

Towards an African Paradigm of Regulating Big Tech

Firoz Cachalia, Mandela Institute, University of the Witwatersrand

Jonathan Klaaren, University of the Witwatersrand

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Introduction: An African Online Market Inquiry Begins

Without too much fanfare, the South African competition regulator has recently embarked upon an investigation of the competitive dynamics and potential monopoly problems in the fast-emerging area of online markets.¹ This move brings the Competition Commission into alignment with numerous other jurisdictions around the world (mostly from developed economies) that are examining economic issues regarding big tech and its regulation. In its online intermediation platform market inquiry (OIPMI or online market inquiry), the South African agency has chosen to focus on e-commerce (online classifieds, travel bookings, and e-commerce outfits such as Takealot).² The inquiry specifically excludes e-hailing services which were the subject of a previous inquiry. However, also of interest – but not receiving immediate attention – are the fintech and the big tech sectors. The Commission distinguishes on a rough basis among these three sectors on the basis of their business models. While fintech works on the basis of commission, many of the big tech firms (such as Google and Facebook) derive the dominant share of their revenue from digital advertising. Nonetheless (as we discuss further below), many definitions of the big tech sector may well go beyond this business model. Having just concluded a stage of collecting information through public hearings, the online market inquiry aims to report on its findings in a sequenced preliminary (Feb 2022) and final report (May 2022).³ The inquiry indicates its willingness to engage forcefully, noting “competition law [is required] to not only consider new theories of harm but also to act proactively against potential entrenchment strategies to ensure markets are contestable and prevent irreversible concentration. Ensuring markets are contestable also requires competition policy tools to facilitate access by potential entrants.”⁴ One relevant question thus asks what revisions of traditional competition analysis may or may not be required by the new understandings emerging of the Platform Economy.⁵

¹ Sasha Planting, “Competition Commission Steps Carefully into the Fast-Growing Online Retail Space,” *Daily Maverick* (blog), March 14, 2021, <https://www.dailymaverick.co.za/article/2021-03-14-competition-commission-steps-carefully-into-the-fast-growing-online-retail-space/>.

² “OIPMI Statement of Issues,” May 2021.

³ “OIPMI Administrative Timetable,” n.d.

⁴ Competition Commission South Africa, “Online Intermediation Platforms Market Inquiry Terms of Reference,” April 2021, 4, https://www.compcom.co.za/wp-content/uploads/2021/04/44432_09-04_EconomicDevDepartment.pdf.

⁵ Julie E. Cohen, “Law for the Platform Economy,” *U.C. Davis Law Review* 51 (2018 2017): 133; Julie E. Cohen, “The Regulatory State in the Information Age,” *Theoretical Inquiries in Law* 17, no. 2 (July 27, 2016), <http://www7.tau.ac.il/ojs/index.php/til/article/view/1425>.

While the decision to defer tackling global big tech in a jurisdiction such as South Africa is understandable, its full implications – just like developments elsewhere⁶ -- remain to be seen and assessed. In any case, we welcome the boundary-drawing exercise among e-commerce, fintech, and what one should call big tech given the sheer size of the revenues derived by a number of American-based globally-operating firms and some Chinese ones from digital advertising and other sources.⁷

The initiation of this online market inquiry comes in close proximity to several recent actions taken by the South African competition authorities. At least two significant decisions have been issued in this space recently by the Competition Tribunal.⁸ As for the Commission, it has finalized a research note that lays out its strategic thinking and appears to have been an important step on the way to the present inquiry.⁹ Moreover, at the 15th Annual Conference on Competition Law, Policy, and Economics from 20-22 October 2021, the Commission held a signing ceremony for a Memorandum of Understanding with South Africa's Information Regulator.

In its publication laying out the terms of reference for the inquiry, the Competition Commission uses the type of online offering and its associated monetization strategy (aka business model) to distinguish three sub-categories to the larger classification of digital platforms.¹⁰ This principle yields a three-part classification of digital platforms:

- (a) Platforms intermediating goods and services between businesses and customers, which are typically monetised on commission/sales business models. These may include eCommerce marketplaces, software application stores, so-called match-making platforms for accommodation or food services, and aggregation services such as travel or similar classifieds.
- (b) Search and social media platforms which tend to be monetised by targeted advertising based on consumer data extracted from offering the service for free. These also include the associated digital advertising ecosystem developed around these services and content publishers.
- (c) A third arguably distinct category is the so-called Fintech market, including new emerging payment systems operators. These are distinguished from the other

⁶ Angela Huyue Zhang, "Agility Over Stability: China's Great Reversal in Regulating the Platform Economy," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, July 28, 2021), <https://doi.org/10.2139/ssrn.3892642>.

