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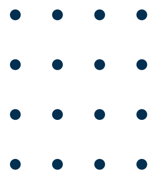
THE NEW FORMS OF ABUSE OF DOMINANCE IN DIGITAL MARKETS

Why platform power is being re-examined



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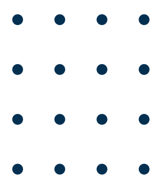

Introduction

Abuse of dominance occurs when a fintech firm with substantial market power uses its position not to compete on merit, but to exclude competitors, restrict market access, or impose unfair conditions on customers or partners.

In digital financial markets, dominance often stems less from size alone and more from control over infrastructure, data, networks, or user access. A platform that sits between consumers and merchants, lenders and borrowers, or developers and payment rails may hold the ability to influence who can compete and on what terms.

Abuse can therefore arise where a fintech:

- denies or degrades access to essential services,
- favors its own products over those of dependent users,
- uses privileged data to undercut rivals, or
- imposes terms that trading partners cannot realistically refuse.

The core issue is not success or innovation. It is whether power derived from the platform is used to distort competition rather than enhance it.

Abuse of dominance is one of the most established concepts in competition law. At its core, it addresses situations where a firm with significant market power uses that power not to compete on merit, but to exclude rivals or exploit customers.

While the doctrine was developed in traditional industries, its principles remain directly relevant to fintechs, particularly as payment platforms, digital lenders, and financial infrastructure providers expand rapidly.

Traditionally, abuse of dominance has taken two broad forms: exclusionary abuse, which harms competitors and market structure, and exploitative abuse, which harms consumers or trading partners.

Digital markets are reshaping how competition authorities think about abuse of dominance. Traditional categories such as refusal to deal, tying, and predatory pricing remain relevant, but they no longer capture the full range of exclusionary conduct emerging in platform-driven ecosystems.

The central compliance challenge is uncertainty. Conduct that appears lawful under today's doctrine may become high-risk tomorrow as enforcement theories evolve.

An overview of Uganda's Competition Regulatory Landscape

1. The Competition Act, Cap 66

Uganda's Competition Act prohibits a dominant firm from using its market power to exploit consumers or exclude competitors. Dominance is evaluated through factors such as market share, control over resources, customer dependence, barriers to entry, and the ability to act without competitive pressure.

Once dominant, a firm may not impose unfair prices or trading terms, restrict innovation, discriminate between customers, deny market access, engage in predatory pricing, squeeze margins, cross-subsidise, refuse to supply, block access to essential facilities, or force tying arrangements.

However, the statute was built around traditional, contract- and price-based behaviour. It does not expressly foresee digital strategies such as algorithmic self-preferencing, exclusion through defaults or interface design, ecosystem lock-in driven by data advantages, or reducing a rival's visibility rather than formally refusing access. These practices can achieve the same exclusionary outcomes, but through mechanisms older frameworks rarely articulate.

2. The Competition Regulations, 2025

Unlike the Competition Act, which is framed in technology-neutral terms, the Regulations move a step further by expressly recognising the economic realities of digital and platform markets.

While dominance itself remains lawful, the authority must first establish whether an undertaking holds a position of power in a properly defined market and only then determine whether that power has been abused. In doing so, the analysis is not limited to market shares.

The Regulations require consideration of broader indicators of strength, including resources, brand advantages, vertical integration, intellectual property, consumer dependence, and the ability to behave independently of rivals or customers. Dominance may also be joint, where firms linked economically or structurally can adopt a common market policy.

Most importantly, the framework adapts traditional competition tests to multi-sided and network environments. Authorities must weigh network effects, the degree of user multi-homing, switching costs, scale advantages, and access to data capable of

reinforcing market position.

Entry will only discipline dominance where it is realistic, timely, and large enough, and the text recognises that barriers may stem from scale, technological control, entrenched networks, or conduct by the incumbent itself.

