Discussion Paper

E-Commerce and the African Continental Free Trade Agreement (AfCFTA)

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Executive summary

Rapid growth in internet connectivity and in the use of the internet for economic purposes is driving major economic shifts, including changes in how products are exchanged within and across countries. The emergence of e-commerce in Africa is a manifestation of these broader shifts but as in other regions, national policy makers in Africa are still grappling on how to deal with these shifts.

With the emergence of the African Continental Free Trade Agreement (AfCFTA), there have been suggestions that an e-commerce agreement could offer a possible framework for overcoming some of these challenges and tap into African e-commerce opportunities: through coordinating initiatives and harmonizing rules on e-commerce at a continental level. This paper explores the potential of an AfCFTA e-commerce initiative, exploring the key challenges and some of the priority areas that that might be focussed on.

Overall, the paper broadly supports the value for African-wide harmonization and rulemaking in the area of e-commerce. In particular, we highlight the importance of continental collaboration to counter potential fragmentation in the governance of e-commerce and the digital economy in Africa as a result of the varying global agendas in this regard. Within Africa, there has been encouraging growth of regional e-commerce activity, but continental harmonization is now vital to ensure that national and sub-regional initiatives do not lead to contradictory and overlapping rules. This could hinder digital linkages between African states and make it more difficult for African countries to develop a common position in global debates on e-commerce.

E-commerce in Africa is growing, and in many nations, foundational rules and infrastructure are now in place. It is notable, however, that the outcome of national and regional activity has tended to be e-commerce sectors focussed on affluent countries, trade amongst established firms and customers amongst urban elites. While market-driven diffusion of e-commerce is likely to result in wider use over the coming decade, a drive to push more inclusive e-commerce markets and integrate broader swathes of the economy into e-commerce or e-trade is vital if e-commerce is to have broader economic impacts. This calls for an ambitious agenda at an African level, in areas such as digital infrastructure, logistics, movement of small packages, taxation and payment integration to discover continental best practices and promote harmonization.

1) Introduction

Ongoing technological shifts are driving important changes in how goods and services are made, exchanged, and consumed with the impact of digital technologies spreading rapidly across economic sectors and activities. These shifts are resulting in important changes to how economies function including the growth in electronic commerce, the sale or purchase of goods or services through the internet whether they are delivered online or offline.

Similar to other developing regions, Africa is facing a number of opportunities and challenges brought about by these changes. E-commerce, as part of broader advancements in digital technology, offers tools to progress and leapfrog by adopting new technologies in areas such as industry, logistics, communication, and agriculture. With limited investments and capacity building in new technologies, however, many African countries might fall further behind the technology frontier, losing their competitive position in segments of the global economy as new technologies reshape the map of production and trade and making it more difficult for African countries to develop new competitive advantages. These challenges are reflected in the growth of e-commerce and digital delivery where outputs such as retail goods, media, entertainment, audio-video services, and financial services promise to redefine the global map of production.

Recently, there has been growing interest in regulating and promoting such issues at a regional level. Regional blocs, including the EU and ASEAN, have built frameworks to deal with the regional implications of such changes, as well as e-commerce becoming a core aspect of regional trade deals such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)[1] and the United States-Mexico-Canada (USMCA)[2] agreement. This paper focuses on e-commerce in Africa. E-commerce could potentially support regional trade, diversify economic and trade linkages, and offer opportunities to marginalised groups.[3] With the signing of the first round of the AfCFTA in March 2018, leaders are discussing potential phase II issues, to begin negotiating in 2019. E-commerce has been suggested as one potential issue to be included. Yet, there is still a lack of clarity with regard to the current positions of countries on e-commerce, if

[1] The updated Trans-Pacific Partnership (TPP) after the US withdrew
[2] The updated NAFTA agreement
[3] UNCTAD, *Information Economy Report 2015. Unlocking the Potential of E-Commerce for Developing Countries* (Geneva, Switzerland: UNCTAD, 2015); UNCTAD, *Information Economy Report 2017 - Digitalization, Trade and Development* (Geneva, Switzerland: UNCTAD, 2017).

there is value in engaging with e-commerce issues at this stage and what the key issues should be if negotiations on e-commerce progress.

This paper seeks to address these questions by reviewing the current status of e-commerce in seven African countries, and by examining in detail eleven key issue-areas that have been core parts of e-commerce chapters and frameworks globally. The rest of the paper is structured as follows. Section two defines the main features of e-commerce and introduces key issue-areas associated with e-commerce. Section three provides a brief overview of seven selected African states in terms of key policies and directions in relation to e-commerce. Section four examines the key issue areas in more detail, drawing on the cases and insights from other regional agreements. Section five provides recommendation in the context of the AfCFTA.

2) E-commerce and trade

Defining e-commerce

This study follows the OECD definition of e-commerce, which defines e-commerce as 'the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of ordersThis definition highlights a focus on systems dedicated to online trade of goods and services (as opposed to more general purpose systems used in trading such as email and social media). The definition also clarifies that 'goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online'.[4] This additional qualification is especially important for African e-commerce as it qualifies common practices where orders are made online, but payments are often made in cash on delivery (COD).

E-commerce has a number of different categories which are important to consider. The core focus of e-commerce has often been on business-to-consumer (B2C) interactions with policy which support the expansion of national e-commerce consumers and the entrance of businesses who sell online. In many countries, consumer-to-consumer (C2C) interactions have also expanded in recent years, where e-commerce firms act as intermediaries to support exchange between transactors. In terms of retail, C2C e-commerce can be observed in the growth of online marketplaces that facilitate smaller retail sellers. The expansion of platforms in service areas such

[4] OECD, op.cit

as ride-hailing, tourism and finance can also be categorised under C2C e-commerce. An equally important form of e-commerce is business-to-business (B2B) interactions. Increasingly firms procure inputs and sell their goods online to business customers. Indeed, regional and global value chains are increasingly incorporating with B2B marketplaces to allow firms to more dynamically order and sell their goods and services.[5]

It is also important to highlight that within each of these categories, e-commerce might include the trade of tangible goods. But increasingly, digital services are an important aspect of e-commerce, in areas such as business services, finance, media and entertainment. The current interest in African e-commerce has mainly focussed on goods to date, as such systems are more prevalent, but robust policy frameworks should also be created to deal with issues that are likely to emerge in the future (for example, issues around copyright of digital goods and services).

The expansion of cross-border e-commerce

While e-commerce interactions often occur within national borders, it is common that many aspects involve cross-border elements. Global data from e-commerce vendors such as eBay and MercadoLibre, for example, highlights that commercial sellers on these platforms are far more likely to sell across borders than similar firms who do not use e-commerce.[6]

Cross-border concerns are likely to be even more crucial when considering the broader e-commerce lifecycle that includes payments, sourcing and transportation of goods, marketing, after-sales service and the storage and use of data.[7] E-commerce firms are liable to find themselves sourcing goods across borders and integrating with international services or data suppliers as they grow. In developing countries, when home-grown firms or service are limited, customers and firms may look to, or having a preference for, foreign vendors and service suppliers.

[5] Christopher Foster and others, ‘Digital Control in Value Chains: Challenges of Connectivity for East African Firms’, *Economic Geography*, 94.1 (2018), 68–86; UNCTAD, *Information Economy Report 2017 - Digitalization, Trade and Development* (Geneva, Switzerland: UNCTAD, 2017).

[6] Andreas Lendle and Pierre-Louis Vézina, ‘Internet Technology and the Extensive Margin of Trade: Evidence from EBay in Emerging Economies’, *Review of Development Economics*, 19.2 (2015), 375–86 <https://doi.org/10.1111/rode.12148>; Ali Hortaçsu, F. Martínez-Jerez, and Jason Douglas, ‘The Geography of Trade in Online Transactions: Evidence from EBay and Mercadolibre’, *American Economic Journal: Microeconomics*, 1.1 (2009), 53–74.

[7] ITC, *Bringing SMEs onto the E-Commerce Highway* (Geneva, Switzerland: International Trade Centre, 2016).

In Africa, there are also indications that regional e-commerce will be important. There is growing emphasis toward regional partnerships, trade and investment across Africa. Following the history of successful firms, it is also likely that successful e-commerce firms in Africa will begin to grow with a regional emphasis, where successful local firms seek to integrate into regional markets as they grow as we can see today in the case of firms such as Jumia. In addition, with the digitalisation of global and regional value chains, there is also likely to be growing demands for cross-border business-to-business e-commerce within regionally integrated multinationals in the future.

Key policy issue e-commerce

The close association between e-commerce and cross-border flows highlights the potential importance of regional and global agreements. There have been a number of analysis of e-commerce chapters within free trade frameworks and agreements,[8] as well as discussion on what e-commerce priorities should be in developing countries.[9] Given the growing interest of e-commerce in Africa, there have also been work highlighting the unique policy issues that are relevant to Africa.[10] Amalgamating these analyses, we highlight the following as key issue-areas:

- **Infrastructure**, both relating to the technical infrastructure of digital connectivity and other national infrastructures such as roads and logistics which provide the basis for e-commerce.
- Rules around **e-transactions, e-signatures and e-contracts** which enable national regulatory frameworks to accept online purchases and agreements within mainstream legal and contract laws.
- Policy activities that seek to ensure that online activities and payments are undertaken in a secure way and that an environment of **trust** is built in online transactions.
- Regulations ensuring protections as e-commerce emerges. That **consumer protections** are relevant for online transactions, and that **data protection** is in place to ensure customers data is managed appropriately.

