

# COMPETITION LAW, POLICY AND REGULATION IN THE DIGITAL ERA

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```
mirror_mod = modifier_ob.  
set mirror object to mirror.  
mirror_mod.mirror_object =  
operation == "MIRROR_X":  
mirror_mod.use_x = True  
mirror_mod.use_y = False  
mirror_mod.use_z = False  
operation == "MIRROR_Y":  
mirror_mod.use_x = False  
mirror_mod.use_y = True  
mirror_mod.use_z = False  
operation == "MIRROR_Z":  
mirror_mod.use_x = False  
mirror_mod.use_y = False  
mirror_mod.use_z = True  
  
selection at the end -add  
mirror_ob.select= 1  
modifier_ob.select=1  
context.scene.objects.active  
("Selected" + str(modifier_ob.  
mirror_ob.select = 0  
= bpy.context.selected_object  
data.objects[one.name].select  
  
print("please select exactly  
  
-- OPERATOR CLASSES --  
  
types.Operator):  
X mirror to the selected  
object.mirror_mirror_x"  
mirror X"  
  
context):  
context.active_object is not
```

## A FAST GROWING MARKET

“Online commerce and financial technology in Nigeria is strengthened by fast growing youth population, expanding consumer power, and increased smartphone penetration. The current Ecommerce spending in Nigeria is estimated at \$12 billion, and is projected to reach \$75 billion in revenues per annum by 2025.”

*United State International Trade Administration, Nigeria - Country  
Commercial Guide, September 2020*

# AN INTERCONNECTED AND MULTI-LAYERED ECOSYSTEM



## Digital infrastructure

Broadband  
Gadgets



## Digital entrepreneurship

Digital start-ups – develop technology  
Digitally enabled businesses – Deploy technology



## Digital financial services

Start-ups and traditional providers deploying fintech in the provision of lending, payment, banking, savings, investments and other financial services.



## Digital platforms

Private sector platforms  
Public data platforms – sharing government data in furtherance of the Nigeria Open Data Policy, 2018  
Social media platforms

### Key concerns:

Big Data

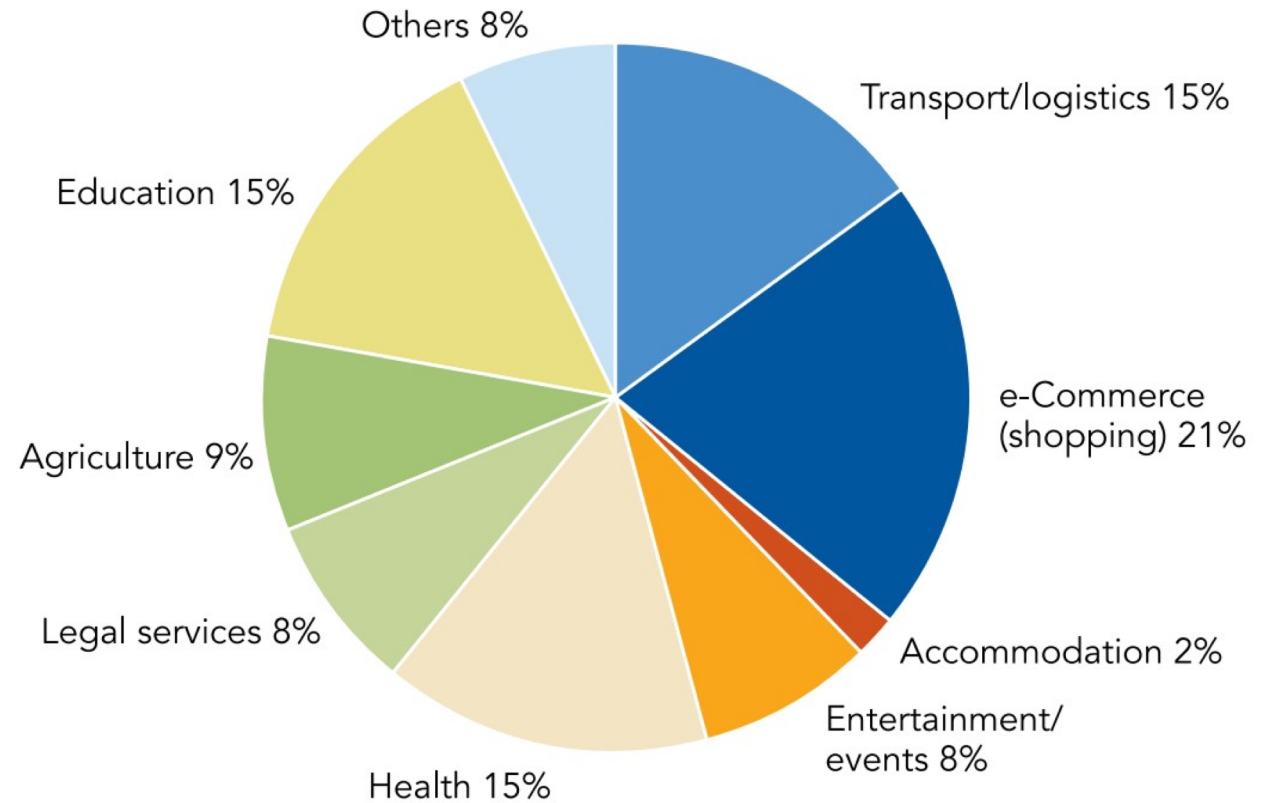
Cyber Security

Data Privacy

# PRIVATE SECTOR PLATFORMS IN NIGERIA

“As per a recent assessment [2018], there are currently around 277 private sector platforms operating in Sub-Saharan Africa. The second largest number in Nigeria (87), which also accounted for the largest share (60%) of the 4.8 million platform workers. Of the 87 platforms in Nigeria, 66 were homegrown (76%), and the remaining were from the U.S. (10%), Europe (6%), the rest of Africa (3%) and other (5%).”

*World Bank, Digital Economy Diagnostic Report, 2019*



Source: Insight 2 Africa (2018).



# REGULATING COMPETITION IN NIGERIA'S DIGITAL MARKETS

A key concern for competition regulation is the anti-competitive use of big data. According to the EU commission, *“recent data and competition policy related reports pointed out that monopolistic behaviour occurs mainly in very large online platforms that have become gatekeepers to online markets.”*

European Commission, JRC technical report, ‘an economic perspective on data and platform market power’, 2020

- Existing legislation provides ample regulatory scope for regulating the space. Specifically, key provisions of the Federal Competition and Consumer Protection Act (FCCPA), 2018, include:
  - Section 2: Scope of the law includes business conduct with an impact in Nigeria (captures conduct by foreign entities)
