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Editor's Note May Edition

Dear Esteemed Clients, Stakeholders and Readers,

Welcome to the May edition of the MWEBESA LAW GROUP Newsletter. As the second quarter unfolds, we continue to track and contribute to critical developments shaping Tanzania's legal and regulatory landscape. This month's stories are bold, timely, and deeply relevant to the moment we are in.

This edition dives headfirst into three conversations we believe every practitioner, policymaker, and business leader should be having. First, in a world where machines are learning faster than laws can adapt, we ask the difficult but necessary question: ***Is Tanzania's Personal Data Protection Act (PDPA) ready for the age of AI?*** As AI systems become more autonomous and data-hungry, our analysis probes the PDPA's readiness by highlighting regulatory blind spots, emerging risks, and the urgent need to fortify our data protection framework before innovation outpaces oversight.

Next, we zoom into the financial engine room, we spotlight Tanzania's newly operational ***Capital Markets Tribunal,*** a promising quasi-judicial body poised to resolve securities disputes with precision and speed. Drawing comparisons from Kenya, India, and South Africa, we explore how this Tribunal could become a bedrock of investor confidence and market stability if empowered with the right tools and structure.

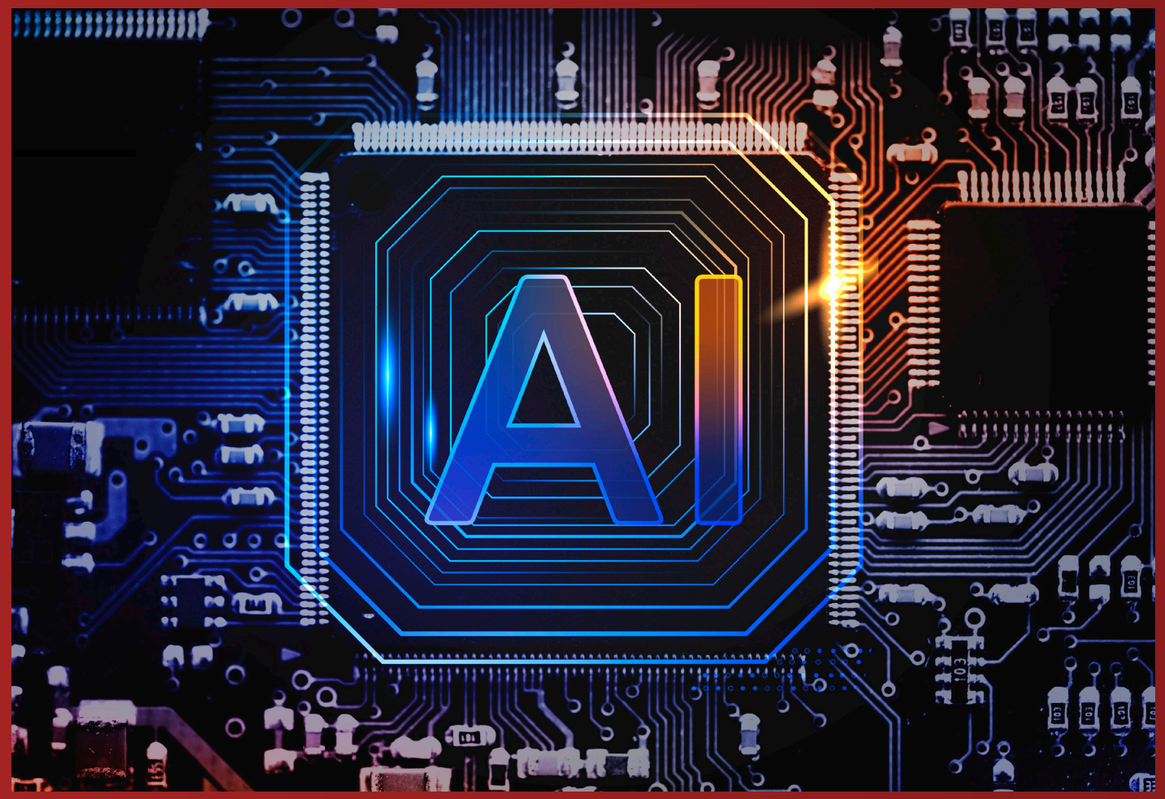
And finally, we take you behind the scenes of the ***2nd IBA African Competition Law Conference*** in Lagos. Where we joined a pan-African gathering of regulators, academics, and practitioners tackling the evolution of antitrust in Africa. From the collision of consumer protection & competition mandates, to AI-driven collusion and AfCFTA's regional vision, the discussions were not just timely, they were transformative.

