

“COMESA 3.0: Closing the Digital Gap with Transaction-Value Triggers”

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Abstract

This paper investigates the strategic harmonization of transaction-value triggers and Public Interest Considerations (“PICs”) within African merger control to prevent “*killer acquisitions*” from neutralizing disruptive innovation. The paper aims to evaluate how emerging regulatory toolkits can bridge the “*dominance gap*” caused by traditional turnover-based thresholds that fail to capture high-value, zero-revenue targets.

Utilizing a comparative legal methodology, the paper assesses merger control in South Africa, Kenya, Uganda, and the Common Market for Eastern and Southern Africa (“COMESA”). It examines the “COMESA 3.0” transition to a mandatory, suspensory regime featuring a USD 250 million transaction-value threshold, alongside South Africa’s use of small merger guidelines to capture global tech acquisitions.

The analysis further addresses Kenya’s digital market definitions and Uganda’s institutional vulnerabilities under its 2024 framework. Drawing on the European Union’s (“EU”) precedents like the Digital Markets Act and Article 22 EU Merger Regulation (“EUMR”), the paper proposes a “*two-way*” assessment framework that separates competition tests from socio-economic mandates. It concludes that leveraging Public Interest Considerations (“PICs”) to craft remedies such as data silos is essential for safeguarding African innovation while maintaining investment appeal.

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1. Introduction

- 1.1. The rapid expansion of the digital economy in Africa has introduced a critical regulatory challenge: “*killer acquisitions*,” where dominant incumbents acquire nascent startups to terminate their development and eliminate future competitive threats. While this paper adopts digital markets as its primary point of departure due to their unique “*innovation-foreclosure*” dynamics, it is acknowledged that killer acquisitions are a broader phenomenon appearing in traditional African sectors such as healthcare, retail pharmacy, and publishing.²
- 1.2. Jurisdictional requirements serve as the legal “*triggers*” for merger control, mandating that parties notify competition authorities of a transaction before it is implemented (an ex-ante approach) if they meet certain financial or market-share criteria.³ Historically, the majority of African and global notification thresholds are turnover-based, relying on the annual revenue of the merging firms to determine whether a transaction has a “*regional dimension*” or sufficient local impact to warrant scrutiny.

2. The M&A problem “*Dominance Gaps*” and serial consolidation

- 2.1. The expansion of Africa’s digital economy has exposed a critical “*dominance gap*.” In this regulatory blind spot, startups prioritize user acquisition and data over immediate profitability, often failing to meet traditional turnover-based thresholds. This allows high-value “*killer acquisitions*” to escape scrutiny, threatening innovation by “*snuffing out*” nascent rivals before their disruptive potential is realized.⁴ Such conduct deprives consumers of superior technologies and creates a “*kill zone*” where the threat of liquidation by incumbents discourages venture capital investment in local startups. Ultimately, the removal of these “*maverick*” firms eliminates the competitive pressure necessary for long-term growth and consumer welfare in emerging markets.⁵

² Goga S “*Serial Acquisitions: A Framework for Analysis*” accessible at [Shaista-Goga-Serial-acquisitions.pdf](#) at page 2 (Accessed on 14 February 2026).

³ H Kühnert “*Joint Guidance on Transaction-Value Thresholds*” accessible at https://www.dorda.at/sites/default/files/core_2018_03-009_0.pdf at page 216 (Accessed on 14 February 2026)

⁴ Okaro C “*A comparative view of Killer acquisition by digital Gatekeepers: EU versus Kenya and Merger Control*” accessible at [download](#) at pages 1 - 2 (Accessed on 14 February 2026).

⁵ Mwemba W “*Do Supra-National Competition Authorities Resolve the Challenges of Cross Border Merger Regulation in Developing and Emerging Economies? The Case of the Common Market for Eastern and Southern Africa*” accessible at [Thesis-Dr-Willard-Mwemba.-pdf.pdf](#) at para 80 – 81 (Accessed on 14 February 2026).

- 2.2. Beyond individual transactions, African markets face significant risks from “*creeping mergers*” or serial consolidation, where large incumbents acquire multiple small competitors that individually fall below notification thresholds but cumulatively result in market “*tipping*”.⁶ This cumulative strategy allows dominant platforms to amass unmatched data synergies and reinforce network effects, creating a “*winner-takes-most*” environment that raises insurmountable barriers to entry for domestic innovators.⁷
- 2.3. As highlighted in Kigwiru’s (2025) analysis of the COMESA regime, the historical reliance on a “*nil threshold*” regime (prior to 2015) created significant jurisdictional friction and blurred the distribution of competencies between national and regional regulators.⁸ While the introduction of quantifiable turnover-based thresholds in 2015 provided clarity and helped delineate the COMESA Competition and Consumer Commission’s (“CCCC”) scope of authority, a “*dominance gap*” persists for high-value digital acquisitions where targets possess high innovation value but zero local revenue.⁹
- 2.4. This jurisdictional friction generated significant legal uncertainty for businesses and practitioners, often rendering COMESA a “*no-go territory*” for merging firms.¹⁰ As Small but Significant Non-transitory Increase in Price (SSNIP) tests fail in “*zero-price*” digital markets, the transition to the Small but Significant Non-transitory Deterioration in Quality (SSNDQ) test is essential to measure injuries to privacy and data contestability.
- 2.5. This approach was exemplified in the *Google LLC and Alphabet Inc v European Commission* case, where the General Court acknowledged that in multi-sided markets, competition occurs through quality and innovation rather than price.¹¹ By measuring injuries to privacy and data contestability, the SSNDQ test allows

⁶ Goga S “*Serial Acquisitions: A Framework for Analysis*” accessible at [Shaista-Goga-Serial-acquisitions.pdf](#) at page 1 (Accessed on 14 February 2026).

⁷ Gumede S and Manenzhe P “*Competition regulation for digital markets: The South African experience*” accessible at [02.pdf](#) at page 1 (Accessed on 14 February 2026).

⁸ Kigwiru VK “*Why, How, and When Do National Competition Agencies Support Supranational Regional Competition Regimes? A Case of the COMESA Competition Regime*” accessible at [Why, How, and When Do National Competition Agencies Support Supranational Regional Competition Regimes? A Case of the COMESA Competition Regime](#) at page 237 (Accessed on 27 February 2026).

⁹ Ibid.

¹⁰ Ibid.

¹¹ Gumede S and Manenzhe P “*Competition regulation for digital markets: The South African experience*” accessible at [02.pdf](#) at page 1 (Accessed on 14 February 2026).

regulators to define relevant markets in the “free” digital sector where data acts as the actual currency.

The COMESA Experience: Jurisdictional friction and threshold lacunae

- 2.6. Historically, COMESA’s “*dominance gap*” was exacerbated by a “*nil threshold*” regime that required notification for all regional mergers regardless of size. While the 2015 introduction of financial thresholds provided clarity, jurisdictional “*turf wars*” persist.¹² Some member states continue to contest the “*one-stop-shop*” principle, leading to burdensome dual notification requirements and increased transaction costs for merging parties.¹³
- 2.7. A notable instance of the CCCC addressing the dominance gap occurred in the *Uber/Careem* (2019) transaction, where the CCCC invoked its discretionary powers to investigate a non-notifiable transaction because it threatened to entrench market power through the consolidation of unique region-specific mapping data and algorithms.¹⁴
- 2.8. Furthermore, the CCCC’s foiled attempts to review the *Activision/Microsoft* transaction under existing thresholds served as a primary catalyst for the 2025 regulatory overhaul, which introduced a specific transaction-value threshold to capture high-impact digital platform mergers.¹⁵

South Africa: Confronting creeping mergers and data-driven power

- 2.9. South Africa has been a pioneer in addressing the “*dominance gap*” through its Small Merger Notification Guidelines, which allow the CCSA to require the filing of mergers that fall below standard thresholds if they raise competition or public interest concerns.¹⁶

¹²Kgapane CE “*Comparison of Merger Regulation in South Africa and COMESA*” accessible at [content](#) at page 11 (Accessed on 14 February 2026).