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[8] José-Antonio Monteiro and Robert Teh, *Provisions on Electronic Commerce in Regional Trade Agreements* (Geneva, Switzerland: World Trade Organisation, 2017); Mark Wu, *Digital Trade-Related Provisions in Regional Trade Agreements: Existing Models and Lessons for the Multilateral Trade System* (Geneva, Switzerland: ICTSD, 2017).

[9] UNCTAD, *Information Economy Report 2015. Unlocking the Potential of E-Commerce for Developing Countries* (Geneva, Switzerland: UNCTAD, 2015); UNCTAD, *ETrade for All - Ecommerce Readiness - Fact Sheets* (Geneva, Switzerland: UNCTAD, 2018).

[10] UNCTAD, *Nairobi Manifesto on the Digital Economy and Inclusive Development in Africa* (Nairobi, Kenya: UNCTAD, 2018).

- Ensuring that cross-border **movement of goods and payments** can be done in a consistent manner, potentially with harmonized regimes of tariffs that facilitate e-commerce.
- Rules that look to ensure that e-commerce firms are able to efficiently **interface with government** in terms of exporting and importing, paying fees, gaining licences etc.
- That all parties including regulators, firms and customers have the **capacity and skills** to interact and integrate appropriately with e-commerce.
- That frameworks around **taxation and intellectual property** are appropriate to integrate e-commerce firms and activities.

In the following sections, these issues have been used as a guide to explore the current development of e-commerce in Africa and to highlight the potential important agendas that are likely to emerge in AfCFTA negotiations related to e-commerce

3) Analysis of country positions

In advance of continental discussions, it is important to be aware of the major positions around e-commerce within Africa, and to understand the likely policy trajectories across different participants. This is done by examining the current status of e-commerce in seven selected countries. Countries were particularly selected to provide regional variation.

Table 1highlights the headline findings in each county with extended discussions below. The country analysis also highlights the growing importance of regional frameworks; these are discussed at the end of the section.

Table 1: Main positions around e-commerce in selected countries (see below for expanded discussion on each country)

Country	UNCTAD B2C index[11]	Main features of e-commerce policy
Egypt	**113th** • Internet use:45 • Banked level:33 • Internet servers:36 • Postal reliability:23	• Dedicated E-commerce strategy • Updating key regulations (payments, consumer protection) • Growing e-commerce • International and Arab e-commerce firms present
Morocco	**81st** • Internet use:62 • Banked level:29 • Internet servers:54 • Postal reliability:59	• Overall digital plans embed e-commerce goals • Developing key regulations • Updating data protection to align with EU GDPR
Nigeria	**75th** • Internet use:42 • Banked level:40 • Internet servers:52 • Postal reliability:85	• Developing key regulations (consumer protection) • Focus around creative/IP aspects of e-commerce policy • Firms include e-commerce leaders such as Jumia
Kenya	**89th** • Internet use:39 • Banked level:82 • Internet servers:37 • Postal reliability:27	• National ICT policy includes some e-commerce aspects • E-commerce supported by EAC frameworks • Growing firms in the payment/m-payment space • Growing e-commerce sector
Uganda	**99th** • Internet use:17 • Banked level:59 • Internet servers:31 • Postal reliability:58	• National development plan align with e-commerce. • Digital Vision upcoming • E-commerce supported by EAC frameworks
Rwanda	**116th** • Internet use:20 • Banked level:50 • Internet servers:31 • Postal reliability:30	• Seen as global leader in ICT • Smart Rwanda Masterplan includes some relevant goals • Involved in new alliances - 'Smart Africa' and eWTP
Senegal	**108th** • Internet use:46 • Banked level:42 • Internet servers:24 • Postal reliability:34	• Stratégie Sénégal Numérique provides basis for e-commerce • Support from regional frameworks (WAEMU & ECOWAS) • Vibrant e-commerce sector, but mainly in capital

Source: Authors analysis

[11] UNCTAD, *B2C E-commerce Index 2018* (Geneva, Switzerland: UNCTAD, 2018)

Egypt

With a large and young population, Egypt is one of the African economies experiencing rapid growth in e-commerce. This growth is a result of improvements in internet access and infrastructure and the growing adoption of e-commerce by consumers and businesses. Egyptian policy makers increasingly see e-commerce as a way to rejuvenate the economy and to create new opportunities. While many reports indicate rapid growth in e-commerce in Egypt, benchmarking Egypt to other emerging and developing economies shows that the share of e-commerce in both B2C and B2B segments remain relatively low. Egypt was ranked 113th in the UNCTAD B2C index for 2018 with the scores highlighting weaknesses in areas such as postal reliability.[12]

In the B2C segment, Egypt has a relatively large number of online shoppers reflecting the comparatively high access to the internet, especially among young demographic segments who account for a high share of the population. A number of barriers, however, are still limiting B2C e-commerce, particularly the cash-based economy and weak infrastructure for online payments in Egypt. Despite these barriers, Egypt experienced significant growth in B2C e-commerce in recent years. A report by Payfort forecasts that e-commerce in Egypt will reach a total value of $ 2.7 billion by 2020 (compared to $1.4 billion in 2014).[13] Limited data on the B2B segment in Egypt is available although some reports indicate an increase in the adoption of e-commerce between Egyptian enterprises, including Micro- Small- and Medium Enterprises (MSMEs).

The rapid growth in e-commerce in Egypt is intensifying competition between domestic, regional, and international e-commerce firms. The domestic sector is highly dynamic, although the survival rate of start-ups is generally low. The ability for commercial scale-up and sustainable growth is restricted by a number of legal and financial barriers (such as lack of capital for subsequent expansion). Some of the global e-commerce firms such as Amazon are exploring expansion in the Egyptian market including setting-up domestic logistics centres.[14] Arab-focused platform Souq is another leader in the Egyptian market with the platform acquired by Amazon in 2017. Nigerian platform Jumia is another important player in the Egyptian e-commerce landscape with plans of further expansion.[15]

[12] UNCTAD, *B2C E-commerce Index 2018* (Geneva, Switzerland: UNCTAD, 2018), p. 23.
[13] Payfort*, the State of Payments in the Arab World, 2017.*
[14] “Amazon considers logistics center in Egypt”. Egypt Today, 13/3/2017.
[15] “Africa's E-Commerce Giant Sets Sights on This Promising Market”, Bloomberg, 7/5/2018.

Key legislation related to e-commerce is in place, although a number of regulations and strategies are still being developed. E-signatures in Egypt were recognised by Law No. 15 for the year 2004. The new Consumer Protection Law (Law 181 for the year 2018) recently updated the consumer protection regime to reflect the rise of e-commerce. Egypt is also in the process of ratifying a new data protection law which was approved by the cabinet in September 2018. The Egyptian authorities are also focusing on developing the infrastructure for digital payments and in November 2016, the Central Bank of Egypt adopted a new set of regulations that aim to boost mobile payment systems, and a National Payments Council was created in 2017.

In addition to adapting regulatory frameworks, a number of strategies to promote e-commerce have been adopted in Egypt. In collaboration with the UNDP, Egypt is one of few African countries to develop a dedicated E-commerce Strategy. The strategy includes four strategic objectives: leveraging e-commerce to boost economic growth, export competitiveness and job creation; raising the value of B2C & B2B e-commerce to GDP from 0.5% to 1.5-2%; doubling the number of Egyptian businesses selling online; and increasing the share of e-payments in e-commerce from the current 8-10% (payments in e-commerce in Egypt are mainly by cash upon delivery). The strategy also identifies six ''mega-projects'' needed to boost e-commerce in Egypt including in areas such as B2C facilitation and e-payments. An important aspect of this strategy was that it emerged through a process that included extensive consultations with domestic and foreign private firms.

There remains limited clarity on regulations in a number of areas related to e-commerce in Egypt. The rules and regulations on so-called OTT services (telecoms services which are delivered over data networks) are still not clearly defined within Egyptian frameworks, with frequent blocking of voice over IP functionality (VoIP) within social media and communications apps such as Skype and WhatsApp. While such bans are often justified on security grounds, it has been suggested that economic factors, especially pressure from telecommunication companies, are an important factor in such restrictions.

