

COMPETITION AUTHORITY OF KENYA

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Vision: "A Kenyan economy with globally efficient markets and enhanced consumer welfare for shared Prosperity"

Content

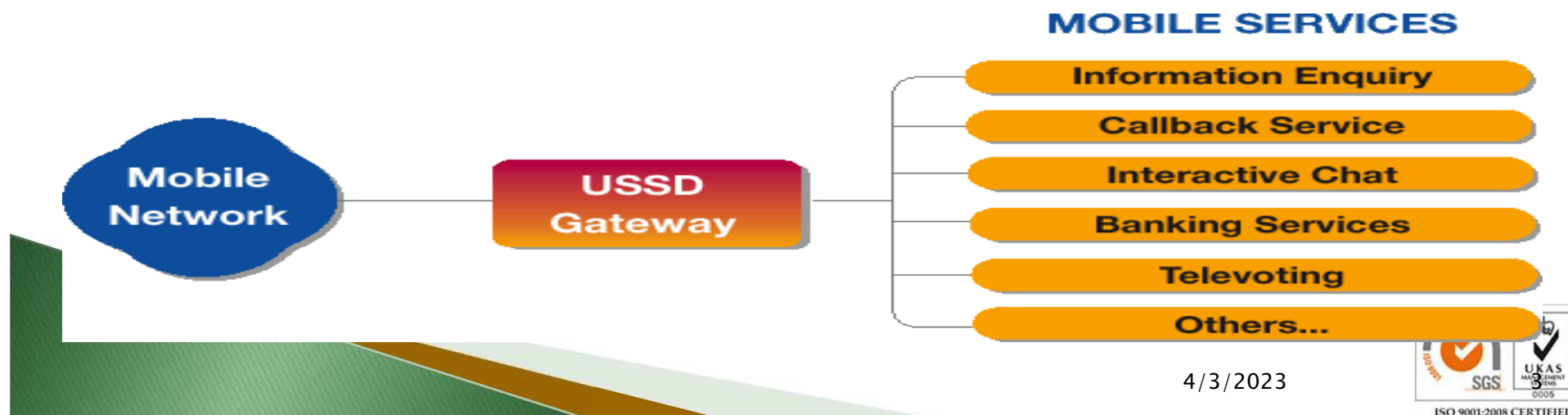
- A. *Market Inquiries as Tools for advocacy and soft enforcement of Abuse of Dominance Infractions.*
- B. *Cooperating With Other Policy/Sector Regulators-case Study.*
- c. *Legislative proposals on dealing with strategic market power in the Digital space.*

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A. MARKET INQUIRY AS A TOOL FOR SOFT ENFORCEMENT OF ABUSE OF DOMINANCE INFRACTIONS-USSD

What prompted CAK to conduct a market inquiry?

- ▶ *Unstructured Supplementary Service Data (USSD) is a channel/protocol used by cellphones to communicate with their service providers.*
- ▶ *USSD can be used on virtually all handsets from the most basic to smartphones.*
- ▶ *MNOs typically charge fees to other service providers for access to and usage of their USSD services.*
- ▶ *In Kenya, the regulatory authority (CA) licenses the provision of USSD services, and the MNOs issue the codes and determine price on a bilateral basis with providers wish to use the USSD.*



THE USSD STUDY



Terms of access to USSD by third parties

Fair pricing, session quality and access

1. entry & foreclosure issues
2. Disclosure and transparency of pricing and information availability

MARKET INQUIRY AS A TOOL FOR SOFT ENFORCEMENT OF ABUSE OF DOMINANCE INFRACTIONS-USSD FINDINGS



The MNOs were charging unfairly high USSD pricing—pricing of USSD to competitors appears to result margin squeeze

Price discrimination by the MNOs; differential pricing is applied to different parties

Lack of interoperability between mobile wallets intensified network effects high prices for bank transfers and high mobile banking

No information disclosure to customers on applicable USSD fees for payments.