¹³Kekesi G “*A Practitioner’s Critique: the One-Stop Shop Regime of the COMESA Competition Commission*” accessible at [Version2](#) at page 8 (Accessed on 14 February 2026).

¹⁴Ibid at page 5.

¹⁵Stargard A and Davis L “*COMESA: Regional rapprochement refined, competition enforcement comes of age*” accessible at [regional-rapprochement-refined-concurrences-10-2025.pdf](#) at para 43 (Accessed on 14 February 2026).

¹⁶Burger-Smidt A “*A Catalyst for Economic Growth – Proposed Amendments to South Africa’s Merger Thresholds*” accessible at <https://werksmans.com/a-catalyst-for-economic-growth-proposed-amendments-to-south-africas-merger-thresholds/> (Accessed on 14 February 2026).

- 2.10. On 27 January 2026, South Africa's Minister of Trade, Industry and Competition published draft amendments to recalibrate merger thresholds, proposing to raise the combined turnover requirement to ZAR 1 billion. This recalibration is designed to concentrate the Competition Commission of South Africa's ("CCSA") resources on high-potential harm mergers while reducing the procedural burden for lower-risk transactions.¹⁷ Crucially, this move effectively expands the discretionary "*call-in*" powers of the CCSA for transactions that now fall into the "*small merger*" category but may still possess high innovation value or significant data assets.
- 2.11. The *Facebook/WhatsApp* (2014) transaction is frequently cited as a classic example of the gap, as it was not notifiable in South Africa at the time because WhatsApp generated no local revenue despite its massive competitive significance.¹⁸
- 2.12. Similarly, the CCSA had to specifically insist on the notification of the *Google/Fitbit* (2021) transaction to evaluate its impact on data privacy and market dynamics. The landmark prohibition of the *Naspers/WeBuyCars* (2020) transaction illustrates the shift toward dynamic assessment; the South African Competition Tribunal blocked the deal because it would have removed Frontier Car Group (FCG), a potential future competitor, and combined centralized data assets from Naspers' other platforms (like AutoTrader) to create an unmatched competitive advantage.¹⁹ Furthermore, this transaction illustrates this shift toward dynamic assessment, where the Tribunal blocked the deal to prevent the removal of a future competitor and the consolidation of unmatched centralized data assets.

Kenya and Uganda: Navigating nascent frameworks and digital ecosystems

- 2.13. In Kenya, the Competition Authority ("CAK") has sought to mitigate the dominance gap by updating its Market Definition Guidelines to better address multi-sided digital platforms and non-price dimensions of competition.²⁰ While Kenya previously required parallel filings alongside COMESA, it has recently moved

¹⁷ Burger-Smidt A "A Catalyst for Economic Growth – Proposed Amendments to South Africa's Merger Thresholds" accessible at <https://werksmans.com/a-catalyst-for-economic-growth-proposed-amendments-to-south-africas-merger-thresholds/> (Accessed on 14 February 2026).

¹⁸ Competition Commission South Africa "*Competition in the Digital Economy*" accessible at [Digital-Markets-Paper-2021-002-1.pdf](#) at page 27 (Accessed on 14 February 2026).

¹⁹ Ibid.

²⁰ World Bank "*Competition Policy in Digital Markets in Africa*" accessible at [World Bank Document](#) at page 43 (Accessed on 14 February 2026).

toward recognizing COMESA's supremacy for regional mergers to reduce the double-notification burden.²¹

2.14. While the Ugandan Competition Act of 2024 ("Ugandan Competition Act") provides a foundational bedrock, a critical academic and practical gap lies in its institutional design, where enforcement is managed by a Technical Committee within a political Ministry.²² This structure risks compromising the decisional independence required to scrutinize acquisitions of local start-ups in sensitive sectors like fintech and agritech. To prevent Uganda from becoming a "*passive market*" for serial consolidation, the Ministry must evolve this committee into an autonomous, expert-led agency to insulate merger review from political influence and "*undue delays*".

2.15. Past transactions like *Orange Uganda/Africell* (2014) demonstrate the need for regional assessment; in that instance, the COMESA Committee Responsible for Initial Determinations (CID) approved the deal because, despite horizontal overlaps, the parties faced different competitors in different geographic markets.²³

3. Jurisdictional focus and recent regulatory developments

3.1. The regulatory landscape across African jurisdictions is undergoing a transformative shift to address the unique competitive dynamics of the digital economy.²⁴ This section focuses specifically on COMESA, South Africa, Kenya, and Uganda because they represent the distinct stages of regulatory maturity and innovation required to bridge the "*dominance gap*".

3.2. South Africa is a pioneer in using small merger notification guidelines and PICs to proactively "*call-in*" and scrutinize global digital acquisitions. Alongside these guidelines, South African regulators uniquely leverage PICs, such as HDP ownership and SME participation, as standalone grounds to condition or block digital mergers that threaten economic transformation. COMESA is included to evaluate the impact of the COMESA 3.0 overhaul, which cured a historical

²¹ Stargard A and Davis L "COMESA: *Regional rapprochement refined, competition enforcement comes of age*" accessible at [regional-rapprochement-refined-concurrences-10-2025.pdf](#) at paras 28 - 29 (Accessed on 14 February 2026).

²² Wahanze R "Regulating Digital Markets In Uganda: A Comparative Analysis Of The Effectiveness Of Merger Control Regimes In Preventing "Killer" Acquisitions" accessible at [content](#) at page 2 (Accessed on 14 February 2026).

²³ Ibid.

²⁴ Stargard A and Davis L "COMESA: *Regional rapprochement refined, competition enforcement comes of age*" accessible at [regional-rapprochement-refined-concurrences-10-2025.pdf](#) at para 43 (Accessed on 14 February 2026).

“inability” to review massive tech mergers, such as the *Microsoft/Activision* transaction, which previously bypassed regional scrutiny because high-value targets lacked the local turnover required to trigger traditional notification. This gap was resolved by transitioning to a mandatory and suspensory regime that introduced a specific USD 250 million transaction-value threshold for digital platforms operating across multiple Member States.