Morocco

Data on the size and growth of e-commerce in Morocco is limited. Nonetheless, a number of reports show growth in e-commerce over recent years. A report by PPRO, e-payments service provider, estimates that the Moroccan e-commerce market is worth around $ 2.6 billion.[16]

A number of barriers, however, are limiting growth in e-commerce in Morocco. Key barriers are the relatively high rate of financial exclusion in the country, the persistent digital divide, and the weak online payments infrastructure. International e-commerce is also restricted by rules which restrict the transfer of cash abroad and limit the use of international credit cards. Despite these issues, Morocco remains an important e-commerce market and the number of internet users is amongst the highest in Africa. Morocco was ranked 81st in the UNCTAD B2C index, placing Morocco as one of the top-ranked countries in Africa.[17]

The e-commerce ecosystem in Morocco is vibrant with a number of domestic start-ups and regional and international firms competing to establish a presence in the market. In terms of local start-ups, there is a relatively high degree of dynamism including domestic firms attempting to expand beyond the Moroccan market. An example is the B2B e-commerce start-up Way2Cap which is a graduate of the high-profile US accelerator program YCombinator and specialises in facilitating B2B e-commerce. Recently, this start-up has moved into logistics and regional sales by establishing two offices in Burkina Faso and Togo. In terms of regional actors, the Nigerian marketplace Jumia is believed to be the leading player in the Moroccan e-commerce market.

The growth in e-commerce is driving the Moroccan government to update the legislative and regulatory framework to align with new types of activity. In 2018, the Moroccan government began to revisit the consumer protection law to adapt it to e-commerce.[18] Similarly, the Moroccan government is keen on updating the legislative framework around data protection and privacy to align it with the European General Data Protection Regulation (GDPR). This focus on alignment with the EU reflects the strong economic links between the EU and Morocco and the presence of an offshore services sector in Morocco that relies on outsourcing from the EU.[19] In recent months, a number of workshops were held in Rabat to provide training on the GDPR, with the Moroccan

[16] PPRO Group, Payments & E-commerce Report, 2018. [PLACE OF ORIGIN?]
[17] UNCTAD, *B2C E-commerce Index 2018*.
[18] "E-commerce pushes government to review consumer protection law", Hespress, 16/8/2018. [SUPPLY LINK]
[19] Chenaoui, H, "Moroccan data protection law: Moving to align with EU data protection?", International Association of Privacy Professionals, 11/9/2018.

Data Protection Authority (CNDP) working towards meeting European data protection standards in order to be given an ‘’adequate‘ status from the EU.[20] Recognising the legal barriers to mobile payments in Morocco, there are also efforts to update the legal framework to enable increased use of mobile payments, which are seen as a way to address financial exclusion. In 2018, Morocco launched a mobile payment service, M-Wallet, that aims to boost the use of mobile payments in the country.

In terms of strategies, the Moroccan government sees digital transformation as a key element in its relatively successful industrialisation drive in recent years. In the last two decades, Morocco has adopted a number of strategies in the area of digital transformation, particularly the ‘’Maroc Numeric 2013’ ‘(Digital Morocco) plan. The results of such strategies have however been mixed, with a number of critics highlighting that the objectives have not been achieved. Morocco is currently working through the ‘’Maroc Digital 2020’ ‘. The plan includes specific initiatives and objectives in a number of areas including skills and human resources, e-government, measures to promote the national digital ecosystem, and the digital transformation of economic sectors. A digital development agency, has also been set up to work on the implementation of this strategy and to further boost the digital sector in Morocco. The Moroccan authorities have also moved to improve connectivity in recent years by lifting restrictions on over the top services (OTT) VOIP services such as WhatsApp and Skype in 2016.

Nigeria

Nigeria is often seen as a positive case of the development of the e-commerce sector in Africa, and also as a country where there is a huge potential for the further growth. This optimism reflects the size of the country and the move toward the growing adoption of electronic payments in recent years. The limited available data shows rapid growth in the e-commerce sector in Nigeria driven by the growth in mobile subscriptions and internet penetration.[21] Some reports suggest that the e-commerce market in Nigeria today is around $12 billion and sustained rapid growth is forecast over the coming years.[22] A key policy that is helping to promote the e-commerce sector in Nigeria is the ‘’Cashless Nigeria‘ policy, which was launched as a pilot in Lagos in 2012, and is being

[20] A determination of ‘adequacy’ in the GDPR allows cross-border trade with the EU to occur without additional data contracts or custom firm-to-firm agreements on data. Adequacy is the aim among a number of nations outside the EU and supports easier integration into the European digital economy, particularly in reducing the administrative burden on small firms.
[21] Jumia, Nigeria Mobile Report 2018.
[22] “Nigeria e-commerce market to hit $13 billion in 2018-study”, Leadership, 16/3/2018. [LINK TO ARTICLE]

rolled out in phases to the rest of the country. Nigeria was ranked 75th in the UNCTAD B2C index.[23]

Optimism around the Nigerian e-commerce market is further reinforced by the rise and growth of a number of Nigerian e-commerce platforms that play an important role throughout Africa. The leading Nigerian firm that has emerged is Jumia. Established in 2012, Jumia secured seed funding from a number of international venture capital and financial firms and expanded rapidly to become the first African unicorn (valuation over $1 billion). As outlined in the discussions of other countries in this report, it is the leading e-commerce firm in a large number of African countries. Another Nigerian firm with a strong presence in the market is Konga (acquired recently by Nigerian ICT firm Zinox Technologies), an online platform with investments in online and offline retail, e-payment, and logistics.

In addition to these larger firms, Nigeria has a vibrant start-up scene, supported by the ability of firms to attract international venture capital. The logistics start-up, Kobo360, raised $1.2 million in pre-seed funding and was accepted into the prestigious California-based accelerator YCombinator. A number of Nigerian start-ups are also active in the Agritech space (Hello Tractor, Beat Drone) and in FinTech (OyaPay, Biya). Nigeria is also attracting global players in e-commerce, electronic payments, and other related areas. In 2017, for instance, Mastercard entered a partnership with the Nigerian start-up, NetPlus, that aims at developing solutions to move towards cashless online shopping. Nigeria has also attracted significant attention in the previous decade as one of the leaders in African media. There has been an expansion of firms in this sector, highlighting an important future area of regulation and growth.

Nigerian authorities have begun to update the legislative and regulatory framework in the country to address issues raised by the growth in e-commerce and the digital economy more broadly. To address issues around fraud and weak consumer protection in e-commerce, the authorities are attempting to update the consumer protection regime in the country. In 2018, the Consumer Protection Council (CPC) adopted new guidelines to address issues related to e-commerce such as complaint resolution processes, the disclosure of terms and conditions, online advertisement, delivery times and return windows, and privacy of consumers. The Nigerian law also recognises e-signatures through the Nigerian Evidence Act. A set of regulations that have received attention

[23] UNCTAD, *B2C E-commerce Index 2018*.

internationally are the regulations outlined in the ''Guidelines for Nigerian Content Development in Information and Communication Technology''; and specifically, the data localisation requirements and the requirements for ICT to have local registration in Nigeria and to use Nigerian companies for the provision of at least 80 percent of all value-added services on their network. These measures have been highlighted by the US as some of the barriers to digital trade in Nigeria[24].

Given the growth in entertainment and media and the implications of it being sold online, the issue of intellectual property rights in the digital era is also receiving attention in Nigeria. The Nigerian Copyright Commission (NCC) launched a reform process on the Nigerian IP regime in 2012 and published a new copyrights draft bill in 2015, partially in response to how the 'emergence of digital technologies revolutionized the creative economy as production and dissemination of creative works became more accessible and lent themselves to global exploitation beyond national boundaries'.[25] The new law, which is going through the approval process, tackles issues such as take-down-notices for infringing material online, the suspension of accounts for repeated infringements, the liability of internet service providers, and the blocking of access to content.

Kenya

While still lagging behind a number of larger countries in Africa, Kenya's e-commerce sector has grown rapidly with an increasing number of firms both local and foreign involved in e-commerce. Statistics from 2012 quoted by the Communications Authority of Kenya suggest the size of the market was around $50million, which is smaller than countries such as Morocco, South Africa and Egypt, but still significant, and it has likely grown further since then.[26] In terms of the UNCTAD B2C e-commerce index, Kenya is positioned as 89nd. This highlights the relatively higher use of the internet as well as the high financial adoption in the country, which suggests a strong potential for B2C e-commerce to take root.[27]

Kenya's ICT sector is governed by a broad range of rules and an independent regulator, generally following international norms. The Internet is dominated by mobile operators with some levels of

[24] USTR, *National Trade Estimate Report on Foreign Trade Barriers* (Washington D.C.: US Trade Representative, 2018).
[25] Nigeria Copyrights Law draft, 2015
[26] CAK, *White Paper on Facilitation and Adoption of E -Commerce via the Postal/Courier Networks* (Nairobi, Kenya: Communications Authority of Kenya, 2015).
[27] UNCTAD, *B2C E-commerce Index 2018*.

competition which has been important in pushing prices and quality.[28] There is no overarching policy that focuses on e-commerce in Kenya, but there is a wider range of policies that are relevant to this area. Notably, the 2009 Kenyan ICT Act (amended 2013) and the 2016 National ICT Policy includes e-commerce relevant clauses around e-transactions,[29] although most ICT rules still focus on infrastructural and regulatory issues. As part of the EAC and COMESA, Kenya has also benefited from relatively strong regional policies in this area.

