

# Mobilising E-Commerce for Development in Africa through AfCFTA

Yasmin Ismail

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# About the Author

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Yasmin Ismail is a Research Fellow at CUTS International Geneva since March 2019. Her research interests include the WTO institutional reform, new issues under the WTO including e-commerce, Africa integration and China-Africa relations. Yasmin holds two Masters' degrees in Economics of Development and in International and European Law from the University of Grenoble-Alpes in France. Prior to joining CUTS, Yasmin was a Projects Manager at Global Partners Governance, Ltd. a UK based International Consultancy specialised in designing and implementing institutional and governance reform projects in the Middle East and developing countries. She also served as a specialist in International Cooperation at the Egyptian Cabinet Information and Decision Support Centre.

# List of Acronyms

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AU	African Union
AU-EU DETF	AU-EU Digital Economy Task Force
AUC	African Union Commission
AfCFTA	African Continental Free Trade Agreement
AfDB	African Development Bank
AIDA	Accelerated Industrial Development in Africa
AMU	Arab Maghreb Union
ASEAN	Association of Southeast Asian Nations
B2B	Business to Business
B2C	Business to Consumer
BPO	Business Process Outsourcing
CA Kenya	Communications Authority of Kenya
CAADP	Comprehensive African Agricultural Development Plan
CEN-SAD	Community of Sahel–Saharan States
CENFRI	Centre for Financial Regulation & Inclusion
CMA	Common Monetary Area
COMESA	Common Market for Eastern and Southern Africa
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DFTA	Digital Free Trade Area
DSM	Digital Single Market
DTS	Digital Transformation Strategy
EAC	East African Community

ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EDI	Electronic Data Interchange
EU	European Union
FES	Friedrich-Ebert-Stiftung
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
GSMA	Global System for Mobile-Communications Association
ICT	Information and Communication Technology
IDRC	International Development Research Centre
ITC	International Trade Centre
IGAD	Intergovernmental Authority on Development
JIPITEC	Journal of Intellectual Property, Information Technology and E-Commerce Law
LDC	Least Developed Country
MNE	Multinational Enterprise
OAU	Organisation of the African Unity
OHCHR	Office of the United Nations High Commissioner for Human Rights
PIDA	Programme for Infrastructure and Development in Africa
PDPC	Personal Data Protection Centre
PWC	Price Waterhouse Coopers
RCEP	Regional Comprehensive Economic Partnership
RCH	Regional Clearing House (RCH)
REC	Regional Economic Community
REPSS	Regional Payment and Settlement System
RTA	Regional Trade Agreement
RTGS	Real Time Gross Settlement System

SADC	Southern African Development Community
SIDA	Swedish International Development Agency
SME	Small and Medium Enterprise
TiSA	Trade in Service Agreement
TFTA	Tripartite Free Trade Area
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
USMCA	United States–Mexico–Canada Agreement
WATRA	Western African Telecommunications Regulators Assembly
WB	World Bank
WEF	World Economic Forum
WTO	World Trade Organisation



# Introduction

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## Background and Conceptual Framework

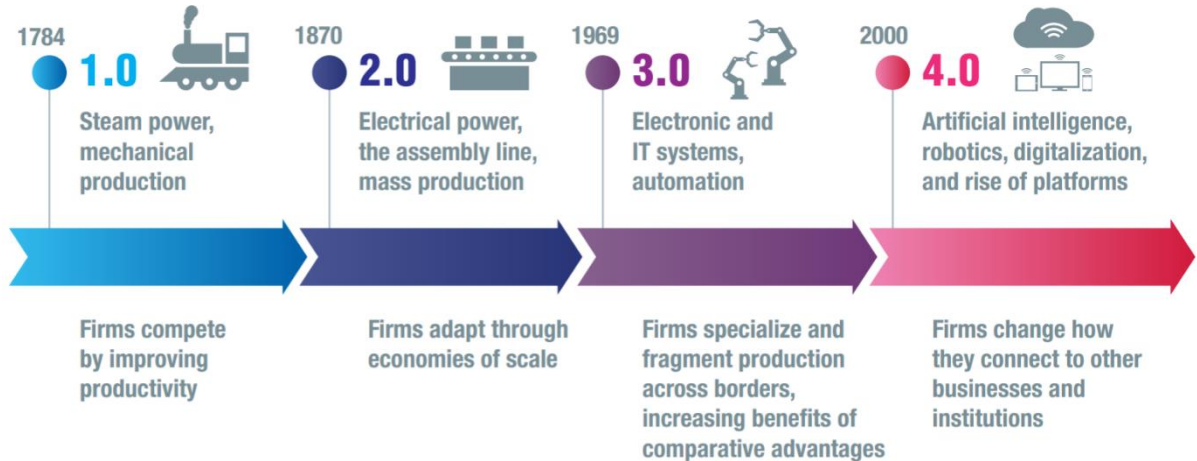
Since the dawn of the 21<sup>st</sup> century, internet, Information and Communication Technologies (ICTs) and digital applications have been infiltrating every aspect of human lives and reshaping social and economic activities and it has become evident that the world is racing to a “digital economy” era. There is no universally agreed definition of “digital economy”. Early attempts confined it to ICT and high-tech sectors in the developed economies. But as ICT continues to generate widespread transformations across other sectors, creating new business models and structures that increasingly involve the developing world, the digital economy is now perceived as encompassing the whole economy with no geographical limits (Ismail, 2020; Cooper, 2017).

According to the 2019 Digital Economy Report of the United Nations Conference on Trade and Development (UNCTAD), the notion of ‘digital economy’ is currently frequently used to refer to transformations

occurring worldwide in patterns of production, consumption and trade. In other words, creating a whole new landscape for business today. ‘The far-reaching nature of the transformation has led many to identify it as a fourth industrial revolution, or 4.0 for short’ (ITC, 2018).

UNCTAD’s 2019 Digital Economy Report identified two recent trends as key drivers for the expansion of the digital economy. The first trend is the increasing ability to collect, store, analyse and commercially use machine-readable information (digital data). The second closely linked to the first, is the rise of digital transaction platforms. ‘Transaction Platforms are two / multi-sided markets with an online infrastructure that supports exchanges between a number of different parties’ (UNCTAD, 2019b, p. xv). The digital platform revolution has greatly changed the way in which firms connect to ‘others’, be they buyers, suppliers, peers or supporting institutions at home or abroad. It could be argued that it is entirely reshaping the economy or business ecosystem (see figure 1 below on how industrial revolutions have affected the business ecosystem).

**Figure 1: How industrial revolutions affect the business ecosystem**



Source: ITC, 2018, p. 2.

The recent UNCTAD report highlights that the top eight companies by market capitalization in the world adopt digital platforms as a core business model. The rise of transaction platform business models and data value chains have particularly contributed to boosting trade in the digital economy leading to the notion of ‘Electronic Commerce’ (e-commerce) and/or ‘Digital Trade’ and ‘e-Trade’<sup>1</sup>. There are several attempts to define e-commerce especially since 1998, when both the World Trade Organisation (WTO) and the Organisation for Economic Co-operation and Development (OECD) adopted their respective Work Programmes on e-commerce. This study adopts the OECD definition which considers that ‘an e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The 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 through digital network means (webpages, extranets, electronic data interchange [EDI] networks)’ (OECD, 2011, p. 72).

It is worth noting here that OECD definition excludes orders done through telephone calls, but admits orders done through smartphone applications and mobile money digital solutions which has been a game changer particularly in the context of Africa and LDCs as it allowed connectivity and remote non-cash money exchange without requiring a bank account (Brusick, 2018).