As always, we write not just to inform, but to challenge, provoke, and invite dialogue. We hope this edition leaves you not only informed, but inspired to think a little deeper, and perhaps ask a few more difficult questions of your own.

We look forward to your thoughts and to shaping the legal landscape together.

Happy reading!

The Editorial Team
MWEBESA LAW GROUP



ASSESSING THE ADEQUACY OF THE PERSONAL DATA PROTECTION ACT IN THE AGE OF ALGORITHMS

The rapid integration of artificial intelligence (AI) into global economies & societies presents both transformative opportunities and unprecedented privacy challenges. While AI promises innovation across sectors, its reliance on vast amounts of personal data raises critical questions about compliance with data protection frameworks, particularly in jurisdictions like Tanzania, where the Personal Data Protection Act (PDPA, 2022) has only recently taken effect.

Tanzania's PDPA establishes essential safeguards for privacy rights such as establishing consent requirements, data subject rights, and a Data Protection Commission (DPC), but its ability to address AI-specific risks such as opaque algorithmic decision-making, large-scale data harvesting, and predictive analytics remains untested. As institutions increasingly adopt AI-driven tools, the law's limitations in governing automated processing, consent mechanisms, and accountability gaps warrant scrutiny. This analysis examines whether Tanzania's current data protection regime is equipped to mitigate the unique challenges posed by AI. It identifies key regulatory shortcomings and proposes targeted reforms to future-proof the legal framework against evolving technological threats.

AI-Driven Data Privacy Risks Under the Personal Data Protection Act (PDPA) Framework

The PDPA embodies principles common to many global data protection frameworks, including purpose limitation, data minimization, and accountability. However, the theoretical harmony between these principles and the realities of AI is far from seamless. This creates a fundamental clash between the dynamic, adaptive nature of AI and the rigid requirements of the law, leading to practical challenges in implementation. It is clear that the PDPC, in its current form, may not have fully anticipated or accounted for the operational complexities AI introduces into the data protection landscape. These complexities manifest in critical areas such as:

1. **Unauthorized Data Collection and Processing:** AI models, especially in machine learning, are notoriously "data-hungry." AI thrives on repurposing data for secondary uses, for instance a patient's medical records, initially collected for treatment, might later train a diagnostic algorithm without their knowledge. This contravenes PDPA principles, including lawful processing **(Section 5; Regulation 23)**, purpose limitation **(Section 5(b); Regulation 26)**, data minimization **(Section 5(c); Regulation 28)**, and the need for consent **(Section 30)**. Furthermore, the High Court in the case of Tito Magoti v. Honourable Attorney General, Miscellaneous Civil Cause No. 18 of 2023 highlighted this tension when it found Section 22(3) of the PDPA (prohibiting collection by "unlawful means") to be "wide and vague" due to the undefined nature of "unlawful means", creating regulatory uncertainty around permissible data sourcing for AI.

2. **Consent erosion: Section 30 of the PDPA** mandates specific, purpose-bound consent for each instance of data processing. On paper, this protects data subjects by ensuring they know and approve how their data is used. But AI's nature is inherently dynamic. Models are not static; they evolve, adapt, and retrain with new data to improve accuracy and handle emerging tasks.

In practice, seeking explicit consent every time an AI model refines itself is impractical & risks paralyzing AI-driven innovation. For instance, an AI-powered fraud detection system in a bank, designed to continuously adapt to new fraud patterns, would struggle to obtain granular consent each time its algorithm evolves. On the flip side, blanket consent erodes privacy, risking misuse of data without informed approval. This creates a compliance and ethical dilemma.

3. **Opaque Automated Decision-Making: Section 36(2)(a) of the PDPA** and Regulation 19(2) demand that data subjects are provided with clear, non-technical explanations of the logic behind automated decisions. This is crucial for transparency and fairness, especially when AI makes significant decisions like loan approvals, employment screening, or insurance premium calculations. However, advanced AI models, particularly deep learning architectures, often operate as opaque "black boxes," where even developers may struggle to explain why without compromising proprietary trade secrets. Forcing full algorithmic disclosure risks IP theft and competitive disadvantage. This by default infringes the data subject's right to object to automated decision-making fails to reveal embedded bias.