SOFT ENFORCEMENT ACTIONS FROM THE STUDY



1. The Authority and the dominant firm(70% of the mobile money services) engaged and entered a commitment agreement to lower its USSD pricing to Kshs 1/= within a year to be applied uniformly across to all players (entered into in Lieu of investigations).

2. The dominant firm was compelled to publish and maintain updated schedule on its website its standard offered prices for USSD services for customer awareness.

3. On Account to Account Interoperability, the Competition agency engaged with central bank and the MNO's and this resulted in interoperability between the various MNOs which allowed transfer of money across networks seamlessly and usage of one account for deposits.(separate accounts were eliminated)

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B. COOPERATING WITH OTHER POLICY/ SECTOR REGULATORS



Information exchange/expertise/consistent decisions

Deal with concurrent laws

regulate markets and ensure that competition and regulation are balanced leads to better outcomes for consumers

Reduce forum shopping

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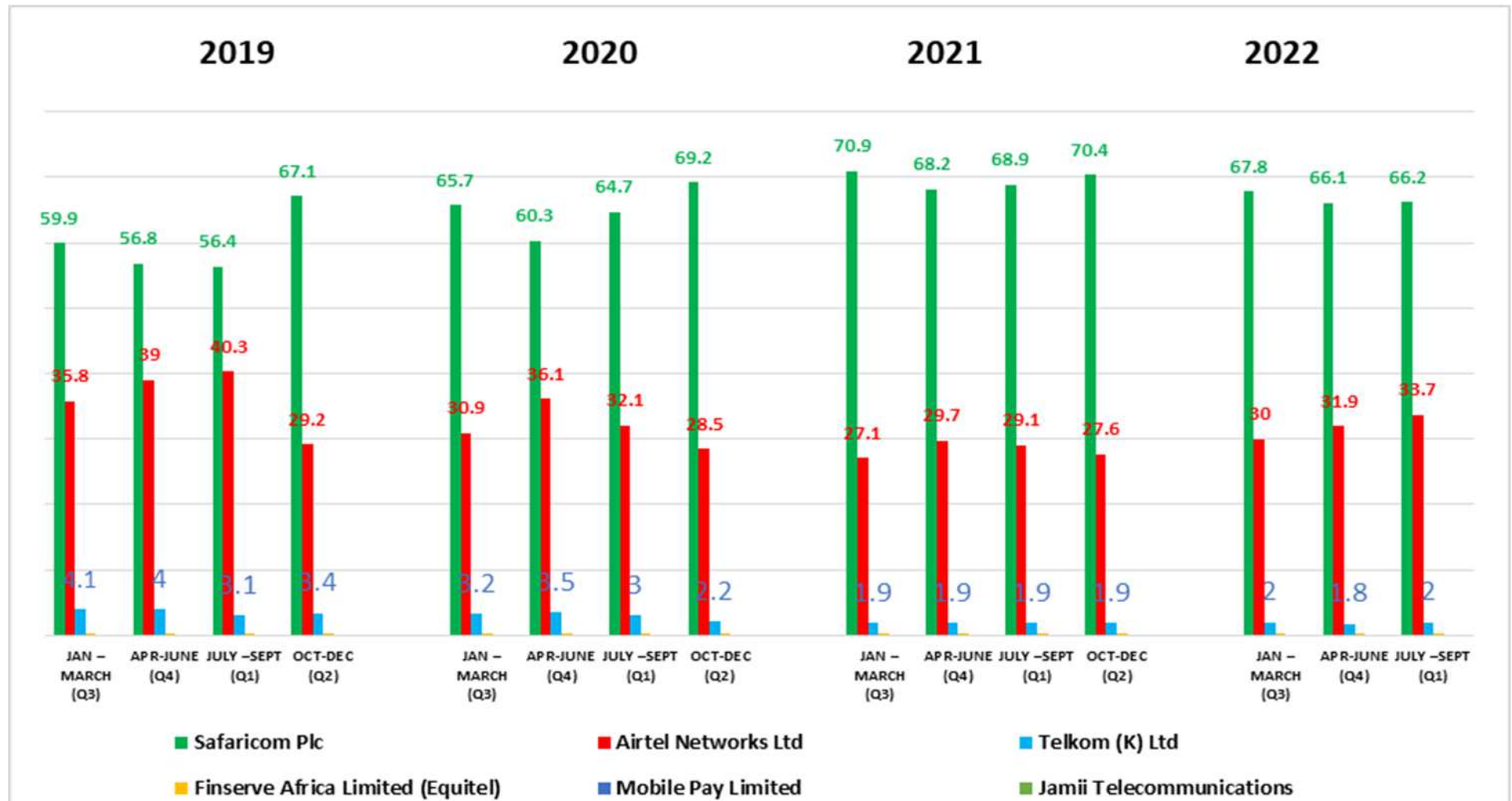
ABOUT THE COMPLAINT