- 3.3. Kenya provides a critical model for modernizing assessment toolkits, specifically through its revised market definition guidelines that account for the *“nominally free”* nature of services in multi-sided digital ecosystems.
- 3.4. Conversely, Uganda is analyzed as a nascent framework under the Competition Act of 2024, illustrating the institutional vulnerabilities and the risk of a *“passive market”* becoming a target for serial consolidation before local innovation matures.
- 3.5. Collectively, these jurisdictions offer a comprehensive comparative roadmap for harmonizing regional and national merger control to prevent *“killer”* acquisitions from neutralizing African disruptive innovation

COMESA: Transitioning to “COMESA 3.0” and transaction-value triggers

- 3.6. The implementation of the 2025 Regulations (effective 4 December 2025) marks the transition to *“COMESA 3.0,”* which represents the third major evolutionary stage of the regional competition framework. This designation signifies a structural leap from the pre-2015 *“nil threshold”* era and the subsequent 2015 turnover-based regime to a modernised model designed for the digital age.
- 3.7. Effective 4 December 2025, the *“COMESA 3.0”* overhaul represents a structural leap to a fully mandatory and suspensory regime under Regulation 42.²⁵ This cures a primary defect of the 2004 rules, which allowed parties to implement mergers just 30 days after notification without awaiting formal clearance.²⁶ By requiring clearance prior to implementation, the CCCC has eliminated the costly

²⁵ Coetzen T and Joubert H *“COMESA Competition & Consumer Commission Clarifies New Regulations”* accessible at [COMESA Competition & Consumer Commission Clarifies New Regulations – African Antitrust & Competition Law](#) (Accessed on 15 February 2026).

²⁶ Ibid.

“*unwinding*” risks associated with anti-competitive mergers that were previously consummated prematurely.

- 3.8. The new regime imposes a strict standstill obligation on implementing a notifiable merger, such as a digital platform deal exceeding the USD 250 million transaction-value threshold.
- 3.9. This forward-looking threshold, combined with new requirements for data collection and user metrics in notifications, sets a global precedent for how regional authorities can capture high-impact technology mergers that lack significant local revenue but possess massive competitive significance.²⁷
- 3.10. The 2025 approval of the *Vodacom/Maziv* and *Canal+/MultiChoice* transactions by South Africa’s Competition Appeal Court (CAC) and Tribunal cements a regulatory trend where affordable connectivity and cultural production are central to competitive assessment. In the *Vodacom/Maziv* case, the CAC set aside the Tribunal’s initial prohibition, approving the merger subject to conditions that addressed foreclosure concerns while ensuring the expansion of digital infrastructure. This approach demonstrates a shift from “*purist*” price-centric models toward a polycentric framework that weighs data-driven market power against the strategic necessity of financial and digital inclusion.²⁸

South Africa: Pioneering small merger scrutiny and public interest mandates

- 3.11. South Africa has pioneered efforts to close the “*dominance gap*” through its Revised Guidelines on Small Merger Notification. These guidelines specifically target “*creeping mergers*” in digital markets by requiring notification if the target has a presence in South Africa and the transaction value exceeds ZAR 190 million.
- 3.12. By securing commitments for data separation and third-party API access in the *Google/Fitbit* (2020) transaction, South African regulators demonstrated how non-

²⁷ Ibid.

²⁸ Ndamase Y “*Main Developments in Competition Law and Policy 2025 – South Africa*” accessible at <https://legalblogs.wolterskluwer.com/competition-blog/main-developments-in-competition-law-and-policy-2025-south-africa/> (Accessed on 15 February 2026).

economic constitutional mandates can be successfully repurposed to safeguard innovation and dismantle historical market hierarchies.²⁹

Kenya: Harmonization and enhanced digital market definitions

- 3.13. The CAK serves as a premier model for modernizing assessment tools in multi-sided digital ecosystems. By revising its Market Definition Guidelines in 2019, the CAK clarified the transactions notifiable to the CAK and the CCCC, aiming to ease the cost of doing business and improve the investment climate through increased transparency and predictability.³⁰
- 3.14. While Kenya has formalised its recognition of COMESA's supremacy through Rule 8 of the 2019 Competition Rules, the 2019 *Airtel Networks Kenya/Telkom Kenya* merger illustrates the persistence of jurisdictional tension.³¹ In that case, the CCCC approved the merger unconditionally, while the CAK imposed its own conditions, arguing it was a "*Kenyan issue*."
- 3.15. The lesson from this case law is that even within a "*one-stop-shop*" framework, a local nexus involving a target active in only one state can lead to conflicting regional and national outcomes.³² To mitigate this, the 2025 Regulations now empower the CCCC to refer a transaction, in whole or in part, to a Member State (Regulation 40/41) where a transaction has a disproportionate effect on a specific domestic market.³³
- 3.16. The January 2026 inquiry into the acquisition of control over Safaricom by Vodacom highlights the new regional synergy focus of COMESA 3.0.³⁴ The parties submitted that the deal would drive "*regional synergies in technology*,

²⁹ Competition Commission South Africa "*Competition in the Digital Economy*" accessible at [Digital-Markets-Paper-2021-002-1.pdf](#) at page 46 (Accessed on 14 February 2026).

³⁰ Kigwiru VK "*Why, How, and When Do National Competition Agencies Support Supranational Regional Competition Regimes? A Case of the COMESA Competition Regime*" accessible at [Why, How, and When Do National Competition Agencies Support Supranational Regional Competition Regimes? A Case of the COMESA Competition Regime](#) at page 235 (Accessed on 27 February 2026).

³¹ Kigwiru VK "*COMESA Competition Commission Agenda Setting Power in COMESA and COMESA Member States' Competition Policy Legislative Processes*." accessible at [Kigwiru +Agenda+setting+power.pdf](#) at page 4 (Accessed on 15 February 2026).

³² Kigwiru VK "*Why, How, and When Do National Competition Agencies Support Supranational Regional Competition Regimes? A Case of the COMESA Competition Regime*" accessible at [Why, How, and When Do National Competition Agencies Support Supranational Regional Competition Regimes? A Case of the COMESA Competition Regime](#) at para 92 (Accessed on 27 February 2026).

³³ Ibid.

³⁴ CCCC "*Merger Inquiry Notice No. 1 of 2026 Notice of Inquiry into the Merger between Vodafone Kenya Limited and Safaricom PLC*" accessible at [Microsoft Word - Website Notice Vodacom - Safaricom.docx](#) (Accessed on 27 February 2026).

financial inclusion, and digital innovation,” specifically through the unified development of the M-Pesa ecosystem across Africa.

- 3.17. The lesson learned is that African regulators are increasingly viewing “*digital mobile financial services*” as a strategic infrastructure layer where consolidation must be balanced against the public interest of financial inclusion. This case serves as an early test of the CCCC’s 120-day review period and its power to assess whether such strategic realignments substantially lessen competition in the Common Market.

Uganda: Nascent frameworks and the regulatory vacuum

- 3.18. Uganda faces critical vulnerabilities in its technology sector, particularly in fintech and agritech, due to a regulatory vacuum where specific merger thresholds and digital enforcement tools have yet to be operationalized.³⁵ While the Ugandan Competition Act provides a foundational bedrock, the current institutional design places enforcement under a technical committee within a political Ministry.
- 3.19. This structure risks compromising decisional independence and impartial assessment, which are essential for regulating global digital incumbents. Without independent, expert-led enforcement, Uganda risks becoming a “*passive market*” for serial consolidation where local innovation is neutralized before reaching maturity.³⁶
- 3.20. Furthermore, experiences in Algeria and Morocco demonstrate that such political dependence can lead to institutional paralysis; for instance, the Algerian Competition Council was inoperative for ten years due to a lack of political initiative in nominating new members after their terms lapsed.³⁷
- 3.21. In the Ugandan context, the risk is exacerbated by the fact that Technical Committee members may not be fully dedicated to competition matters due to pre-existing full-time jobs, leading to “*undue delays*” and “*red tape*” in decision-making.³⁸ While the UCC has regulated the telecom sector, the *Ezeemoney v*

³⁵ Wahanze R “*Regulating Digital Markets In Uganda: A Comparative Analysis Of The Effectiveness Of Merger Control Regimes In Preventing “Killer” Acquisitions*” accessible at [content](#) at page 1 (Accessed on 14 February 2026).