There are still some limitations in terms of regulation. The aforementioned lack of specific e-commerce plans and the absence of a dedicated implementing unit means there is insufficient joined-up activity in this area, and in areas such as e-transactions, disputes and cybersecurity there is further work to be done to ensure policies are relevant to e-commerce. As importantis the need to build capacity in national actors to ensure these rules are followed and implemented appropriately.[30] Moreover, with the adoption of technology by lower skilled digital users, using services such as M-Pesa, users have found themselves prone to scams, quality problems or poor quality goods,[31] and this could potentially limit e-commerce in the long run.

Business to customer e-commerce is growing nationally, particularly in larger cities, where a number of major e-commerce players have emerged. The largest e-commerce sites are Jumia, the Nigerian e-commerce provider and Kilimall, which begun in Kenya but has since expanded into Nigeria and Uganda.[32] There are also a number of platforms which offer customer-to-customer (or hybrid c2c and b2c offerings) such as the popular marketplace OLX (part of the South African group Naspers) and local firm Pigia.me. Global e-commerce giants such as Amazon, eBay and Alibaba have some sales within Kenya but they have not focused on the region and their sales are currently low. Other service-based e-commerce providers around taxi and ride sharing (Uber and Taxify), online car tracking and tourism (TripAdvisor, booking.com, Sleepout) are also popular. Online media delivery is also growing, with Netflix and South African Showmax present.

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[28] T Waema, C Adeya, and M. Ndungu N, *Kenya ICT Sector Performance Review 2009/2010*, Towards Evidence-Based ICT Policy and Regulation (Cape Town, South Africa: Research ICT Africa, 2010).
[29] CUTS, *Assessing the State of Play in Electronic Commerce: Stakeholder Perspectives* (Nairobi, Kenya: CUTS Africa Resource Centre, 2016); Heinrich Krogman and Nkululeko Khumalo, *E-Commerce in Africa: Definitions, Issues and the Evolving International Regulatory Landscape* (Pretoria, South Africa: GEG Africa, 2016).
[30] MITC, *Concept Note on E- Commerce Policy* (Nairobi, Kenya: Ministry of Industry, Trade and Cooperatives, 2018).
[31] Christopher Foster, 'Does Quality Matter for Innovations in Low Income Markets? The Case of the Kenyan Mobile Phone Sector', *Technology in Society*, 38 (2014), 119–29 <https://doi.org/10.1016/j.techsoc.2014.03.003>.
[32] Peter Misiani Mwencha, *2016 E-Commerce Sub-Sector Assessment Report for Kenya*, 2016.

In terms of local firm involvement in e-commerce, there is little evidence of the extent to which e-commerce platforms sell local products in comparison to international ones. However, local firms are often constrained by the requirements of international platforms that may prove too onerous for their participation (eg Paypal, Amazon).[33] As a result, international orientated e-commerce sellers in Kenya are limited to a few service sectors such as tourism and online work outsourcing.[34] For more technically skilled actors, supporting local e-commerce ecosystems offers many opportunities in the areas of payments, logistics, web design/development and marketing. Building on the success of M-Pesa, Kenya has been particularly successful in the payments space, and a number of services and firms have expanded regionally.[35]

Uganda

Uganda is a landlocked country and with relatively high levels of poverty, it faces a number of challenges in e-commerce. While there are no direct figures on the extent of e-commerce, the UNCTAD B2C index provides some indications, placing Uganda at 99th position, a relatively high position for sub-Saharan Africa.[36] This indicates recent positive developments in the country related to the use of banking services by low income groups and the relatively well managed postal system in the country. Alongside the relevant e-commerce regulations put in place, as outlined below, these indicate the potential for significant e-commerce growth in the coming years as the adoption of the internet expands in Uganda.

Historically, most ICT policy that has emerged in Uganda has tended to focus on infrastructure provision and regulating a liberalised ICT sector. The most recent National Development Plan II (2015-2019) looks to leverage these ICT developments in key areas - agriculture, natural resources, tourism and in supporting education and skills. In this plan, there are relatively few specific references to e-commerce, but the activities put in place align well with supporting the entrance of international providers, including e-commerce firms.[37] The Digital Uganda Vision is forthcoming and will provide more detailed policy around digital technologies. A number of

[33] T Waema and C Katua, *The Promises of Fibre--Optic Broadband in Tourism and Tea Sectors: A Pipeline for Economic Development in East Africa* (Nairobi, Kenya: University of Nairobi, 2014).
[34] Laura Mann, M Graham, and N Frederici, *The Internet and Business Process Outsourcing in East Africa* (Oxford, UK: Oxford Internet Insitute, 2015).
[35] David-West, O. & Evans, P.C. (2016) The Rise of African Platforms: A Regional Survey. *Center for Global Enterprise (CGE), Washington, DC*.
[36] UNCTAD, *B2C E-commerce Index 2018*, p. 2.
[37] UNCTAD, *Uganda Rapid ETrade Readiness Assessment*, p. 58. (Geneva, Switzerland: UNCTAD, 2018).

initiatives in areas such as payments (through the national payment systems bill), value-added tax (VAT) exemptions for small firms and the introduction of a *deminimis* level (of $50) highlight area where rules have been enacted of relevance to e-commerce.

Uganda has done well in putting a range of regulations in place which facilitate e-commerce, in areas such as e-transactions, e-signatures and consumer protection. A data protection and privacy bill was also proposed in 2015 but has not yet been enacted into law. This relatively robust set of rules has been supported by the wider EAC agenda, which has pushed a set of cyber-rules across the region.[38]

Key challenges emerge in terms of moving from enacting such rules into implementation, and there is a perception that while laws may have been enacted they are not in broad use.[39] In the previous year, there has also been some disquiet around the so-called ''social media'' tax which taxes mobile data bundles which impacts OTT over mobile. While there may be genuine motivations for government linked to tax collection, not only does this tax raise the cost for online users of emerging apps and media, it is also likely to impact on some of the burgeoning commercial activity linked to the development of mobile apps.

Overall, Uganda's e-commerce sector is growing but is still in its infancy in comparison to neighbouring Kenya. The largest B2C firms are Nigerian giant Jumia and Kilimall, which has expanded from Kenya. Many e-commerce consumers in Uganda tend to prefer to shop on international websites, delivering and paying through intermediary sites that make these international providers available locally. There have been some isolated successes of local firms such as motorcycle ride app SafeBoda. Following the growth of mobile money and agency banking in the country, there are also some successful payment facilitation firms such as JPesa and Jambopay, both of which have graduated onto e-commerce payments.

Rwanda

Rwanda is often regarded as a regional, and indeed a global ICT leader. Driven by the strong interest of President Kagame, Rwanda has for the last decade made ambitious plans for ICT to become a driving force for economic transformation. In particular, Rwanda has made significant

[38] UNCTAD, *Harmonizing Cyberlaws and Regulations: The Experience of the East African Community* (Geneva, Switzerland: UNCTAD, 2013).
[39] NITA-U, *Policies, Strategies and Initiatives Put in Place in Uganda* (Geneva, Switzerland: National Information Technology Authority, December 2010).

investments in connectivity to allow Internet access through the country. In terms of statistics, such investment has led to growing use of the Internet. In 2016, the International Telecommunications Union (ITU) data highlighted that 20% of the population has used the Internet in the previous three months.[40] While this number does not seem very high, it represents good progress given the rural profile and topography of the country. In terms of the UNCTAD B2C index, Rwanda is positioned in 116th place, with this index highlighting positive areas around the growing banked population and a reasonably well organized postal sector.[41]

The potential socio-economic impacts of connectivity have been strongly articulated within Rwanda's Vision 2020, with ICT and connectivity important to both economic and socio-economic goals.[42] The most recent Smart Rwanda Master Plan 2015 - 2020 highlights an ambition to move away from building infrastructure towards a richer set of digital society initiatives that piggyback on that connectivity, including government cloud provision, data centre provision, private sector development, cybersecurity policy and e-waste.[43] A key institutional change in this policy was the creation of a new agency, the Rwandan Information Society Agency, which was given responsibility for implementation over RICTA, the Rwandan ICT Agency, which was responsible for previous plans. Notably, this plan includes very few explicit mentions of e-commerce.

Rwanda is a small and landlocked country which typically looks to the region (and its membership of the EAC and COMESA) as a key source and destination of trade. Rwanda itself has also led a new continental grouping aligned with its Smart Master Plan, under the title ''Smart Africa', with a goal to ''Transform Africa into a single digital market''.[44] Members of this grouping include a wide range of countries within the continent, mainly more liberal and outward-looking nations such as Kenya, and Senegal.

