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

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UNCTAD IGE ON COMPETITION LAW AND POLICY
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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%

Cont'd..

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);**
- **Recoupment 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).