⁷ Keith Breckenridge, "Capitalism without Surveillance?," *Development and Change*, 2020, 19 (detailing the size of the digital advertising market).

⁸ Competition Tribunal, "Tribunal Issues 'Order for Interim Arrangement' in Govchat, WhatsApp, and Facebook Matter," *Competition Tribunal* (blog), January 22, 2021, <https://www.comptrib.co.za/info-library/case-press-releases/tribunal-issues-order-for-interim-arrangement-in-govchat-whatsapp-and-facebook-matter>; MIH eCommerce Holdings Pty Ltd t/a OLX South Africa & WeBuyCars Pty Ltd, No. LM183Sep18/INT113Sep19 (Competition Tribunal March 27, 2020).

⁹ Competition Commission, "Competition in the Digital Economy (Version 1)" (Competition Commission, September 7, 2020), http://www.compcom.co.za/wp-content/uploads/2020/09/Competition-in-the-digital-economy_7-September-2020.pdf; Competition Commission, "Competition in the Digital Economy (Version 2)," November 2, 2020, <http://www.compcom.co.za/wp-content/uploads/2021/03/Digital-Markets-Paper-2021-002-1.pdf>.

¹⁰ Competition Commission South Africa, "Online Intermediation Platforms Market Inquiry Terms of Reference," 6.

two categories largely insofar as these technological platforms and startups usually operate within a pre-existing financial market regulatory context where prudential and customer security issues are highly prominent.

The South African online market inquiry is effectively concerned with the first type (e-commerce platforms working on a commissions business model). However, the terms of reference do acknowledge some areas of overlap. One big tech activity (category “b” above) is directly included in the online market inquiry’s terms of reference – the operation of app stores by firms such as Alphabet (Google) and Facebook.¹¹ And one area of overlap from online markets into fintech (category “c” above) is of current interest to the SA regulator: “the role of payment services in facilitating transactions on the online intermediation platforms.”¹²

A final crucial part of understanding the background to the current market inquiry is the degree to which the investigation’s scope overlaps with privacy and data protection policy. The answer is: “not much”. While the online market inquiry “will consider how consumer and business data advantages may shape competition” and does recognize that “the competition issues simultaneously raise other concerns such as independent media funding and data privacy”, the terms of reference for the inquiry “specifically exclude[s] broader data privacy issues.”¹³ While they may be innovative and well-resourced in domestic and continental terms, there are acknowledged and clear limits to the resources and capabilities of the South African competition authorities compared to their global peers.

Part One: Background on Big Tech in South Africa and on African Big Tech

The South African authority’s investigation is part of a global trend. Over the past several years, big tech’s increasing scope and power – the apparently dominant and ever-growing market and social power of these corporations --has triggered in many jurisdictions a political willingness to examine strengthened regulation of these entities. With efforts differing significantly, many states are now considering different and increased national regulation, particularly in sectors such as telecommunications, e-commerce, financial services, and media. This willingness to regulate the negative and toxic effects of digitalisation overlaps with a drive by governments to facilitate and encourage the growth of the digital economy with the many positive effects it brings. Proposed state responses often traverse the cross-economy regulatory domains of privacy, technology standards, and consumer affairs and their embedded regulatory institutions. Competition enforcement features particularly prominently especially in the Global North, where serious scrutiny of big tech by competition/antitrust agencies has begun.

There is an urgent need for African societies to explore and consider their appropriate responses to the rise of big tech and to the rise of cross-border data flows. This effort requires both understanding the African impact and presence of these global firms in Africa as well as identifying and mapping emerging African tech firms and data start-ups.

¹¹ “OIPMI Statement of Issues,” 16–19.

¹² “OIPMI Statement of Issues,” 3.

¹³ Competition Commission South Africa, “Online Intermediation Platforms Market Inquiry Terms of Reference,” 9, 14.

