

Competition Law: Kenya's Essential Cure for Consumer Protection and Data Abuse in the AI Digital Era.

Theme Promoting Competition and Consumer Welfare in Globalized & Dynamic Markets

Pillar 2: Competition and consumer protection in digital markets

ABSTRACT

Africa's digital market is predominantly platform based and dominated by foreign tech giants that own the infrastructure. 1 Africa accounts for less than 1% of global data center capacity, 0.5% of its international cloud computing market and its infrastructure remains underdeveloped. 2 This leads to a power asymmetry as domestic companies remain infrastructure dependent. 3 These leads to abuse of dominance manifested in the opaque algorithms that dictate content visibility, platform work allocation without human intervention and review mechanisms. 4 Consumer abuse such as data violation and discriminatory labour practices for Kenyan platform workers remains accelerated. Africa's digital tech giants are now facing dominance checks through cases like Kenya's Sama case and Uganda's google case. 5 Stringent competition laws will ensure algorithm audits, platform accountability and free market entry for SMEs and consumer protection.

1.Introduction

Kenya's digital economy is growing with potential and is projected to contribute approximately KES 662 billion to GDP by 2028.¹ Digital transformation in Kenya is fueling significant innovation and economic growth and its adoption is expanding in critical areas from agriculture and healthcare powered by innovation.² The digital economy is expected to represent about 9.24% of GDP by 2025 with mobile network coverage reaching 99% of the population.³ However, there lies a looming shadow of unchecked monopolies amidst this promise. Dominant firms and platforms threaten the promise of digital growth by putting both consumers and small domestic businesses at risk.

In this unfolding landscape competition law alongside the Kenyan AI strategy emerge as a critical shield for consumer protection curbing consumer and data abuse amid the surge of digital driven platforms and systems.⁴ As the market power becomes unprecedented, competition law will act as a beacon of fairness and transparency ensuring market equity and consumer protection. These laws dismantle monopolistic barriers, protect consumers from abuse, hold dominant players accountable and regulate algorithmic transparency. This will ensure a balance between the digital economy growth and consumer protection where each stakeholder, including startups and small businesses thrive.⁵

2.The Power imbalance in Kenya's AI landscape.

The AI landscape in Kenya feels like a digital Goliath vs David creating uneven battleground where Kenya's local startups compete with tech giants. These foreign tech giants dominate and control critical infrastructure and AI platforms, processing and storing vast amounts of data outside Kenya.⁶

¹ GSMA, Driving Digital Transformation of the Economy in Kenya (2024) <https://www.ca.go.ke/kenyas-digital-economy-contribute-over-ksh-600-billion-gdp-2028-gsma-report-shows> accessed 6 July 2025.

²International Trade Administration, Kenya - Digital Economy (2024) <https://www.trade.gov/country-commercial-guides/kenya-digital-economy> accessed 6 July 2025.

³ Ibid.

⁴ Govt moves to regulate market dominance in digital economy' Capital FM (26 February 2025) <https://www.capitalfm.co.ke/business/2025/02/govt-moves-to-regulate-market-dominance-in-digital-economy/> accessed 6 July 2025.

⁵ W. Allen, 'The Impact of the Competition (Amendment) Bill, 2024' LinkedIn (10 December 2024) <https://www.linkedin.com/pulse/regulating-mergers-acquisitions-kenyas-digital-economy-xitme> accessed 6 July 2025.

⁶ 'Ethical AI Development in Kenya: The Role of Ethical Data Sourcing and Governance' (CIPIT Strathmore, 10

2.1 Data colonialism and digital sovereignty concerns

Global tech giants have created **data monopolies** in Kenya.⁷ They mine vast amounts of not only citizen data but also cultural and traditional knowledge, a digital gold that lacks individual ownership and protection in Kenya.⁸ This data fuels AI tools and systems that in turn are patented and the data owners end up with no share of the benefits creating data colonialism, a modern form of data extraction without equitable benefit sharing mechanisms.⁹ Additionally, the dominance of these companies leaves the Kenyan companies in a digital resource grab leaving them sidelined. As a result, the foreign companies reap disproportionate benefits undermining Kenya's economic growth potential and threatening its digital sovereignty.