³⁶ Ibid.

³⁷ UNCTAD “*Good Governance Guidelines: Independence and Transparency*” accessible at [Good Governance Guidelines: Independence and Transparency](#) at page 9 (Accessed on 11 March 2026).

³⁸ ALN “*Analysis of the New Competition Act, 2023*” accessible at [Legal Alert on Competition Act 2023 - 5 March 2024.pdf](#) at page 2 (Accessed on 11 March 2026).

MTN case highlights that without an autonomous, expert-led agency, as seen in the independent statutory models of South Africa and Kenya, Uganda remains a “*passive market*” vulnerable to political interference and serial consolidation.³⁹

- 3.22. To strengthen its framework, Uganda should borrow the “*call-in*” power utilized in South Africa and the Transaction-Value Thresholds introduced in COMESA 3.0 to capture high-value digital acquisitions that currently escape its “*regulatory vacuum*”. Furthermore, to avoid the institutional paralysis seen in Algeria and Morocco, where political dependence left regulators inoperative for years, Uganda must evolve its committee into a standalone authority with clear, expert-led mandates. Finally, as demonstrated by the EU’s “*Towercast Doctrine*,” Uganda should empower its regulator to conduct ex-post investigations of acquisitions as an abuse of dominance if they bypass ex-ante thresholds but still foreclose competition after implementation

4. Leveraging public interest to safeguard innovation

- 4.1. In Africa, merger control is rarely a “*purist*” economic exercise, but the legal status of PICs varies significantly by jurisdiction.⁴⁰ In South Africa, competition concerns and public interest concerns are of equal status, meaning a merger can be prohibited on public interest grounds alone even if no competition harm is found.
- 4.2. To enhance legal certainty, this paper proposes a “*two-way*” assessment framework that establishes PICs as a standalone second stage of review. By decoupling the Substantial Lessening of Competition (SLC) test from socio-economic mandates, such as HDP ownership or SME participation, regulators can prevent PIC assessments from becoming “*otiose*”.⁴¹ This separation ensures that PICs serve as a precise legal basis for crafting targeted remedies, such as data silos, rather than acting as a speculative catch-all for blocking acquisitions.
- 4.3. This ensures that pro-market justifications are not confused with broader socio-economic mandates, such as SME participation or employment, thereby providing merging parties with the transparency and certainty required for complex digital

³⁹ Maples & Associates “*Uganda’s New Competition Act*” accessible at [Analysis of Uganda’s New Competition Act, 2023 | Maples & Associates Advocates](#) (Accessed on 11 March 2026).

⁴⁰ Ndamase Y “*Main Developments in Competition Law and Policy 2025 – South Africa*” accessible at <https://legalblogs.wolterskluwer.com/competition-blog/main-developments-in-competition-law-and-policy-2025-south-africa/> (Accessed on 15 February 2026).

⁴¹ Ibid.

consolidations.⁴² The CCCC is “*very unlikely*” to reject a pro-competitive merger solely for public interest concerns unless the negative social impact is extraordinary.⁴³

- 4.4. The integration of PICs into African merger control finds its most potent precedent in the South African *Mediclinic* judgment (2022). In this landmark case, the South African Constitutional Court established that merger analysis must occur within the “*normative framework of the Constitution*,” effectively elevating non-economic factors, such as the fundamental right to healthcare access, to a status equal with traditional competition standards.⁴⁴
- 4.5. While this constitutional anchor is specific to South Africa, its regulatory logic is mirrored in the COMESA 3.0 transition. Under the 2025 Regulations, COMESA has moved away from “*folding*” public interest into broad competition assessments toward an explicit delineation of factors like SME competitiveness, innovation, and environmental sustainability.⁴⁵
- 4.6. Thus, whether derived from a national constitution or a regional treaty, competition agencies are increasingly adopting a “*two-way*” assessment framework. To ensure transparency, regulators should adopt a ‘two-way’ assessment framework that decouples the competition test (SLC) from standalone PICs. This separation prevents pro-market justifications from being confused with broader socio-economic mandates, allowing PICs to serve as a distinct legal basis for crafting targeted digital remedies like data silos.⁴⁶
- 4.7. Furthermore, whereas PICs were historically folded into competition analysis in COMESA, the adoption of the 2025 Regulations provides an explicit list of

⁴² Mwemba W “Do Supra-National Competition Authorities Resolve the Challenges of Cross Border Merger Regulation in Developing and Emerging Economies? The Case of the Common Market for Eastern and Southern Africa” accessible at [Thesis-Dr-Willard-Mwemba.-pdf.pdf](#) at page 246 (Accessed on 14 February 2026)

⁴³ Ndamase Y “Main Developments in Competition Law and Policy 2025 – South Africa” accessible at <https://legalblogs.wolterskluwer.com/competition-blog/main-developments-in-competition-law-and-policy-2025-south-africa/> (Accessed on 15 February 2026).

⁴⁴ Coester P “Evaluating the public interest effects of a merger: The Competition Appeal Court charts the course” accessible at [Evaluating the public interest effects of a merger: The Competition Appeal Court charts the course - Werksmans Attorneys](#) (Accessed on 11 March 2026).

⁴⁵ Ndamase Y “Main Developments in Competition Law and Policy 2025 – South Africa” accessible at <https://legalblogs.wolterskluwer.com/competition-blog/main-developments-in-competition-law-and-policy-2025-south-africa/> (Accessed on 15 February 2026).

⁴⁶ Ibid.

considerations, such as SME competitiveness, to provide merging firms with greater regulatory certainty.⁴⁷

South Africa: A Dual Mandate for Transformation and Innovation

4.8. While leveraging PICs like SME competitiveness and HDP ownership is a “*uniquely African innovation*” used to block mergers that entrench data monopolies, a significant empirical gap has been identified.⁴⁸ Recent studies indicate that the application of public interest criteria in South Africa significantly increases the likelihood of Type II errors, approving anti-competitive mergers, by approximately 24 percentage points.⁴⁹ This structural tension suggests that expecting merger control to serve both competition and socioeconomic policy risks compromising both objectives.⁵⁰ Furthermore, regulators must ensure that pro-competitive interventions are not “*diluted*” by socio-economic goals, particularly when a dominant firm might leverage an SME-friendly remedy to further entrench its data advantage in related markets.⁵¹

4.9. South African regulators have used PICs to bridge the dominance gap by imposing behavioural remedies, such as the “*data silos*” and API access commitments seen in the *Google/Fitbit* transaction. While these tools safeguard innovation where turnover is low, the approach is criticized as speculative.⁵² Defining the removal of a “*potential competitor*” requires complex counterfactual scenarios that are difficult to maintain in volatile digital ecosystems.

4.10. This evidentiary gap is compounded by an identified Type II error risk: an empirical study of 225 South African mergers found that the formal integration of public interest factors increases the likelihood of approving anti-competitive mergers by

⁴⁷ ENSafrica “COMESA’s Competition Regime Overhaul: Key insights from the ENS webinar” accessible at <https://www.ensafrica.com/news/detail/11276/comesas-competition-regime-overhaul-key-insig> (Accessed on 15 February 2026).

⁴⁸ Competition Commission South Africa “*Competition in the Digital Economy*” accessible at [Digital-Markets-Paper-2021-002-1.pdf](#) at page 6 (Accessed on 14 February 2026).