4. **Inference of Sensitive Personal Data:** A significant risk arises from AI's ability to infer "sensitive personal data" from non-sensitive inputs. For instance, mobile usage patterns might reveal a person's mental health status or political beliefs. **Section 30** of the PDPA mandates explicit, written consent for processing sensitive personal data, yet inferred data often falls outside this protection.

Additionally, the PDPA currently defines “sensitive data” as explicitly provided information, leaving inferred insights in a regulatory grey zone. Thus, AI’s inferential power effectively sidesteps the PDPA’s intent, creating legal and ethical risks.

5. **Erosion of Anonymity and Re-identification Risks:** While anonymization is a recognize privacy- preserving technique under the PDPA, AI's sophisticated analytical capabilities can de-anonymize datasets previously considered secure by linking them with other publicly available information. This undermines the effectiveness of anonymization as a safeguard and raises questions about whether data, once processed by powerful AI, can ever be truly considered non-identifiable.

6. **Regulatory Lacunae and Development Delays:** The Tito Magoti case underscored the need for clarity by ordering amendments to the PDPA’s vague provisions within a year. Yet, a year later, comprehensive AI-specific guidelines remain absent. Compounding the issue, the Personal Data Protection Commission (PDPC) has yet to publish adequacy lists for cross-border data transfers (Regulations 20-22), creating hesitancy among businesses that depend on global AI infrastructure. The lack of clear, harmonized guidance leaves companies walking a regulatory tightrope, hesitant to deploy AI innovations that might later be deemed non-compliant.

7. **Enforcement:** Even the most robust legal provisions require enforcement to have bite. Part VII of the PDPA outlines the PDPC’s enforcement powers, including investigation and penalty imposition mechanisms. However, the practical effectiveness of these measures hinges on operational readiness, resources, and clarity in execution. Without a fully functional enforcement division and clear procedural guidance, violations may slip through the cracks, eroding public trust and weakening the intended protective net.

Tanzania’s Approach to AI Governance

To ensure the PDPA effectively governs AI, fostering innovation while safeguarding rights, Tanzania should consider:

1. **Mandate Clear and Functional Explanations for AI Decisions:** Section 36(2)(a) should be amended and enhanced to compel entities using AI to provide plain-language explanations for automated decisions that significantly impact individuals. For instance, a bank denying a loan should be required to offer a concise, understandable explanation such as, “Your loan application was declined because your transaction history indicates a high debt-to-income ratio.”

2. **Expediting AI-Specific Regulations & Amendments:** The PDPC should swiftly amend PDPA sections identified as vague in the Tito Magoti Judgment and develop clear PDPC guidelines under **Section 64 PDPA** addressing AI-specifics: tiered consent for AI research, standards for algorithmic transparency, and robust criteria for AI DPIAs beyond the current Regulation 33 & Form 9.

3. **Standard Algorithmic Audits:** The PDPC should be empowered to conduct regular audits of high-risk AI systems, evaluating their fairness, accuracy, and compliance with data protection principles. This mechanism would proactively identify and mitigate algorithmic bias, discriminatory outcomes, and transparency gaps before they impact individuals or businesses.

4. **Capacity Building:** Enhance the PDPC's technical capacity and train DPOs, controllers, and processors on AI ethics and PDPA compliance. Tanzania should engage actively with the East African Community (EAC) & other regional bodies to develop harmonized AI governance frameworks. Coordinated standards will prevent regulatory fragmentation, facilitate cross-border data flows, and ensure that AI regulation reflects regional realities while maintaining respect for national sovereignty.

5. **Learning from Global Precedents:** Across the world, jurisdictions are grappling with how to regulate AI’s unique challenges, offering valuable lessons that Tanzania can adapt though not simply replicate. The European Union’s AI Act is a notable example. It introduces a risk-based framework, categorizing AI systems from minimal to unacceptable risk. High-risk applications like those used in critical infrastructure, recruitment, or financial services are subject to stringent transparency, accountability, and human oversight requirements. Notably, these provisions aim to mitigate AI’s potential harms while promoting innovation, a balancing act Tanzania must consider. Tanzania must craft a bespoke framework that balances the imperative for innovation with robust, context-sensitive safeguards, ensuring that data protection principles remain resilient in the face of rapid AI advancements.