Digital technologies such as AI platforms and systems are powered by cloud services and data centers from foreign companies with Africa owning less than 1% of the global data centers.¹⁰ As a result, Kenya's most valuable resource in the digital era being citizen data drifts from its shores. This has accelerated economic growth and innovation as Kenya lacks adequate resources and infrastructure for the same. However, the same poses critical **data sovereignty concerns**.¹¹ The

April 2025) <https://cipit.strathmore.edu/ethical-ai-development-in-kenya-the-role-of-ethical-data-sourcing-and-governance> accessed 6 July 2025.

⁷ The Competition Authority of Kenya (CAK) has acknowledged that global tech giants—including Google, Meta, and Amazon—have created and maintained digital data monopolies within Kenya's digital economy, prompting legislative efforts such as the Competition (Amendment) Bill 2024 to curb their dominance, which extends beyond market share to encompass data access and network effects: Competition Authority Of Kenya Moves To Curb Digital Monopolies (JedcaMedia, 28 February 2025) <https://jedcamedia.com/competition-authority-of-kenya-moves-to-curb-digital-monopolies/> accessed 6 July 2025.

⁸ The Protection of Traditional Knowledge and Cultural Expressions Act mandates the maintenance of registers and formal recognition of owners or holders, but overall, communal cultural knowledge remains vulnerable due to weak enforcement and unclear proprietary claims: Protection of Traditional Knowledge and Cultural Expressions Act 2016 (Sections 8-11) <https://www.pckamunya.co.ke/wp-content/uploads/2018/07/Protection-of-Traditional-Knowledge-and-Cultural-Expressions-Act.pdf>. accessed 10 July 2025.

⁹ AI, digital colonialism & social mobilization in Africa' (ICTworks, 2025) <https://www.ictworks.org/wp-content/uploads/2025/01/African-Digital-Colonialism.pdf> accessed 16 July 2025.

¹⁰ The dominance of foreign cloud services and data centers powering AI platforms in Kenya concentrates digital power in multinational companies, restricting local economic growth and digital sovereignty: Kenya Artificial Intelligence Strategy 2025-2030 (Govt. of Kenya, 2025) <https://ict.go.ke/sites/default/files/2025-03/Kenya%20AI%20Strategy%202025%20-%202030.pdf>. accessed 16 July 2025.

¹¹ The dominance of foreign cloud services and data centers powering AI platforms in Kenya concentrates digital power in multinational companies, restricting local economic growth and digital sovereignty: Kenya Artificial Intelligence Strategy 2025-2030 (Govt. of Kenya, 2025) <https://ict.go.ke/sites/default/files/2025->

ability of Kenya to govern, control and protect its citizen data remains disabled due to data storage outside the country. Kenya heavily relies on foreign data centers for storing and processing critical citizen data under the control of foreign entities.¹² The [Kenyan AI strategy](#) highlights how this dependence raises concerns about loss of control over critical data and exposes the country to risks such as data breaches and exploitation.¹³ This echoes the issue of data colonialism and such data can be used to train AI models or for commercial purposes without knowledge and consent of its owners. As a result, Kenya remains a beggar at its own digital feast, its culture and data used for commercial gain and citizens' privacy sacrifice for the benefits of others. Consequently, Kenya lacks oversight and control over the processing of such data and the power to require transparency and accountability for such foreign entities undermining privacy and data sovereignty and further losing its national agency in the algorithmic age.¹⁴