### B2C Cross-border E-commerce: the Rise of Online Platforms Chain

Measuring e-commerce is a challenge as not many countries are able to compile data on e-

<sup>1</sup> E-commerce, e-Trade and digital trade are mostly being used interchangeably while recognising that they may be used/interpreted differently. For example, some countries, mainly the U.S. and Canada prefer to use ‘digital trade’ with the difference of excluding ordering and delivery of ‘physical good’. In the World Trade Organisation Joint

Statement Initiative where a group of countries are negotiating e-commerce provisions, digital trade is used interchangeably with e-commerce. Also, some trade experts and academics like Foster & Azmeh (2018), consider ‘digital trade’ as an expansion in focus towards regulating a broader set of cross-border digital issues.

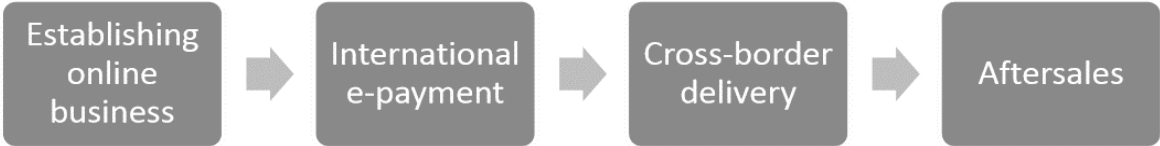
commerce revenues. UNCTAD has worked on this issue and estimated that the global value of e-commerce to have reached 29 trillion USD in 2017, which is equivalent to 36 per cent of world Gross Domestic Product (GDP) (UNCTAD, 2019b, p.15). In some countries like Korea and Japan, data shows that e-commerce value is exceeding 50 per cent of their respective GDP (OECD & WTO, 2017). Global business-to-business (B2B) e-commerce was 25.5 trillion USD in 2017, representing 87 per cent of all e-commerce, while B2C e-commerce was 3.9 trillion USD in 2017 witnessing an increase of 22 per cent over the previous year (UNCTAD, 2019b, p.15). So B2B e-commerce currently has the largest share of e-commerce globally, however B2C e-commerce is the fastest growing, particularly when it comes to cross-border trade.

UNCTAD (2019b) reports that around one quarter of the world's population aged 15 years and older, shopped online in 2017, which is 12 per cent higher than in 2016. According to the same source, most online shoppers buy from domestic sellers or suppliers, however, the interest in buying from

foreign suppliers is rapidly growing. This is proved by the fact that the share of cross-border online shoppers in total online shoppers rose from 15 per cent in 2015 to 21 per cent in 2017 as well as the fact that the cross-border B2C sales by value of merchandise exports corresponds to almost 11 per cent of total B2C sales in 2017, up from 7 per cent in 2015 (Ibid, p.15-16).

Such trends prove how B2C cross-border e-commerce is becoming a core driver of global growth. This may be explained by the difference in nature between cross-border B2B and B2C. In B2B, ICT has changed the speed of doing international business but is still mostly confined to traditional international trade business models between importers and exporters communicating faster through the internet. On the other hand, 'cross-border B2C e-commerce is potentially redefining international trade through its entirely new process chain' (ITC, 2019, p.2). This new chain consists of four stages: establishing an online business, using international e-payments, providing cross-border delivery and providing aftersales services (See Figure 2 below).

**Figure 2: Cross- border E-commerce Process Chain**



Source: ITC, 2016, p. 4.

## Digital Economy Ecosystems: Portal to SME Scale up and Sustainable Development

Based on Figure 2 above, two steps precede cross-border trade: establishing an online business (online platform) and using electronic payment mediums, which together can be considered the nucleus for a digital economy ecosystem; herein after called 'digital ecosystem'(AU, 2019a). According to Azmeh & Foster (2018), 'the notion of the digital ecosystem refers to a wider set of capabilities, organisations and support that can facilitate digital trade in a country that moves well beyond the underlying regulatory environment' (Azmeh & Foster, 2018, p. 13). They further explained: 'A common aspect of digital trade (and/or e-commerce), and particularly activities that revolve around platforms, is the importance of so-called third parties – actors outside the actual platform that nevertheless provide services to support these platforms. Examples of such third parties include logistic providers, financial and payment services and business support services' (Ibid, p. 18). Allowing digital ecosystems to flourish creates greater opportunities for Small and Medium Enterprises (SMEs) to upscale their businesses, go beyond their borders and access new and larger Markets.

In this e-commerce enabled ecosystem, SMEs can (ITC, 2016):

- access essential services to promote their growth, such as financing options, delivery and logistics solutions, promotion packages, etc., at discounted prices.

- ship goods and provide services directly to the end user without intermediaries which occupy a large proportion of value in cross-border trade.
- expand their outreach abroad and access larger markets thanks to the marginal operating costs of maintaining an online platform and network effects that facilitate and speed up customer acquisition.
- reduce the cost of market research thanks to Big Data technologies that analyse user data, browsing and transactions history to target customers. build trust with consumers, especially abroad, as platform creates accessible transaction records and allows direct reviews from customers to assess company's performance and trustworthiness.

Both developed and developing countries can benefit from upscaling SMEs by promoting the e-commerce model of business. According to ITC (2017a), 'SMEs make up the bulk of the economic tissue of an economy. They account for approximately 50 per cent of GDP and 60-70 per cent of total employment worldwide'. This means a lot more to developing countries and LDCs in terms of stimulating development effects and accelerating achieving SDGs (see Box 1 below), especially since SMEs in those countries tend to employ the poorer and more vulnerable segments of society such as young people and women (ITC, 2017a).

## Box 1. E-commerce as a driver for achieving SDGs

E-commerce can:

- Become a driver of inclusive growth and sustainable development by empowering women as entrepreneurs and traders. (Goal 5: Target 7; Target 8)
- Support productive activities, create decent jobs, entrepreneurship, creativity and innovation, and encourage the formalization and growth of micro-, small- and medium-sized enterprises (MSMEs), including through access to ICT-enabled financial services (Goal 8: Target 3)
- Help MSMEs gain access to financial services (including online and mobile payments) and their integration into value chains and markets (including virtual marketplaces) (Goal 9: Target 3)
- Contribute to significantly increasing the exports of developing countries, in particular doubling the share of global exports by Least Developed Countries by 2020 (Goal 17: Target 11)

Source: Kituyi, M. (n.a.), e-Trade for All Initiative: <https://etradeforall.org/connecting-dots-sustainable-development-e-commerce-sdgs/>

Online platforms, and the digital ecosystem they create, can generate socio economic benefits as more and more portions of the economy and of the society become adopters and users (See Figure 3 below). For example, banks use them for engagement and

operations purposes, individual businesses use them to widen their outreach to customers, and governments increasing use them to deliver better quality and faster services to their citizens (UNCTAD, 2017a).

**Figure 3: E-commerce online platforms increasingly spreading across economic sectors and societies**



Source : UNECA et Al. (2019b), p.18.

As a matter of fact, it has become evident in the past two decades that human and economic development are more and more dependent on the ability to connect to digital networks and harness the potential of ICT in

economy and trade (OECD & WTO, 2017). The United Nations General Assembly has clearly acknowledged this fact by committing to harness the potential of ICT to accelerate the achievement of SDGs while noting that

'access to information and communications technologies has also become a development indicator and aspiration in and of itself' (UN, 2016).

