

# Competition & Digital Platforms: A view from South Africa (in Africa)

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Competition Global Dialogue

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# Online Intermediated Platforms Market Inquiry ([OIPMI](#) of the [CCSA](#))

- OIPMI instituted February 2021
  - after 2018 deconcentration amendments to the Act inter alia gave more powers to market inquiry tool; and
  - amidst growing concern among [African Competition Regulators](#), including the [Competition Authority of Kenya](#), about the impacts of digital platforms and the digital economy on their societies.
- OIPMI [ToR](#) placed the emphasis on competition issues in e-commerce platforms - over fintech and over issues of technology & society
- The [July 2022 Provisional Report](#) floated hard-hitting specific findings and proposals against a range of e-commerce practices and platforms, both global (Google Search) and domestic/African (Takealot)
- However, after [comments from \(mostly\) platforms](#), the Final Report date has been extended from Nov 2022 to 18 April 2023; proposed final [Recommendation](#) (Feb 2023) has pulled back from specific findings and proposes now (via s 78) to specify OIP factors relevant to CCSA usual competition enforcement processes

# African Digital Competition Research Project (Wits University)

- Running from mid-2021 to end April 2022, University of the Witwatersrand
  - More at: <https://wiser.wits.ac.za/page/african-digital-competition-research-working-papers-webinars-13755>
- This Omidyar-funded research initiative explored the political and legal landscape surrounding the enforcement of competition (antitrust) laws on the African continent in the digital age.
  - It investigated strategic options/tactics to address anticompetitive conduct and conduct violating the right to privacy by tech platforms, including the potential for litigation, public awareness, law reform, and campaigns regarding responsible technology.
- The working assumption of the research was that, while different countries vary on the African continent, there exist currently more regulatory resources to respond in a competition paradigm than in one of privacy.

# Research/Think&Do Partners

- [WiSER](#) – longstanding research on the historic shift from paper-based systems of population registration to digital and biometric systems
  - Worldwide but with particular impact on the African continent
  - Researching the registration deficit in both public and private spheres; [research project on digital identity](#)
- [Mandela Institute](#) (Wits Law School) – growing body of research on law and technology and on the regulation and governance of digitalization
  - Also with a tradition of research on economic regulation and competition
- Centre for Competition Regulation and Economic Development ([CCRED](#), at UJ) – leading economics research centre on competition and economic development
  - Since 2015, training/conference event, [ACER2023](#), w/African competition authorities
- Some excellent research in the associated sector of TMT (telecomms, media, & tech) comes from [ResearchICTAfrica](#) and the [LINK](#) Centre.

# Guiding Questions

- Q: What are some of the key opportunities around the use of competition to reign in Big Tech in S Africa, and elsewhere on the Continent?
- A: 2021-2023 Market Inquiry – MOU with Info Regulator; Publishers’ attempt to draw on new Australian media paradigm
- Q: Who are the key actors in the South Africa/Kenya regulatory ecosystem? How significant is the joint working plan announced in February 2022 between competition authorities in Egypt, Kenya, Mauritius, Nigeria and South Africa? [<https://globalcompetitionreview.com/article/african-enforcers-adopt-joint-approach-in-digital-markets>]
- A: The African Competition Forum held a steering committee mtg in Johannesburg 8-9 March 2023, attended by Tanzania, Mauritius, Morocco, and e Swatini in addition to South Africa; launched two reports (roaming and generic pharma); joint action in a sector or on an issue is possible
- Q: What is the role of the regulators, and how can civil society engage with and support them? For example, how can civil society get more closely involved in the Africa-EU Partnership on competition cooperation? It seems Google but not civil society was represented at a recent conference: <https://africa.competitioncooperation.eu/conference-on-african-competition-policy/>
- [A: Comp authorities in Africa play a convening role; rivaled only by the law firms and CCRED/MI/ACER](#)

# Resources (updated)

- African Digital Competition Research Project (see previous slide)
- Buthelezi, Thembaletu, and James Hodge. “Competition Policy in the Digital Economy: A Developing Country Perspective.” *Competition Law International* 15, no. 2 (2019): 201–8. <https://heinonline.org/HOL/P?h=hein.journals/cmpetion15&i=199>
- Cachalia, Firoz, and Jonathan Klaaren. “Digitalisation, the ‘Fourth Industrial Revolution’ and the Constitutional Law of Privacy in South Africa: Towards a Public Law Perspective on Constitutional Privacy in the Era of Digitalisation.” *Digital Pathways at Oxford Paper Series; No. 14*, July 16, 2021. [https://doi.org/10.35489/BSG-DP-WP\\_2021/04](https://doi.org/10.35489/BSG-DP-WP_2021/04). (forthcoming in *Journal of African Law*)
- Kira, Beatriz, Vikram Sinha, and Sharmadha Srinivasan. “Regulating Digital Ecosystems: Bridging the Gap between Competition Policy and Data Protection.” *Industrial and Corporate Change*, no. dtab053 (August 24, 2021). <https://doi.org/10.1093/icc/dtab053>.
- Paelo, Anthea, and Simon Roberts. “Competition and Regulation of Mobile Money Platforms in Africa: A Comparative Analysis of Kenya and Uganda.” *Review of Industrial Organization* 60, no. 3 (May 1, 2022): 463–89. <https://doi.org/10.1007/s11151-022-09858-x>.
- Breckenridge, Keith. “The Global Ambitions of the Biometric Anti-Bank: Net1, Lockin and the Technologies of African Financialisation.” *International Review of Applied Economics* 33, no. 1 (January 2, 2019): 93–118. <https://doi.org/10.1080/02692171.2019.1523836>.
- Fox, Eleanor M., and Mor Bakhoun. *Making Markets Work for Africa: Markets, Development, and Competition Law in Sub-Saharan Africa*. Oxford University Press, 2019.
- Kigwiru, Vellah Kedogo. “Supranational or Cooperative? Rethinking the African Continental Free Trade Area Agreement Competition Protocol Institutional Design.” *Journal of Antitrust Enforcement*, February 3, 2023, jnad003. <https://doi.org/10.1093/jaenfo/jnad003>.