2.2 Algorithm Opacity and Automated Decision Making

Algorithms at the heart of most AI systems and platforms operate as black boxes and opaque engines subjecting Kenyans to **Automated Decisions** such as employment screening and credit scoring, especially the gig workers shaping the lives of countless Kenyans.¹⁵ The algorithms are fed with personal data and make decisions that are opaque to consumers without offering transparency and explainability. This leads to lack of **transparency and accountability**, which are very critical in data processing and use of algorithms.¹⁶ There is no **explainability** to consumers on how decisions affecting them are made by such systems. For example, uber drivers rarely understand the reasons behind their price fixing and application for loans can be denied without an explanation or opportunity to challenge such decisions despite their significant effects. This opacity strips individuals of their agency and leaves them with no redress avenues. Additionally, algorithms based on biased data can perpetuate and amplify existing inequalities and lead to discrimination. With the logic behind such decisions being hidden it's impossible to detect such biases. Kenyans are constantly subjected to invisible judges whose judgment is final and remains unexplained, raising questions of fairness and the requirement for humans in the loop in the digital era.

3. Why Competition Law

[03/Kenya%20AI%20Strategy%202025%20-%202030.pdf](#). accessed 12 April 2026.

¹² CIPIT Strathmore, 'The Role of the State and Foreign Companies in the Launch and Implementation of Digital Government Services in Kenya and Zambia' (24 June 2025) <https://cipit.strathmore.edu/the-role-of-the-state-and-foreign-companies-in-the-launch-and-implementation-of-digital-government-services-in-kenya-and-zambia/>

¹³ Republic of Kenya, Kenya Artificial Intelligence Strategy 2025–2030 (Ministry of Information, Communications and the Digital Economy 2025) <https://ict.go.ke/sites/default/files/2025-03/Kenya%20AI%20Strategy%202025%20-%202030.pdf> accessed 10 April 2026.

While the Kenyan Data Protection Act (DPA) provides for safeguards for protecting personal data, it falls short in specifically addressing the urgent need for algorithmic transparency and accountability. This regulatory gap leaves consumers with no redress when they suffer harm from opaque AI decisions. However, the ongoing discussions around the Competition (Amendment) Bill 2025 recognize these challenges and remain a beacon of hope to the Kenyan AI landscape.¹⁴

3.1 Comparative analysis and best practices

The UK's Competition and Markets Authority for instance has been proactive in investigating algorithmic collusion recognizing how AI can facilitate these collisions.¹⁵ The Authority has identified algorithm collusion as a priority under the 2026- 2029 enforcement [strategy](#).¹⁶ This shows the potential of collaboration between competition laws and Data protection laws in the digital era to protect consumers and ensure data sovereignty.

The Competition commission of south Africa conducted a media and digital platforms inquiry and its [report](#) in 2025 found Google's algorithmic structure to favor foreign outlets over local media.¹⁷ This highlights the algorithm inequalities by the search engine, reducing traffic on south African publishers sites leading to less content visibility and advertising reach for the local community media. The commission after establishing the monopoly, secured a R688 million media support from google to fund local media while google agreed to establish a media liaison office to expand access.¹⁸ Additionally, the ongoing case between GovChat and Meta in the South Africa Competition Tribunal highlight the potential of competition law for consumer protection in the AI era. GovChat uses WhatsApp to connect communities to Government departments. However, in 2020 Meta wanted to offload GovChat from WhatsApp claiming Violation of privacy policies. The competition Tribunal gave an [interim verdict](#) stopping Meta from this.¹⁹

Regionally, the COMESA Competition and Consumer Protection Commission has come up with

¹⁴ Ibid.

¹⁵ United Kingdom, 'Algorithms: how they can reduce competition and harm consumers' (CMA, 19 January 2021) <https://www.gov.uk/government/publications/algorithms-how-they-can-reduce-competition-and-harm-consumers/algorithms-how-they-can-reduce-competition-and-harm-consumers>. accessed 26 July 2025.

