

# Competition policy challenges posed by data-driven businesses

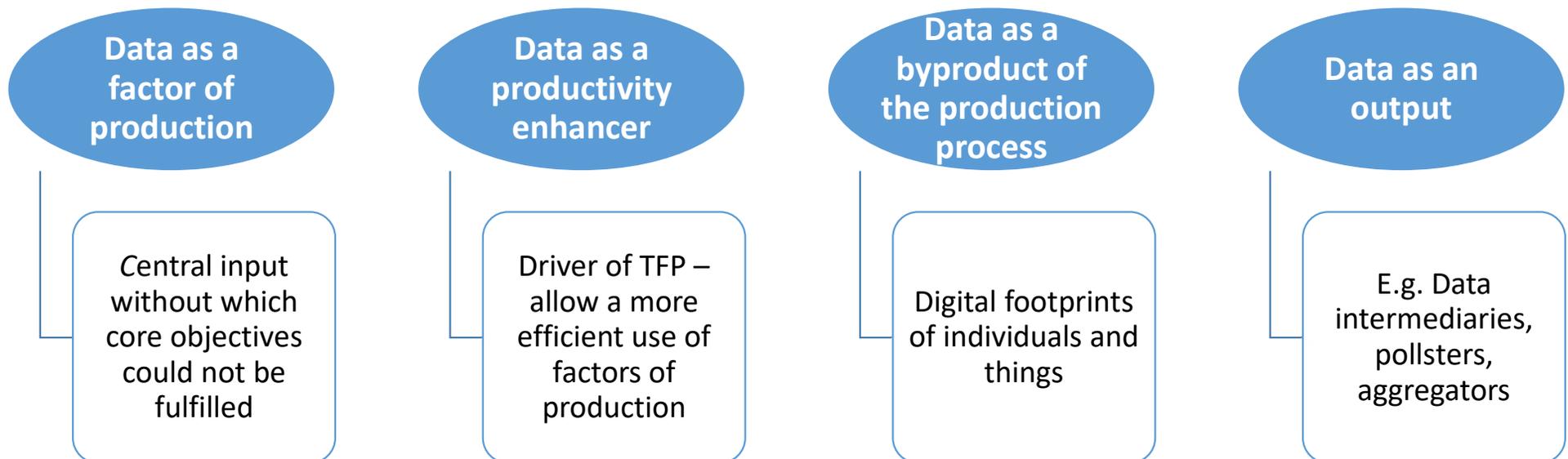
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Sara Nyman, Senior Economist, Markets & Technology Unit, WBG

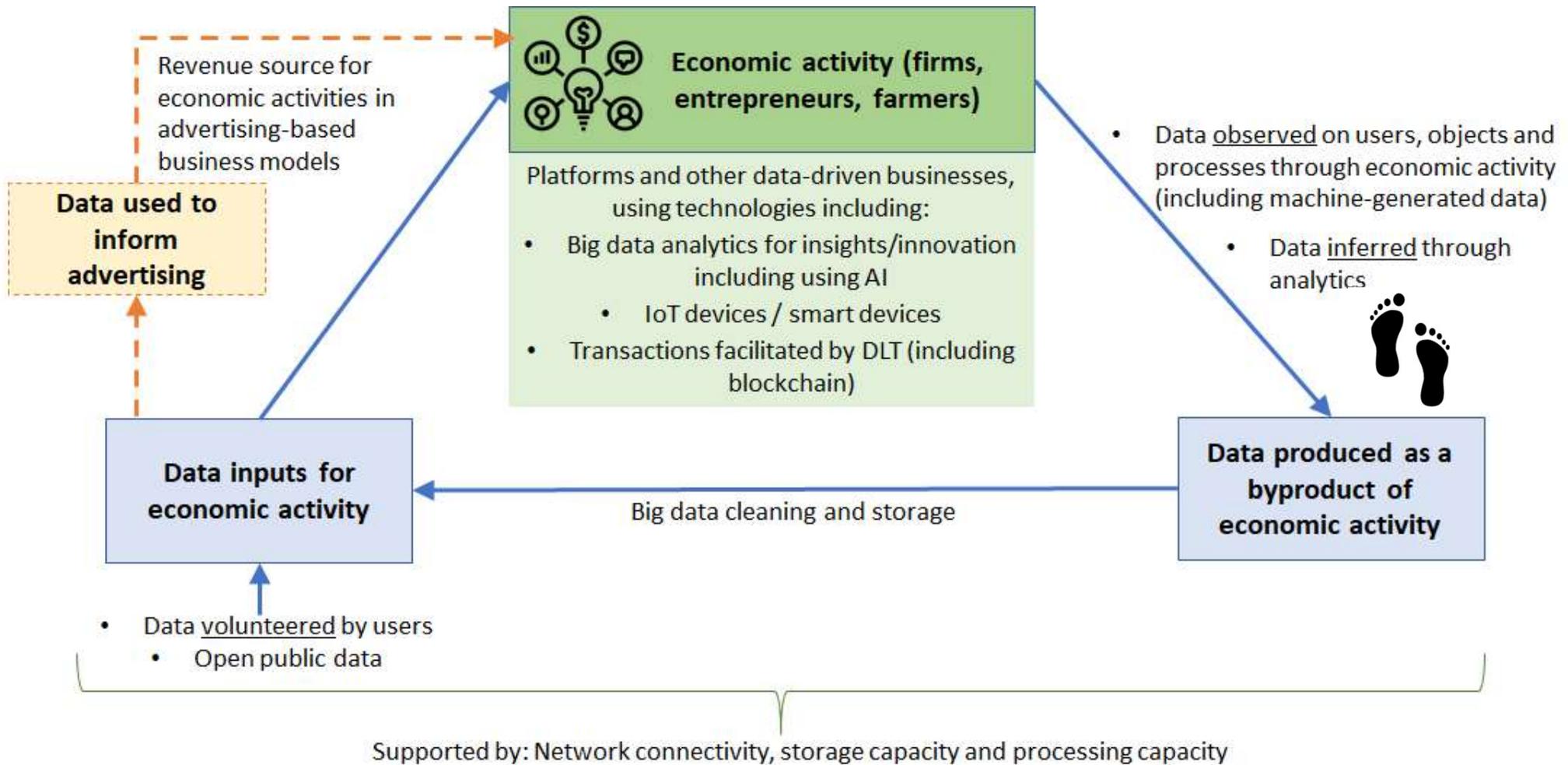
## The role of data in the production process of firms