There are arguably several features of developing market economies (such as South Africa) which mean that their digital markets competition policy agenda should take into account economic development issues broader than the outsize dominant power of the top global tech companies. These economies are small and have limited jurisdiction and enforcement resources. They have highly concentrated markets. And many of these economies are characterized by significant inequality and poverty. One implication of this view is the digital economy presents a “disruptive force that could provide an opportunity to enhance inclusion in markets, which has been lacking to date.”¹⁴

Another implication of this view is the proposition that emerging economies have a constrained ability to act decisively against the most economically powerful companies which also have limited physical presence in our economies. While we think there is much to be said for this proposition, we also observe that the current market inquiry appears to have pushed back strongly against at least one attempt by firms without a physical presence in South Africa to avoid their regulatory obligations. The Commission wrote quite pointedly in August 2021: “The scope of the OIPMI is *not* restricted to platforms that have a physical presence in South Africa only. The scope of the OIPMI *includes* foreign-based online intermediation platforms that have an economic effect in South Africa even if such platforms do not have a physical presence in the country.”¹⁵

From the point of view of crafting a realistic regulatory response to the full range of issues above, it is important to map the available regulatory resources – assessing their constraints as well as their powers. On the continent, while different countries of course vary, there are currently more regulatory resources to respond in a competition paradigm than in one of privacy. Without losing sight of the important connections to data protection authorities and TMT regulators, it is the competition authorities that are often possessing greater capability and thus at the cutting edge.

Part Two: Questions and Answers

In our preliminary view, the need for a realistic regulatory response to African big tech calls for a set of questions and for a research agenda that relate to but are not driven by this official enquiry. We see this call as resolving into two broad areas for questions: what kind of regulation is appropriate for African big tech and what answers can already be identified in emergent practices responding to big tech on the African continent. Using this broad distinction, the remainder of this section identifies several questions that we feel require discussion and debate – as well as answers.

What regulation is appropriate?

- A. Self-regulation, regulation, and competition – how should these three interact and overlap in this policy space? Self-regulation is arguably increasing in

¹⁴ Thembaletu Buthelezi and James Hodge, “Competition Policy in the Digital Economy: A Developing Country Perspective,” *Competition Law International* 15, no. 2 (2019): 201–8.

¹⁵ Competition Commission (South Africa), “Online Intermediation Platforms Market Inquiry Clarification on the Inquiry Scope,” August 2021.

prominence globally. Facebook's decision to institute and to listen to the freedom of expression panel may be seen as an example.

- B. Regulation also appears to be on the increase. If the boundaries of regulators used to be important, increasingly from a digital tech point of view the jurisdictions of regulators are porous and of less important – often allowing for regulatory and political bodies to be played off against each other. Indeed, many regulatory bodies on the African continent are currently striving to establish their authority and to assert and maintain their independence. If regulation is to be an important part of the way forward in African countries and on the African continent, how can these regulators achieve sufficient coordination and cooperation among each other, both within and across borders?
- C. The importance and potential policy contribution of concepts of competition are evidenced by the Commission's enquiry into this area. However, the enquiry is clear to indicate that the activities of "free platforms" are not the priority area for potential enforcement in terms of Competition Act proceedings at the moment. Should the Commission rethink its reasoning and conclusion?

What African Answers are Emerging?

- D. Is the Competition Commission's postponement of robust engagement (which might take the form of competition law enforcement proceedings such as are occurring in other jurisdictions) justified?
- E. Are African competition officials and corporate lawyers identifying a set of legal issues emerging that go beyond competition and privacy? For instance, in the area of "free" platforms, one might ask how the doctrines of responsible technology and corporate social responsibility have or have not been respected in the African context?
- F. As one should expect with digital technology, some of these pressing and interesting questions reach far beyond South African borders. To what extent are African data protection agencies aware of, interested in, and engaging with the issues posed by the growth of "free" platforms?
- G. And even further afield – how can democracy across the more than 50 national jurisdictions of the continent itself be resilient in the face of the use of social media to peddle misinformation and computational propaganda?
- H. To what extent are African answers necessarily entangled with issues of global governance and equity? For instance, the introduction of a global corporate tax – while facially neutral – in implementation and effect is a policy development directed at big tech.¹⁶ What might a continental (or a regional) tax look like?

¹⁶ Kate Thompson Davy, "KATE THOMPSON DAVY: US Pushback Part of Global Efforts to Cut Big Tech down to Size," *BusinessLIVE*, August 3, 2021, <https://www.businesslive.co.za/bd/opinion/columnists/2021-08-03-kate-thompson-davy-us-pushback-part-of-global-efforts-to-cut-big-tech-down-to-size/>.

- I. Conversely, to what extent are the African answers emerging local in scale? For instance, the negotiation and contestation over big tech projects such as the proposed Amazon headquarters precinct in Cape Town represent a direct social interface between big tech and their various publics, in very local form.
- J. Given the capacity and capability constraints of countries such as South Africa, Kenya, and Nigeria, what are strategic options/tactics to address the anticompetitive conduct by tech platforms, including the potential for litigation, public awareness, law reform, and campaigns regarding responsible technology?