⁴⁹ Kyla J “*Are Public Interest Criteria in The Public’s Interest?*” accessible at [Are-Public-Interest-Criteria-in-The-Publics-Interest.pdf](#) (Accessed on 11 March 2026).

⁵⁰ Ibid.

⁵¹ Kyla J “*Are Public Interest Criteria in The Public’s Interest?*” accessible at [Are-Public-Interest-Criteria-in-The-Publics-Interest.pdf](#) page 3 (Accessed on 11 March 2026).

⁵² Sanghi A and Agarwal SS “*Assessing M&As based on the new deal value threshold – A comparative analysis*” accessible at <http://iclr.in/wp-content/uploads/2024/03/ICLR-Volume-VII2-Article-4-pg-41-57.pdf> (Accessed on 11 March 2026).

⁵² Wahanze R “*Regulating Digital Markets In Uganda: A Comparative Analysis Of The Effectiveness Of Merger Control Regimes In Preventing “Killer” Acquisitions*” accessible at [content](#) at page 67 (Accessed on 14 February 2026).

24 percentage points, suggesting that broad socioeconomic mandates can compromise decision-making precision.⁵³

- 4.11. To solve this, the paper recommends a “two-way” assessment framework that decouples the competition test from the public interest test, ensuring that PICs are used to craft targeted digital remedies rather than serving as a speculative catch-all for blocking sub-threshold acquisitions. Furthermore, for designated “gatekeepers,” a rebuttable presumption of harm should be established, shifting the burden of proof to the acquirer to demonstrate verifiable, public-interest efficiencies.
- 4.12. Furthermore, the initial prohibition of the *Burger King* (2021) merger demonstrated the CCSA’s willingness to block transactions solely on PIC grounds, in this case, because HDP ownership would have dropped from 68% to 0%, though it was later approved with a remedy establishing a 5% employee share ownership program.⁵⁴

COMESA: Transitioning to explicit innovation mandates

- 4.13. COMESA has historically folded public interest into a broader competition analysis, but the transition to “COMESA 3.0” marks a significant shift toward explicit delineation.⁵⁵
- 4.14. Under the 2025 Regulations, the CCCC now has an expanded list of factors, including innovation considerations and environmental sustainability. A major problem in the region has been jurisdictional friction, as member states like Kenya and Zambia have historically contested the regional “one-stop-shop” principle to protect national interests.⁵⁶
- 4.15. The CCCC has used its discretionary powers to investigate “killer” threats, as seen in the *Uber/Careem* (2019) merger, where it examined the consolidation of region-specific mapping data and algorithms despite the transaction potentially

⁵³ Kyla J “Are Public Interest Criteria in The Public’s Interest?” accessible at [Are-Public-Interest-Criteria-in-The-Publics-Interest.pdf](#) at page 15 (Accessed on 11 March 2026).

⁵⁴ Stargard A and Davis L “COMESA: Regional rapprochement refined, competition enforcement comes of age” accessible at [regional-rapprochement-refined-concurrences-10-2025.pdf](#) at paras 11 and 12 (Accessed on 14 February 2026).

⁵⁵ Ibid at paras 35 and 36.

⁵⁶ Kigwiru VK “COMESA Competition Commission Agenda Setting Power in COMESA and COMESA Member State’s Competition Policy Legislative Processes.” accessible at [Kigwiru +Agenda+setting+power.pdf](#) at page 4 (Accessed on 15 February 2026).

falling below standard triggers.⁵⁷ Unlike South Africa, COMESA maintains that public interest is secondary to competition; however, the Commission aims to use narrow Public Interest Guidelines to ensure that mergers in strategic sectors like digital platforms do not undermine the Common Market's industrial policy.⁵⁸

- 4.16. The transition to COMESA 3.0 marks a structural shift toward the explicit delineation of innovation mandates.⁵⁹ The USD 250 million threshold acts as a blunt instrument, as many “killer” threats occur when valuations are significantly lower. Lessons from India, which set its threshold at INR 2,000 crore (approx. USD 240m), suggest that unless accompanied by clear Substantial Business Operations (SBO) criteria, such as a 10% user-base or GMV metric, high thresholds will result in “false negatives.”⁶⁰ Furthermore, international experience in Germany and Austria confirms that high thresholds rarely capture the infancy-stage “unicorns” they are intended to target.⁶¹
- 4.17. Consequently, a fixed threshold risks creating a “regulatory blind spot” where global incumbents can engage in serial consolidation of local fintech or agritech innovators without triggering regional review. To bridge this gap, COMESA must move beyond static thresholds and adopt discretionary “call-in” powers similar to South Africa’s Small Merger Guidelines, allowing the CCCC to investigate mergers that pose a “killer” threat despite their low financial value.
- 4.18. Furthermore, the lack of judicial oversight, caused by the Commission’s exclusion from Article 32 of the Treaty, risks allowing these new innovation mandates to be applied through administrative discretion rather than stable legal precedent, potentially deterring the very investment the region seeks to attract.

Kenya and Uganda: Navigating guidelines and regulatory vacuums

⁵⁷ Mwemba W “Do Supra-National Competition Authorities Resolve the Challenges of Cross Border Merger Regulation in Developing and Emerging Economies? The Case of the Common Market for Eastern and Southern Africa” accessible at [Thesis-Dr-Willard-Mwemba-.pdf.pdf](#) at para 59 – 60 (Accessed on 14 February 2026).

⁵⁸ Stargard A and Davis L “COMESA: Regional rapprochement refined, competition enforcement comes of age” accessible at [regional-rapprochement-refined-concurrences-10-2025.pdf](#) at paras 53 - 55 (Accessed on 14 February 2026).

⁵⁹ Ibid at paras 35 and 36.

⁶⁰ White & Case “EU top court delivers a blow to the European Commission’s approach on Article 22 below-threshold referrals” accessible at <https://www.whitecase.com/insight-alert/eu-top-court-delivers-blow-european-commissions-approach-article-22-below-threshold> (Accessed on 13 March 2026).

⁶¹ Dr Sauermann M “The Transaction Value Threshold in Germany” accessible at <https://www.competitionpolicyinternational.com/wp-content/uploads/2019/10/Europe-Column-October-2019-Full.pdf> (Accessed on 15 February 2026).

- 4.19. In Kenya, the CAK must consider “*public benefit*” and SME participation, but it faces challenges in applying these to “*nominally free*” digital services.⁶² Kenya has addressed this by revising its Market Definition Guidelines to capture non-price dimensions like data protection and innovation.⁶³
- 4.20. Conversely, Uganda represents a jurisdiction struggling with a regulatory vacuum. While the Ugandan Competition Act provides a bedrock, it currently lacks the specific merger thresholds and notification regulations necessary to detect acquisitions of nascent fintech and agritech startups.
- 4.21. This leaves Uganda's innovative ecosystem vulnerable to serial consolidation, where global incumbents buy local rivals to preemptively eliminate competition.⁶⁴ Furthermore, the lack of an independent regulator in Uganda raises concerns that PICs could be used for political interference rather than objective innovation safeguarding.⁶⁵

5. Comparative insights: Lessons from the European Union

- 5.1. While Africa draws from the EU template, the EU can conversely learn from Africa's pluralistic approach to PICs. African regimes, notably South Africa and the 2025 COMESA framework, treat non-economic factors like SME competitiveness and innovation sustainability as standalone grounds for intervention. The EU could adapt this by formalizing Public Interest Guidelines for digital markets, moving beyond the “*purist*” consumer-welfare standard to address social harms, such as the exclusion of nascent innovators, that are often ignored by traditional price-centric models.
- 5.2. The EU has long served as a global template for multijurisdictional merger control, and its recent evolution provides a roadmap for African regulators seeking to address the “*dominance gap*” in digital markets.⁶⁶ While mature, the EU framework has also struggled with the revenue-innovation paradox, where

⁶² Kigwiru VK “*Striking the Balance: Reassessing Public Interest Considerations in Africa's Merger Control Regime.*” accessible at [Striking-the-Balance-Reassessing-Public-Interest-Considerations-in-Africas-Merger.pdf](#) at page 15 (Accessed on 15 February 2026).