Conclusion: Future-Proofing Privacy in the Age of AI

Tanzania’s Personal Data Protection Act, while commendable for echoing global standards, reveals its limitations when confronted with AI’s evolving complexities. Consent, transparency, and accountability, the cornerstones of data protection, are put to the test by AI systems that thrive on continuous learning, opaque decision-making, and inferred insights. This demands proactive regulatory refinement.

Without a deliberate and context-sensitive recalibration of the PDPA, Tanzania risks either stifling innovation through over-regulation or eroding public trust through inadequate safeguards. Neither outcome is acceptable. What’s needed is a dynamic legal framework that accommodates AI’s potential while holding it to the highest standards of fairness and transparency. By integrating AI-specific provisions, bolstering institutional capacity for oversight, and fostering a nuanced understanding of AI's impact on data privacy through mechanisms like the Codes of Ethics. Tanzania can ensure its data protection regime remains robust and adaptive. This approach will be key to protecting fundamental rights while responsibly unlocking the immense societal and economic benefits of Artificial Intelligence.

The challenge and the opportunity, is to strike the balance: to govern AI not through fear of its complexity, but through informed, adaptive regulation. It is not a choice between progress and protection; it is a call to ensure they walk hand-in-hand. The future of Tanzania’s digital ecosystem depends on it.

THE ROLE OF TANZANIA'S CAPITAL MARKETS TRIBUNAL IN RESOLVING SECURITIES DISPUTES

Capital markets move at lightning speed but justice often does not. When a broker misuses client funds or a listed company manipulates its stock, waiting years for a conventional court ruling would paralyze the financial system. This is why capital markets tribunals exist: specialized bodies that speak the language of finance while delivering justice at market velocity. Their very existence represents an acknowledgment that money moves too fast for traditional legal systems to keep pace.

In Tanzania, this recognition has led to the creation of the Capital Markets Tribunal (CMT), an independent appellate body established under Section 136A of the Capital Markets and Securities Act (Cap. 79), as amended (the Act). The CMT stands as a pivotal institution, designed to resolve disputes arising from the capital markets, ensuring fairness and stability within this dynamic sector. The CMT's existence is further bolstered by its collaboration with the CMSA and the Ministry of Finance, creating an integrated framework for upholding market integrity. By combining judicial authority with sector-specific expertise, the Tribunal is able to deliver justice at the pace demanded by modern finance.

Legal Framework and Structure of Tanzania's CMT

Tanzania's Tribunal is explicitly statutory & endowed with significant powers. Its mandate spans the adjudication of all disputes arising from the Act, including but not limited to interpretive questions of market regulations, conflicts between the Capital Markets and Securities Authority (CMSA) & stock exchanges or intermediaries, licensing disputes, and challenges to securities listing refusals. The Tribunal serves as the primary appellate forum for parties aggrieved by CMSA decisions, requiring appellants to file a Notice of Intention to Appeal within seven days of the contested ruling, followed by a full appeal submission within thirty days. Notably, this appellate pathway excludes decisions reached through mutual consent, which are expressly non-appealable.

Chaired by a High Court judge and supported by four specialist members, the CMT exercises the full judicial powers of the High Court, including the authority to summon witnesses, administer oaths, and compel document production. Its evidentiary procedures are intentionally flexible, permitting written testimony and considering any relevant evidence, even if inadmissible in other judicial forums while retaining the discretion to award costs to prevailing parties. The CMT's determinations are final on factual merits, with appeals to the Court of Appeal restricted strictly to points of law. This finality underscores the CMT's role as the ultimate judicial forum for capital-markets cases.

Comparative Perspective: Insights for Tanzania's Capital Markets Tribunal (CMT)

The CMT while commendable in its design and statutory authority, has much to learn from global counterparts with similar structures. Drawing from Kenya, South Africa, and India, clear lessons emerge on how Tanzania can enhance the CMT's effectiveness, fairness, and adaptability in a rapidly evolving financial ecosystem.