When it comes to cross-border trade, the ecosystem created by e-commerce provides a unique opportunity for developing countries and LDCs (who traditionally face difficulty due to high costs of physically crossing borders and hiring intermediaries and their geographical remote and landlocked position) to connect their goods and services with potential buyers beyond their borders and access their regions' market and the international market. Thus, promoting cross-border e-commerce can result in boosting intra-regional trade, accessing regional and global value chains (GVCs), and achieving economies of scale (UNCTAD, 2019).

Therefore, leaders and policymakers across the developing world are currently striving to formulate digitalisation strategies and policies that promote SMEs' adoption of e-commerce online platforms and to create the suitable business environment for the cross-border e-commerce process chain to function effectively and capitalise on its related growth and development opportunities (Cooper, 2017).

## E-commerce in Africa

This drive to promote e-commerce adoption is particularly visible in Africa, where the digital divide between the developed and developing worlds is significantly manifested. With the accelerating digitalising of the global economy, cross-border e-commerce promises

to promote intra-regional trade, economies of scale, and growth and development on the continent.

In 2012, African leaders and politicians renewed their commitment to accelerate their 50-year-old aspiration of achieving an integrated Africa and decided to launch negotiations for an African Continental Free Trade Agreement (AfCFTA) in 2015. Less than three years later, the AfCFTA was signed in Kigali on 21 March 2018 by the representatives of forty-four African Governments - The largest agreement of its kind since the signing of WTO in 1994. It is also considered a significant step forward towards the creation of a common market using African Regional Economic Communities<sup>2</sup> (REC) as building blocks, as envisaged by the Abuja Treaty adopted by the Organisation of the African Unity (OAU)<sup>3</sup> back in July 1991. (Albert, 2019). Within only thirteen months of opening for signature, the AfCFTA attained the minimum number of instruments of ratifications on 29th April 2019 and thus entered into force on 30th May 2019. The 12th Extraordinary Session of the Assembly of the AU on the AfCFTA on 7th of July 2019, witnessed the adoption of the Niamey Declaration on the Launch of the Operational Phase of AfCFTA (AU, 2019b). At the time of writing, fifty-four of the total fifty-five African Member States have signed the agreement<sup>4</sup>, while twenty-eight State Parties have deposited their ratification instruments (AU, 2020).

The AfCFTA establishes the institutional and regulatory framework for the implementation of the Continental Free Trade Area (CFTA), a

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<sup>2</sup> There are eight Regional Economic Communities in Africa recognized as the building blocks of the African Union. These eight are namely: AMU, CEN-SAD, COMESA, EAC, ECCAS, ECOWAS, IGAD and SADC.

<sup>3</sup> The Organisation of the African Unity was replaced in 2002 by the African Union. The latter is now the continental body consisting of 55 member states from the African Continent.

<sup>4</sup> The remaining non-signatory country is Eritrea

single and liberalised market for goods and services, facilitated by movement of persons. It originally envisaged two negotiation phases:

- Phase I: concluded protocols on trade in goods, trade in services and the dispute settlement mechanism. It aims to boost intra-African trade through progressive elimination of tariff and non-tariff barriers. (AU, 2018). The start of trading under this protocol and the agreed schedule of tariffs is set for 1 July 2020 (AU, 2020)
- Phase II: to tackle cooperation on a number of complementary policies. The following policies were identified: competition policy, intellectual property rights and investment. This phase is now set to be concluded by December 2020 (*Ibid*).

However, the AfCFTA did not clearly address the growing reality of the digital economy, nor did it envisage e-commerce to be part of those two negotiation phases. During the same period, countries across the globe were seeking to capitalise on the growth of e-commerce and their appetite for negotiating e-commerce provisions in Regional Trade Agreements (RTAs) was increasing. Developed countries' heightened the pressure on the WTO to bring e-commerce to the heart of the organisation WTO when they announced a Joint Statement Initiative at the 11<sup>th</sup> WTO Ministerial Conference in December 2017 with the intention of initiating e-commerce negotiations among them and other countries who decide to join.

The first study commissioned by CUTS International as part of this project, and conducted by Gaitan G., A. (2020), demonstrated how e-commerce provisions have recently become a core element in RTAs such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

(CPTPP) and the United States-Mexico-Canada (USMCA) agreement. According to the study, 60 per cent of all RTAs that entered into force between 2014 and 2016 included e-commerce specific chapters or provisions. It also showed that up until June 2019, a total of 84 RTAs included e-commerce provisions and added that while developing countries were parties to most (74) of these agreements, emerging markets made the bulk of their participation and 32 among them involved the participation of smaller developing countries, whether in a North-South set-up or South-South set-up. A significant example from the developing world is the Association of the South Eastern Asian Nations (ASEAN) Work Programme on E-Commerce 2017-2025 and the signing of the ASEAN agreement on Electronic Commerce in January 2019. One trend showing the increasing appetite for e-commerce in trade agreements is the recent inclusion of e-commerce provisions in mega-regional agreements and negotiations, such as those aiming at a Trade in Service Agreement (TiSA), Regional Comprehensive Economic Partnership (RCEP) and Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) among others.

Each of these recent developments made it more and more evident that 'if the African Continental Free Trade Area is to fulfil its potential in transforming African economies, it must also include a clear digital strategy. This has led to discussions on whether e-commerce should be included in the second phase of negotiations. (UNECA. OHCHR & FES, 2017, p. xii).

It was finally decided by the AU in its 33<sup>rd</sup> ordinary session in February 2020 in Addis Ababa, that Phase III Negotiations on an AfCFTA protocol on E-commerce will immediately start after the conclusion of phase II on investment, intellectual property

rights and competition policy so far set for December 2020. (AU, 2020, p. 4).

## Study Rationale and Objective

It is against the above background and context that this study will explore policies and approaches through which African integration could tap into e-commerce opportunities and harness its development potential, particularly in the context of AfCFTA.

This study's ultimate objective is to provide African policymakers and trade negotiators with relevant synthesised information, analysis and experiences that can be leveraged at the national, regional and continental level within the framework of AfCFTA negotiations and its prospective e-commerce protocol, in order to promote e-commerce growth across the continent, establish suitable environments and regulatory frameworks that enable and further facilitates cross-border e-commerce, boost intra-African trade and capitalise on its growth and development benefits.

The study will contribute to better preparing the continent for an era of digitalised global economy and trade while it builds on existing efforts at the national, regional, and multilateral levels.

## Methodology and Steps of Analysis

In order to meet this objective, the study will be based on a review and empirical analysis of the existing literature, data, reports and experiences. These include the following: i) AfCFTA agreement framework; ii) AU Agenda 2063 (a continental comprehensive vision and framework for sustainable development) and draft digitalisation strategy in the process

of finalisation; iii) digitalisation and e-commerce strategies and/or policies and/or legislations developed in Africa at the national or REC level with the objective of highlighting significant national and regional case studies and best practices and iv) relevant studies, reports and data published by African States and by relevant regional and international organisations.

The analysis is presented in 4 steps which are reflected in the four chapters of the study as follows:

- Step/Chapter 1: Explores the potential of e-commerce in Africa, identifying opportunities, challenges and potential risks in light of the newly emerging cross-border e-commerce process chain.
- Step/Chapter 2: Explores the relation between AfCFTA and e-commerce in light of the wider continent development aspirations and how AfCFTA framework can be leveraged to promote e-commerce and catalyse its benefits across the continent.
- Step/Chapter 3: Gives an overview of how a number of African countries and the RECs (the building blocks of the African Integration) have attempted to address the issue. This step will help identify best practices and initiatives from within the continent and explore potential synergies between their various approaches in addressing digital economy and e-commerce.
- Step/Chapter 4: Synthesises the global discussions/negotiations on regulating e-commerce and/or promoting the digital economy in the context of the WTO. This final step is to allow AfCFTA to grasp key debated issues on the e-commerce global



agenda, and the various positions and approaches taken, to enable the formulation and advancement of an African common position.