A potentially significant initiative for e-commerce in Rwanda, is that it recently became the first African member of the e-World Trade Platform (eWTP), a high profile global initiative to support MSME trading online.[45] The details of the agreement are yet to be made clear, but the

[40] ITU, *World Telecommunication/ICT Indicators Database* (Geneva, Switzerland: International Telcommunications Union, 2017).
[41] UNCTAD, *B2C E-commerce Index 2018*.
[42] GoR, *Rwanda Vision 2020* (Kigali, Rwanda: Government of Rwanda, 2009).
[43] MYICT, *SMART Rwanda Master Plan 2015 ~ 2020* (Kigali, Rwanda: Ministry of Youth and ICT, 2014).
[44] Smart Africa, *Smart Africa Strategic Vision* (Kigali, Rwanda: Smart Africa, 2016).
[45] Alibaba Group, *The Government of Rwanda and Alibaba Group Enter into Agreements to Promote Rwanda's Economic Development*, 2018 <https://www.alibabagroup.com/en/news/press_pdf/p181031.pdf> [accessed 30 December 2018].

announcement suggests that Alibaba (who is influential in guiding this platform) will support the entrance of Rwandan firms into Alibaba stores through the creation of a sub-portal on the site, as well as supporting capacity building and financial support (through Alibaba's ANT finance subsidiary). A particular focus in this agreement will be in pushing Rwandan tourism to Chinese customers.

A number of challenges exist for policy in Rwanda. Principally, for all the hype and activities in Rwanda on ICT, previous policies have yet to yield significant gains. Empirical analysis has highlighted the failure of IT firms and services to take hold in Rwanda,[46] and there is only incremental expansion in e-commerce. At a regional level, the very active nature of Rwanda within regional and global digital plans poses a risk that Rwanda has to deal with a complex set of overlapping rules which are difficult to combine together.

E-commerce is a relatively small but a growing sector in Rwanda. The largest consumer focused firms are Jumia, with some sectoral e-commerce in areas such as electronic imports, property and food delivery in Kigali. Another important growth area has been the use of e-commerce in tourism, a priority sector in Rwanda. While many sights, hotels and firms have gone online in Rwanda, typically their online aspects operate as information sources at present, where transactions are then undertaken in person, over the phone or through email.[47] The government has facilitated a number of e-commerce capacity building activities in this sector, and these initiatives may lead to expanded use of e-commerce in the future.

Senegal

For a country at its stage of development, Senegal is notable in that e-commerce has grown significantly over recent years, particularly in the capital Dakar. Moreover, Senegal has produced a growing ecosystem of firms around e-commerce. Internet use has grown with 25% of individuals in 2016 reporting using the Internet in the last three months.[48] No clear statistics are available in terms of the size of the e-commerce market in Senegal, and the UNCTAD B2C index ranks Senegal at 108.[49]

[46] Pritish Behuria and Tom Goodfellow, 'Leapfrogging Manufacturing? Rwanda's Attempt to Build a Services-Led "Developmental State"', *The European Journal of Development Research*, 2018 <https://doi.org/10.1057/s41287-018-0169-9>; Mann, Graham, and Frederici.
[47] C Foster and M Graham, *The Internet and Tourism in Rwanda* (Oxford, UK: Oxford Internet Insitute, 2015).
[48] ITU.
[49] UNCTAD, *B2C E-commerce Index 2018*.

E-commerce in Senegal is guided by a number of national policies. The Plan Sénégal Émergent (Emerging Senegal Plan), the overall development plan for the country, was introduced in 2013. It pushes structural transformation, particularly through exports and investment. Notably, this plan includes a strong ICT focus, including the establishment of the Conseil National du Numérique (National Digital Council or CNN) and supporting the growth of clusters of ICT enabled service outsourcing.[50] The Stratégie Sénégal Numérique 2025 (Digital Strategy Senegal 2025 - SSN), introduced in 2016, provides a more concrete plan around digital, with a focus on improving digital connectivity and government services.

Supported by regional bodies, Senegal has instituted frameworks covering issues such as cybersecurity, personal data and copyright.[51] These rules may require some refinements as technologies change, but in general, they provide a solid base for e-commerce. The only exception to this are the data protection rules. A particular concern here, given the close connections of Senegal into France, is that national data rules may not align well with the recent EU General Data Protection Regulation (GDPR), leading to challenges in interfacing data between Senegal and Europe.[52]

A number of additional challenges remain. Principally, while e-commerce has grown, this is mainly isolated to Dakar, with limited reach outside the capital. As illustrated in plans proposed in SSN2025,[53] initiatives are being supported which encourage balanced growth of e-commerce. However, more can be done in areas such as the national addressing system, and logistics for e-commerce, to push wider adoption.[54] A lack of coherence around e-commerce leadership is also problematic. Agencies related to e-commerce include the Ministry of Telecoms , the CNNand the E-commerce Working Group. A recent interview with the Minister of Trade highlights that a more coherent e-commerce plan may be produced in the future.[55]

The leading retail e-commerce firms in Senegal is Nigerian giant Jumia, with a number of other smaller suppliers such as French-financed Afrimarket, and more niche sites in beauty, fashion

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[50] *GoS 2012, Plan Sénégal Emergent (PSE), Government of Senegal, Dakar, Senegal*
[51] UNCTAD, *Évaluation Rapide de l'état de Préparation Du Sénégal Au Commerce Électronique* (Geneva, Switzerland: UNCTAD, 2018), p. 58.
[52] UNCTAD, *Évaluation Rapide de l'état de Préparation Du Sénégal Au Commerce Électronique*.
[53] *GoS 2012, Sénégal numérique 2016-2025 (SSN2025), Government of Senegal, Dakar, Senegal*
[54] UNCTAD, *Évaluation Rapide de l'état de Préparation Du Sénégal Au Commerce Électronique*.
[55] A Sarr, *Talking E-Commerce with Alioune Sarr, Senegal's Trade Minister* (Geneva, Switzerland: Bridges Africa, 14 March 2018) <https://www.ictsd.org/bridges-news/bridges-africa/news/talking-e-commerce-with-alioune-sarr-senegal%E2%80%99s-trade-minister> [accessed 30 December 2018].

and electronics that often provide imported goods. A key area of local entrepreneurship linked to e-commerce is the large number of FinTech firms emerging within the country. This is illustrated by successful local firms such as Wari, Joni-joni and Paydunya that have all grown through providing relatively innovative models for payments, including agency models for unbanked payments, mobile payments and issuing pre-payment debit cards.

Regional e-commerce frameworks in Africa

In exploring these countries, one notable finding is the extent to which the regional bodies (COMESA, EAC, WAEMU, ECOWAS and SADC) are playing a role in the policy development and implementation of a number of rules relevant to e-commerce.

Regional payments and movement of goods have long been promoted by regional bodies such as WAEMU and the EAC, and with the expansion of e-commerce this has become an important area of activity in order to facilitate regional integration. In WAEMU, electronic payments policy is looking to push interoperability amongst emerging financial and FinTech services, and region-wide mobile roaming agreements and regulatory harmonization is also being supported.[56] Both ECOWAS and the EAC have developed a number of policy frameworks in areas linked to e-commerce such as cybersecurity, regional payment and e-transactions.[57] Like WAEMU, the EAC has also been encouraging simplified tariffs and electronic transactions across regional borders.[58] COMESA is currently implementing the COMESA Digital Free Area, which builds on trade facilitation plans with payment systems and mechanisms relevant to e-commerce firms trading across the region.[59]

SADC has a number of digital plans that are relevant to e-commerce. One key digital initiative is the SADC Digital 2027 Agenda. This agenda is part of the Infrastructure Vision 2027, and thus concentrates on infrastructural aspects of digital, such as international bandwidth costs, mobile roaming and regional transit of internet traffic (ie regional internet exchanges), all which are likely to contribute towards improved internet infrastructure in the region. SADC also has an e-SADC strategy, launched in 2010. This included activity around benchmarking e-commerce and building

[56] UNCTAD, *Évaluation Rapide de l'état de Préparation Du Sénégal Au Commerce Électronique*.
[57] UNCTAD, *Harmonizing Cyberlaws and Regulations: The Experience of the East African Community*.
[58] Deloitte, *Updates on COMESA Developments* (Nairobi, Kenya: Deloitte East Africa, 2018); Ahmed Yasin Salih, 'The COMESA Perspectives on Trade Facilitation Agreement and E-Commerce Development in Africa' (presented at the 6th Edition of the International Single Window Conference, Accra, Republic of Ghana, 2017).
[59] Salih.

a regional e-commerce framework, supported by UNECA[60], although the extent of the implementation of this framework in the region is unclear.

Such regional measures appear to be especially important for smaller and landlocked countries. For example, Uganda's policy framework already includes consumer protection, e-transaction and cybersecurity policy and this can partly be linked to the EAC's regional initiatives in these areas.[61]

4) Key Issue-areas for the AfCFTA

This section briefly explores eleven key areas that emerge from the cross-country analysis. It also reviews work that has examined how these areas have been addressed in other parts of the world,[62] and discusses the potential implications for Africa and the AfCFTA.

Intellectual property rights

With the expansion of the internet as a medium for exchanging media, entertainment, and audio-video services, debates on the implementation of intellectual property on the web and the responsibility of different actors to control illegal material, are growing. This debate has intensified as two major economic powers, the US and the EU, push for different intermediary liability regimes and regulations, both internally and gradually, in their trade agreements. Generally speaking, the US follows the model of limited intermediary liability which means that the responsibility of internet firms is limited to taking down illegal material upon notice, while the legal responsibility falls on the user. This regime, often criticised by copyright owners, is being challenged in the EU, with calls for stricter regimes that place responsibility on internet firms to filter what users are able to upload to the internet.

