

ANNEX: Summary of AHCAD members intervention in Digital Markets (Roundtable discussion)

Name of Authority	Tool employed	Issue	Findings
Competition Commission of South Africa	Market Inquiry – Online intermediation platforms (online search, e-commerce, food delivery, travel & accommodation)	To understand scope of competition issues in this market segment	• Google Search favouring established platforms • Booking.com's pricing restrictions limiting competition • Takealot's conflict of interest affecting sellers • Google Play and Apple App stores unconstrained commission fees charged to app developers, and • Uber Eats and Mr D Food's lack of transparency on menu surcharges across platforms.
*Additional comments from CCSA: <i>The OIP market inquiry was preceded by a strategy paper on digital economy that was published in 2020 to understand context. The market inquiry generated a number of case referrals: Facebook and Meta. Ongoing case against Microsoft re. cloud storage.</i>			
Egyptian Competition Authority	Enforcement (Conduct case)	Abuse of a dominant market position by an online food delivery platform ('OFPD')	• OFPD imposed exclusivity conditions in its agreements with the restaurants not to deal with its competing food delivery companies. Resulting harm to competitors and consumers. • OFPD also imposed tying obligations on the restaurants by tying unreasonable terms and conditions distinct from the relevant products to the product where the company has its dominance. • OFPD required restaurants to align their prices regardless of sale via outlet and platform, restricting competitive pricing. • Administrative measures applied to ensure that competition in the market was restored.
Federal Competition and Consumer Protection Commission (Nigeria)	Enforcement (Consumer protection)	Illegal practices among digital money lenders (DMLs), including the unauthorized	• Occurrence of prohibited loan money recovery methods and practices by DMLs that were using (Android Package Kits) formats to provide links to consumers to visit unregistered websites using their Android devices/phones. During this visit, consumers' private information is illegally accessed and

Moroccan Competition Council		use of consumers' private information	downloaded. DMLs also resorted to threats of using consumers' private data if loans were not repayed - Measures: - Mandatory registration of DMLs - Delisting of registered DMLs that were found to violate the law. - DMLs failing to register are placed under strict surveillance, with the FCCP providing a watchlist of non-compliant entities for consumer awareness and protection.
	Market study & Stakeholder engagement	Promoting digitalization incl at payment level	- MCC carried out a detailed study on data centers to promote a conducive infrastructure to lay the base for the digital markets. - The study revealed that there are 23 data centers in Morocco, to facilitate and protect the digital sovereignty and economic transaction at national and international level. - Public-private stakeholder engagement to address and eliminate additional commission being paid by the consumers for electronic payments. This initiative roped in private and public partnerships and extended to payment in the telecommunication sector, social security, public utilities, taxes, private schooling fees etc. - Intervention aligns with the broader global vision of the Morocco (given it being a tourist destination) to call for the development of the digital economy, e-commerce and transactions. This to be done through investment and support companies to develop an electronic service for local and foreign consumers.
Fair Competition Commission of Tanzania	Study on mobile money market following request from the	Access	Study was prompted by the following incident: A prominent TV company, lacking its own mobile network, sought access to mobile payment services from a mobile network operator. Despite an agreement

**Angola Competition
Authority**

Tanzanian Communication Regulatory Authority		to collaborate, the operator imposed excessively high fees for access. • Study still ongoing and expected to be by end of Apr 2024 • FCC's approach involves considering both competition and consumer protection angles, recognizing the potential impact of exorbitant fees on consumers. Additionally, Tanzania's government's focus on digital economy is urging both public and private sectors to align their services with this governmental drive, necessitating a deeper examination of the broader aspects of the digital market. • As part of this effort, the FCC is examining various aspects of the digital market, including relevant markets, potential exploitative abuses, and appropriate remedies. Specifically, the FCC is scrutinizing concerns related to platforms, search engines, and online advertising etc... The FCC also expressed gratitude for the insights gained from the experience of other agencies, which have enhanced their understanding of digital market dynamics.
		• Implemented data protection law 2 years ago and created the Data Protection Office. • 2 years ago, the ACC made a recommendation regarding Fintech to open the market for start-ups and reduce the barriers for entrants. • Noted the information on digital market and would welcome guidelines or statistics on the digital market.