The ability of businesses to extract value from data has taken off in recent years with growing capacity to collect, store, and process data

- The role of data in production can be conceptualized in different ways depending on the specificities of different firms, industries, technologies, and the type of data being considered.
- Has implications for data as a barrier to entry, incentives to collect data and propensity for data concentration

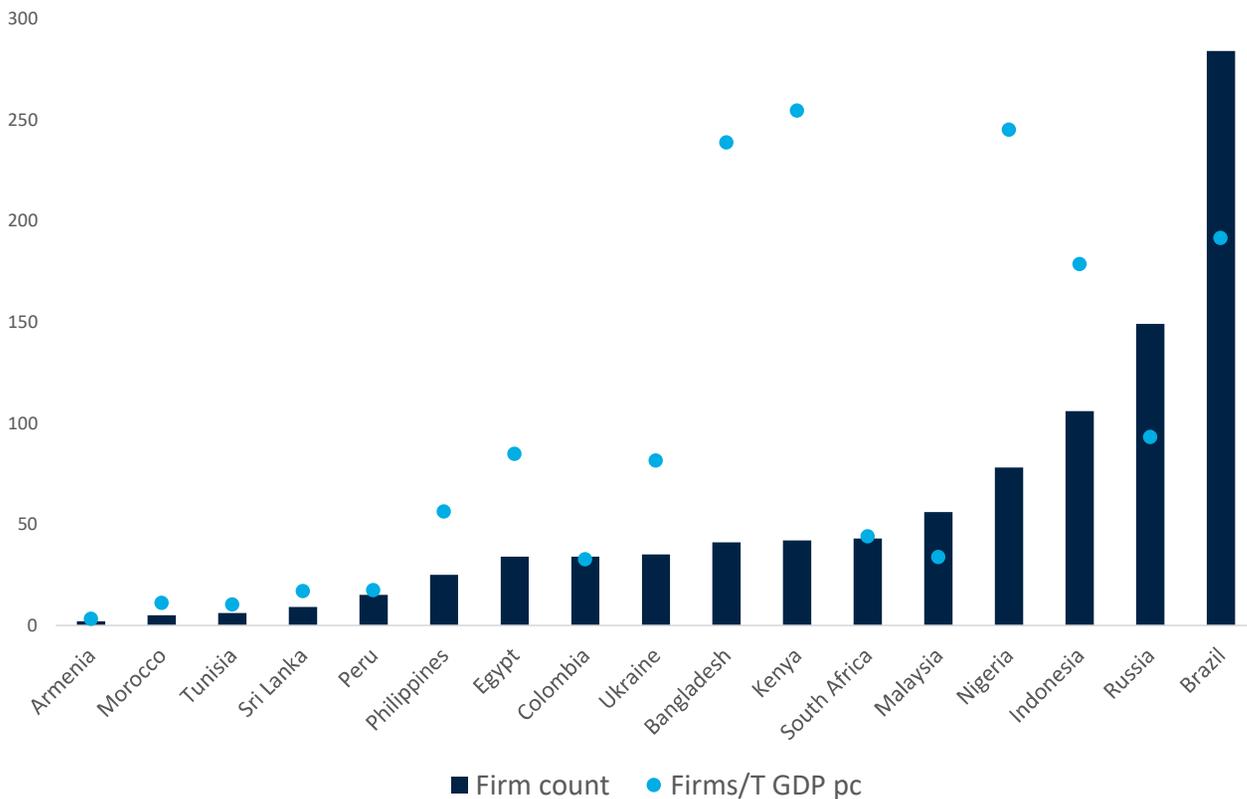


# Data are used as an input to—and are produced as a byproduct of—economic activity



# Data-driven platforms are on the rise in low- and middle-income countries

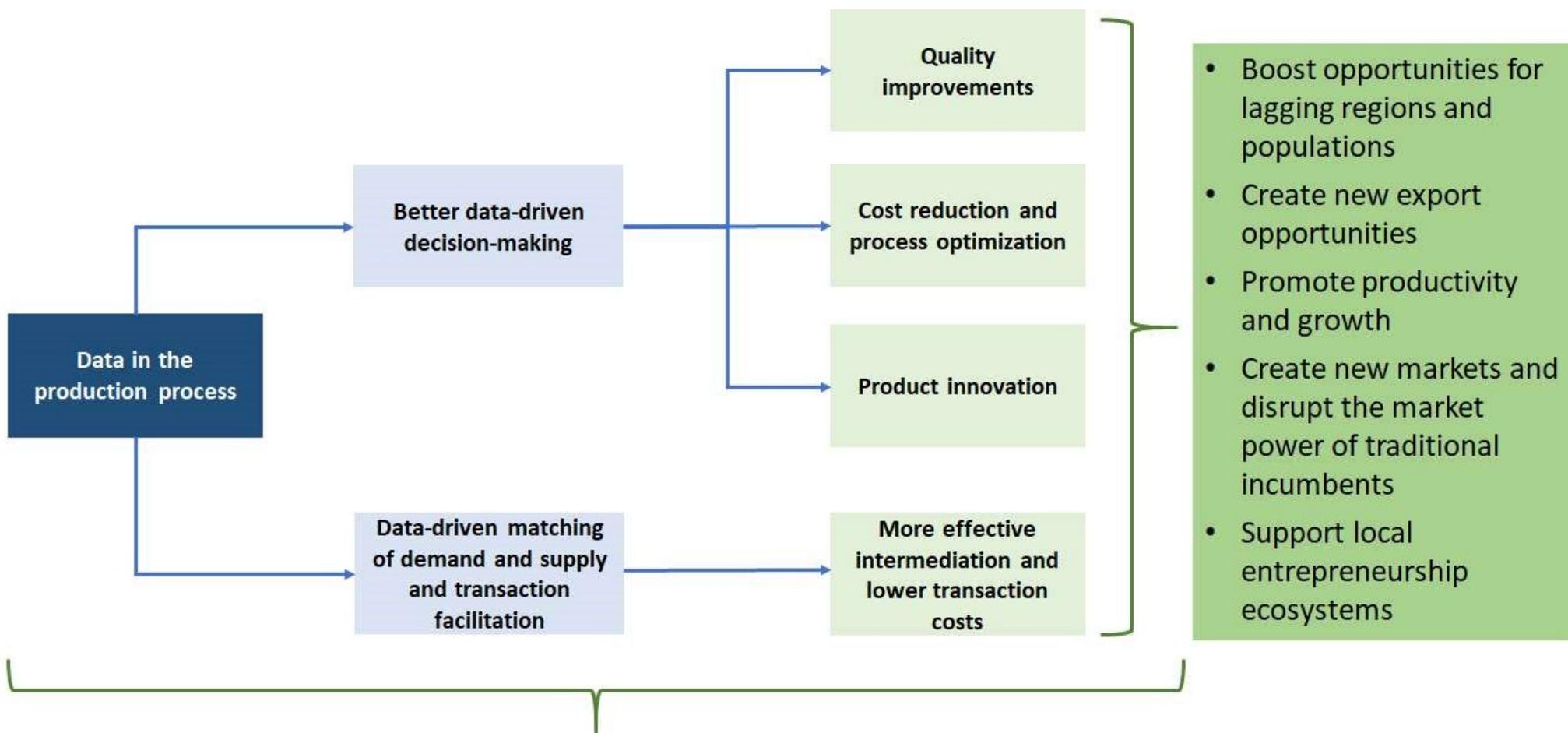
Number of firms, total and per GDP per capita (in thousand USD) across sample countries