While debates are still at an early stage in the African countries examined in this study, there are important examples of efforts to update the legal framework to address these changes. The draft law in Nigeria is perhaps the most advanced, reflecting its sophisticated online media industry.

[60] UNECA, *E-Commerce in the SADC Sub-Region: Strategy Framework* (Addis Ababa, Ethiopia.: UN Economic Commission for Africa, 2012).
[61] UNCTAD, *Uganda Rapid ETrade Readiness Assessment*, p. 2.
[62] UNCTAD, *Information Economy Report 2015. Unlocking the Potential of E-Commerce for Developing Countries* (Geneva, Switzerland: UNCTAD, 2015); UNCTAD, *ETrade for All - Ecommerce Readiness - Fact Sheets* (Geneva, Switzerland: UNCTAD, 2018); UNCTAD, *Nairobi Manifesto on the Digital Economy and Inclusive Development in Africa* (Nairobi, Kenya: UNCTAD, 2018); Mark Wu, *Digital Trade-Related Provisions in Regional Trade Agreements: Existing Models and Lessons for the Multilateral Trade System* (Geneva, Switzerland: ICTSD, 2017).

This law largely follows the US model, particularly with regard to intermediary liability. Such debates are destined to become more relevant as IP rules in the internet era are transferred to trade agreements to which the US and the EU are party to, further suggesting that efforts to discuss these issues in the context of the AfCFTA are needed in order to coordinate the position of members and potentially to discuss regional rules. Intellectual property rights will be included in phase II issues of the AfCFTA and those debates related to intellectual property in e-commerce are likely to emerge.

Data flows and data protection

Data protection in the digital economy is an issue that has received substantial attention in recent years as countries move to adopt rules to govern the collection, storage, and use of personal data. For e-commerce, this issue is very important as e-commerce transactions entail flows of data between countries and often the collection and storage of consumer data; meaning that rules on data could affect the scale and direction of e-commerce. The importance of this issue is destined to increase, with growth in sectors such as the Internet of Things (IoT) and autonomous vehicles, expected to lead to an explosion in data. Furthermore, as a growing number of countries adopt measures that restrict flows of data, often referred to as data localisation measures, there are growing demands to discipline and harmonise such policies.

A number of major economies are pushing for different regimes in governing data. At the global level, the two dominant governance frameworks that have been in competition over recent years are the US model and the EU model. Reflecting the strong position of US data firms, the US has been pushing for a more liberal environment in the collection of data and also for the transfer and use of data. Globally, this has been translated into support by the US for the principle of the ‘‘free flow of data’’ and the inclusion of rules banning data localisation in US trade agreements such as the Trans-Pacific Partnership (TPP), the CPTPP and the updated NAFTA agreement (the USMCA), while recognising that countries need to have regimes in place for personal data protection. The EU, on the other hand, has pushed for a more restrictive environment on data. This direction has been manifested in the adoption of the GDPR that entails strict requirements in regard to data collection, storage, flows, and use; and applies to any holder of personal data of European citizens. Nonetheless, the digital single market (DSM) of the EU provides for the free flow of data, but only within the EU.

Debates on data protection are also growing in the African countries examined in this study. The majority of countries have adopted or are in the process of adopting data protection legislation. Nigeria has adopted measures that fall within data localisation measures. Countries that are strongly integrated with the European economy, such as Morocco and Senegal, see the alignment of their data rules with the GDPR as an important step to benefit from opportunities in the ICT sector in Europe. Going forward, such debates are likely to intensify.

The AfCFTA could be an important forum to examine the implications of these rules and to provide for the harmonisation of such policies amongst African countries. Whether this harmonisation should be through hard rules (free flow of data between AfCFTA members) or through soft rules (cooperation and coordination) would have to be the subject of negotiation.

Consumer protection

Weak consumer protection and the lack of confidence in e-retail remains an important barrier to growth in e-commerce. This includes issues such as fraud, misleading advertising, non-satisfactory products, difficult refund processes, and data theft. These issues often become more complex in the context of cross-border e-commerce. While such issues exist throughout the world, they tend to be more prevalent in countries with weaker regulatory and legal regimes.

In some countries, such as China, lack of consumer trust has led to new ways of payments, including third-party payments in which consumers deposit the money with a third party which is not released until the goods are received in good condition. Such systems are less prevalent in Africa with COD as the most common method to overcome some of these consumer challenges. COD, however, creates its own problems. In Nigeria for instance, this has raised issues regarding the safety of delivery workers. For e-commerce firms, sustainability can be threatened by very high return rates of goods that are associated with COD.

The majority of countries analysed in this report have either updated or are in the process of updating their consumer protection regimes to deal with consumer issues. Nonetheless, the enforcement of such measures remains a challenge in most countries. While few trade agreements so far include hard rules on such issues, commitments for cooperation and for adopting measures to improve consumer protection in e-commerce are being included or negotiated in bilateral and regional trade agreements[63]. Discussions around this issue in the context of the AfCFTA are likely to be included within phase II negotiations of competition policy which provides an opportunity to develop continental policies. ASEAN countries, for example, include a number of consumer protection issues in their work programme on e-commerce, including developing regional guidelines on cross-border B2C complaints, establishing an online dispute resolution system, and training initiatives focusing on consumer protection agencies, amongst other policies.

Taxation

The growth in e-commerce in recent years is affecting taxation regimes by challenging some of the traditional tools used in tax administration, such as rules on residency, source of income, and the enforcement of taxation. These complexities have translated into relatively low levels of taxation of e-commerce and digital companies, as these companies are able to reduce their tax burden by shifting revenues and profits. For a number of countries, the lack of customs duties on e-products (products that were previously physical goods but are now transmitted electronically) has led to a decline in customs duties. Another related challenge emanates from the expansion and enforcement of VAT on e-commerce.

As a result of these developments, many countries are examining alternative ways to increase taxation on e-commerce firms. This task is, however, proving to be difficult at a national level especially considering the temptation of adopting light touch tax policies as an incentive for attracting investments. In the European Union, the European Commission argues that the tax regime should tax profits in jurisdictions where corporations have significant interactions with users. While this solution is seen as a long-term strategy some are pushing for an interim digital tax.

The countries examined in this report are experiencing challenges related to taxation on e-commerce. Egypt, for example, requires e-commerce platforms to charge the VAT that would be applicable on their offline sales, and Uganda has also looked to expand its VAT regime to ingrate a broader expanse of e-commerce firms. While such measures could help with aspects of taxation, there is an urgent need for a wider discussions on the broader implications of the shifts brought about by e-commerce. There is also evidence that if effective approaches to tax collection

[63] Mark Wu, *Digital Trade-Related Provisions in Regional Trade Agreements: Existing Models and Lessons for the Multilateral Trade System* (Geneva, Switzerland: ICTSD, 2017).

are not resolved soon, African countries may revert to more restrictive instruments, such as Uganda's recent OTT tax, foreign currency payment taxes or less discriminating taxes on mobile operators.

Infrastructure and logistics

E-commerce relies heavily on infrastructure both for internet access, but also for the delivery of goods and services. Increasingly, regional initiatives include measures to improve internet access and improve cross-border logistics networks to encourage e-commerce, especially for MSMEs. The ASEAN work programme on e-commerce for 2017-2025, for example, includes a number of policies related to joint efforts to improve internet access. Similarly, one of the policies implemented in the context of the European DSM was the abolishment of roaming charge across Europe on calls, text, and data. Within the framework of the DSM, the EU has in 2018 adopted new regulations on parcel delivery in the EU that aim to lower the cost of cross-border parcel delivery in the EU. This remains substantially higher than domestic delivery prices.

Notwithstanding progress in recent years, infrastructure and logistics issues remain important barriers to e-commerce in the countries examined in this report. Overall, although to varying degrees, logistics networks in these countries are underdeveloped with low reliability and efficiency of postal services. Similarly, despite the widespread adoption of mobile internet, the cost of internet access remains high in some countries (particularly in comparison to income), with significant quality issues in both urban and rural areas that are likely to discourage e-commerce transactions over mobile. Many of these issues are exacerbated when examining cross-border logistics and access. The AfCFTA offers a potential framework to address some of these issues, as well as to promote regional cooperation in these areas in a way that could help promote regional e-commerce. This effort could build on ongoing discussions, particularly in the context of regional blocs, such as the COMESA digital free trade area.

Skills development

A key insight from our country analysis is that in the last decade, many African countries have been active in introducing rules relevant to e-commerce. These rapid changes, however, do not automatically imply implementation or e-commerce expansion. Supporting capacity and facilitating necessary skills is crucial. One can identify two levels where capacity building and skills are particularly necessary: at a policy level; and at an entrepreneur/firm level.[64] Policy makers in Africa face a number of challenges when it comes to e-commerce rules. A number of areas, including cybersecurity, e-signatures and e-transactions include relatively complex and technical aspects - understanding the implications requires considerable knowledge. Regional bodies such as the EAC, COMESA and ECOWAS have often provided capacity building support for policy makers in this respect. A regional emphasis may, however, lead to uneven or overlapping outcomes. As such, an African Union (AU) approach to supporting policy creation and bringing together capacity as new issues emerge could be an important outcome of any AfCFTA agreement.