The study concludes with an overview of lessons learned and recommended policy options to support African policy makers and negotiators in mobilizing AfCFTA towards a better integration of the continent in the age of

e-commerce and to take advantage of the fast advancing digitalised economy and trade.

## SECTION 1

# The Rise of E-commerce in Africa: Opportunities, Challenges and Risks

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This Chapter will give an overview of the fast-growing e-commerce potential of the African continent and the opportunities e-commerce growth can bring to the continent's key economic and development aspirations: growth, industrialisation, regional integration and global value chain integration. It will then track the cross-border e-commerce chain to identify challenges that can stand against e-commerce growth and risks associated with its growth and expansion across borders.

## 1.1 E-commerce growing potentials and opportunities in Africa

Despite being a late comer, it has become widely believed during the past few years that Africa will be soon witnessing significant transformations through the rise of the digital economy and e-commerce (ITC, 2015). The existing and growing potential of e-commerce is more and more evident from the significant internet connectivity and mobile financial access digitalisation trends and the emergence of e-commerce platform-based businesses in Africa across various economic sectors and societies (UNECA & *Al.*, 2019).

## Growing access to Internet and financial services

The African continent has a total population of about 1.3 billion people and, with 60% of the entire continent aged below 25, is home to the youngest population in the world (WB, 2019). Recent internet and mobile access reported trends support that, 'Africa is now digitalizing faster than anywhere else in the world' (UNECA & *Al.* 2019, p. 229). Over the past ten years, the continent has recorded the highest growth globally in internet access, moving from 2.1 per cent in 2005 to 24.4 per cent in 2018<sup>5</sup>. The progress is not only visible in internet connectivity but also in mobile-cellular telephone subscriptions and in digital financial services using "Mobile Money" (AU-EU DETF, 2019, p.13-14). According to World Bank (WB) 2019, more than 50 per cent of all mobile money services in the world are in Africa. Based on the GSMA (2019) State of the Industry Report on Mobile Money, table 1 below shows that the number of mobile money subscription accounts in Sub-Saharan Africa (excluding North Africa countries) have reached 395.70 million subscriptions (representing 60 per cent of Sub-Saharan countries adult population) out of 866.2 million subscriptions globally.

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<sup>5</sup> According to ITU's Press release announcing 2018 Global ICT estimates, available here: <https://www.itu.int/en/mediacentre/Pages/2018-PR40.aspx>

**Table 1: Number of Registered Mobile Money Accounts in World Regions in Millions, 2013 – 2018**

REGION	2013	2014	2015	2016	2017	2018
Sub-Saharan Africa	98.3	146	222.8	277.4	348.60	395.70
Northern Africa and Middle East	35.8	37.9	41.7	44.1	47.27	48.89
Latin America and the Caribbean	8.3	14.9	17.3	23	23.53	26.99
East Asia and the Pacific	23.7	21.8	26	36.6	68.55	94.61
South Asia	35.5	76.9	101.9	164.2	258.36	287.59
Europe and Central Asia	1.5	1.5	1.7	10.4	11.55	12.35

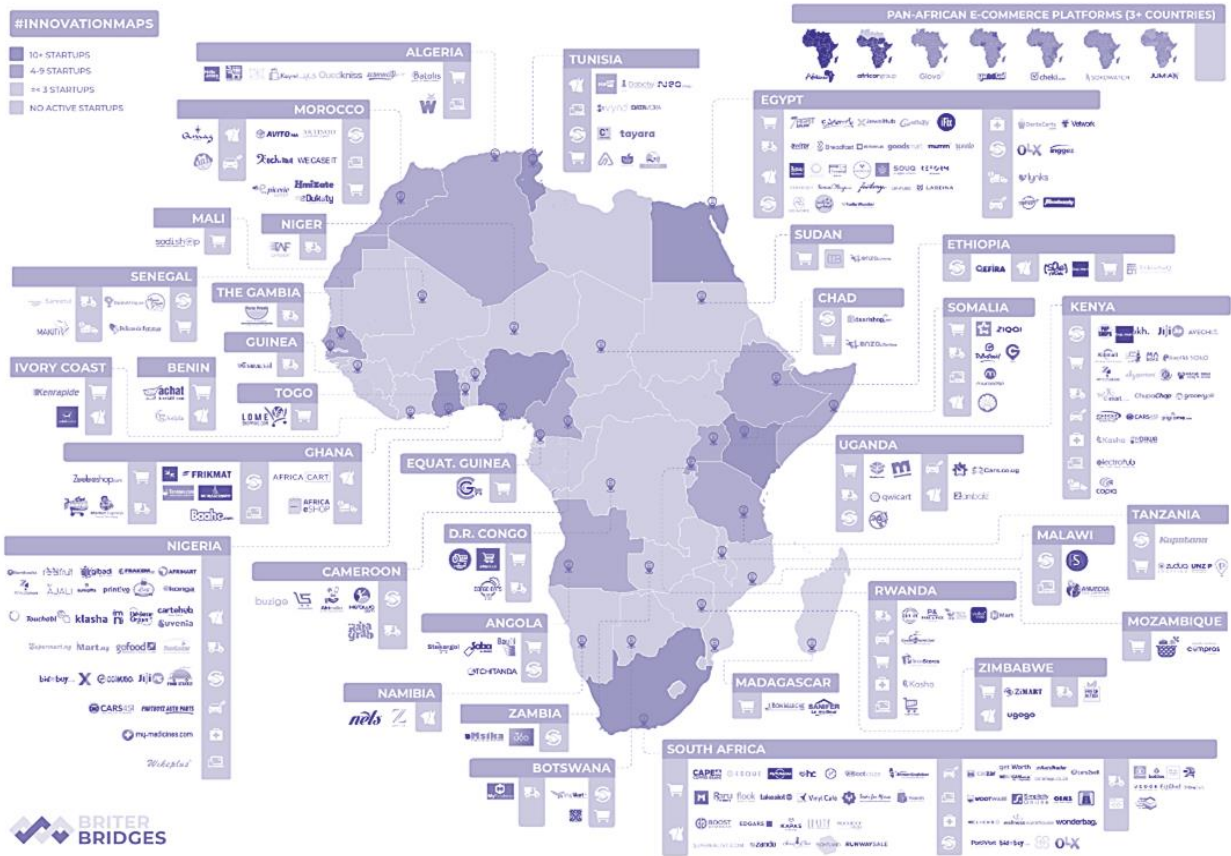
Source: AU, 2019a and GSMA, 2019.

According to the GSMA (2019), while Africa is still driving growth of Mobile Money, it is expected that its growth rate of registered accounts will slow down as more and more people get access. However, Africa still has three ‘sleeping giants’: Nigeria, Ethiopia and Egypt – the top three most populated countries of the continent. Their combined adult population of over 242 million remains with limited availability of mobile money services and low rates of financial inclusion (GSMA, 2019). Mobile money as previously introduced, is a game changer in Africa as it allowed bringing populations traditionally excluded from the formal financial system into economic activity, notably: the rural poor, women and displaced persons (GSMA, 2019; WB, 2019; UNCTAD 2019b).