- **Across four key sectors (agriculture, tourism, transport/logistics and e-commerce), at least 959 digital platforms have a physical presence in 17 LMICs**
- **Most platform firms are recent entrants; 55 percent were established in the past five years**
- **They tend to be small – almost half have 10 or fewer employees**
- **Survival rate appears to be around 80% (except in SSA at around 50%)**

Sources: WDR platforms background paper, forthcoming 2020. Based on the WBG Developing Economies Digital Platform Database 2020, using data from Crunchbase, Factiva, Thomsonreuters, and Alexa (downloaded in Q2: 2020); WBG World Development Indicators. Number of platforms cited her are likely to be a lower bound since those identified are limited to firms present in available databases.

## Pathways to development from data in the production in process

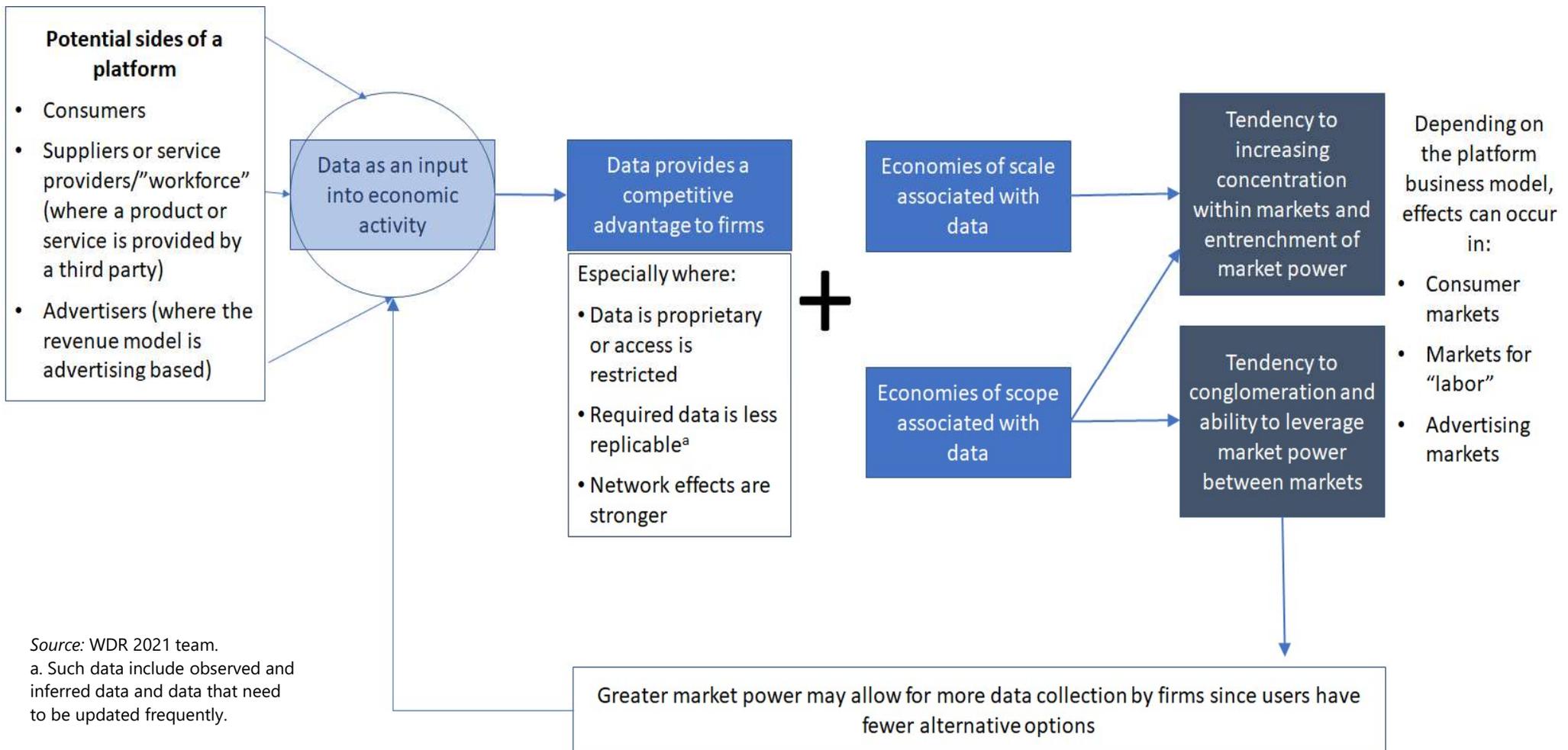


**Related opportunities: Access to “free” services, adaptation to COVID-19 challenges, and support for the green agenda**