Even a firm with high shares may escape a finding of market power if customers can credibly switch or sponsor alternatives, though this defence fails where it protects only a narrow segment of the market.

In relation to exclusionary conduct, the Regulations modernise the refusal-to-deal doctrine. A dominant undertaking may abuse its position where it denies competitors access to inputs or facilities that are indispensable, risks eliminating effective competition, and harms consumers, particularly by stifling innovation.

The refusal can be explicit or occur indirectly through mechanisms such as a margin squeeze. Importantly, the text makes clear that in the digital economy, unjustified denial of access to essential data, networks, or infrastructure that cannot be obtained on reasonable terms may itself constitute abuse.

Predatory pricing is framed as below-cost selling designed to eliminate or deter competitors. The key benchmark is average avoidable cost, and authorities ask whether the losses would be rational absent the exclusion of rivals. Recoupment need not be proven, but consumer harm and the survival prospects of an equally efficient competitor are central.
The text nevertheless recognises legitimate reasons for temporary below-cost offers, such as promotions or stock clearance.

Importantly for digital markets, the Regulations confirm that competitive harm may be exercised not only through money prices but also through output, innovation, quality, variety, and the collection or availability of data. This widens abuse analysis to the non-price dimensions through which platforms typically compete.

Regional Perspectives

For digital markets, national rules are only part of the picture. Platforms scale across borders, pool data regionally, and design business models that operate simultaneously in multiple jurisdictions.
That is why regional frameworks matter. They allow conduct with cross-border effects to be assessed at the level where the competitive harm actually occurs.

3. **The COMESA Competition and Consumer Protection Regulations, 2025**

Under the rules, when determining dominance, authorities may examine the structure of the relevant product and geographic market, the intensity of existing or potential competition, barriers to entry or expansion, and the history of rivalry within the sector. In digital markets, this assessment expressly highlights the importance of control over data and network effects as potential sources of such power.

Both Uganda and the COMESA Competition Commission have moved decisively to ensure that African competition law speaks the language of the platform economy.

However, the laws remain fundamentally enforcement-led and retrospective, relying on lengthy investigations to correct market structures that, in digital environments, can tip long before a decision is rendered.

The challenge now is not identifying digital power, but acting on it through faster procedures, clearer rules for gatekeepers, and solutions that move as quickly as the markets themselves.

Emerging forms of abuse of dominance in digital markets

Digital markets are stretching traditional competition law concepts in ways that leave many fintech firms exposed to legal risk they do not yet recognise.

Practices that appear commercially rational such as data-driven expansion, platform integration, or preferential design choices, can quietly replicate classic forms of exclusionary conduct. The problem is not the absence of rules, but the growing gap between how fintechs operate and how dominance is assessed in law.

1. **Forced Free Riding on Dependent Innovation**

Forced free riding occurs where a dominant platform appropriates the value created by businesses that depend on it for access to users. This is not competition on the merits, but competition enabled by control over the platform itself.
Common manifestations include using third-party data or content to launch competing products, leveraging insights generated by dependent firms to replicate their offerings, or implicitly threatening delisting or demotion to

discourage resistance. While not always framed explicitly as exclusion, the effect is to extract innovation without bearing its cost.

Legally, this conduct sits at the intersection of refusal to deal and margin squeeze theories, where access is not priced in money alone, but in data, visibility, or algorithmic preference.

In 2022, the European Commission investigated Amazon's Marketplace conduct, especially related to the *"Buy Box"*, a feature that chooses which seller gets priority placement on product pages.

Amazon has access to rich third-party seller data (sales volume, pricing, fulfilment metrics) and was alleged to use it to advantage its own retail products. Investigations looked at how this access systematically disadvantages competing sellers, a form of data-based exclusion.

Amazon committed to applying objective, non-discriminatory conditions for selecting the *"Featured Offer"* (Buy Box winner) and will not use Prime-eligibility or use of Amazon logistics (FBA) as the sole criterion.