- *That Safaricom Plc had been running promotions(bonus airtime/bundles) in which they offered voice prices that were below the Mobile Termination Rate (MTR-0.99 per minute) i.e Kshs. 0.33 per minute which were below the set MTR.*
- *This resulted incoming off net traffic from Safaricom increased steadily from May 2021 to December 2021 as customers from Safaricom could easily call Airtel due to the low calling charges attributed to the promotions.*
- *That losses attributed to the promotions could be easily recouped because of Safaricom's high onnet traffic(95%) as opposed to off-net traffic which is only 5% of their traffic. That due to the promotions Airtel which relies on off-net traffic suffer losses.*

ENGAGEMENT WITH SECTOR REGULATOR ON CASES: SAFARICOM MATTER

INVESTIGATION FINDINGS

Whether Safaricom Plc is dominant in the voice calls market and did it gain from the promotions of the period?



ENGAGEMENT WITH SECTOR REGULATOR ON CASES: SAFARICOM MATTER



INVESTIGATION FINDINGS

Whether Safaricom Plc charged its promotions below average variable cost and what was the effect?

- *The MTR rates are regulated and are recommended at 0.99*
- *CA had authorized Safaricom to run the subject promotions for 90 days.*
- *CA implementing a Network Cost Study on National Roaming and Interconnection which modelled an interconnection rate of KES 0.06 based on the network of a hypothetically efficient operator.*
- *The network effect was not based on promotions but was likely to occur due to factors related to mobile money services, the full spectrum of services and the quality of services and not solely due to running promotions.*