# But along with the opportunities, new risks are emerging from the use of data in the production process

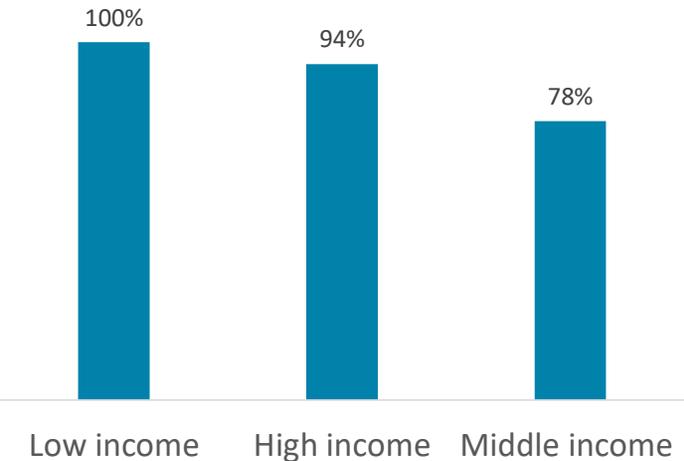


# The risks of entrenched market power has become a key concern of greater use of data in the production process – and can manifest in different markets

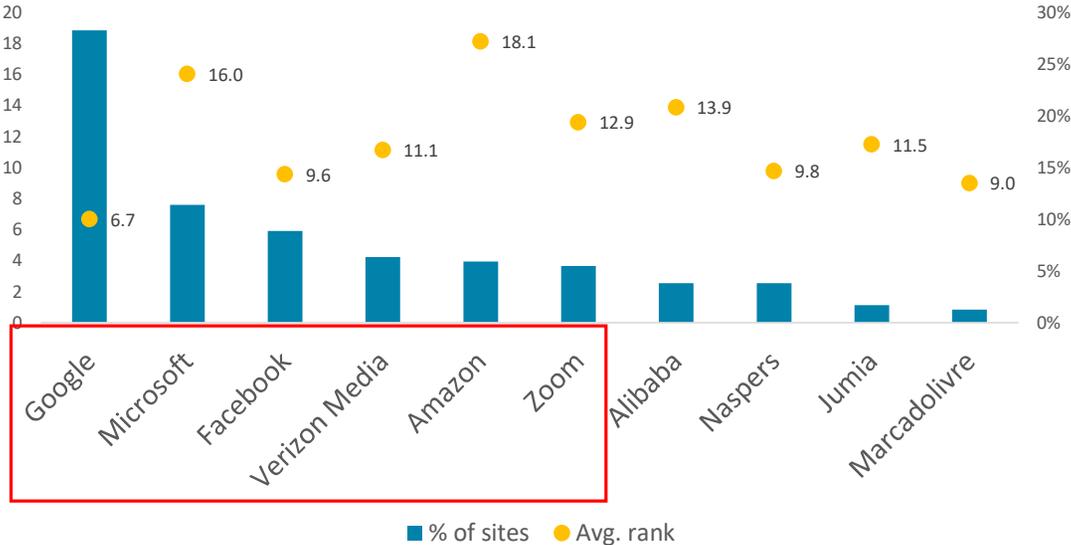


# This can be seen in the concentration of ownership and traffic in a few large platform firms

**% of countries where Google, Facebook, and YouTube are in the top ten most-visited sites**



**Most common parent companies among top websites in 17 sampled LMIC (all sectors)**



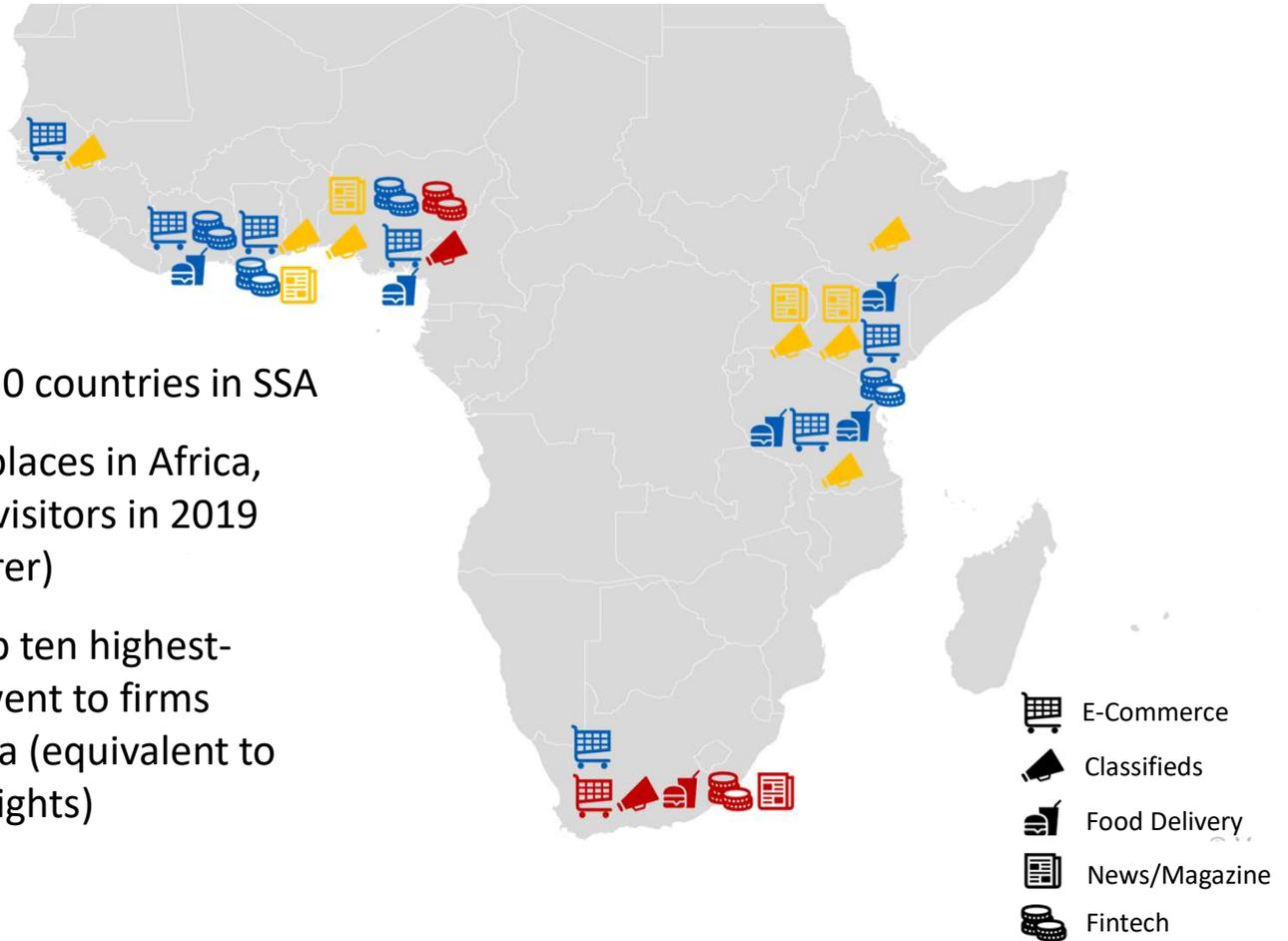
- Google, Facebook, and YouTube are in the top ten visited sites for all low-income countries globally