Name of Authority	Tool employed	Issue	Findings
Namibian Competition Authority	Merger	-	• Merger between a traditional bank (Standard Bank) and MobiPay which is a digital player that had a system in place for enabling consumers to pay utilities electronically. No competition issues found. • Merger between First National Bank and E-bank (electronic bank allowing banking transaction through computer or mobile phone). E-bank was a small bank. No significant effect on competition and likely encourage other banks to innovate in this sense.
WAEMU	Competition enforcement	Access	• WAEMU shared the case involving mobile money, where a new entrant offering low-cost services faced challenges in accessing mobile telephony codes necessary for its operations. This difficulty arose following the central bank's directive to separate mobile money from telephony services, leading to the telecommunications regulator assuming control over code allocation. Independent operators encountered obstacles in obtaining these codes, raising concerns about fair market access and competition dynamics. • Challenges arose due to the lack of independent behaviour by mobile telephony operators, who instead complied with a decision made by the sector regulator. This compliance with regulatory directives prevented further investigation progress, as the regulatory authority had jurisdiction over the sector. Consequently, the investigation was impeded, leading to the drafting of a decision stating the inability to find evidence of abuse of dominant position.
COMESA Competition Commission	Competition enforcement & consumer protection	-	<u>Google/Fitbit case:</u> • Need to revise the laws to capture transactions which have already started. • Looking into comprehensive submissions on how transactions in the digital economy may be captured (Merger and Conduct cases).

		• CCC will be bringing forward these submissions to a dedicated team of experts from member states (by April 2024) to see if the submissions are workable. <u>Jumia case:</u> • Case launched <i>proprio motu</i> (without any actual consumer complaints). biggest online purchasing platform in the East, North and Middle East Africa. • Looked at the terms and conditions on the websites in the height of COVID 19 when consumers were using online platforms a lot for purchases. • Unethical Terms and Conditions such as: • Jumia did not guarantee the continuation of its platform; there would not be any redress if Jumia stopped operating the platform, even if the consumer completed the transaction. • Jumia refused to state their official trading name (stated to be confidential); a serious consequence in case of a legal matter. • Refused to disclose the seller being dealt with by the consumers– any grievance or dissatisfaction, Jumia would not be liable. • Engaged Jumia; which was very cooperative and removed all the terms and conditions which were incompatible with the CCC regulations. <u>Kylemore:</u> • Express provisions such that they will not entertain return or refund policies. • These provisions indicated towards potential dominance, as otherwise they would have known that consumers could have used other platforms. • CCC again used consumer provisions instead of competition provisions. • The terms and conditions were removed upon the intervention of the CCC. <u>Uber/Careem merger</u> • In Africa, Uber was in Uganda and Egypt. Careem operated only in Egypt.
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		• The merger notification threshold was not met. But in Egypt, Careem was the only other operator. Further to the merger, there would not be any competition. • Looked through regulations, the CCC has provision which enables it to intervene even where thresholds are not met (Exception to the norm). To use the provision, the CCC had to demonstrate the harm to competition resulting from the merger. • Raised the issue of COMESA intervention, when the case regarded Egypt only. The CCC provided that Egypt was a substantial part of the common market. (Got reference from the Italian Competition Commission case regarding <i>Port of Genoa</i>) • Received significant undertakings in this case amongst inter alia: 1. The merged entities Uber and Careem should not behave in a manner to foreclose potential entrants in the Egyptian market by not giving access to anonymized data and maps and 2. Not to engage in exclusive arrangements with driver recruiting companies etc. <u>Uber:</u> • Issues discovered in Kenya and Uganda. • Uber drivers fare at destination and on app were different (reasons put forward was traffic etc.) Case is ongoing.
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***Additional comments from COMESA CC:**

- *Challenges faced: Definition of geographic market and absence of physical location of parties in COMESA*
- *It was submitted that the resources in terms of adequate capacity, skills, knowledge are not lacking in Africa but the only thing is potentially lack of coordination.*
- *There lies a case for the AFCFTA to look into as digital markets which go beyond one single country/region and are matters that can be dealt with at continental level.*
- *Just like the Seychelles, Kenya, Zambia, Eswatini amongst other, the COMESA regulations regulate both competition and consumer matters. There is a thin line between consumer and competition matters especially in regard to digital market.*
 - *Cases on online platforms looked into by the CCC included Jumia, UBER, Digital Paytv;*

- *Exploitative abuse was observed with mainly dominant firms misbehaving towards consumers;*
 - *Observed consumer cases used the term unquestionable conduct;*
 - *CCC has the choice to opt for competition law against abuse of dominance or opt for consumer provisions.*
 - *With competition provisions, there are high standards in establishing dominance etc. In view of prioritizing resources and effective redress (while using non-confrontational approach but still addressing the issue) – Used the consumer law provisions.*
- *Competition Authorities have to be proactive and not wait for complaints; as even in the absence of consumer complaints, there might be concerns.*
 - *Engage in deliberate advocacy on digital markets for the layperson.*
 - *Internally put up specialized dedicated team for digital markets and train them*
 - *Potential amendments to the law being looked into to address digital matters.*