



Panel 1 – Competition in the digital age in Africa and the EU – shared realities?

Summary:

“The growth in tech emergence has accelerated since the global pandemic, and the rapid rise of the digital economy has led to policy makers and competition authorities looking at a more nuanced approach to competition regulation for digital markets. This panel explored the differences and similarities of the dynamics of digital markets in Africa and the EU, and how considerations of digital and structural transformations – such as the impact of digital innovation on opening up the economy to previously excluded businesses and consumers – are balanced against concerns about market power and the growing influence of large digital platforms within and beyond the marketplace.”



Speakers:

- **Heather Irvine (Partner, Bowmans Law, Johannesburg);**
- **Georgios Mavros (Public Policy Manager, EMEA, Google);**
- **Sophie Moonen (Head of Unit Antitrust case support and policy, European Commission's Directorate-General for Competition);**
- **Hardin Ratshisusu (Deputy Commissioner, South Africa Competition Commission).**

Moderator:

- **Hilary Jennings (Course Director, Senior Competition Expert and member of the UK Regulatory Policy Committee).**

Nowadays, digital markets present opportunities as well as challenges, and therefore, they are high on the agenda of policymakers. But what are the challenges for the African continent in terms of (digital?) infrastructure, how infrastructure is linked to the digital era and how do agencies respond to these questions? Africa faces the issue of security around the market itself. The same security challenges apply in other areas of the world. However, an additional issue for the continent is its infrastructure. The majority of the population lives isolated in rural areas with no access to digital

opportunities. To tackle this issue, the Africa Competition Commission is taking a pragmatic approach with a digital market team that seeks to respond domestically and collectively. The digital market is beneficial for the continent and this can be seen by how large platforms such as Airbnb are taking benefit from it.

Africa has a huge potential for a digital market. It can create a variety of different brands and cultures for African consumers. Online platforms have enabled small businesses to raise in the market and gave names to them (ex: tourists from Europe would book a hotel in a tiny town thanks to digital platforms). However, the problem of regulation has to be taken into account. However, the dynamics in African markets might be very different from the European ones, because in South Africa there is a history of fairness, not as in Europe, therefore the approach has to be tackled differently. There are elements of fairness beyond competition law, open & contestable (like energy, telecoms) that are regulated, meaning that this is not new, however, different complementary approaches have been taken. Competition can continue its role and DMA will allow for more quick enforcement.

The platform economy has wide types of services since there are a lot of intermediates across the value chain. The technological revolution has indicators of competition policy. But the longer you wait for regulation, the stronger firms become. Although there are challenges in the market and there are remedies, most of them are Euro-centric and therefore are not always useful for other parts of the world like South Africa. But DMA has a list of do's and don'ts extracted mainly from competition cases that can be used to apply rules specified in each case (never extrapolate and apply across).

Taking everything into consideration, we should not forget that the digital market has a big social impact in developing economies because platforms have the potential for huge opportunities for SMEs to sell goods in regional blocs and therefore grow and solve social problems.

Panel 2 – International and regional cooperation – partnerships for development.

Summary:

“International cooperation between competition enforcers is recognized as beneficial. While the types of benefits vary according to the size of authority, maturity, resources, and legal system, international cooperation provides opportunities for more efficient and effective consideration of competition matters, facilitates compliance and improves relationships, trust and transparency. There is always scope to improve and promote regional and international

cooperation, within the EU, across Africa and between Africa and the EU. But this requires resources, frameworks and opportunities for effective collaboration. This panel explored existing cooperation mechanisms within the EU, across Africa and between the EU and Africa. It discussed what policy and practical support is needed to improve partnerships and effective cooperation – not only enforcement cooperation but other mechanisms to build trust and transparency between competition authorities and improve the efficiency of markets.”



Speakers:

- **Eddy De Smijter (Head of International Relations Unit, European Commission’s Directorate-General for Competition);**
- **Professor Frederic Jenny (Chairman of the OECD Competition Committee and Professor at ESSEC Paris Business School);**
- **Margarida Matos Rosa (President, Autoridade da Concorrência – Portugal);**
- **Dr Mahmoud Momtaz (Chairman, Egyptian Competition Authority)**

Moderator:

- **Hilary Jennings (Course Director, Senior Competition Expert and member of the UK Regulatory Policy Committee).**

EU competition was not built easily. Some of the Member States did not believe in the network because most of them already had their competition authorities and did not want to centralize all the power. However, over the years this has changed and the keys to success have been the following ones.

- 1) The EU network gathers all groups that apply the same rules and discusses on the basis of the same legal framework
- 2) The EU has installed a cultural debate: discussion of cases at all levels, while they are still ongoing, has helped the debate, in the sense of belonging and has led to the creation of the ECA.
- 3) The European Commission Regulations work at all levels without creating a hierarchy where everyone has the right to speak.
- 4) Respect each other differences and identities without trying to unify
- 5) Patience is key to progress. (Ex: soft law becomes hard law)

Within the EU, there also are regulations that apply and enable Member states to cooperate. And this cooperation is always based on neutrality, respect, and solidarity and the structure enables cooperation at all levels of agencies.