Part Three: Towards an African Paradigm of Regulating Big Tech

We begin this closing section where the opening section also began: with an examination of the scope of the pertinent issues. For reasons we explore below (as well as in an accompanying working paper from a more technical/regulatory angle), this question of scope or framing is a central one for this working paper. Faced with the social transition that we are, the appropriate scope of projects such as the authorities' regulatory response and (albeit at a smaller scale) our own research is a question that has significance in this context beyond the technical importance of research methodology.

In the first two sections of this paper above, we described and used a specific regulatory process to provide focus to our research. That process – still ongoing as of the date of the publication of this working paper – was the South African Competition Commission's market inquiry.

We drew attention to and leveraged from that specific regulatory process for at least three reasons. First, it is important to recognize the issues of competition and regulatory design within a national context that, in our view, lie at the heart of the questions we posed in the first section and the discussions offered by our contributors in the second section. We acknowledge these issues are linked to international and global issues of tax, trade, etc. but we assert that the national context and its politics remain key. Second, while we could have chosen equally significant other ongoing interventions elsewhere in Africa such as in Kenya, we opted to work with this South African process in part because it is both relatively transparent and arguably pioneering, in both national and African contexts. For instance, the open and transparent way in which the OIPMI identified (and as necessary clarified) its own scope, publishing its work along the way, has allowed us and many of our contributors to discuss a number of crucial issues (such as the degree of international coverage of this regulatory process and the orientation of this process to competition and/or to competition plus issues). Third, we identified the inquiry as an important starting place additionally since it is a process in principle open to both the participation of civil society (a term we use here in a broad sense of including business and public interest non-governmental organisations) in its operation and the involvement of civil society in the implementation of its policy recommendations. This is the kind of regulatory politics we need in on our continent.

Against the backdrop of the contributions made in the second section of this working paper, we are now able to refine and re-articulate the scope of the research here undertaken, taking a higher-level perspective than we did in the opening section.

The scope of our research is potentially very wide. It is potentially what one might term Digitalization Plus. In this framing, the scope would include an understanding of the workings and the effects of at least three arguably distinct societal processes. One is digitalization and the coming of the digital age (or what some term the fourth industrial revolution with the rapid development of communications technologies such as email, social media). A second is datafication – the collection, storing, and processing of information including personal information.¹⁷ This process allows for the use of data to predict and make inferences about human behavior and to monitor our actions. A third is the growth of artificial intelligence. In this process, automatic decision-making replaces at times and in certain contexts human decision-making and discretion.

Each of these processes is integrally involved in the current restructuring of national economies seen across the globe, as well as the elaboration of what is now a clear global economy. The depth of that restructuring – at core the impact of the application of digital technology to production processes – is apparent in explorations of the changing relationships between technology and labour/employment. (Carl Frey *The Technology Trap* (2019)). Some of these dynamics impacting on workers have been illuminated in scholarship from the South.¹⁸

The combination of these processes and the rapidly developing ‘technologies’ central to them are reshaping fundamental parts of our societies: the way states deliver services, how value is created, recognized and appropriated in economies, and our cultural practices (how we interact, consume and share information). All of this appears set only to increase as interconnected ‘digital devices and data’ have come to penetrate and permeate everyday life.

As one consequence of this multi-faceted change, states are increasingly investing in data driven administration of public programs. Such investment is usually rationalized in the name of efficiency, the reduction of fraud and waste etc. And some scholars known for their radical and critical scholarship such as Roberto Unger (writing in his 2019 book of the same name) see potential for enhanced productivity and economic inclusion in this “Knowledge Economy”.

But other scholars are worried about increasing inequality and about exclusionary and other negative impacts on marginalized groups. (e.g. Virginia Eubanks, *Automating Inequality: How High Tech Tools Profile, Police, and Punish the Poor* (2019), Ruha Benjamin *Race After Technology* (2019)). Alongside the worry over increasing inequality arising directly from the incorporation and use of digital technologies is the way in which *lack of*

¹⁷ UNCTAD, “Digital Economy Report 2021” (UNCTAD, September 2021), https://unctad.org/system/files/official-document/der2021_en.pdf.