Kenya's Capital Markets Tribunal offers a nearby mirror, with a well-structured appellate pathway under the Capital Markets Act. Like Tanzania's model, Kenya's CMT is composed of legal and financial experts, presided over by a seasoned advocate. However, Kenya's framework stands out for its explicit allowance for further appeals first to the High Court, then the Court of Appeal. This multi-tier system not only strengthens checks and balances but also builds a rich body of jurisprudence on capital-markets regulation. While Tanzania's "finality" approach at the CMT level promises faster resolution, it risks bypassing higher judicial scrutiny on complex regulatory issues. The Tanzanian CMT could consider incorporating a limited right of appeal on specific legal points to foster fairness without sacrificing efficiency.

South Africa's Financial Services Tribunal (FST), operational since 2018, broadens the lens further. Established under the Financial Sector Regulation Act, the FST's composition of retired judges and financial experts ensures independence and credibility. The South African model underscores the importance of member neutrality: Tribunal members cannot be active participants in the industry, safeguarding impartiality. A key takeaway for Tanzania is the potential complexity of consolidating multiple sectors under one tribunal, as South Africa did. While a single forum for financial disputes offers consistency, it demands diverse expertise and clear procedural rules to avoid conflicts of interest. Additionally, South Africa's use of electronic filing and seamless integration with higher courts reduces delays, a model Tanzania should emulate, especially given the CMT's mandate to keep pace with dynamic market conditions.

India's Securities Appellate Tribunal (SAT) presents both a caution and an inspiration. As a centralized forum for securities, insurance, & pension disputes, SAT epitomizes efficiency and consistency. Its composition a presiding retired judge and two expert members, mirrors Tanzania's approach. However, India's SAT faces a crushing case-load, with over 1,100 pending appeals in 2024. The backlog stems from limited bench capacity and high demand, delaying resolutions for years. For Tanzania, this highlights the necessity of proactive capacity planning. If the local capital market continues to expand, the CMT must scale its membership and establish multiple panels to avoid bottlenecks. Formalizing strict deadlines, adopting electronic filing systems, and ensuring that CMT decisions are backed by clear, codified procedural rules will be vital to maintaining public confidence.

Comparatively, Tanzania's CMT stands at a crossroads. It has the statutory framework and high-court powers akin to Kenya's, the independence and neutrality ideals from South Africa, and the scale potential reflected in India's SAT. Yet, to unlock its full potential, the Tanzanian CMT must incorporate best practices: streamlined appeal structures to balance speed and fairness; independent, multidisciplinary panels; robust case management systems; and forward-looking regulatory coordination. This evolution is critical not just for the Tribunal's effectiveness but also for reinforcing investor confidence in Tanzania's burgeoning capital market.

Lessons and Best Practices for Tanzania

To fully realize its role as a credible and efficient arbiter of capital markets disputes, the Tanzanian Capital Markets Tribunal (CMT) should embed best practices that align with global standards while remaining tailored to the local context. Drawing from lessons learned in Kenya, South Africa, and India, the following principles can strengthen the CMT's operational integrity and effectiveness:

A. **Maintain Independence and Transparency:** The credibility of any tribunal hinges on its perceived and actual impartiality. Like SFT's model, Tanzania's CMT should ensure that its members are free from conflicts of interest, such as active participation in the capital markets they regulate. Transparent appointment processes, including public vetting and selection criteria based on expertise and ethical standing, can bolster public trust. Fixed terms and restrictions on external engagements, as seen in Kenya's framework, safeguard against regulatory capture and maintain a clear separation between adjudicators and market participants. Furthermore, the CMT's leadership by senior judges is a promising precedent, affirming its commitment to independence.

B. **Ensure procedural efficiency:** Timeliness is the bedrock of effective capital markets adjudication. Strict filing deadlines should be rigorously enforced to avoid delays. Tanzania's ongoing efforts to introduce electronic filing and case management systems are commendable and should be prioritized to eliminate paperwork bottlenecks. Importantly, the Tribunal must anticipate potential surges in case volume, as seen in India's SAT, by ensuring adequate staffing perhaps through multiple panels or additional members to avoid backlogs & maintain swift resolution.

C. **Educate & Engage Stakeholders:** Judicial efficiency thrives when market participants understand their rights and the processes available to them. As highlighted by Justice Nangela's emphasis on public awareness, the CMT should invest in regular outreach initiatives, including seminars, easily accessible guidelines, & publication of anonymized decisions to build stakeholder confidence. Collaborative efforts with regulators, such as the Capital Markets and Securities Authority (CMSA), and with the judiciary, can create a harmonized and predictable regulatory ecosystem.