  - Section 17 (g): eliminate anti-competitive agreements
  - Sections 59 – 63: Restrictive agreements
  - Sections 70 – 73: Abuse of dominant position
  - Sections 76 – 85: Monopoly investigations
  - Sections 92 – 102: Merger review
  - Section 108: Collusion, conspiracy, cartels.

# DOES COMPETITION LAW AND POLICY NEED TO BE COMPLEMENTED BY REGULATION TO RESTORE FAIR COMPETITION IN DIGITAL MARKETS?

- Yes. However, regulators can do much more with specific regulatory instruments that provide clarity on how a competition regulator will assess conduct within the digital markets.
- Presently, the FCCPC is developing guidelines for market definitions and this includes a section on “Zero Price and Digital Platforms”. Key considerations for defining markets in this area include:
  - a. Understanding the roles of players in the space, i.e., recognising that with digital platforms the user plays the role of a producer, while platforms play a distribution role, and advertisers are consumers.
  - b. Platforms as multi-sided markets with network effects.
  - c. Defining digital markets using modified versions of the SSNIP test:
    - i. The SSNIQ (small but significant non-transitory change in quality); or
    - ii. The SSNIC (small but significant non-transitory change in cost) – cost here not being monetary.

# HOW CAN REGULATION CONTRIBUTE TO ACHIEVING OPEN AND ACCESSIBLE DIGITAL MARKETS?

- By addressing entry barriers, particularly those relating to access to data.
- The concepts of democratisation of data and data portability are gradually taking hold in jurisdictions across the globe. The Nigerian Data Protection Regulation (NDPR) already lays the relevant foundation for this to become operationalised in Nigeria. FCCPC is looking in that direction because of the potential benefits to both consumer protection and competition regulation in digital markets.
- Specifically, Section 2.13.12 of the NDPR, 2019 provides for the right of data subjects to own their data. The benefits of this is that data sets harvested and relied upon by big digital platforms can be made available to other platforms if users choose to migrate. In many ways this access to data has the potential to level the field in digital markets.
- So, a competition law regulation that builds on the twin concepts of data democratization and portability will certainly help to achieve open and accessible digital markets.

# HOW SHOULD COMPETITION AUTHORITIES INTERACT WITH GOVERNMENTS AND OTHER REGULATORY AUTHORITIES IN REGULATING DIGITAL MARKETS?

- Competition authorities should take a holistic approach to regulation. Sometimes, what may be beneficial for operators in a market may not be in the overall interest of that market. So, as competition authorities who have a market protection mandate, it falls upon us to take responsibility for keeping that holistic view on the table, even for other regulators.
- Many sectors converge in the digital market, and this sometimes creates a conflict of interests and purposes. I daresay that competition regulators have overarching responsibility to manage the market conduct of each sector with the objective of achieve a levelled playing field for all.
- I suppose this is why Section 104 of the FCCPA, provides for the supremacy of the FCCPC over other regulators, when it comes to matters of competition regulation and consumer protection.

# THANK YOU!