- Across the top online services websites by traffic in the 17 LMICs sampled, **66% are owned by a group of 6 firms HQ'd in the US.**

Source: Source: WDR21 Background Paper, based on data from Alexa.com, downloaded April 2020.  
 Note: RHS The panel shows the percentage of the top 25 websites owned by the listed parent organizations in the sample. Total sample includes 425 websites from 17 low-income and middle-income countries (Armenia; Bangladesh; Brazil; Colombia; Egypt, Arab Rep.; Indonesia; Kenya; Malaysia; Morocco; Nigeria; Peru; Philippines; Russia; South Africa; Sri Lanka; Tunisia; Ukraine). Ownership is defined as majority shareholding. Note LHS: based on data from Alexa.com, downloaded April 2020. Sample of 1270 websites (top ten websites in 127 countries). YouTube is owned by Google.

## In SSA, Naspers, ROAM and Jumia are the 3 most prevalent holding companies - with a diverse portfolios of businesses that, in some cases, compete in overlapping markets and countries

- **Naspers** owns 21 subsidiaries across two countries in SSA
- **Ringier One Africa Media (ROAM)** owns 20 subsidiaries across seven countries in SSS
- **Jumia** owns 47 subsidiaries across 30 countries in SSA
  - Among 631 B2C online marketplaces in Africa, Jumia alone had 24 percent of visitors in 2019 (ITC African Marketplace Explorer)
- Of the total funding going to the top ten highest-funded firms in Africa, 77 percent went to firms owned by Naspers, ROAM and Jumia (equivalent to USD 1.06 billion according to CB Insights)



# Increasing focus on the responsibility of competition policy to curb the market power of digital platforms

- **Specific features of data-driven markets render competition issues more complex and hold implications for firm behavior**
  - **Exclusionary behavior:** Potential to exclude rivals
  - **Exploitation:** Scope for excessive data-collection
  - **Collusion:** Digital platforms can disrupt cartels but greater transparency and algorithms can facilitate collusion
  - **Mergers:** Data-driven mergers; Killer/zombie acquisitions

**Calls for policies to safeguard competition in digital markets by: preventing anticompetitive firm behavior, mitigating risks of dominance, and ensuring a level playing field**

Data as “an input”

Multi-sided markets

Economies of scale

Network effects

Transparency in pricing

Algorithms

Importance of intangible assets

# Competition policy tools in the data-driven economy

## Two competition policy tools in the data-driven economy

1. Antitrust enforcement: Prevent anticompetitive firm practices ex post and prevent anticompetitive mergers

- Adapting competition analysis to address abuse, collusion or anticompetitive mergers by data-driven firms
- Designing antitrust remedies to restore competition in data markets

2. Pro-competition ex ante regulation: Allow firms to enter and compete on a level playing field

- Enabling pro-competition use of data through regulation
- Overseeing industry-led schemes for data-sharing
- Providing smaller firms with fair access to platforms
- Ensuring traditional regulations promote competition
- Protect those that connect to platforms

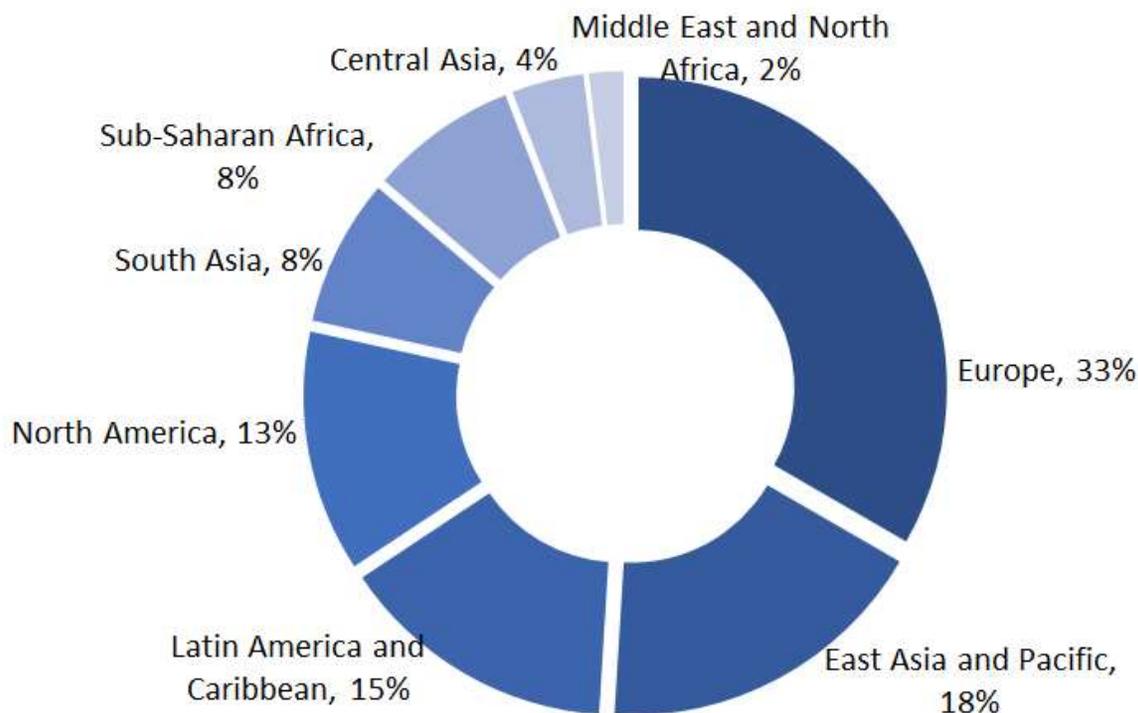
Interface between data protection, user privacy preferences and competition policy