D. **Leverage Comparative Review;** Allowing higher appeals (if needed) can increase confidence. Tanzania's finality clause reduces court interference, but the rule linking the CMT to the Court of Appeal (via electronic referral) provides a hybrid solution. Ensuring the Court of Appeal can review CMT decisions on point of law would add legal oversight without burdening ordinary courts with merits.

Conclusion

In summary, adopting these best practices rooted in independence, empowerment, efficiency, stakeholder engagement, and balanced oversight will transform Tanzania's CMT into a resilient, trusted institution. By learning from both regional and international models, the CMT can set a new benchmark for specialized financial adjudication in East Africa. For example, having at least one judicial member per bench (as in India and South Africa) ensures legal rigor, while including market experts ensures economic context in decisions. Regular training (cross-border exchange of judges, as Tanzania is already pursuing with Burundi's CMA) can share best practices. The result will be greater investor protection and market confidence, as envisioned by Tanzania's policymakers.

A GLIMPSE INTO THE FUTURE OF COMPETITION LAW: REFLECTIONS FROM THE 2nd IBA AFRICAN COMPETITION LAW CONFERENCE 2025

The vibrant city of Lagos provided a fitting backdrop for the 2nd IBA African Competition Law Conference, where leading legal minds, policymakers, and regulators particularly the Federal Competition & Consumer Protection Commission (FCCPC), convened to explore the evolving terrain of competition law across the continent. The event was a dynamic convergence of ideas, debate, and visionary discourse, each session contributing to a clearer, more cohesive vision for Africa's antitrust future.

Our firm was proudly represented by Managing Partner, Crispin Mwebesa, and Associate Monalisa Mushobozi, who actively engaged in forward-looking discussions on merger control, the impact of AI on antitrust enforcement, competition considerations under the African Continental Free Trade Area (AfCFTA), digital market regulation, and the push for regional harmonization. These rich engagements not only sharpened our strategic outlook but also fostered meaningful connections with enforcers, practitioners, and scholars across the region.

A key takeaway was the shifting role of competition law as it increasingly intersects with consumer protection. While these have traditionally been viewed as distinct mandates, there is growing recognition that a siloed approach no longer reflects market realities. The challenge? Ensuring that competition enforcement continues to protect consumers without compromising its economic rigor. A harmonized, outcome-oriented framework may be the path forward, one that balances technical analysis with social relevance.

Merger control also emerged as a focal point, particularly the growing prominence of public interest considerations in regulatory decisions. Employment preservation, local industrial capacity, and broader development goals are now central to merger assessments across several African jurisdictions. The consensus: public interest cannot be ignored but neither should it overshadow competition principles. Striking the right balance is essential, and African regulators must craft merger control frameworks that reflect both economic efficiency and socio-political realities.

In discussions on cartel enforcement, we were reminded that while leniency programs have historically been powerful tools, evolving market behaviours demand more sophisticated strategies. Data analytics, digital monitoring, and stronger whistleblower protections are gaining traction. But without sustained institutional support, even these tools risk falling short. Enforcement strength remains the linchpin of effective deterrence.

The conversation on digital markets and artificial intelligence stood out as a call to action. The rise of algorithmic collusion, AI-powered mergers, and tech monopolies presents unprecedented challenges. Regulators must now grapple not only with how AI distorts competition, but also how they can leverage AI themselves to enhance enforcement. The message was clear: the digital economy demands a new regulatory imagination, one that is agile, anticipatory, and technologically literate.

Finally, the AfCFTA continues to offer a bold vision for a continent-wide competition regime. While recent strides like regional memoranda and collaboration frameworks show promise, challenges around national sovereignty, legal fragmentation, and institutional capacity persist. Still, the momentum is undeniable. AfCFTA, when fully realized, will not only unify markets but also align regulatory ambition across the continent.

The event was a testament to Africa's dynamic role in shaping global competition discourse. The kind that makes you rethink what it means to practice competition law on a continent as diverse and dynamic as Africa. The issues, public interest in mergers, AI's silent hand in market behavior, cartel detection are not theoretical. They are unfolding now, in boardrooms and enforcement offices across the region. The challenge is not just catching up to these shifts; it is being part of shaping them, and that is the real takeaway. For our team, the lessons were clear: agility, collaboration, & a willingness to rethink tradition will define the next era of antitrust in Africa.

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