## Emerging local platform-based businesses

Figure 4 below shows a recent mapping of e-commerce companies using online platforms in Africa in the year 2020. It counts more than 250 e-commerce companies operating across the continent. The map shows how e-commerce platform-based business enabled various forms of trade: in goods, in services and the combined trade in goods and services. It also gives a live example of how online platforms are more and more adopted by various economic actors and across various sectors, including even the most traditional, like health and medical services.

**Figure 4: More than 250 E-commerce Companies in Africa in 2020**



Source: Briter Bridges (2020), Innovation Maps. Available at: <https://briterbridges.com/innovation-maps>

**Supporting SMEs and start-ups to transcend borders**

The above map points to seven e-commerce platform-based companies (SMEs) who are now able to access the markets of three or more African countries. This is an affirmation of what the study outlined in the introduction that e-commerce platforms can bring particular benefits to SMEs by helping them transcend location constraints and reduce marketing and advertising costs of their products and services, as well as by providing

easy and simplified access to necessary services to facilitate SMEs exports to foreign markets, naming for example: simplified payment solutions and logistics (WB, 2019; MacLeod, 2018). Such benefits are even more particular in the case of Africa, where SMEs contribute to more than 80 percent of output<sup>6</sup> and employment, thus establishing a new middle class and fuelling demand for

<sup>6</sup> World Finance (2014). SME growth key to Africa's future, says African Guarantee Fund, 18 November 2014,

available at: <https://www.worldfinance.com/banking/sme-growth-key-to-africas-future-says-african-guarantee-fund>

new goods and services, including online services<sup>7</sup>.

## Growing Digital Markets potential

African SMEs also create around 80% of the region's UNCTAD B2C E-commerce Index 2018<sup>8</sup> estimates that there were at least 21 million online shoppers in Africa in 2017 and it has surged annually by 18 per cent since 2014, higher than the world average growth rate of 12 per cent. According to UNCTAD this number represents less than 2 per cent of the global online shoppers, but still Africa holds a lot of potential: 'Unlike developed markets such as the European Union, where 68 per cent of Internet users made an online purchase in 2017, the corresponding figure in Africa was only 13 per cent on average in 2017. If the ratio of online shoppers to Internet users in the region was increased to 50 per cent, an additional 77 million online shoppers would be added and the estimated B2C revenue (assuming average annual spend was halved) would more than double' (UNCTAD, 2018b, p.16).

Accordingly, and as mentioned in the Introduction, 'the digital transformation of Africa would foster economic growth and reduce poverty. It has the potential to create more jobs, encourage entrepreneurship among the youth, increase farmers' productivity, bring more women into the labour force, and create markets.' (WB, 2019, p.3).

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<sup>7</sup> WEF (2015). Why SMEs are key to growth in Africa, 04 August 2015, available at: <https://www.weforum.org/agenda/2015/08/why-smes-are-key-to-growth-in-africa/>

<sup>8</sup> UNCTAD B2C E-commerce Index of 2019 mentions that given data limitations, this year's index should be considered provisional. Internet user data for 2018 was limited at the time of index calculation and the latest data on accounts are for 2017. Hence, changes from the

## Boosting Intra-African trade

According to UNECA et Al. 2017a, Intra-African trade provides a far larger share of growth in Africa's value-added and industrialized exports than does Africa's trade with any other market.

E-commerce facilitates cross-border flows of goods, services and particularly data, thus, can significantly boost intra-African trade (OECD, 2017). A relevant example from another continent, is MercadoLibre, an Argentinian company that is now the largest online retailer in Latin America (MacLeod, 2018). A recent study showed that of the total amount of Latin Americans with internet access in February 2018, 62 per cent visited e-commerce sites and 47.4 per cent of those made their online purchases on MercadoLibre (and only 16.6 per cent of them shopped on Amazon and 10.9 percent shopped via Alibaba<sup>9</sup>).

## Creating value for Africa in the 4.0 Industrial Revolution Business Ecosystem

'Digitalization offers new opportunities to boost the economy (through e-commerce and digital financing), cut red tape and reduce trade costs (through e-payments, e-government and the digitalization of public services), leap frog and participate in the 4th industrialization revolution' (AU, 2019a).

previous edition of the index are mainly influenced by secure servers and postal reliability. Therefore, this study relies on the 2018 index data and trends.

<sup>9</sup> Portada Online, Top LatAm E-Commerce Sites: 47.4% of Latin American Internet Users Buy on MercadoLibre, Only 16.6% Prefer Amazon, 04 October 2018, available at: <https://www.portada-online.com/latest-news/top-latam-e-commerce-sites-47-4-of-latin-american-internet-users-buy-on-mercadolibre-only-16-6-prefer-amazon/>

## 1.2 E-commerce Challenges and Associated Risks

While the economic and developmental potential of e-commerce and the digital economy are increasingly accepted, countries are not on an equal footing to reap its fruits. E-commerce was enabled by wide scale adoption of the internet in societies of the developed and advanced countries (Weigert, 2018). According to Weigert (2018), developed countries enjoyed a far more favourable environment than developing countries to embrace e-commerce and allow it to flourish. This gap persists as some developing countries are able to catch-up more than the others, while Africa is still lagging behind (UNCTAD, 2018a).

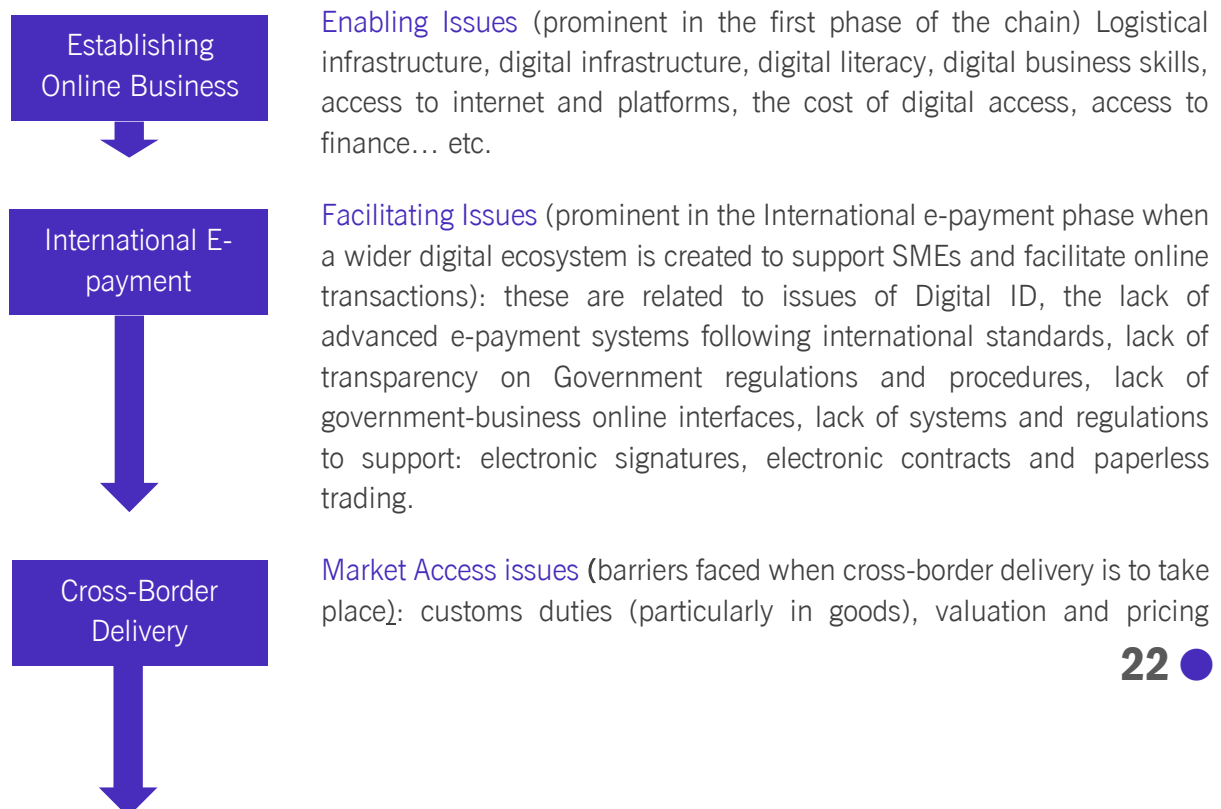
Weigert (2018) explains that in developed markets 'online traders were able to levy the necessary logistical infrastructure, such as effective transport networks and postal