While a number of e-commerce firms have emerged on the continent, further activities should look to leverage the benefits of e-commerce more broadly. Skills building to expand digital ecosystems and leverage e-commerce to improve 'bricks-and-mortar' businesses are an important aspect of national e-commerce frameworks. Successful E-commerce firms require skills in several areas for success: business; technical; language and marketing. For more marginalised groups such as youth, women, and micro-enterprises, a number of countries have looked to support such groups through dedicated training (eg Nigeria and South Africa). African governments have also increasingly supported skills building through innovation hubs and competitions, and these has expanded across the continent. Many firms in e-commerce ecosystems originate from such sources, and indeed strong digital ecosystems are often correlated with the presence of urban innovation schemes in Africa.

It should also be noted that not all capacity and skills building will come from the public sector. Privately-led skills development initiatives that link national firms with leading e-commerce firms (such as TripAdvisor and Alibaba) were found in Kenya and Rwanda. Similarly, in many countries in Africa, expatriates often play an important role as a source of skills, innovation, networks and finance. African wide institutions or networks around sharing best practices, or providing a focus for donor projects, might be instituted within continental frameworks to drive such activities forward.

[64] Consumer knowledge at a e-commerce customer level is also important, this is covered in more detail relating to consumer protection and cyber security sections

E-contracts/E-signatures rules

In a number of countries in Africa, rules around digital contracts, e-signatures and transactions standards have been in place for a number of years. With a large number of African signatories to the WTO trade facilitation agreement (see below), it is also likely that these foundational rules will become important not only in private exchanges, but in facilitating public systems that are being built.

Most rules in this area draw on the UNCITRAL model laws and as such tend to be broadly aligned across the continent. Nevertheless, African level agreements that promote such rules in nations who have not yet adopted them would be useful. There have also been some concerns about issues such as national certificate authorities (that may push advantages for local firms) and potential rules which force nations to accept lower security e-signatures.[65] More detailed analysis around the potential for the harmonization of these rules at the continental level would therefore be beneficial.

In some countries there is evidence that while rules are in place, there are still challenges in practice. For example, courts in Uganda have sometimes demanded paper copies of contract documents. Thus, as outlined in the previous section, capacity building work in the public sector, supported by the adoption of common principles and the provision of technical support at the continental level, might lead to such rules becoming embedded within African institutions and practices.

E-Payments

Facilitating an improved digital payment environment is an important component of national and regional policy making and this could be integrated into any continental free trade deal. There has been significant innovation in this area in Africa but a large number of policy challenges are present. Challenges include facilitating banking amongst the poor (in African countries where unbanked populations are still high), tensions between banking and new non-bank payment providers, and national currency controls, that could limit e-commerce.

Many countries in Africa are working to update their rules, national finance systems (such as interbank payments systems) and interoperability frameworks. Such reforms are vital to ensure

[65] Wu; Richard Hill, *Notes on E-Signatures and Trade*, 2017.[PUBLISHER + PLACE OF PUBLICATION]

that transactions are sufficiently secure and efficient for e-commerce, and can be made from a variety of banks and payment services. Specialist expertise and consistent guidance at the continental level could serve to support e-commerce growth across the continent. Transferring best practice from countries that have made progress in this area, to the continent more widely, is also important.

Regional African bodies have been active in supporting regional payment and settlement mechanisms. These are vital for growing regional e-commerce, particularly as evidence suggests that e-commerce firms are more likely to expand to multiple markets as they grow.[66] Ensuring that regional mechanisms are standardised across the continent will be vital, particularly as regional expansion poses challenges for those nations who are facing overlapping and potentially contradictory payment initiatives. African countries are also endeavouring to integrate with international payment systems, but there are a number of obstacles in this area. There are also some initiatives at a continental level but a more coherent continental approach to payments, including private sector partnerships, would be of further benefit to e-commerce.

Trust and security

Building trust and security in e-commerce is an important factor which will determine the extent of e-commerce growth. In a number of countries that were analysed in Africa, e-commerce expansion is negatively affected by a lack of trust in online activities. Even where there is sufficient trust for users to order online, they may only do so in specific ways (such as cash on delivery, inspection of goods, using on international e-commerce firms). In the longer term, such actions potentially limit some of the benefits of e-commerce and increases costs for African-focussed e-commerce firms.

A number of rules are in place across the continent to support trust in areas such as consumer protection, data protection and ‘‘know your customer standards’’ for payments. In many areas, rules are in existence, but continental coordination could serve to strengthen the implementation of these rules, especially when dealing with cross-border trade.

Given the growing importance of cybersecurity, it is likely that these issues will be covered in separate agreements and initiatives. African countries are already active in this area, having

[66] eBay, *Commerce 3.0 for Development: The Promise of the Global Empowerment Network* (San Francisco, CA: Ebay, 2013).

signed the 2014 AU agreement on cybersecurity, and a number of regional cybersecurity agreements are in place (eg ECOWAS). National laws are being instituted in a number of countries. However, there are questions about how these rules are transferring into e-commerce practice. Further work may be required to consider how measures on cybersecurity may impact on regional trade in e-commerce, and how the AfCFTA might serve to address any emerging concerns.

Partnerships and Private sector development

E-commerce is strongly driven by private sector activity. Thus it is important that governments enable firms to be able to shape policy processes. In Brazil, for instance, e-commerce associations are an important stakeholder whose participation in policy processes has led to improved quality and acceptance of rules.[67] With the exception of a few cases, such as the Egyptian e-commerce policy, African policies and plans appear to be developed from the top-down, with little room for private stakeholder engagement. It is vital that African agreements allow firms to shape these processes (at a continental, regional and national level) in an open and transparent way. This should be a priority for continental policymakers as they consider future plans.

Many of the areas explored in this paper such as e-signatures, payment and trade facilitation should serve to contribute towards private sector development in e-commerce. They seek to build a rules-based system that allow firms to operate at a continental level. Further actions might however be taken to accelerate e-commerce. In other digital agreements, such as the EU DSM, rules-based reform has been supported by continent-wide interventions which look to accelerate digital growth. While the nature of the EU as an integrated economic union is substantially different to the AU, it might still provide insights on potentially more interventionist policies that may also work in Africa. For example, a common issue for African e-commerce firms across the continent is a lack of finance for start-ups to grow. Following the EU, there might be potential for the AU, with the support of donors, to support strategies for finance and/or venture capital growth on the continent. Continental research initiatives and guidance on supporting innovative projects and procurement rules can also serve to spur private sector growth in e-commerce.

[67] Azmeh S and Foster C, *Bridging the Digital Divide And Supporting Increased Digital Trade: Country Case Studies* (Pretoria, South Africa: GEG Africa, 2018).

African nations are individually building e-commerce related partnerships globally. International integration often entails regulatory harmonisation with foreign countries, for example, statutes in payments or data rules. Some African nations, such as Egypt and Senegal, see European nations as their key partners, and this is leading them to pursue mechanisms (such as regulatory alignment with the GDPR) that will enable private sector partnerships in e-commerce with the EU. The growing link between sub-Saharan African countries and China also points to other types of strategic partnerships emerging in e-commerce. Rwanda's recent joining of the eWTP platform which is closely aligned with Alibaba is thus potentially significant. There are risks that as e-commerce sectors develop and different nations 'look north' or 'look east' that e-commerce rules begin to diverge (eg. between the more liberal rules of the US and data-oriented ones of the EU). The AfCFTA presents an important opportunity to ensure that African interests and approaches are at least partially aligned.

Firms and interface with the government

Many African countries (including all those covered in detail in this report) are signatories to the WTO Trade Facilitation Agreement (TFA), which was agreed in 2016 and began to be implemented in 2017. Implementation of the TFA promises to reduce the challenges that firms and traders face in moving goods through customs and across borders in Africa through mechanisms such as single-windows (a single point of interaction for exports/imports), simplified and digitalised procedures/systems and published information on import/export costs and tariffs.[68]

These rules are particularly important for e-commerce where slow movement of goods and bureaucratic processes can reduce the viability of cross-border e-commerce flows. There are also additional areas for trade facilitation, less covered by the WTO agreements that will be especially relevant to e-commerce given the nature of e-commerce occurring through the movement of small parcels, small payments and MSE. Thus continental rules that encourage the harmonisation of *deminimis* levels (levels under which firms are exempt from duties), promote cross-border logistics of small goods, and support simplified procedures for small firms are important.