¹⁶ Competition and Markets Authority, Annual Plan 2026 to 2027 (CMA 2026) <https://www.gov.uk/government/publications/cma-annual-plan-2026-to-2027/annual-plan-2026-to-2027> accessed 10 April 2025.

¹⁷ Competition Commission of South Africa, Media and Digital Platforms Market Inquiry: Final Report (CCSA 2025) https://www.compcom.co.za/wp-content/uploads/2025/11/CC_MDPMI-Final-Report_Non-Confidential-1.pdf accessed 10 April 2026.

¹⁸ Competition Commission of South Africa, Media and Digital Platforms Market Inquiry: Final Report (CCSA 2025) https://www.compcom.co.za/wp-content/uploads/2025/11/CC_MDPMI-Final-Report_Non-Confidential-1.pdf accessed 10 April 2026.

¹⁹ M Jordaan, 'GovChat v Meta: How Competition Tribunal Ruling Could Redefine Big Tech Accountability in South Africa' (African Antitrust, 8 December 2025) <https://africanantitrust.com/2025/12/08/govchat-v-meta-how-competition-tribunal-ruling-could-redefine-big-tech-accountability-in-south-africa> accessed 10 April 2026.

a framework for handling e commerce integrating consumer protection oversight. The COMESA Competition and Consumer Protection [Regulations](#) of 2025 set a threshold for mergers for digital markets including platforms for notification to the commission, bringing an unchecked market under its mandate.²⁰ Additionally, the regulations in determining what a dominant position is extends its application to digital markets providing for considerations such as data quantity, accessibility and control as well as network effects as the criteria for determining a dominant position in the digital market.²¹ The regulations also prohibit the supply of digital content that causes harm, distress or may cause harmful or adverse effect on consumers.²² These provisions offer a potential to ensure platform accountability for production of harmful content as well as ensuring market integrity and competition through checking monopolies and digital merger notifications.

3.2 Prevention of abuse of dominance

Dominant firms exploit the exclusive control over vast data and their critical digital infrastructure to exclude local startups and entrench monopolies. Competition laws serve as a critical safeguard against such abuse from these monopolies ensuring a fair ground for innovation and consumer choice. This is in alignment with the Competition Amendment Bill of 2025 which seeks to address dominance in the digital market.²³ This case shows how competition law is evolving and extending to digital monopolies and ensures fairness in emerging markets such as AI infrastructure and cloud computing.

At the international level, the European Union's Digital Markets Act (DMA) shows a proactive approach by mandating tech giants to share data with competitors, ensure fair access to platforms and protection of consumers from unfair contracts and data misuse.²⁴ The DMA compelled Google to allow third party app stores on its android platform breaking the exclusive control and thus ensuring competition.²⁵ These measures show the evolving role of competition law globally in

²⁰ Regulation 41, Common Market for Eastern and Southern Africa, Competition and Consumer Protection Regulations, 2025 (COMESA 2025).

²¹ Regulation 35 Common Market for Eastern and Southern Africa, Competition and Consumer Protection Regulations, 2025 (COMESA 2025).

²² Regulation 62, Common Market for Eastern and Southern Africa, Competition and Consumer Protection Regulations, 2025 (COMESA 2025).

²³ Ibid.

²⁴ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act) <https://eur-lex.europa.eu/eli/reg/2022/1925/oj/eng>

²⁵ The Digital Markets Act requires gatekeeper operating systems like Google Android to allow users to install and designate third-party app stores as the default, effectively breaking Google's exclusive control and promoting competition in app distribution: 'Digital Market Act designations: the interoperability of Google Android' (Bruegel)

dismantling digital monopolies and ensuring fairness, consumer welfare and innovation in emerging digital markets such as AI cloud computing and infrastructure.