¹⁸ Webster Edward, “The Uberisation of Work: The Challenge of Regulating Platform Capitalism. A Commentary,” *International Review of Applied Economics*, June 1, 2020, 1–10, <https://doi.org/10.1080/02692171.2020.1773647>.

access to infrastructure, devices, and data) reinforces existing inequalities. This digital divide can for instance be seen in the case of education.¹⁹ Across the entire society, a data-driven public administration may well have implications for personal freedoms, for rights and for democracy. The use of digitalized surveillance technologies by the agencies of law enforcement brings with it a particularly high risk. (Snowden, Cambridge Analytica, the SA case, Amabungane).

Precisely how associated harms are characterized depends on different framings of this 'epochal' transition. In this respect, it is, for instance, useful to compare two influential and well-known scholars who grapple with this social transition. The well-known Zuboff book *The Age of Surveillance Capitalism: The Fight For A Human Future At the Frontier of Power* (2019) has a focus on the instrumentalization of data as a means of behavior modification. She claims that this is central to the new 'mode of production'.²⁰ Zuboff's analysis is particularly useful in drawing attention to privacy harms.²¹ Her argument may be contrasted with that of the legal scholar Julie. E. Cohen, who has long worked in the fields of information technology and intellectual property. In works including *Between Truth And Power: the Legal Construction of Informational Capitalism* (2019), Cohen draws attention to a specific mode of *economic appropriation/ surplus extraction*. For Cohen, data is an economic resource, 'de facto property' and associated with 'informational capitalism.'²² Her analysis assists in assessing the economic logic of the 'Platform Economy' and its implications for economic regulation (such as at least competition law, copyright, contract and property law).

Invoking the work of Karl Polanyi, Cohen provides a frame within which to examine the legal and regulatory issues posed by the transition from 'industrial capitalism' to 'informational capitalism'. The key theme is the ways in which 'platforms' reshape economic exchange and concomitant limitations of extant regulatory and doctrinal paradigms. For Cohen, the conceptual use of platforms draws upon but is not limited to its use within economics, including competition economics. In her argument, 'Where markets are concerned, scholars and policymakers traditionally have defined impermissible results in terms of concepts such as market power, discrimination and deception- benchmarks that are relatively easy to assess when markets are distinctly ascertainable...and information about consumers is limited. In the platform-based, massively intermediated information economy, none of these things are true. Markets are fluid and interconnected and information ecologies have complex and often opaque path dependencies.' (p.173). The harvesting of data as an economic resource, writes Cohen, is the defining feature of the Platform economy and informational capitalism: 'Economically speaking platforms

¹⁹ University of Chicago Law School - Global Human Rights Clinic, "Access Denied: Internet Access and the Right to Education in South Africa," *Global Human Rights Clinic*, January 1, 2020, <https://chicagounbound.uchicago.edu/ghrc/1>.

²⁰ For one critical review of this work, see Keith Breckenridge, "Capitalism without Surveillance?," *Development and Change*, 2020, 19.

²¹ Firoz Cachalia 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.

²² Ignasi Dorca and Patrick Schmidt, "Between Truth and Power: The Legal Constructions of Informational Capitalism," *Law & Society Review* 54, no. 3 (2020): 722–27.

represent both vertical and horizontal strategies for extracting the surplus value of user data. Because that project requires large numbers of users generating large amounts of data, the platform providers goal is to become and remain the indispensable point of mediation for parties in the target markets.’ (p.42). We continue to work with the activity of reading Cohen in Africa further below.

The large corporations we identify today as Big Tech are the public face (irony intended) of this platform economy. Google, Facebook, Amazon and Apple have become ‘global platform based superstructures’ (Cohen, p 44) which have billions of users worldwide (including Africa and SA) and seek to ‘colonize the global public domain of personal data’, in what Cohen calls a ‘postcolonial two step’ of surveillance and data harvests (Cohen, p.59). Facebook commands over 80% of the worlds social networking revenue, uses its algorithms to decide what people see on their newsfeeds and what speech is not protected.

At a different scale to that of the nation-state, the digital/data/AI transition has a disruptive effect on existing industries. One such example – as this project explores further in an accompanying working paper – is in the field of financial services. Here we can see the workings of ‘fintech’. In payment systems, mobile devices may well foster economic inclusion. At the same time, automated decision making for, say, loan applications may reinforce systemic biases against persons who are marginalized and poor/vulnerable.²³ To sector regulators, digital technologies allowing for the introduction of cryptocurrencies can be a new source of financial fraud and instability.

It seems clear to us that Africans must explore the parameters and increase the knowledge of our own ‘platform economy’. The regional specificity of the continent and its political economy must be claimed (and reclaimed).²⁴ Many businesses, small and large in African countries are now dependent on these platforms with a global reach. Those platforms are here; we need empirical research to assess the extent of penetration by ‘Big Tech of African, Southern African economies and societies.

