

African data dimensions for the Competition Commission

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What might an African approach to regulating Big Tech look like? Sometimes, seeking to unpack the complexity required of digital regulation is aided by examining it through a specific lens - and data governance intersections help provide important nuance for considering a regional approach.

Certainly, the South African Competition Commission has shown an eager readiness to delve into the world of Big Tech, considering for example also its Digital Economy Report,¹ and its Tribunal's decision to interdict in the public interest WhatsApp's attempt to offboard local client, GovChat.² That the Competition Commission is seeking to entrench itself firmly in the South African digital reality continues then with its online intermediation platform market inquiry (OIPMI). This is reassuring - as the realities of course are that digital oligopolies (chiefly from the United State and China) significantly impede the hopes of local innovation communities to benefit from their own markets.³ This impediment is multi-faceted – not only do these companies dominate both existing and emerging digital markets, but there are also a variety of reliance's for local innovators on foreign companies: from cloud infrastructure to platform dependency. Importantly too, this dominance is not just an inhibitor to outcomes to the digital economy, but notably to the capacity of domestic environments to intervene legislatively and regulatorily.⁴

The Competition Commission has experience of course in managing many aspects of consumer rights, including privacy rights. This consumer focus though, for privacy, comes with the limitation of excluding another vital privacy intersection: that between citizen and state. The African reality of digital roll-out has seen collaborations between the public and private sector that require specific considerations for both privacy risks, but also other good governance risks, in relation to Big Tech.⁵ These other governance include accountability challenges (such as a lack of clarity in identifying a responsible party), transparency challenges (which arise not just from data and algorithmic opacities, but also the private and commercial relationships that regulate these public-private partnerships).⁶ This is why the express collaboration between the Information Regulator and Competition Commission is so commendable.

Privacy risks are only one aspect of the risks that emerge for a local economy due to Big Tech. The Competition Commission's focus on competition between local and international firms will help challenge some of the negative business ramifications for local innovation. Yet, one area of data governance in this realm that is frequently underappreciated (sometimes due to the focus on privacy, and sometimes competition) is that what local innovation communities require are

¹ Competition Commission, 'Competition in the Digital Economy'.

² McLeod, 'Facebook interdicted in fight with South Africa's Govchat'.

³ Razzano et al., 'SADC Parliamentary Forum Discussion Paper: The Digital Economy and Society.'

⁴ Thieulin, 'Towards a European Digital Sovereignty Policy'.

⁵ Razzano, 'The public-private: a key legal nexus for South Africa's AI future'.

⁶ Razzano, 'AI4D - Digital and Biometric Identity Systems'.

not simply improved access to markets, but improved access to better quality data that underpins their ability to extract economic value from digital production. This indicates the need to focus on the improvement of data capacities in local innovation communities as a precursor to reaping digital dividends, but also highlights the public role in the provision of good quality open government data for the stimulation of innovation communities as the “demand side” of the equation.⁷ The proactive release of open government data offers additional social, political and economic gains: McKinsey estimates that open data could unlock US\$3-5 trillion in economic value annually across specific sectors; and the European Commission has estimated that open government data was forecasted in 2020 to result in *cost-saving benefits* to European countries to the tune of €1.7 billion.⁸ At a microeconomic level, business innovation can also be fostered by increased access to data and be used to improve evidence-based decision-making within organisations.⁹ Importantly then the “enabling” role of the government within the digital economy extends beyond its role in regulation, to its role in the very creation and provision of data itself.

When the OIPMI brings nuance to understanding the business models of actors, it should also bring nuance to unpacking the value data plays in the market - which is heterogeneous and complex across business (and impacts).¹⁰ How Facebook extracts value from data is very different to how Pfizer extracts value from data, yet it is clear that a sound digital strategy for companies’ centres data always. This demands complexity in policymaking, complexity that might best be facilitated by Regulators which are already experienced in the kind of multi-stakeholder participation sound data and digital regulation requires.

⁷ Razzano. ‘Data Localisation in South Africa: Missteps in the valuing of data’.

⁸ Razzano, ‘Data Localisation in South Africa: Missteps in the Valuing of Data’.

⁹ Razzano.

¹⁰ Nissenbaum, *Privacy in Context*.