ENGAGEMENT WITH SECTOR REGULATOR ON CASES:WAY FORWARD

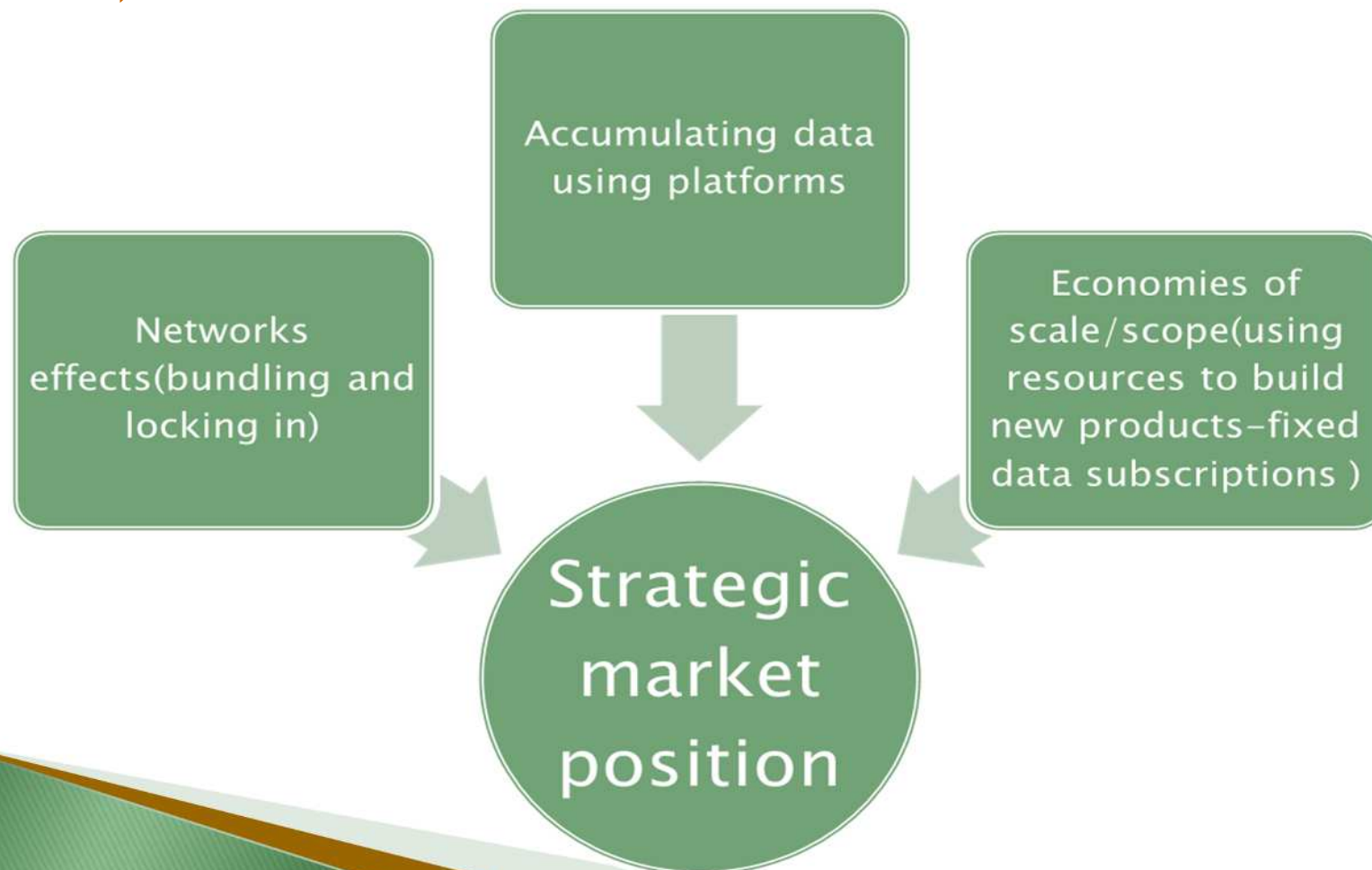
- *To address the network effects and have wholesale interventions, CA and CAK are currently reviewing the Kenya Information and Communication(KICA) Act regulations to address the bottlenecks related to declaration of dominance.*
- *The Competition Authority intends to bring up amendments of the competition act to capture firms with strategic market power i.e firms with potential market power.*

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C. ADVOCACY INITIATIVES AND LEGISLATIVE PROPOSALS ON DEALING WITH STRATEGIC MARKET POWER



Strategic market position? a firm enjoys a position of economic strength through economies of scales and network effects(not dominant).



What is the gap in the Act?

SMP gap

New entrant firms cannot access the data required which facilitates entry into new markets (big firms not obliged to share data or interoperate)

Unilateral behavior by companies that are not yet dominant but controls the market and have strong networks effects(restrictive clauses in one mkt but dominant in another) –not in the act

Abuse of conglomerate market power –cannot sanction a firm that is growing using its internet data growth driven by other business lines(network effects)

Proposed Competition Act (SMP) amendments



PROPOSED AMENDMENTS	RATIONAL
<i>Define strategic market power and key platform services</i>	<i>To capture unilateral behavior by companies that are not (yet) dominant BUT that are active in markets with strong positive network effects & access to data. large online platforms that serve as gateways for business users and end users has led or is likely to lead to weak contestability of these services</i>
<i>Assessing strategic market position and when is a firm declared to be an SMP</i>	<i>elements to be considered include size, turnover, data driven advantages, number of dependent users and end users of platform, entry barriers derived from network effects.</i>
<i>Obligations for undertakings with strategic market position</i>	<i>A firm declared as an SMP shall sign commitment with the Authority obligating it to allow competitors access to data, interoperability with the existing systems, allow switch-ability and un-install any pre-installed software applications among others.</i>

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END
THANK YOU!

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