systems, in order to be supplied and to deliver to customers. They turned to consumers from high-income countries who, due to their high purchasing power, their use of the banking system, and their trust in legal systems, quickly occupied e-commerce's intangible market space'. Such an enabling and favouring environment is not yet fully enjoyed, with many foundational challenges to overcome to build digital ecosystems and facilitate cross-border e-commerce.

### Challenges across the Cross-border E-commerce Chain (A bottom-up approach)

SMEs, wishing to engage in cross-border e-commerce, face many challenges across every step of the process chain (ITC, 2017b; Ebrahim Darsinouei, 2017). From the Global MSME Competitiveness Survey conducted by ITC (2017b) of more than 2,200 MSMEs across 111 developing and least developed countries (with particular focus on Africa), four key issues emerge:

**Figure 5: Issues under Four Steps of E-Commerce Process Chain**





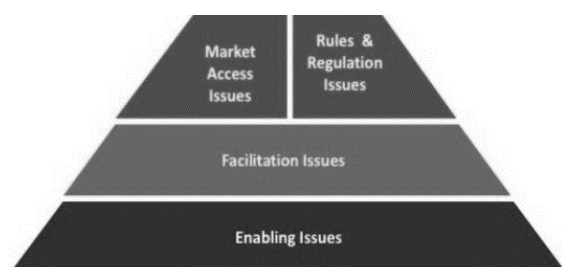
Aftersales

issues (lack of information on duties and delivery costs), movement of natural persons, access to foreign parcel deliveries and warehouses and issues related to data access and localisation (particularly in the case of services becoming more prominent in digital economy).

**Trust Issues** (very evident in the cross-border and aftersales phases as well): these reflect weak regulatory frameworks and are linked to lack of understanding of consumer rights and enforcement, lack of customer feedback, application of duties on returned products, and lack of online dispute settlement mechanisms.

One can observe that challenges in the early phases of the cross-border e-commerce chain relate to the actual feasibility of setting up the online business which requires a certain amount of both financial and human capital. But moving down the chain, challenges move from being firm-specific to involving the larger business ecosystem and national and cross-border actors and stakeholders (ITC, 2017b). Kaukab (2017) cited by Ebrahim Darisinoei (2017) captured this tendency and translated it into a bottom-up (Pyramidal) classification (See Figure 6 below). Such a bottom-up approach, together with the ecosystem approach to digital economy, enable policy makers to capture the linkages between various policy responses and provides greater flexibility for simulating different policy scenarios (AU, 2019a).

### **Figure 6: A Bottom-Up (Pyramidal) classification of e-commerce issues and challenges**

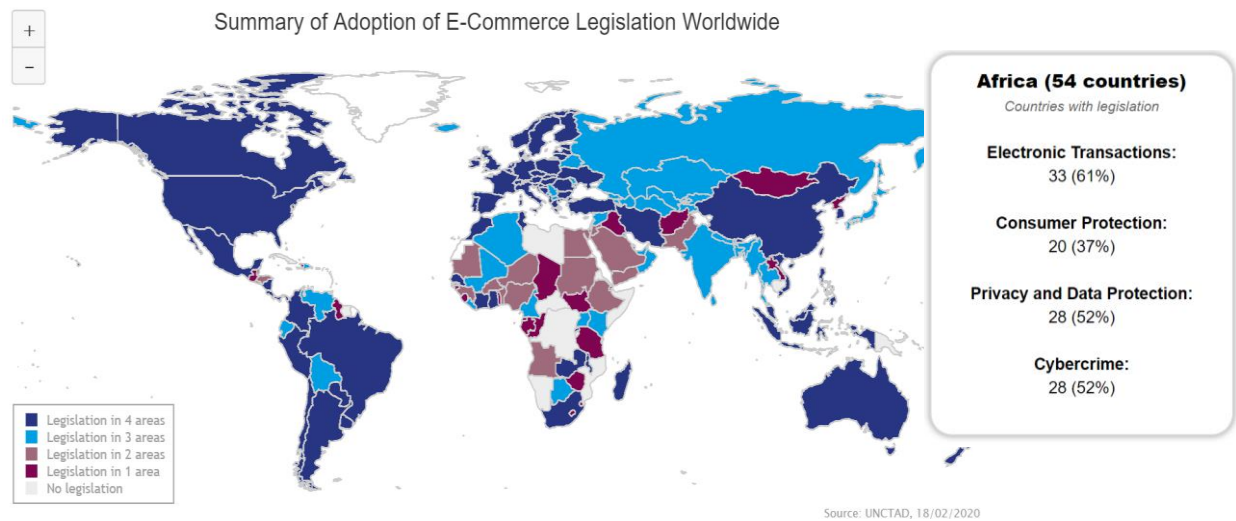


Source: Kaukab (2017) cited in Ebrahimi Darisinoei (2017).

## **Lack or inefficiency of E-commerce Regulatory Frameworks**

It is important to note that the literature on digital ecosystems highlights that well-developed legal frameworks are needed at every step of the chain, and the implications of lacking those or having inefficient ones are aggravated once e-commerce activity crosses national borders (WB, 2019a). Emphasis is given to regulations related to electronic transactions, consumer protection, privacy and data protection and cyber security as they could strengthen business and consumer trust and boost e-commerce (Ebrahimi Darisinoei, 2017; Krogman & Khumalo; 2016). UNCTAD tracks the state of these e-commerce legislations across its 194 member States. Figure 7 below shows the latest map of the adoption of these legislations worldwide. The African continent lags on several fronts: out of 54 African countries tracked, only 33 adopted electronic transactions regulations, 20 adopted consumer protection regulations, 28 adopted privacy and data protection and 28 adopted Cybercrime laws.

**Figure 7: Summary of Adoption of E-commerce Legislation Worldwide**



Source: UNCTAD, 18 February, 2020

**E-commerce - Associated Risks**

Adoption of e-commerce is increasingly seen as inevitable and any potential attempts of digital protectionism would mean further isolation and exclusion for the African continent in the future global digital economy (MacLeod, 2018; AU-EU DETF, 2019). At the same time, we are seeing the rising risks and disbenefits of promoting cross-border e-commerce growth. According to Bukht & Heeks (2018), those risks stem from the fact that the digital divide while being a constraint to digital economy development, ‘may also be seen as a disbenefit inherent to that development’. They add that e-commerce can be ‘technologically biased’, favouring those who are already digitally skilled over unskilled labour, thus increase digital inequalities. These fears stem from how advances in 3D printing and Artificial Intelligence (AI), are at odds with the past incentives to invest in developing countries with cheap labour, which was at the heart of the export-led

industrialisation strategy that proved successful in Emerging Economies (MacLeod, 2018).