2. **Abusive Leveraging and Self-Preferencing**

Abusive leveraging arises when dominance in one market is used to advantage a firm's own products or services in an adjacent market. This may take the form of preferential rankings, privileged access to platform features or data, or design choices that subtly favor internal offerings.

Often described as self-preferencing, the concern is foreclosure without formal exclusion. Cross-subsidisation and ecosystem integration can be efficiency-enhancing, but they become problematic when they systematically disadvantage rivals that depend on the same platform to compete.

In 2017, the European Commission found that Google had abused its dominant position in respect of specialized shopping services. This came to be known as the *"Google Shopping Case"*.

The Google Shopping case was investigated under EU competition law and helped clarify how self-preferencing , giving internal products a better position or visibility, can constitute abuse of dominance.

The EU's approach focused on how Google's search result adjustments disadvantaged competing services, not just traditional price competition.

3. **Behavioural and Design-Based Foreclosure**

In digital markets, exclusion increasingly occurs through design rather than contracts. Default settings, pre-installation, visibility and ranking decisions, and behavioural "nudges" can steer users in ways that replicate the effects of tying or refusal to deal, without explicit coercion.

Because these strategies operate at the interface between users and technology, they are harder to detect and even harder to justify once competitive harm is shown.

Another well-known EU competition case involved Google Android, where Google was accused of requiring device manufacturers to pre-install Google's suite of apps to access the Play Store.

This conduct isn't pure data abuse, but it shows design/installation strategies that can limit rivals' visibility, related to behavioural and design-based foreclosure.

4. **Privacy Policy Tying and Data Envelopment**

Another emerging concern is privacy policy tying, where a dominant firm collects extensive user data in one market and deploys it to enter and dominate adjacent markets. Over time, data feedback loops can reinforce dominance across multiple services.

This conduct often combines exclusionary and exploitative elements: rivals are foreclosed, while users face increasingly intrusive data collection terms. Data portability and interoperability obligations are now being explored as structural responses to this form of dominance.

What Ugandan Digital Service Providers Should Watch Out For

For many Ugandan digital service providers, "abuse of dominance" still feels like a problem for Big Tech or telecom giants. In reality, the risk increasingly arises much earlier, when a fintech becomes a platform, controls data flows, or intermediates access between users, merchants, agents, or developers.

The question is no longer "Are we dominant?" but "How are we using the power we already have?"

Below are practical red flags fintechs operating in Uganda should consider.

- You operate a platform (payments, lending, wallets, APIs) and offer products that compete directly with merchants, agents, or third-party service providers using your platform.
- You use transaction data, behavioural insights, or customer trends generated by third parties to launch competing in-house products.
- Merchants or partners complain informally about being "copied" or undercut after sharing data or onboarding.
- Your own products appear more prominently, load faster, or enjoy better pricing than third-party offerings without a clear, neutral rationale.
- Internal teams get early or exclusive access to APIs, features, or customer interfaces.
- Algorithm changes consistently disadvantage external providers.
- Defaults that push users toward your services (pre-selected options, opt-out rather than opt-in).
- Pre-installation or mandatory bundling of financial services.
- User journeys that make switching or multi-homing unnecessarily difficult.

Conclusion

Uganda's competition enforcement in digital markets is still developing, but it will not start from zero. Regulators will borrow heavily from international precedent, especially where platforms control data, payments, or access to users.

The safest strategy is not to avoid growth, but to grow with discipline:

- Treat platform power as a legal risk, not just a commercial asset.
- Involve legal and compliance teams in product design and data strategy.
- Monitor emerging enforcement trends and not just current black-letter law.

In digital markets, today's clever design choice can become tomorrow's enforcement case.

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Galandi is the Managing and Founding Partner of Diamond Advocates. He is the WONE Global Technology Leader for Uganda.

He is the Co-Director, Lextech AI Company Ltd, the company behind Esheria and Lextchat, both AI Legal Research Tools.

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