

24 June 2025

Principal Secretary Alfred K'Ombudo
State Department for Trade
Ministry of Investments, Trade and Industry
18th Floor, Teleposta Towers
Kenyatta Avenue
Nairobi, Kenya

Dear Principal Secretary K'Ombudo:

ACT | The App Association appreciates the Republic of Kenya's efforts to empower Kenyan innovators by facilitating their access to international markets and supporting their ability to compete. A strong and fair digital trade framework is vital to the success of small Kenyan businesses innovating across consumer and enterprise markets, and they need your support for their continued investment, growth, and job creation across the Republic of Kenya. We recognize the importance of your ongoing negotiations with the United States (U.S.), including during the APEC Ministers Responsible for Trade meeting, to achieve a reciprocal trade agreement with the U.S.. To support your efforts, we highlight key non-tariff barriers that should be addressed during these negotiations.

The App Association represents thousands of small business innovators and startups in the software development and high-tech space around the globe.¹ As the world has embraced mobile technologies, our members create the innovative products and services that drive the global digital economy by improving workplace productivity, accelerating academic achievement, and helping people lead more efficient and healthier lives. Today, the app economy is worth approximately KRW 1037 trillion annually and supports approximately 300,000 Kenyan jobs.

We are encouraged by Republic of Kenya's commitment to opening markets for Kenyan businesses and are optimistic that the ongoing negotiations with the U.S. will lead to a deeper alignment on digital economy priorities. As you negotiate with the U.S. and seek ways to support Kenyan small business innovators through digital trade policies and eliminating non-tariff barriers to trade, and otherwise support Kenyan economic and national security through a bilateral trade agreement with the U.S., we call on the Republic of Kenya to reconsider discriminatory mandates for digital platform markets that are misaligned with its goals of enhancing investment and innovation in Kenya as well as the Trump Administration's established policy.

Today's leading curated online marketplaces (COMs) enable micro, small, and medium-sized businesses (MSMEs) to fairly and securely access broader markets at lower costs and with greater efficiency. We initially emphasize that it is vital that the Republic of Kenya ensure fair treatment of COMs under existing competition mechanisms as a measure of supporting trade. This includes

¹ ACT | The App Association, *About*, available at <http://actonline.org/about>.

avoiding regulatory practices such as excessive investigations and inquiries targeting a broad range of U.S. companies including COMs. At the same time, it is important that the Kenyan government refrain from advancing new policies that could further impact the ability of COMs to compete on a level playing field. Recently, however, the Competition Authority of Kenya (CAK) has issued a draft Competition (Amendment) Bill for public comment that would create a framework similar to the EU DMA in an attempt address concerns with large tech platforms. We emphasize that CAK's proposal would reshape Kenyan competition law, and negatively impact COMs that are foundational to our community of software developers, as well as the countless consumers that depend on them. Notably, CAK's proposed measures—heavily influenced by the European Union's Digital Markets Act (DMA)—would adopt an ex-ante regulatory approach that would stifle the very dynamism that has propelled Kenya's digital economy forward. While CAK's proposal alludes to fostering innovation and curbing anti-competitive behaviors such as "self-preferencing" by so-called market-dominant players, these interventionist frameworks would, in practice, produce the opposite effect. By mirroring the DMA's regulatory model, the Kenyan digital platform regulatory proposal fails to account for the pro-competitive benefits of platform-driven innovation, and risks undermining Kenyan consumer welfare in a fast-evolving digital marketplace. Ultimately, these costs will be passed on to the App Association's small business innovator members, who will also find the key utilities they rely on in COMs—vetting for data stewardship and privacy, cybersecurity risk mitigation, intellectual property dispute resolution, and disability access functionality support, among others—either greatly reduced in their effectiveness or eliminated entirely.

Continuing to pursue inappropriate platform regulatory proposals place the Republic of Kenya at a significant disadvantage in its ongoing negotiations. The Trump Administration has made its opposition clear with respect to digital platform regulatory proposals that appear to specifically target U.S. companies by restricting their operations and effectively prohibit U.S. companies from engaging in normal and beneficial business practices on their platforms.² Further, legislation has been introduced in the U.S. Congress to confront the potential of new discriminatory digital economy policies in other countries.³

The Republic of Kenya's apparent commitment to new interventions into the digital economy that App Association members power would contribute to a growing delta between it and the U.S.' approach to regulation and competition, potentially straining the overall Republic of Kenya-U.S. alliance. Given the historically strong trade ties between these two nations, the potential of reciprocal actions offers an additional incentive for Republic of Kenya to reconsider its approach to digital platform regulations. The new Republic of Kenya-U.S. reciprocal trade agreement can and should eliminate this delta by protecting Kenyan digital economy MSMEs that rely on COMs to grow and create more Kenyan jobs.

² <https://www.chosun.com/english/industry-en/2024/12/19/ZMLPRZXJTNBJ7NY5PXVVJBNH4A/>.

³ <https://drive.google.com/file/d/18rfZ74iKJbTa5EgtJZfKJlpXeGTyqB-/view?pli=1>.

We therefore urge you to (1) work with counterparts across the government of the Republic of Kenya to resist calls to enact harmful proposed ex-ante regulation of COMs; and (2) in negotiations with the U.S., support access and innovation in new and emerging technology markets, such as digital platforms, by securing commitments to non-discrimination, transparency, and adequate notice and consultation. Taking such steps would represent significant steps forward in supporting Kenyan startups and MSMEs, and in supporting Kenyan economic security and competitiveness, while also demonstrating global leadership in setting pro-innovation policy.

Thank you for your consideration of this matter and your continued support of strong trade policies that bolster the success of Kenyan MSMEs. We welcome the opportunity to meet with you to elaborate on our views and to identify further ways we can support your mission.

Sincerely,

A handwritten signature in black ink that reads "Morgan Reed". The signature is fluid and cursive, with the first name "Morgan" and the last name "Reed" clearly distinguishable.

Morgan Reed
President

ACT | The App Association
1401 K St NW (Ste 501)
Washington, DC 20005