- Ensuring consumer data regulation are designed to minimize competition distortions while maintaining the rights of users
- Understanding whether firms compete on data protection in order to analyze market dynamics
- Accounting for differences in valuations of privacy in developing countries when assessing competition on privacy

## Competition authorities all over the world are looking at these issues

- Europe leads the geographic distribution followed by EAP & LAC
- 40% of cases were in less developed jurisdictions – but no cases in low-income countries yet
- Most practices cases found misconduct by firms
- Over 90% of mergers were approved – a quarter with conditions
- Majority involve a foreign firm – Google and Uber involved in highest number of cases

Regional distribution of antitrust cases involving digital platforms



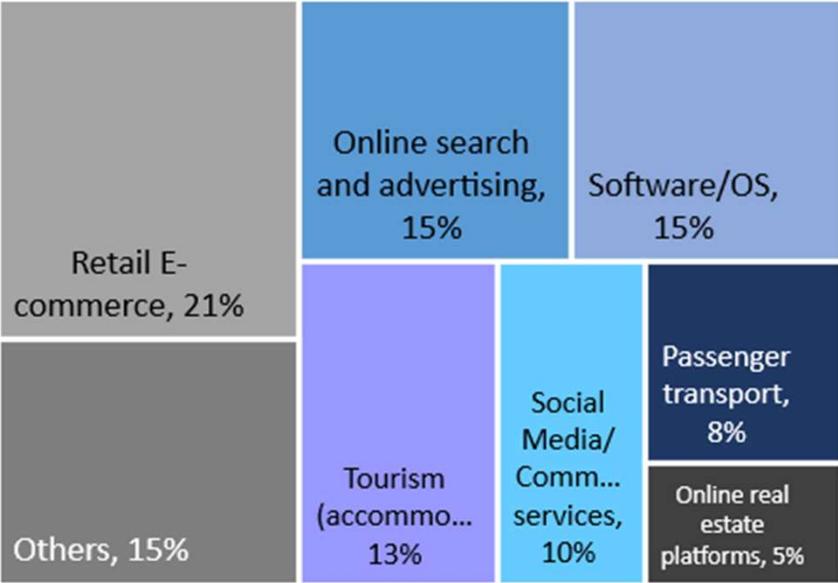
Based on a database of all finalized digital antitrust cases globally as at Jan 2020 (>100 case)

Source: WBG Global Digital Antitrust Database

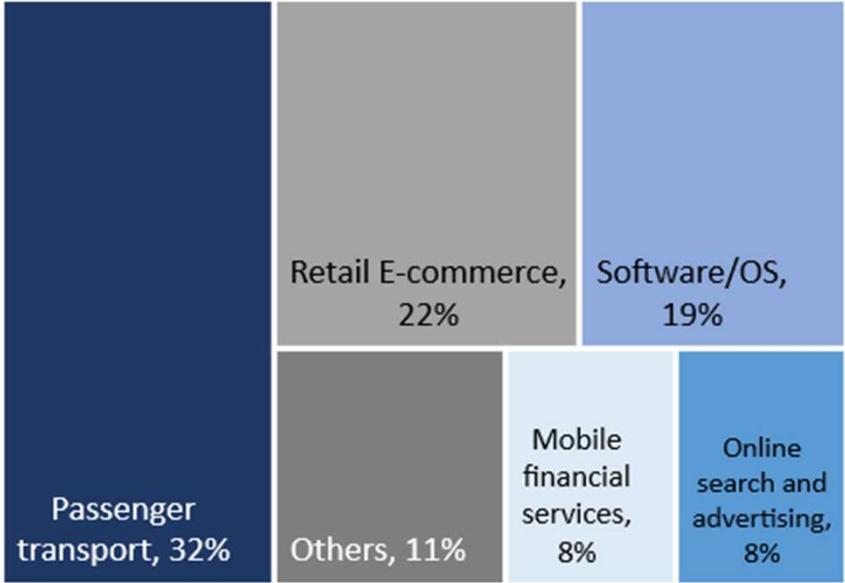
**More than half of antitrust cases are focused on three sectors**

- E-commerce, passenger transport and software/operating systems account for 56 percent of all cases globally.