Regional African bodies are already leading the implementation of the TFA in Africa. For example, COMESA and ECOWAS are serving as a source of support and developing regional frameworks and initiatives on trade facilitation, which drives national level activity. While some of these

[68] Rutendo Tavengerwei, 'Using Trade Facilitation to Assist MSMEs in E-Commerce in Developing Countries', *Journal of International Economic Law*, 21.2 (2018), 349–78 <https://doi.org/10.1093/jiel/jgy022>.

regional activities have had a more generic implementation, others such as COMESA's digital free trade area have particularly focused on how such facilitation will facilitate digital commerce. It includes activities such as e-certificates of origin and tariff-free cross-border trade between small traders, which will be especially relevant for e-commerce traders.[69]

The AfCFTA Agreement on Trade in Goods signed in 2018 already includes some clauses related to trade facilitation. Key challenges, which can potentially be addressed at the continental level, are to ensure that different initiatives align, and do not lead to a set of poorly supported and overlapping set of systems and rules.

5) Conclusions and Recommendations

Rapid growth in internet connectivity and in the use of the internet for economic purposes is driving major economic shifts, including changes in how products are exchanged within and across countries. The continuous growth in e-commerce is a manifestation of these broader shifts. This growth is creating important opportunities and challenges for national policy makers on a range of issues such as intellectual property, data protection, consumer protection, and taxation. Similar to other countries, national policy makers in the African countries examined in this study are still grappling with how to deal with these shifts. Policy makers see e-commerce as a potential tool to revitalise their economies and to increase economic opportunities for marginalised groups. However, policy makers are still working to understand these shifts and to address the challenges raised by e-commerce.

The African cases examined in this report show a number of common trends. Across all countries, there is limited available data but indicators highlight an increase in e-commerce, in both B2C and B2B segments. The cases show a growing entrance of firms in Africa and competition in this market between domestic e-commerce platforms, regional platforms and global platforms. This competition is intensifying and is likely to intensify even further in the coming years as these platforms jostle for higher market share and compete to acquire domestic and regional start-ups as a way to penetrate the market. The cases also illustrate how successful African firms see expansion in neighbouring African countries as an important opportunity to scale-up their operations. These market shifts are interlinked to a growing focus across all countries to regulate

[69] Salih.

different aspects related to e-commerce and also to growth in sub-regional initiatives in this regard.

As detailed in the analysis of issue-areas, the AfCFTA offers a potential framework for reaching rules on e-commerce at a continental level. While different approaches are viable, one possibility to explore is to follow the ASEAN model of creating a working programme on e-commerce with a mandate to discuss key issues, coordinate regional policies and facilitate a joint position within global debates. For such efforts to be effective, in our view, activities should extend beyond simply harmonising rules into joint programmes for building African capacities in e-commerce and related areas. [70]

Coherent policy at a continental level will provide support for digital African firms and start-ups by increasing the ability of these firms to scale-up in other African markets and also by providing better clarity on legal frameworks that are applicable to firms and consumers. With other regions such as the EU, ASEAN, and LAC building regional e-commerce agendas, there are also competitive implications for a lack of harmonization, where fragmented markets and higher costs could inhibit firm growth. Given the close alignment of e-commerce with digital trade and the digitalisation of value chains, such decisions would extend beyond e-commerce.

This study identifies key issues to be considered in the context of the AfCFTA as follows:-

Divergence and harmonization: A key future risk for e-commerce is Africa is in diverging digital rules, which then become major barriers for domestic e-commerce firms to scale up regionally, and might make the region less attractive to international firms to localise. Two interrelated risks of divergence can be observed in Africa: internally, driven by the agendas of different regional blocs; and externally, driven by the continent’s international linkages with other major trading nations.

This study highlights the encouraging progress in e-commerce regulations and initiatives already occurring in Africa, driven particularly by regional bodies that promote both regional integration and national policy momentum in areas such as payments, cybersecurity, e-signatures and trade

[70] This paper has not explored the potential implementation detail of e-commerce in the AfCFTA, which may be the subject of further research. Similarly, questions and issues on the overlap of e-commerce policies with other areas of existing and potential AfCFTA policy, including trade in services and intellectual property may require further analysis.

facilitation. Such activities should be supported strongly at a continental level. There is scope, however, for harmonization to limit divergence across regions. This relates specifically to countries which are part of multiple regional blocs and may have to deal with overlapping and potentially contradictory activities, as well as for countries which are peripheral to regional activities.

It is also important to highlight that policy activity in Africa is taking place in the context of global debates on e-commerce. Such debates are taking place at the multilateral level but also, as highlighted in this report, in regional blocs and agreements such as the EU, ASEAN and the CPTPP, which offer varying rules on key e-commerce related issues. African countries are not yet part of such agreements, but are likely to face increasing pressure to adopt such rules in the future through their trade agreements with advanced economies. The different trade profiles and strategic partnerships of African countries are likely to result in diverging positions on e-commerce rules across the continent. To some degree, such divergence is already happening with different countries in Africa approaching discussions on e-commerce or digital trade agreements with limited coordination. North African countries, for example, with their strong links to the EU, are rapidly working on rules around data protection to align with the EU GDPR. Nigeria and Kenya, have also joined the ‘‘Friends of E-Commerce for Development’’ group, which is strongly advancing liberalisation agendas around e-commerce. While continental agreements are unlikely to completely eradicate such divergences, they can provide coordination and space for articulating continental agendas on e-commerce, linked to the specificities of African needs, and provide a bloc that can support African countries as they engage internationally.

Infrastructure and logistics: Cooperation at the level of the AfCFTA on issues related to digital infrastructure in terms of internet connectivity and other infrastructure, such as logistics is important. National and regional infrastructure is the foundation of e-commerce. Such initiatives should focus on supporting existing initiatives for expanding internet access and infrastructure, particularly in poorly connected areas, to offer opportunities to widen the benefits from e-commerce. Logistics, which remain an important barrier to e-commerce outside major cities, is also fragmented across countries. Continental cooperation in this area is an important aspect of strengthening both public and private postal and delivery services, which underlie e-commerce effectiveness.

Taxation and customs duties: The AfCFTA could function as a framework to harmonise and develop policies related to taxation and customs duties. For transactions which revolve around the cross-border movement of physical goods, the AfCFTA can support existing initiatives looking to harmonise tariff barriers on regional trade, with a special focus on the regulation of small packages (which are particularly relevant to e-commerce). For transactions of digital goods and services, customs duties have received little attention so far (as countries have been renewing the commitments not to impose such duties at the WTO). Nonetheless, the expansion of e-commerce in areas such as entertainment and media, and the predicted loss of tariff revenues to some states, is leading to growing calls to end this commitment. The AfCFTA provides a framework to offer more clarity on such issues, and to fully consider the potential implications for Africa.

The issue of corporate taxes in e-commerce and more broadly the digital economy, is an additional and challenging issue that many nations are struggling to resolve globally. Agreements across countries are likely to provide the best direction forward where multinational firms are the largest perpetrator, although it is not clear that the AfCFTA offers the most preferable forum for these discussions.

Payments and trade barriers to e-commerce: Africa has a wide range of different payment and banking systems in place, ranging from formal banks to mobile money and informal microfinance schemes. Indeed, in countries such as Kenya and Senegal, Africa is one of the leaders in terms of innovative payments approaches at scale. Facilitating these payments within e-commerce is becoming an important part of national payment policies. Regional e-payments are also an important area to encourage e-commerce in Africa. Further policy support and analysis of the barriers to payments (fees, restrictions, systems etc.) is needed, and appropriate policies to address these restrictions will be important.

Similarly, identifying trade limitations and barriers to e-commerce is important. Existing activities are being supported at a regional level around trade facilitation. The AfCFTA should serve to promote the relevant e-commerce aspects of these initiatives, as well as provide harmonization across regions. While analysis further reveals new and unpredictable digital trade barriers emerging in certain policies (internet cuts, bans of VoIP, OTT taxes, rules on data flows, etc), more clarity could be provided on the desirability and impact of such policies through continental discussions.

E-commerce regulation: Many countries already have or are instigating broadly harmonized rules on e-contracts, e-signatures etc., often driven by regional initiatives. The promotion and harmonization of these rules can provide further certainty for cross border trade in Africa, and specifically for e-commerce. Likewise, commitments and rules on consumer protection in the AfCFTA could be useful in offering clarity for cross-border transactions on issues such as fraud, delivery times and refund windows, particularly given that successful e-commerce firms tend to expand into multiple countries. Data protection has become a critical issue with evidence of national divergence, due to different countries adopting differing models of governance. This debate is set to intensify with issues such as privacy and data localisation receiving growing policy attention. While reaching a joint position may pose certain challenges, the AfCFTA could, at a minimum, provide more guidance on the legislation and agreements pursued by different countries, thereby contributing towards some form of harmonisation.

Capacity building and coordination of regional initiatives: A continuing challenge for e-commerce is that the benefits may potentially only reach more affluent firms and groups. Looking beyond a purely market driven approach, additional interventions may be required to leverage these gains for the benefits of a wider number of firms and society. This is a critical policy challenge for all countries and should also be a priority at the continental level. Possible areas for discussion and joint activities could include, policy capacity building and implementation, training and skills for MSMEs and marginalised groups, rural e-commerce inclusion and efforts to increase the participation of the private sector within e-commerce policy development.