⁶³ World Bank “*Competition Policy in Digital Markets in Africa*” accessible at [World Bank Document](#) at page 2 (Accessed on 14 February 2026).

⁶⁴ Wahanze R “*Regulating Digital Markets In Uganda: A Comparative Analysis Of The Effectiveness Of Merger Control Regimes In Preventing “Killer” Acquisitions*” accessible at [content](#) at page 3 (Accessed on 14 February 2026).

⁶⁵ Ibid.

⁶⁶ Stargard A and Davis L “*COMESA: Regional rapprochement refined, competition enforcement comes of age*” accessible at [regional-rapprochement-refined-concurrences-10-2025.pdf](#) at para 1 (Accessed on 14 February 2026).

traditional turnover thresholds fail to capture high-impact technology mergers.⁶⁷ Drawing on the EU's use of Article 22 referral mechanisms, the DMA, and ex-post application of abuse of dominance provisions, African jurisdictions like COMESA, Kenya, and Uganda can refine their own toolkits to prevent “killer” acquisitions.⁶⁸

The European Union: Closing the threshold gap through Article 22

- 5.3. A primary problem identified in the EU was the failure of turnover-based thresholds to trigger reviews for transactions involving nascent, low-revenue startups with massive competitive potential.⁶⁹ The *Facebook/WhatsApp* merger remains a classic example of the threshold gap. While the European Commission attempted to use Article 22 EUMR referrals to capture similar mergers like *Illumina/Grail*, the Court of Justice of the European Union (“ECJ”) subsequently overturned this approach.⁷⁰
- 5.4. Furthermore, the *Towercast* case confirmed that transactions falling below merger thresholds can still be assessed ex-post under abuse of dominance (Article 102 TFEU) rules.⁷¹ To address this, the EC initially repurposed the Article 22 EUMR referral mechanism, a strategy tested in the *Illumina/Grail* case. However, in September 2024, the ECJ overturned the earlier approval of this approach, holding that Article 22 does not enable the Commission to review mergers that fall below the jurisdictional thresholds of the referring Member State.⁷²
- 5.5. This ruling emphasizes that Article 22 is not a general 'corrective mechanism' for enforcement gaps, signalling that African regulators must prioritize domestic call-in powers rather than relying on regional referral models.⁷³
- 5.6. The EU's experience provides a cautionary tale regarding the expansion of referral mechanisms. While the General Court initially confirmed the European Commission's competence to review sub-threshold acquisitions referred by

⁶⁷ Okaro C “A comparative view of Killer acquisition by digital Gatekeepers : EU versus Kenya and Merger Control” accessible at [download](#) at page 5 (Accessed on 14 February 2026).

⁶⁸ Ibid at page 2.

⁶⁹ Ibid.

⁷⁰ Competition Commission South Africa “*Competition in the Digital Economy*” accessible at [Digital-Markets-Paper-2021-002-1.pdf](#) at paras 37 - 38 (Accessed on 14 February 2026).

⁷¹ Okaro C “A comparative view of Killer acquisition by digital Gatekeepers : EU versus Kenya and Merger Control” accessible at [download](#) at page 57 (Accessed on 14 February 2026).

⁷² White & Case “EU top court delivers a blow to the European Commission's approach on Article 22 below-threshold referrals” accessible at <https://www.whitecase.com/insight-alert/eu-top-court-delivers-blow-european-commissions-approach-article-22-below-threshold> (Accessed on 13 March 2026).

⁷³ Wilmer Hale “EU Merger Control: What You Need to Know From 2024 to Navigate 2025” accessible at [EU Merger Control: What You Need to Know From 2024 to Navigate 2025](#) (Accessed on 27 February 2026).

Member States in the *Illumina/Grail* case, the ECJ subsequently overturned this approach. This ruling signals a retreat from using the Article 22 EUMR referral mechanism as a broad tool to capture “killer acquisitions” that lack a formal national or EU dimension.⁷⁴

5.7. The EU’s experience provides a cautionary tale regarding the expansion of referral mechanisms. While the EC initially attempted to repurpose Article 22 EUMR as a “corrective mechanism” to review sub-threshold “killer acquisitions” like *Illumina/Grail*, the ECJ overturned this approach in September 2024.⁷⁵ The ECJ held that Article 22 does not empower the Commission to review transactions that fall below the jurisdictional thresholds of the referring Member State, signalling a retreat from using referrals as a broad tool for deals lacking a formal national or EU dimension.⁷⁶

5.8. In response to this gap, the EU has shifted toward a two-pronged strategy for “pre-revenue” acquisitions: first, the Digital Markets Act (DMA) mandates that designated “gatekeepers” must inform the Commission of all intended acquisitions regardless of turnover thresholds and second, the “Towercast Doctrine” affirms that sub-threshold mergers can still be investigated ex-post as an abuse of a dominant position (Article 102 TFEU) if they eliminate effective competition.

5.9. Furthermore, the Germany/Austria Joint Guidance now provides a specific blueprint for capturing high-value, zero-revenue targets by utilizing transaction-value thresholds (€400m and €200m, respectively) and non-price metrics such as user engagement and R&D maturity.⁷⁷

Ex-Ante Scrutiny: The Digital Markets Act and gatekeeper power

5.10. The EU has moved toward a more proactive, ex-ante regulatory model with the enactment of the DMA to curb the power of massive online platforms known as

⁷⁴ Wilmer Hale “EU Merger Control: What You Need to Know From 2024 to Navigate 2025” accessible at [EU Merger Control: What You Need to Know From 2024 to Navigate 2025](#) (Accessed on 27 February 2026).

⁷⁵ White & Case “EU top court delivers a blow to the European Commission’s approach on Article 22 below-threshold referrals” accessible at <https://www.whitecase.com/insight-alert/eu-top-court-delivers-blow-european-commissions-approach-article-22-below-threshold> (Accessed on 13 March 2026).

⁷⁶ Ibid.