It is in this light that the South African competition authorities’ approach to the Platform Economy should be evaluated. These authorities (both the Competition Commission and the Competition Tribunal) have certainly not turned away from the challenge posed by this multifaceted social transition. They have engaged in analysis of its competition issues, have proposed a scheme of how to prioritize responses, and have pushed ahead with the proactive employment of the market inquiry tool. In so doing, they are performing a public service for both the South African economy and African society. In our humble opinion, but also that of the African Heads of Competition Authorities. Joint

²³ Simone Schotte, Rocco Zizzamia, and Murray Leibbrandt, “Snakes and Ladders and Loaded Dice: Poverty Dynamics and Inequality in South Africa between 2008 and 2017,” *South African Journal of Economics* n/a, no. n/a, accessed February 13, 2022, <https://doi.org/10.1111/saje.12308>.

²⁴ Keith Breckenridge, “What Happened to the Theory of African Capitalism?,” *Economy and Society* 50, no. 1 (January 2, 2021): 9–35, <https://doi.org/10.1080/03085147.2021.1841928>.

Statement of the Heads of Competition Authorities Dialogue on Regulation of Digital Markets (18 February 2022).²⁵

One particular question that should be posed in relation to the ongoing market inquiry raises two different scenarios. It is whether the Inquiry's operative taxonomy (which we have described above and embedded within this set of working papers) based on business models misidentifies key characteristics and dynamics of the information economy in Africa. If so, this may lead to 'underenforcement'. If not, the taxonomy would be seen as realistic in the light of its resources and the resources at the disposal of Big Tech. A restatement of the underlying question is to ask what the conceptual, regulatory and enforcement gaps there might be in the current responsive regime. One potential gap is the space between privacy and its concepts, regulation, and enforcement structures and competition and its such structures.

Returning now to the exercise of reading Cohen in Africa, we can trace an African parallel (perhaps even a deepening) to Cohen's analysis and then at least two implications of her work on the global spread of informational capitalism. The parallel relates to Cohen's point about markets. She argues that under informational capitalism, markets are difficult to ascertain and are fluid. While the point should not be overstated, this is hardly news to Africans. To take just two heuristic features that economists have drawn from Africa, informational asymmetry and the informal sector are perhaps beyond embedded within and are instead core to the African political economy, at least in its theory and ideal types. They have characterized capitalism on the African continent before the advent of informational capitalism. The recent burgeoning line of African scholarship in the field of economic regulation supports this view.

The two implications are ones that Cohen makes specifically in relation to US/EU competition regulation and need to be tweaked only slightly for the African political economy. The first is that the response necessary for the development of the platform economy cannot be accomplished solely within the realm of competition, even if it is that regulatory regime that has correctly identified and begun to respond to the issue. Even with the development of new theories of harm and the flexing of new tools such as market inquiries, the competition authorities themselves cannot provide a full response. The second implication is that the broader sphere of "regulation" itself needs critique and revision in light of the platform economy. With this African specificity and these implications in mind, we conclude, using competition language to pose three final questions of how to respond to the African platform economy, apart from understanding it.

Should online platforms be regulated through competition? We would like to see the Information Regulator, ICASA, and the Competition Commission further coordinate their actions with respect to the platform economy. As an accompanying working paper explores, the disruptive effects in fintech are profound. The Financial Sector Markets Conduct Authority should also be part of the coordination that is required (as well as the

²⁵ As Anthea Paelo has noted, this is "a strong move towards regulation of digital markets in Africa. It will be interesting to see if and how this regulation will apply to digital financial services. Most of the current competition cases on digital platforms globally have centred on search engines and social networks i.e. Google and Facebook."

shape and strength of the coordination itself). Such a research scope follows the implications for the regulatory state (not just competitive markets) of the technological/economic transition we have sketched above.

Further, the necessary research and regulation should include non-economic concerns such as privacy rights, democracy, freedom of speech, and the countering of misinformation).

Broadly speaking aligned with the 'neo-Brandesians' abroad, our concern is not only with market power but with future market power, and harm to potential competition. We therefore recommend proactive anti enforcement against 'Big Tech' (both exclusionary conduct and merger control), significantly expanded resources for such enforcement and legislative changes to support regulators and plaintiffs. In our view, Big Tech's harm is to be evaluated in the light of the specific characteristics of the 'Platform Economy': network effects, two sided markets, and high barriers to entry.