Twentieth Session of the Intergovernmental Group of Experts on
Competition Law and Policy,
21-22 July 2022

Room XVII, Palais des Nations, Geneva

Measures Put in Place by The Competition Authority of Kenya to Balance
Between Effective Monitoring and Innovation Promotion Of Digital Platforms

Presentation

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21st July, 2022

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UNCTAD IGE ON COMPETITION LAW AND POLICY 2022
Reliance on Digital Platforms during (and post) COVID19

#Mobile Money – Transfers & Payments
• Value of Mobile Money transactions increased by 63.2% in 2021 compared to 2020
• Mobile Money Transactions grew by 32%
• Previously transactions were Person-to-Person (P2P) and now transitioned as a Critical payment Channel for Business (P2B and B2B)
• Mobile Money Accounts increased by 2.4%
# Banking
• Digital Banking Transactions increased by 6.4%. This is supported by Banks launching and promoting the usage of Banking Apps. Also high internet penetration levels in Kenya.

# Ride Hailing
• Ride-hailing Services have involved from Private Car transportation to provision of motor-bikes, three wheelers taxis and Mass transportation (– ordered of the road due to regulatory challenges)

# On-line Food Delivery
• Grew by 22.4% and it is expected to double by 2024.
• On-line Purchases registered an increment of 79% in 2020 and 2021. Main Players (Jumia -42%; Kilimall – 11%; Jiji (former OLX) – 7% while Facebook Market Place – 4%).
The Regulatory Dilemma

# Digital Platforms through innovation have?

i. Increased efficiency;
ii. Reduced transaction costs;
iii. Increased Consumers choice (new Products)
However…

#Digital Platforms have led/may lead to: -

- Market **Concentration**? - Killer Mergers (or the incubation approach?);
- Opportunities for AoD – **Increased Market Power**;
- **Superior Bargaining Position**/Abuse of Buyer/Critical Trading Partner positions
- Increased/new **Consumer Protection infringements/issues**
Available Enforcement Provisions

# Intervention Criteria

• **Contestability** ?...if yes, do not intervene!
  - Need to review cost of entry; Period to enter?

• Is the **Conduct Fair**?...if yes, do not Intervene!
  - Are the AoD provisions adequate?

• **Superior Bargaining Position**/Buyer Power

• **Excessive Pricing**
  - Strategic Market Position/Dominance – to intervene or not to?
Approach...Measures

- **Balancing efficiency gains and anti-competitive losses**
  - Is it necessary? If yes, does the period of intervention matter?

- **Minimizing the Jurisdictional Conundrum/haziness**
  - Economic Regulation (Ex-ante) and or competition laws (Ex-Post).

- **Increased Market Inquiries/ Studies to inform the regulatory Approach**
  - merger thresholds
  - Dominance provisions – USSD Study
  - Digital Credit Market Inquiry
Approach cont’d….

• **When and form of Intervention – matters!**
  - e.g. Mobile Agents Exclusivity Order (CAK vs. Safaricom PLC)

• **Increased horizontal (Continental) and vertical cooperation** (Competition Agencies and Sector Regulators);

• **Recoupmment or Abuse? – Excessive Pricing in Mobile Money Transfers**

• **Enhancing Agency Effectiveness** (skills, resources….)
On the Table…The future

• **Discussions on A new Regulatory Approach**
  - New Laws? Guidelines? Specific/Require further specification process?

• **Developing a Credible, Critical mass and Coherent Regulation**
  - Whole of Africa Approach?

• **Publishing the Strategic Market Position Guidelines/Approach**
Cont’d…..

• Increased role of Market Inquiries – **Increased Advisory Role**

• **More Collaboration and Cooperation** (National & International, Agencies and Stakeholders).