3.3 Addressing algorithmic collusions

Kenya's legal framework currently lacks specific regulation to tackle these sophisticated algorithmic collusions. To bridge this gap, the CAK can bolster its technical expertise and forge strategic collaborations with international bodies like the International Consumer Protection and Enforcement Network, learning from pioneers such as the UK's Competition and Markets Authority which has investigated algorithmic collusion and championed transparency measures including mandatory algorithmic audits.²⁶ Kenya stands poised to develop robust tools to detect and deter invisible cartels. Drawing from proven EU best practices and reinforcing its technical capabilities, Kenya can illuminate the hidden mechanics of algorithmic pricing, safeguard consumers, and secure a fair, transparent digital marketplace where innovation flourishes and monopoly shadows fade.

Algorithmic collusion is an invisible shadow threatening to tighten its grip on Kenya's burgeoning digital economy. As AI-powered pricing algorithms autonomously learn and mimic competitors' moves in real time, they form covert cartel, silent conductors orchestrating price inflation and restricting consumer choice without a single explicit agreement. This new form of digital collusion is especially pervasive in Kenya's fast-growing e-commerce sector, where the consumer often remains unaware of the artificial hands shaping market outcomes.

Algorithmic collusion is a great threat to Kenya's growing digital economy. With growth of the digital economy, AI powered pricing mechanisms arise posing a new complex challenge of algorithmic collusions.²⁷ The same is not like traditional collusions which is evidenced by explicit contracts with competitors. AI systems autonomously adjust prices in real time by learning competitors' behaviors forming invisible cartels that cause consumer harm by restricting choices and inflating prices.²⁸ This is especially common with the e-commerce sector continuously

https://www.bruegel.org/analysis/digital-market-act-designations-interoperability-google-android-0__ accessed 20 August 2025.

²⁶ Ibid.

²⁷ OECD, Algorithms and Collusion: Competition Policy in the Digital Age (Policy paper, May 2025) https://www.oecd.org/en/publications/algorithms-and-collusion-competition-policy-in-the-digital-age_258dcb14-en.html

²⁸ Renato Nazzini and James Henderson, 'Overcoming the Current Knowledge Gap of Algorithmic "Collusion" and the Role of Computational Antitrust' (Stanford Law School) <https://law.stanford.edu/wp->

growing.

The Competition Authority of Kenya Digital credit Market [inquiry](#) of 2021 revealed how algorithm systems in digital lending exploit consumers and especially women.²⁹ This study shows how algorithm opacity enables consumer harm.

Kenya's current legal framework does not regulate algorithmic collusion. However the CAK can enhance its technical expertise and collaborate with international bodies such as International Consumer Protection and Enforcement Network to develop tools that detect algorithmic manipulation.³⁰ The UK's Competition and Markets Authority for instance has pioneered in addressing algorithmic collusion and investigated cases on the same and proposed algorithmic transparency and audits which if adopted by the CAK can effectively prevent algorithmic collusions and enhance transparency.³¹ Kenya can draw best practices and lessons from the EU and by enhancing its technical expertise can deter the invisible cartels and safeguard consumers.

3.4 Complementing consumer protection and data privacy

Competition laws are crucial in complementing data protection in the digital area by addressing the gaps that data protection laws cannot tackle alone. This is particularly in digital platforms that collect, process and control vast amounts of personal data raising privacy concerns.³² Competition Laws prevent monopolies by tackling the concentration of data by dominant firms which due to monopoly restrict data access and sharing leading to data fortress. Through aggressive anti-competitive data practices by foreign companies and encouraging interoperability and data portability.³³

[content/uploads/2024/02/Algorithmic-Collusion.pdf](#) explain how AI pricing algorithms autonomously learn competitors' pricing behaviors to form tacit collusion or “invisible cartels” without explicit human agreements, leading to supra-competitive prices and restricted consumer choices.

²⁹ Competition Authority of Kenya and Innovations for Poverty Action, Report on the Competition Authority of Kenya Digital Credit Market Inquiry (CAK 2021) https://poverty-action.org/sites/default/files/2023-05/Digital_Credit_Market_Inquiry_Report_2021.pdf accessed 10 April 2026.