Developed jurisdictions

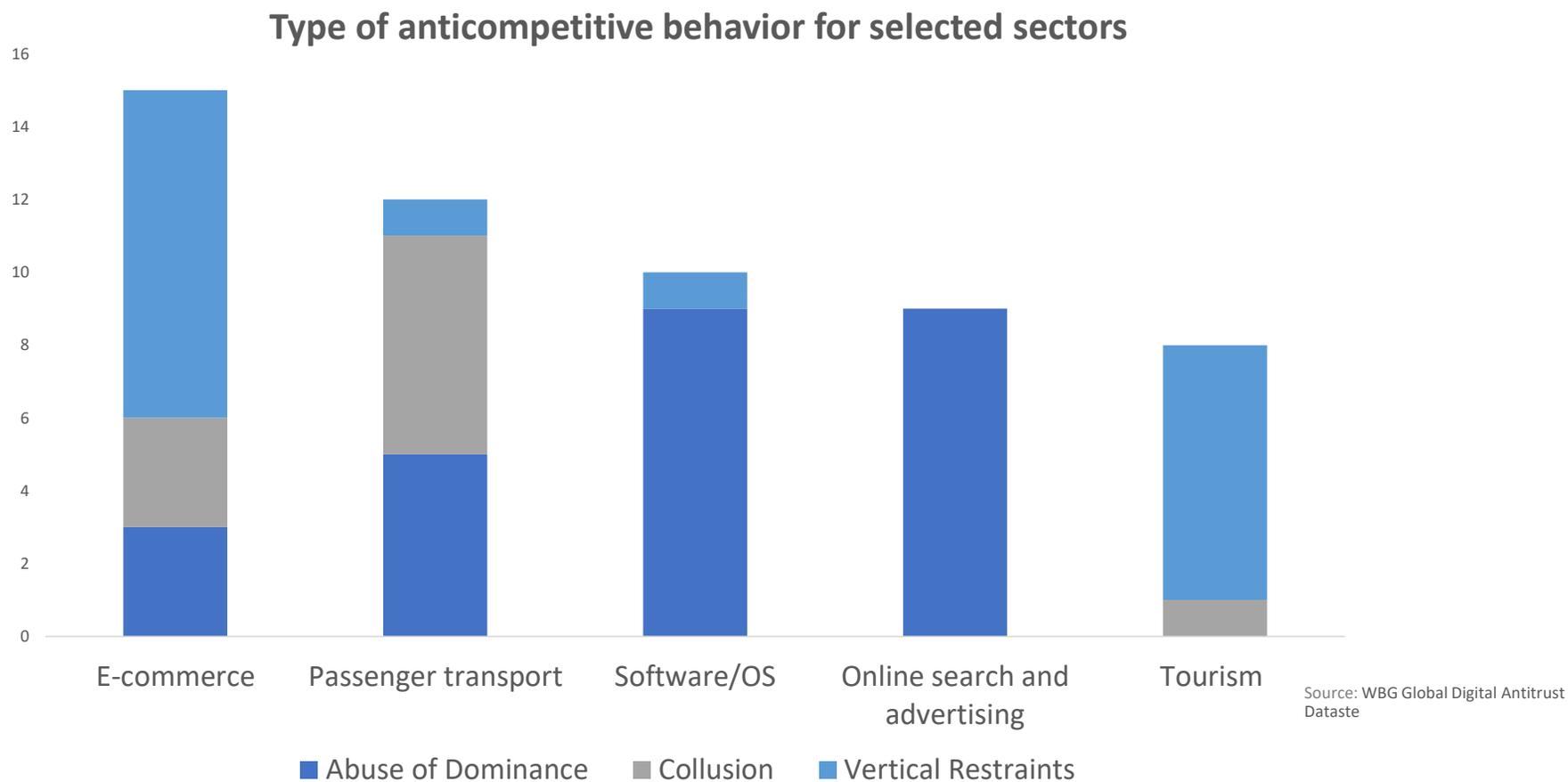


Developing jurisdictions



Source: WBG Global Digital Antitrust Dataste

## Different sectors may be prone to certain types of anticompetitive behavior



# Adapting tools for data-driven markets

## Economics of platform firms

- Complications from the multisided nature of platforms
  - Definition of relevant markets and market share – e.g. Kenya updated guidelines on market definition
  - Platforms as a “buyer” of services or “employer” – e.g. regulations on abuse of buyer power in SA
  - Advertising cross subsidizing services – driven by collection of data
- Consumer harm in markets where products are provided for “free”
- Non-price dimensions of competition, such as privacy.
- Collusive algorithms
- Ecosystem dynamics where interconnecting firms act as complementors and potential competitors

## Merger-specific issues

- Potential for killer/zombie acquisitions
- Mergers driven by desire to acquire new data/IP
- Less likely acquisition of data-driven firms trigger merger review - update thresholds, allow for clawback or shift presumption of anticompetitive effects

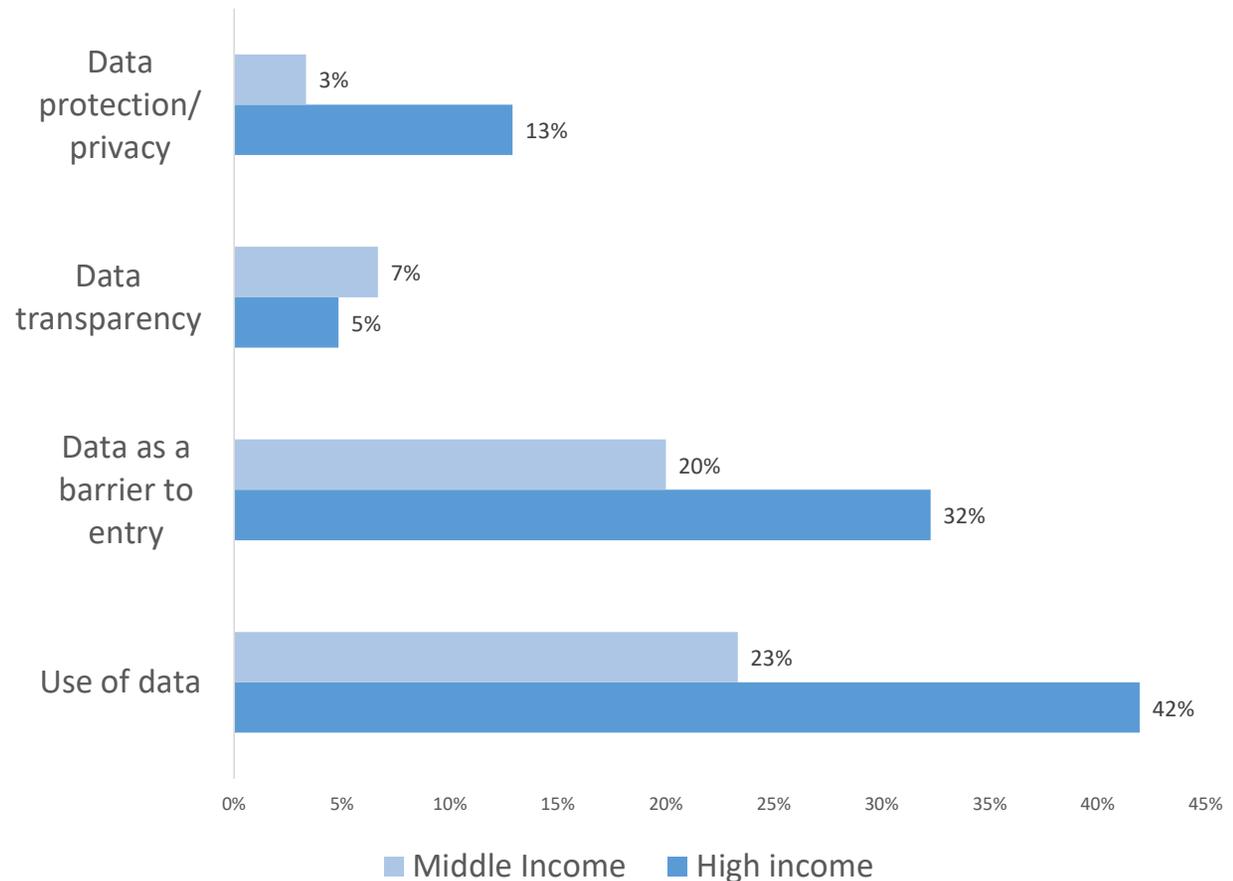
## Institutions

- Need to build capacity – staff with specialist expertise competition in the digital economy
- Cooperating across borders given global nature of large platforms – e.g. regional authorities, BRICS, AFCFTA