Worries also stem from the clear risk of concentration of economic power in the digital platform market which already represents an anti-competitive environment for developing countries. Data ownership, access to critical source codes and intellectual property rights are all areas where Africa and most developing countries will be the newcomers and where digital Multinational Enterprises (MNEs) are becoming monopolies (UNECA, & A/. 2017). As e-commerce grows, developed countries are ramping up the pressure on others to bring those issues to global negotiation tables whether in Regional Trade Agreements or in the Multilateral sphere of the WTO (Ismail, 2020a). Platform-based MNEs have in the past decade made headlines for alleged tax avoidance and profit shifting scandals. Taxing MNEs in the digital economy has been on the agenda of developed



countries for many years before bringing developing countries into the discussion. This is despite the fact that many developing countries (including African) represent a significant market for MNE businesses and imposing VATs or taxing income could generate significant and much needed revenues (Ismail, 2020b).

In conclusion, E-commerce holds the key to boosting intra-African trade, scaling up Africa's SMEs, transcending borders and creating a place for the continent in the 4.0 industrial revolution. On the other hand, cross-border e-commerce growth in Africa faces a specific set of challenges incomparable to most other countries: while it

can pull Africa out from its inherited digital and industrial disadvantage, its growth can generate disbenefits that can further widen the inequalities. But e-commerce is a growing reality and well-designed policy responses, that address challenges across the different phases of the new cross-border e-commerce chain, are necessary to minimize risks while reaping the fruits of promising technologies. The current AfCFTA negotiations represent an opportunity to scale policies at the regional level in harmony with the African integration vision and objectives and foster coordination and leverage benefits at the continent level.

## SECTION 2

# AfCFTA: Leveraging E-commerce for Intra-African trade and Development

The AfCFTA agreement did not envisage any negotiations or inclusion of e-commerce or digital trade provisions at the launch of negotiations in 2015. The decision to embark on phase 3 negotiations for an e-commerce protocol (right after the accomplishment of phase 2) was decided at the 33<sup>rd</sup> AU Assembly Ordinary Session in February 2020. This Chapter explores the journey that led to e-commerce being included in the AfCFTA negotiations, including the AU Strategic Framework for Development (Agenda 2063) announced in 2013 and the later developed draft AU strategy for Digital Transformation (SDT) 2020-2030.

## 2.1 E-commerce and AfCFTA: Building Momentum under AU

### The development link between AU Agenda 2063 and AfCFTA

Even though it took almost 5 years to bring e-commerce to the AfCFTA negotiating table, AfCFTA and e-commerce were clearly intertwined under the AU Agenda 2063 announced in 2013 (See Box. 2 below). AfCFTA's main objective, as per the signed agreement in 2018, is 'to establish the institutional and regulatory framework for the implementation of the African single and liberalised market for goods and services, through gradual elimination of tariffs and facilitating movement of persons' (AU, 2018).

However, the AfCFTA has overall objectives that go beyond trade liberalisation. (UNECA, OHCHR & FES, 2017). In particular, art.3.a clearly mentions that the agreement seeks to achieve the wider vision of '*An integrated, prosperous and peaceful Africa*' enshrined in Agenda 2063. Also art.3.e of the AfCFTA states that the agreement aims to "promote and attain sustainable and inclusive socio-economic development, gender equality and structural transformation of the State Parties" (AU, 2018, p.4).

In relation to Agenda 2063 formulated around two years earlier, AfCFTA's role to achieve 'an integrated, prosperous and peaceful Africa' comes under target 21 under aspiration 2: the same aspiration under which digital economy, ICT and intra-African trade intersect to realise African integration and development:

*'By 2063, the necessary infrastructure will be in place to support Africa's accelerated integration and growth, technological transformation, trade and development. This will include high-speed railway networks, roads, shipping lines, sea and air transport, as well as well-developed ICT and the digital economy. A Pan-African High-Speed Train Network will connect all the major cities/capitals of the continent, with adjacent highways and pipelines for gas, oil, water, as well as ICT Broadband cables and other infrastructure. This will be a catalyst for manufacturing, skills development, technology, research and development, integration and intra-African trade, investments and tourism'* (AU – Agenda 2063, aspiration 2.25).

## Box. 2. AU Agenda 2063

'Agenda 2063 is a shared framework for inclusive growth and sustainable development for Africa to be realized in the next fifty years. It was agreed upon by the African leaders in 2013 through the 50th Anniversary Solemn Declaration during the commemoration of the Fiftieth Anniversary of the Organization of African Unity (OAU). It builds on past and existing continental initiatives for growth and sustainable development. Those include but are not limited to: the Abuja Treaty; the African Charter on Democracy, Elections and Governance; the African Charter on Values and Principles of Public Service and Administration; Programme for Infrastructure and Development in Africa (PIDA); Comprehensive African Agricultural Development Plan (CAADP); Accelerated Industrial Development in Africa (AIDA); and so on.

It identifies 7 aspirations for the continent to be realised by 2063:

Aspiration 1: A prosperous Africa based on inclusive growth and sustainable development

Aspiration 2: An integrated continent, politically united based on the ideals of Pan Africanism and the vision of Africa's Renaissance

Aspiration 3: An Africa of good governance, democracy, respect for human rights, justice and the rule of law

Aspiration 4: A peaceful and secure Africa

Aspiration 5: An Africa with a strong cultural identity, common heritage, values and ethics

Aspiration 6: An Africa whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children

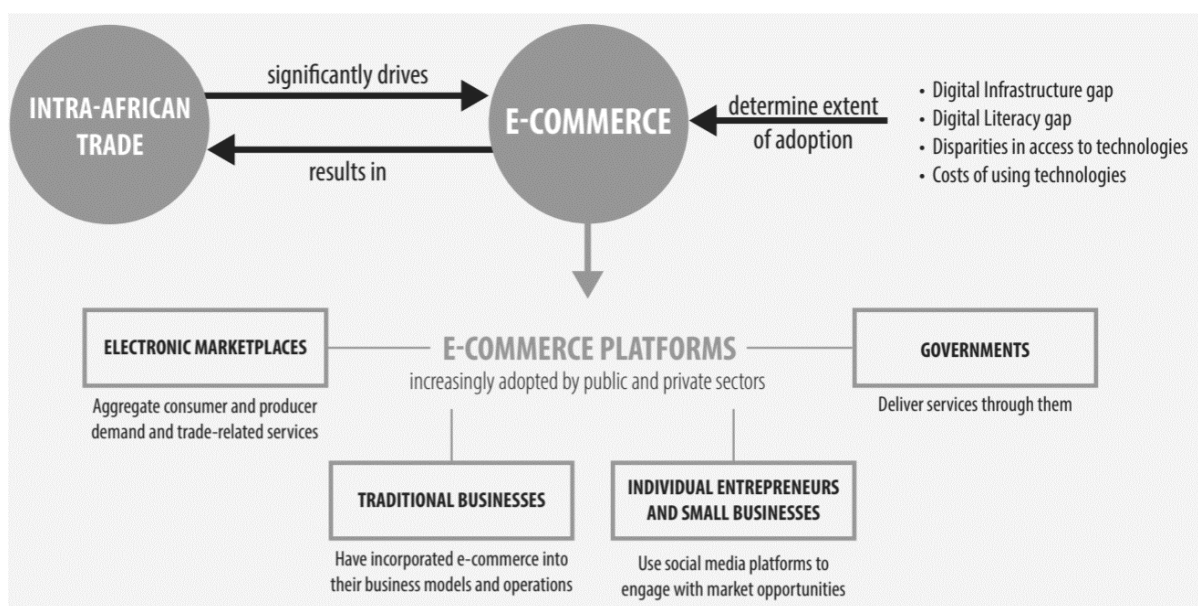
Aspiration 7: Africa as a strong, united, resilient and influential global player and partner.'