⁷⁷ H Kühnert “Joint Guidance on Transaction-Value Thresholds” accessible at https://www.dorda.at/sites/default/files/core_2018_03-009_0.pdf at page 216 (Accessed on 14 February 2026)

“gatekeepers”.⁷⁸ The DMA addresses the issue of serial consolidation by requiring these designated gatekeepers, such as Alphabet, Meta, and Microsoft, to inform the EC of all intended acquisitions regardless of whether they meet traditional merger thresholds.⁷⁹

- 5.11. This ensures that even small startups, which may be “killed” to prevent future rivalry, are brought to the attention of regulators.⁸⁰ This approach provides a blueprint for COMESA’s 2025 Regulations and Kenya’s developing framework on how to monitor gatekeeper behaviour to preserve market contestability and fairness.⁸¹

Ex-Post Safeguards: The Towercast Doctrine and Article 102 TFEU

- 5.12. A significant development for African regulators to observe is the EU’s use of abuse of dominance provisions (Article 102 TFEU) as an ex-post safety net for mergers that completely bypassed ex-ante review.⁸² In the *Towercast* case, the Court of Justice of the European Union (“CJEU”) affirmed that a concentration that falls below both national and EU thresholds can still be investigated ex-post if it constitutes an abuse of a dominant position.⁸³ This “rekindled” application of primary law serves as a vital tool for jurisdictions like Uganda, which currently lacks mandatory merger regulations, by allowing enforcers to challenge anti-competitive consolidation after implementation if it creates a monopoly that forecloses all independent rivalry.⁸⁴

Behavioural remedies and data governance in digital mergers

- 5.13. The EU’s experience also offers insights into the use of condition-based approvals to mitigate non-price harms such as data concentration. In the *Google/Fitbit* (2020) merger, the EC allowed the transaction only after securing commitments for data separation (silos), ensuring that Google could not combine health data

⁷⁸ American Bar Association “Comments Of The American Bar Association Antitrust Law And International Law Sections On The COMESA Draft Competition And Consumer Protection Regulations” accessible at [Comments on COMESA](#) at page 17 (Accessed on 15 February 2026).

⁷⁹ Wahanze R “Regulating Digital Markets In Uganda: A Comparative Analysis Of The Effectiveness Of Merger Control Regimes In Preventing “Killer” Acquisitions” accessible at [content](#) at page 51 (Accessed on 14 February 2026).

⁸⁰ Ibid at page 50.

⁸¹ American Bar Association “Comments Of The American Bar Association Antitrust Law And International Law Sections On The COMESA Draft Competition And Consumer Protection Regulations” accessible at [Comments on COMESA](#) at page 18 (Accessed on 15 February 2026).

⁸² Okaro C “A comparative view of Killer acquisition by digital Gatekeepers: EU versus Kenya and Merger Control” accessible at [download](#) at pages 74 - 75 (Accessed on 14 February 2026).

⁸³ Ibid.

⁸⁴ Ibid.

from Fitbit with its advertising data to foreclose competitors.⁸⁵ This case highlights the utility of behavioural remedies and long-term monitoring (in this case, 10 years) to control the impact of data accumulation in dynamic, rapidly evolving digital ecosystems.⁸⁶ African authorities can learn from this polycentric approach, which balances technical progress against the risks of data-driven market power.⁸⁷

6. Conclusion and recommendations for African regulators

- 6.1. To preserve the continent's innovative potential and address the structural “*dominance gap*,” African regulators must move beyond traditional turnover-based notification thresholds. The emergence of “*killer*” acquisitions requires a proactive regulatory shift that captures high-value technology mergers regardless of the target's current revenue.
- 6.2. This is critical because innovative digital firms often prioritize user acquisition and data collection over immediate profit, thus failing to trigger standard notification requirements despite their disruptive potential.⁸⁸ Furthermore, regulators must address the cumulative harm of “*creeping mergers*” or serial acquisitions that individually fall below thresholds but collectively entrench gatekeeper power and raise insurmountable barriers to entry.

COMESA: Formalizing the suspensory regime and transaction-value triggers

- 6.3. The CCCC should prioritize the effective implementation of the 2025 regulatory overhaul, which transitions the region to a fully mandatory and suspensory regime.⁸⁹ A primary hurdle identified in the previous framework was its non-suspensory nature, which allowed merging parties to implement transactions before formal clearance, risking costly “*unwinding*” if the deal was later found anti-competitive.⁹⁰

⁸⁵ Ibid.

⁸⁶ Wahanze R “Regulating Digital Markets In Uganda: A Comparative Analysis Of The Effectiveness Of Merger Control Regimes In Preventing “Killer” Acquisitions” accessible at [content](#) at page 67 (Accessed on 14 February 2026).

⁸⁷ Lianos I “Mergers and Concentration in the Agri-Food Value Chain” accessible at [Standards](#) at page 67 (Accessed on 14 February 2026).

⁸⁸ World Bank “Competition Policy in Digital Markets in Africa” accessible at [World Bank Document](#) at page 27 (Accessed on 14 February 2026).

⁸⁹ Baker McKenzie “Changes to the COMESA Competition Regime” accessible at [attachment_dw.action](#) (Accessed on 14 February 2026).

⁹⁰ Mwemba W “Do Supra-National Competition Authorities Resolve the Challenges of Cross Border Merger Regulation in Developing and Emerging Economies? The Case of the Common Market for Eastern and Southern Africa” accessible at [Thesis-Dr-Willard-Mwemba-.pdf.pdf](#) at paras 32 - 33 (Accessed on 14 February 2026).

- 6.4. To counter “killer” threats, the CCCC has introduced a USD 250 million transaction-value threshold specifically for digital platforms, a move catalyzed by its previous inability to review high-impact mergers like *Microsoft/Activision*.⁹¹ It is recommended that the CCCC issue specific guidelines for this trigger, focusing on non-revenue metrics such as user numbers and platform significance to Common Market consumers. Additionally, the CCCC must resolve jurisdictional “turf wars” by unequivocally affirming the “one-stop-shop” principle, ensuring that member states like Egypt do not require parallel national filings for regional mergers, which currently increases costs and legal uncertainty for businesses.⁹²

South Africa: Enhancing small merger scrutiny and public interest mandates

- 6.5. In South Africa, the 27 January 2026 draft amendments to the Competition Act represent a strategic recalibration of merger thresholds. By proposing to raise the combined turnover requirement for large mergers to ZAR 1 billion, the Minister aims to concentrate regulatory resources on high-potential harm mergers while shifting lower-risk transactions into the “small merger” category. This expansion grants the CCSA broader discretionary “call-in” powers, allowing it to scrutinize nascent acquisitions that fall below standard financial limits but possess high innovation value or involve significant data assets.⁹³
- 6.6. A unique African innovation lies in the strategic leverage of PICs, non-economic, socio-economic mandates that competition authorities must weigh alongside traditional competition harm.⁹⁴ These mandates were significantly enhanced through the 2019 amendments to the South African Competition Act, which introduced the “*promotion of a greater spread of ownership*” as a standalone factor, specifically aiming to increase the ownership stakes of HDPs and workers in firms across all markets.⁹⁵

⁹¹ ENSafrica “COMESA’s Competition Regime Overhaul: Key insights from the ENS webinar” accessible at <https://www.ensafrica.com/news/detail/11276/comesas-competition-regime-overhaul-key-insig> (Accessed on 15 February 2026).

⁹² Ibid.

⁹³ Gumede S and Manenzhe P “Competition regulation for digital markets: The South African experience” accessible at [02.pdf](#) at page 9 (Accessed on 14 February 2026).

⁹⁴ Competition Commission South Africa “Competition in the Digital Economy” accessible at [Digital-Markets-Paper-2021-002-1.pdf](#) at page 6 (Accessed on 14 February 2026).

⁹⁵ Senona L “The Evolving Landscape of Public Interest in BRICS Competition Law: A New Paradigm for Development” accessible at [The-Evolving-Landscape-of-Public-Interest-in-BRICS-Competition-Law-Londiwe-Senona.pdf](#) at page 3 (Accessed on 14 February 2026).