In the case of Egypt, the cooperation is multilateral. *“Egypt specifically is flourishing because we can consider Mediterranean, Africans, Arabs, Middle Eastern.”* (Mahmoud Momtaz) However, this also poses different challenges because anticompetitive practices might appear in the segmentation. It seems obvious to Egypt that talking about other cases is crucial for a learning process. Bilateral agreements are necessary because they share the same challenges and therefore for the digital market they have to stand together.

However, is the EU model applicable to the rest of the world? There is a deficit of realization, a deficit of innovation, and a deficit of conceptualization. To cooperate there are many things to be taken into account. The topic is very relevant, it is very different to cooperate for competition law than to cooperate on investigating techniques or advocacy or enforcing. The context also plays a crucial role, for instance, there are many differences between centralized and decentralized competition law. Moreover, bilateral agreements have to be also taken into account. Not only that, but also cooperation's costs, and therefore there is always one that gets the benefits and one that loses them. That is why, nowadays the cooperation is just

between some bilateral small countries, leaving many countries and sectors. And although everybody would like to have more, it has not moved forward very much.

It is obvious that there are challenges that limit cooperation (maybe resources or legal limitations). Sometimes the EU looks for strategic samples to cooperate and it is really important to acquire the learning process before creating multilateral agreements. However, sometimes it is very difficult because countries want to protect their countries, not only in Africa but all over the world. Another of the main issues with cooperation between African and non-African countries is the size of the countries because there are a lot of small countries, thus many issues in Africa do not resonate.

In order to make cooperation more inclusive there is the need to make things easy, not try to make ideal cooperation but just make it happen: “pick the phone whenever someone is calling you” because at the end of the day, cooperation is beneficial for everyone and as a country you have to get the best for your people and you should do as much as possible to enforce competition law.

Panel 3 – Working together for a continental competition regime for Africa – The AfCFTA.

Summary:

“Strengthening economic integration across Africa requires solutions to cross-border anti-competitive practices and identification of competition problems at the continental level. The development of a competition regime for the African Continental Free Trade Area (AfCFTA) provides a platform for a continent-wide competition policy to tackle priority public and private restraints that threaten African integration. The AfCFTA can also offer a vision and voice for African competition policy. This panel considered the development of this pan-African model and experiences from other regional organizations that might inform and support the effectiveness of a supranational regime, such as institutional architecture, scope, and legal mandate. It also explored the balance between a continental regime, regional and national competition authorities in terms of overlap, coordination and best-placed actors. The panel was an opportunity to discuss the ambitious AfCFTA competition project and what is required to make it a success.”



Speakers:

- **Malick Diallo (Acting Head of Competition Division, AfCFTA)**
- **Vellah Kedogo Kigwiru (Advocate of the High Court of Kenya, a doctoral research fellow at TUM and a Guest Researcher at the Marx Planck Institute for Innovation and Competition, Munich Germany)**
- **Dr. Willard Mwemba (Director & Chief Executive Officer, COMESA Competition Commission)**

Moderator:

- **Hilary Jennings (Course Director, Senior Competition Expert and member of the UK Regulatory Policy Committee)**

The AfCFTA Competition Protocol has the ambition to integrate competition policy at the African level, in order to get to an African economic community. The reasons behind this decision are various: boosting economic efficacy and private sector competitiveness; pursuing consumer protection, continent industrialization and the creation of regional value chains, poverty reduction, new employment opportunities and competition protection.

In order to avoid backlash from single countries, there should be clear jurisdiction thresholds between national and regional competition authorities, since the goal should be that of fighting anti-competitive practices. Two ways to make it work are 1) the involvement of all

stakeholders to uphold competition law under the principle of multilateralism and 2) helping some member states of the AfCFTA to build national competition authorities from scratch in order to be successful at the regional level. The AfCFTA can draw from the experiences of the COMESA, the West African Monetary Union as well as the European Union.

The Competition Protocol is also a mechanism for cooperation on two levels:

1. A commission committee in terms of policy-making, negotiations, exchange of information and best practices at national levels
2. A committee of heads of competition

This mechanism will also inform the Council of Ministers on what needs to be done next, hence gaining political legitimacy and creating the ground for a forum for coordination and cooperation to give substantiality to Art. 3 of the AfCFTA establishing agreement, as it envisages the following common objectives: openness in trade, services and movement of people, elimination of constraints (non-tariff measures and facilitation of investments), promotion of sustainable and inclusive socio-economic development and enhancement of business competitiveness. In this way, the Competition Protocol will help replace the trade remedies regime with the competition regime in the next few years.