## Competition authorities are increasingly considering data related issues

- The most frequently assessed factors still tend to be more traditional, e.g. price competition
- But data use and data as a barrier to entry are increasingly being investigated
- Scope for developing jurisdictions to increase focus on these issues

Analysis of factors related to data in antitrust cases



## Assessing data in competition cases

Case	How was data assessed?
<p><b>India</b></p> <ul style="list-style-type: none"> <li>• <b>Google favored its own services and partners through manipulating its search algorithm</b></li> <li>• <b>Put smaller businesses at a disadvantage.</b></li> </ul>	<p><b>Data as barrier to entry in online search and advertising:</b></p> <ul style="list-style-type: none"> <li>• Google had an insurmountable scale advantage in indexing data for search.</li> <li>• Google was also found to give prominence to its own content which in turn allowed it to collect more user data thus reinforcing its advantage.</li> </ul> <p><b>Provision of data on advertising performance:</b> Google refused to provide advertising firms with details of their “quality scores” to understand the performance of ads. Accusation dismissed as Google provides several granular data metrics beyond the quality score.</p>
<p><b>Mexico</b></p> <ul style="list-style-type: none"> <li>• <b>Walmart’s proposed acquisition of Cornershop was blocked</b></li> <li>• <b>Partially due to potential harmful effects on smaller retailers.</b></li> </ul>	<p><b>Access to strategic data from competitors:</b> The merged firm’s access to data on competing retailers might lead to concerns over how the data could be used by Walmart.</p>
<p><b>Egypt</b></p> <ul style="list-style-type: none"> <li>• <b>Uber’s acquisition of Careem was cleared subject to conditions,</b></li> <li>• <b>Conditions incl. obligation to provide data on mapping and trips to potential entrants</b></li> </ul>	<p><b>Data as barrier to entry:</b></p> <p>The merged firm would have access to superior mapping data due to its control over the combined datasets of the two firms – time and cost to build a rival dataset would deter new entry.</p> <p><b>Use of data in price discrimination:</b> Ability of the merged firm to combine trip and customer-behavior datasets may exacerbate the risk of personalized pricing being introduced in future.</p>

## Deterring anticompetitive behavior and remedying harm

### Are fines a sufficient deterrent?

- Fines were imposed for only 34% of cases where wrongdoing was found
- In developing jurisdictions fines have only been imposed in Russia, India and S. Africa
- The overall median fine of USD 14.5 m is low relative to the global revenue of many platforms.
  - Even the record largest fine by the EC was less than 4% of Google's 2018 worldwide revenue
  - India's USD20m fine of Google was only 0.01% of Google's global revenues in 2018
- Consensus is growing that imposing fines may be insufficient.

### Attention has turned to remedying harm caused by anticompetitive firm behavior

- In some cases, measures targeting data and algorithms may be helpful to restore competition
  - However, remedies are difficult to design and monitor
    - Evidence on their efficacy is scarce

## Examples of data-related antitrust remedies



Uber mergers  
(Egypt and  
Singapore)

Grant competitors  
and users access to  
data

Concerns over  
monitoring.  
Different approach  
taken in Singapore



Amazon abuse  
of dominance  
case (Germany)

Reduce Amazon's  
rights to use data on  
products of third-  
party sellers

Actions of national  
authorities can  
impact the policies  
of platform firms  
globally



Facebook abuse  
of dominance in  
data processing  
(Germany)

Prohibit combining  
user data across  
platforms and end  
collecting data from  
3<sup>rd</sup> party sites without  
consent.

Could be considered  
an internal  
divestiture of  
Facebook's data.

## Three key avenues to promote competition through ex ante regulation I

Just as important as competition enforcement – if not more - especially where there is no functional competition authority

### *1. Mandatory and voluntary schemes to improve access to data.*

#### Rules to facilitate multihoming

Relatively simple but may not go far enough - especially in presence of strong network effects

#### Right to portability of personal data

Untested even in the most advanced markets

Technical feasibility is an issue

One-time transfers of data unlikely to solve competition bottlenecks

#### Data interoperability

Eases data sharing from a technical perspective

Useful when continuous access to data is required

E.g. Open Banking regimes

#### Encouraging data sharing/pooling or other voluntary schemes

E.g. One Million Farmer Project, Solid, the Data Transfer Project

Lack of incentive from larger players

## Three key avenues to promote competition through ex ante regulation II

### *2. Regulating the structure and behavior of data-driven platform firms*

- Could include data sharing schemes as above
  - Targeted and grounded in economic analysis – e.g, “essential facilities”-style framework
  - Time bounded or limited to specific markets or data types? Asymmetric regulation?
  - Ensure data protection in sharing personal data.
- Growing discussion on break-up of large data-driven platform firms
  - But given potential impact on certainty and incentives should be very carefully targeted e.g. when market power is entrenched and durable
  - Could reduce economies of scope and risk of self preferencing
  - But may not be a panacea if network effects that led to dominance persist
- Regulation of terms provided to (often small) suppliers that act on these platforms
  - Provide access to small suppliers on a fair, consistent and transparent basis
  - E.g. EU P2B Regulation 2019

### *3. Leveraging offline regulation*

- Traditional regulation that protects incumbents (e.g. restrictions on entry for data-driven firms)

# Recommendations



**Low-income countries with limited institutional capacity**

*Establishing prerequisites*

- *Create a level playing field for data-driven businesses*
- *Build on existing sectoral regulations*
- *Develop capacity for dealing with data-driven businesses*



**Countries with greater institutional capacity**

*Accelerating data flows*

- *Establish data repositories.*
- *Develop guidelines for portability and interoperability*
- *Consider ex ante regulations of large platforms- Carefully assess the merits of case by case*
- *Create markets for data intermediaries*



**Where a functioning antitrust enforcement regime exists**

*Optimizing the system*

- *Adapt the antitrust approach*
- *Publish clear guidelines– including on regulatory remedies*
- *Develop capacity in antitrust agencies*
- *Encourage cooperation among regulators*
- *Promote international cooperation on antitrust*

Thank you!

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