- 6.7. Additionally, the amendments clarified the mandate to protect the ability of SMEs and HDP-owned firms to not just survive, but to “*effectively enter into, participate in or expand*” within their respective markets.⁹⁶ This transition is mirrored in the COMESA 3.0 overhaul; the 2025 Regulations moved away from “*folding*” public interest into general competition analysis toward an explicit delineation of factors, including new mandates for innovation, sustainability and environmental protection.
- 6.8. By elevating these considerations to equal status with traditional competition tests, African regulators can now block or condition digital mergers such as the *Naspers/WeBuyCars* or *Burger King* transactions solely on the grounds that they threaten to entrench data-driven monopolies or reverse gains in economic transformation.
- 6.9. The landmark prohibition of the *Naspers/WeBuyCars* (2020) merger illustrates the effectiveness of this approach, as the Tribunal blocked the deal to prevent the removal of a future competitor and the combination of unmatched centralized data assets.⁹⁷

Kenya: Updating Market Definitions and Strengthening Regional Comity

- 6.10. The CAK serves as a model for modernizing assessment tools through its revised Market Definition Guidelines, which explicitly account for multi-sided platforms and non-price dimensions of competition. Traditional tools like the SSNIP test are often ineffective in digital markets where services are nominally “free,” necessitating a shift toward the Small but Significant Non-transitory Deterioration in Quality (SSNDQ) test.⁹⁸
- 6.11. To address “*killer*” acquisitions, the CAK should explore expanding its ex-post “*call-in*” powers to investigate non-notifiable mergers for a set period after implementation if they are later found to have stifled innovation. Furthermore, Kenya should continue to lead by example in regional comity by recognizing

⁹⁶ Ibid.

⁹⁷ Competition Commission South Africa “*Competition in the Digital Economy*” accessible at [Digital-Markets-Paper-2021-002-1.pdf](#) at page 6 (Accessed on 14 February 2026).

⁹⁸ Mwasru T “*Developments in Digital Markets and The Relevance for African Markets*” accessible at [Development+of+Digital+Markets+&+its+relevance+to+Africa+Markets+-+Final+-+Tekla+Mwasaru.pdf](#) at page 16 (Accessed on 14 February 2026).

COMESA's supremacy for regional mergers, thereby eliminating the double-notification burden that previously hampered M&A activity in the region.⁹⁹

Uganda: Addressing the Regulatory Vacuum and Institutional Independence

- 6.12. Uganda's Competition Act of 2024 provides a foundation, but currently leaves the digital ecosystem vulnerable to serial consolidation due to a lack of operationalized notification thresholds. To prevent Uganda from remaining a 'passive market' for killer acquisitions, the Ministry must fast-track Merger Regulations that include both turnover and transaction-value criteria. Furthermore, Uganda should learn from the institutional independence of the EU and South Africa by evolving its Technical Committee into an autonomous, expert-led agency to insulate merger review from political interference.¹⁰⁰
- 6.13. Following the 2 February 2024 assent to the Ugandan Competition Act, the Ministry must now fast-track regulations to operationalise notification thresholds.¹⁰¹ However, the current structure, placing enforcement under a technical committee within a political Ministry, risks impartial review.
- 6.14. Lessons from the 2024 *Ezeemoney v MTN Uganda* case and the 2026 Lewis Stores intervention in South Africa suggest that without an autonomous, expert-led agency, merger review can be subject to "*undue delays*" and political interference. Establishing an autonomous authority grounded in competition economics is essential for the legal certainty required to protect local agritech and fintech startups.

Recommendations: A roadmap for the digital age

- 6.15. To support this modernized framework, the 2025 Regulations have introduced a tiered filing fee structure. Fees for traditional mergers are now 0.1% of combined COMESA turnover or assets, capped at USD 300,000 (an increase from the previous USD 200,000 cap). Notably, to encourage compliance in the digital sector, transactions triggered by the transaction-value threshold are charged a

⁹⁹ African Antitrust & Competition Law "South Africa: Small Merger Notifications: The SACC Joins the European Commission in expanding the application of Small Merger notifications to 'Digital Markets'" accessible at <https://africanantitrust.com/tag/mergers/> at page 16 (Accessed on 14 February 2026).

¹⁰⁰ Wahanze R "Regulating Digital Markets In Uganda: A Comparative Analysis Of The Effectiveness Of Merger Control Regimes In Preventing 'Killer' Acquisitions" accessible at [content](#) at page 2 (Accessed on 14 February 2026).

¹⁰¹ ALN Uganda "Analysis of the New Competition Act, 2023" accessible at [Legal Alert on Competition Act 2023 - 5 March 2024.pdf](#) 2 (Accessed on 28 February 2026).

lower rate of 0.05% of the transaction value, though they remain subject to the same USD 300,000 cap.

- 6.16. For firms designated as digital “*gatekeepers*” or those with strategic market status, the roadmap recommends establishing a rebuttable presumption of harm for acquisitions of potential competitors. Under this framework, the burden of proof shifts to the acquirer, requiring them to demonstrate that the transaction will generate verifiable and merger-specific efficiencies that benefit the public. Additionally, gatekeepers should be legally obligated to inform the Commission of all intended acquisitions, even those falling below standard thresholds, to ensure no “*creeping*” or serial consolidation occurs without regulatory knowledge.
- 6.17. To promote investment and regulatory certainty, authorities should issue clear Public Interest Guidelines that specifically delineate the legal test adopted, including metrics for substantiality and merger-specificity, to weigh innovation loss and data access barriers during assessment.
- 6.18. To safeguard the continent’s digital future against “*killer acquisitions*” and the “*dominance gap*,” African regulators must adopt a modernized framework that transitions from turnover-based triggers to transaction-value thresholds (such as COMESA 3.0’s USD 250 million trigger for digital platforms) and expanded ex-post “*call-in*” powers to capture high-value, low-revenue targets.
- 6.19. A uniquely African innovation lies in the strategic leverage of PICs, specifically HDP ownership and SME competitiveness, as a robust legal basis to block mergers that entrench data-driven monopolies, moving beyond a “*purist*” economic exercise to address historical market failures.
- 6.20. To resolve jurisdictional “*turf wars*,” regional bodies should implement revenue-sharing filing fees as a financial “*adhesive*” to incentivize Member States to yield to a “*one-stop-shop*” jurisdiction. However, regulators must acknowledge that revenue-sharing can lead to a reduction in fees received at the national level, a potential downside that some NCAs have noted could diminish their willingness to support the regional regime

- 6.21. Finally, the gamification of competition culture through smartphone apps can empower consumers to report anti-competitive behaviour, while supranational referral mechanisms (modelled after the EU's Article 22 EUMR) ensure a harmonized defence against global digital consolidation across the AfCFTA.
- 6.22. This would enable national competition authorities to refer problematic cross-border digital mergers to a central regional or continental authority, such as the CCCC or the AfCFTA authority, even if they do not trigger standard notification levels. Such a "*one-stop-shop*" approach eliminates double-notification burdens and ensures a harmonized defence against global digital consolidation.
- 6.23. Finally, the roadmap emphasizes technology-enabled enforcement through the creation of digital forensic labs and informant reward schemes to detect anticompetitive agreements and algorithmic collusion. African agencies can "*leapfrog*" traditional resource constraints by adopting computer-assisted systems for monitoring market concentration and conducting retrospective analyses of consummated mergers. Proactive market inquiries into online intermediation platforms and digital lending can further build a robust knowledge base to support evidence-based interventions in rapidly evolving ecosystems.