³⁰ Geoffrey Wachira, “Legal Challenges Facing Algorithmic Decision-Making in Kenya” (2022) SSRN Paper No 4787052 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4787052.accessed 22 July 2025.

³¹ Competition and Markets Authority, ‘Algorithms: How They Can Reduce Competition and Harm Consumers’ (2021) <https://www.gov.uk/government/publications/algorithms-how-they-can-reduce-competition-and-harm-consumers/algorithms-how-they-can-reduce-competition-and-harm-consumers> accessed 22 July 2025.

³² Beatriz Kira, Vikram Sinha and Sharmadha Srinivasan, ‘Regulating digital ecosystems: bridging the gap between competition policy and data protection’ (2021) 30 Industrial and Corporate Change 1337 <https://doi.org/10.1093/icc/dtab053> accessed 22 July 2025.

³³ Ibid.

The EU for instance has the GDPR protects data privacy while the DMA targets platforms that cause market dominance thus enforcing data sharing. The use of the two fosters consumer trust and market fairness in the digital era.³⁴ In Kenya while the DPA provides a strong foundation for data privacy in the digital era, regulatory gaps remain and enhanced enforcement mechanisms such as competition laws to foster consumer data confidence. The CAK and ODPC can collaborate to investigate and ensure data use complies with privacy and market abuses.

Competition law remains the best in driving innovation while protecting consumers in the digital era especially due to its holistic market focus unlike the DPA which solely focuses on personal data. The competition laws focus on practices that harm the market and consumers. It is uniquely positioned to prevent monopolies, promote interoperability and complement the DPA. The laws enforcement powers go beyond the imposition of fines to ordering behavioral remedies for restoration of competitive conditions and mandating data sharing. By dismantling monopolies, competition laws foster a competitive environment for SMES and startups to compete. In 2018, the European commission imposed a fine of 4.34 billion euros due to abuse of dominance in Android through the imposition of restrictive practices on the device app developers.³⁵ Similarly, the UK CMA investigated amazon for potential dominance in respect of data access and treatment of third parties highlighting a new global trend of scrutiny of data driven monopolies.³⁶ Kenya can safeguard market fairness and integrity, protect consumers and enhance innovation by borrowing best practices from the EU and other countries that have successfully used competition law in the digital era.

4. Conclusion

Competition Laws in AI governance will empower the CAK to regulate dominant digital entities. Additionally, the cooperation between different players such as ODPC will ensure mandatory transparency and accountability requirements for tech firms and platforms ensuring compliance

³⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data [2016] OJ L119/1; Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act) [2022] OJ L265/1.

³⁵ European Commission, 'Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android mobile devices to strengthen dominance of Google's search engine' (Press Release, 18 July 2018) IP/18/4581 https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581 accessed 10 April 2026.

³⁶ Competition and Markets Authority, Decision to Accept Binding Commitments under the Competition Act 1998: Amazon (CMA 2023) https://assets.publishing.service.gov.uk/media/6544cbaed36c91000d935d20/Non-confidential_decision_pdfa_4.pdf accessed 10 April 2026.

with data localization and privacy requirements. The Kenya digital economy remains at crossroads with a promise of economic revolution and amplified risks of data colonialism, consumer abuse and foreign monopolies. The dominance of foreign tech companies threatens data privacy and sovereignty, consumer welfare and market fairness for local innovation. Competition law will be the immune systems for detection, neutralization and prevention of these threats preserving Kenya's digital sovereignty.

The proposed Competition (Amendment) Bill, 2025, represents a pivotal step in Kenya's regulatory evolution by explicitly recognizing the unique dynamics of digital markets. It expands the definition of dominance to include control over data, network effects, and switching costs, factors that are central to AI-driven platforms and cloud services. This legislative reform empowers the CAK with stronger tools to dismantle data monopolies, regulate algorithmic transparency, and mandate interoperability, thereby reinforcing consumer protection and data sovereignty.

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