**Source:** AUC. (2015a). 01 Background Note: Agenda 2063, Addis Ababa: African Union Commission. Available at: [https://au.int/sites/default/files/documents/33126-doc-01\\_background\\_note.pdf](https://au.int/sites/default/files/documents/33126-doc-01_background_note.pdf)

The AU also decided to identify specific actions to ensure the achievement of goals by 2063. Under one of these actions named '*Connect Africa through world-class Infrastructure*', ICT, digital economy and AfCFTA intersect again to fulfil the vision of Africa as '*a continent on equal footing with the rest of the world as an information society, an integrated e-economy where every government, business and citizen has access to reliable and affordable ICT services by increasing broadband penetration... and providing venture capital to young ICT entrepreneurs and innovators (...)*'.

Figure 8 below from UNECA & Af. (2019b), visualises this relation of interdependence between, Intra-African trade, e-commerce, development and the ultimate goal of having an integrated e-economy or a regional digital economy ecosystem. Negotiating e-commerce under AfCFTA was therefore only a matter of time as economies depending on traditional sectors needed to have their worries around e-commerce growth addressed.

**Figure 8: E-commerce and Integration in a Digitizing Africa**



Source: UNECA & AI. (2019b), p. 18.

## Building Momentum for AfCFTA e-commerce Negotiations

Given this development mandate of the AfCFTA and the potential of e-commerce development across the continent, the AU organised its E-commerce Conference on 23-26 July, 2018 in Nairobi, Kenya. The conference aimed 'to provide a platform to enhance understanding of the current state of e-commerce in Africa, the challenges and opportunities building on the experience of actors on the ground as well as other regions of the world, and discuss key elements of a roadmap for the development of an African Strategy of E-commerce with a view to promoting the emergence of African e-commerce champions and ensuring that African countries maximize the opportunities of e-commerce and the digital economy' (AU, 2018b, p.4). One of the key specific objectives of the conference was to 'Explore the merits and scope of using the AfCFTA as a platform for advancing e-commerce and digital trade in Africa' (Ibid, p. 4).

According to UNECA et Al. (2019b), the AU Conference on e-commerce concluded 'that any future continental e-commerce strategy should build on RECs' initiatives and ensure coherence between national, regional and continental initiatives and that member States should endeavour to ensure that the necessary infrastructure to support e-commerce is put in place...'

A series of conferences and events then took place in different national, regional and international fora with special focus on e-commerce development acceleration in Africa. A key event was *UNCTAD's Africa e-Commerce Week* which took place for the first time in December 2018, only a few months after the AU Conference, also in Nairobi. The UNCTAD eCommerce Week of 2018 was organised in collaboration with the AU and the European Union (EU) and resulted in the *Nairobi Manifesto on the digital economy and inclusive development in Africa* which gathered recommendations mentioned in the conference. Box 3 highlights the key recommendations related to cross-border trade in the digital economy and AfCFTA's potential role.

### Box. 3. Nairobi Manifesto Recommendations on Cross-Border e-commerce and AfCFTA's potential role (Kenya, 2018)

- Under the first policy area *E-commerce readiness assessment and strategy formulation*: the Nairobi Manifesto outlined the benefit of formulating a Continental Strategy in the context of the AfCFTA as it would ‘facilitate, for example, the development of regional markets, the harmonization of legal frameworks, the interoperability of payment systems, the sharing of best practices’ (UNCTAD, 2018b, p.3). It also highlighted the importance of adopting strategies to strengthen domestic and regional digital infrastructure and capabilities through forward looking policies to support local and regional platforms to grow and cope with competition from global digital platforms and to harness data for local and regional development.
- Under policy area 4 *Trade logistics: transport and trade facilitation*, it calls for the promotions of regional integration and the consolidation of e-commerce shipment within Africa and African RECs by adopting ambitious regional trade facilitation programs that include for example: the harmonization of procedures, transit regimes, and regional trade facilitation monitoring tools (UNCTAD, 2018b).
- Under policy area 5 *Legal and regulatory frameworks* and in the context of many African countries lacking a legal framework for e-commerce, it recommends countries ‘adopt baseline legislation based on international best practice, and to ‘pursue regional and international regulatory convergence to facilitate digital single markets, aiming to achieve technology neutral and principles-based regulatory frameworks’ (Ibid, p.7).

Source: UNCTAD, 2018b.

While consensus was still building with regard to whether and how e-commerce could be integrated into the AfCFTA framework, the AU Executive Council of 7–8 February 2019 directed the AU Commission to coordinate with other relevant stakeholders for ‘the development and formulation of the *AU Digital Transformation Strategy for Africa (2020 – 2030)* to guide a common, coordinated digitalization agenda, enhance synergies and avoid duplication of effort’ (AU, 2019a). This draft Strategy plants the seed for a more fleshed-out framework for e-commerce negotiations under AfCFTA.

## 2.2 AU Draft Digital Transformation Strategy: the potential starting point for an eAfCFTA

The Strategy’s most significant specific objective is to “*Build a Digital Single Market in Africa by 2030*”. It was endorsed by the Sharm El-Sheikh Declaration<sup>10</sup> at the 3<sup>rd</sup> ordinary session of the Specialised Technical Committee on Communication and Information Technologies (STC-CICT), held from 22 to 26 October 2019. The Declaration called upon the AU Member States to ‘adopt and implement the Digital Transformation Strategy for Africa (2020- 2030) as the common digitalization agenda for the Continent upon its adoption’. The draft developed

<sup>10</sup> The full declaration is available at: <https://au.int/sites/default/files/decisions/37590->

[2019\\_sharm\\_el\\_sheikh\\_declaration\\_-\\_stc-cict-3\\_oct\\_2019\\_ver2410-10pm-1rev-2.pdf](#)

in February 2019 provides comprehensive sets of policies to support countries who did not yet adopt policies to address e-commerce challenges and opportunities. It also suggests policy reforms and actions at the national, regional and continental levels to promote convergence and regulatory cooperation. Its recommendations are based on best-practices and lessons-learned from policies adopted by the RECs as well as lessons from external regional experiences like the EU (AU, 2019a).

**Its vision reflects an ecosystem approach to digital economy, as it states:** ‘an integrated and inclusive digital society and economy in Africa that improves the quality of life of Africa’s citizens’ and its overall objective is ‘to harness digital technologies and innovation to transform Africa’s societies and economies to promote Africa’s integration, generate inclusive economic growth, stimulate job creation, erase the digital divide and eradicate poverty to secure the benefits of digital revolution for socio-economic development’ (AU, 2019a).

**It is developed based on a collaborative/multi-stakeholder approach,** involving UNECA and other initiatives at the continental level, as well as partnerships with international stakeholders to support digital transformation in Africa. The most important among these are Smart Africa<sup>11</sup>, AU-EU Digital Economy Task Force (AU-EU DETF) and the partnership with World Bank. It also involved other regional institutes and development banks and consulted with the private sector and civil society.

**And it adopts a bottom-up approach when defining policy interventions,** which is necessary to support the cross-border e-commerce process chain, as developed by ITC (2016), and is also

in-line with recommendations to ensure ‘buy-in from local stakeholders, who need to be satisfied that the overall digital ecosystem is beneficial to them’ (ITC, 2019, p.7).

The below Figure 9 visualises the ecosystem promoted by the AU-DTS, which is founded on the following (AU, 2019a):

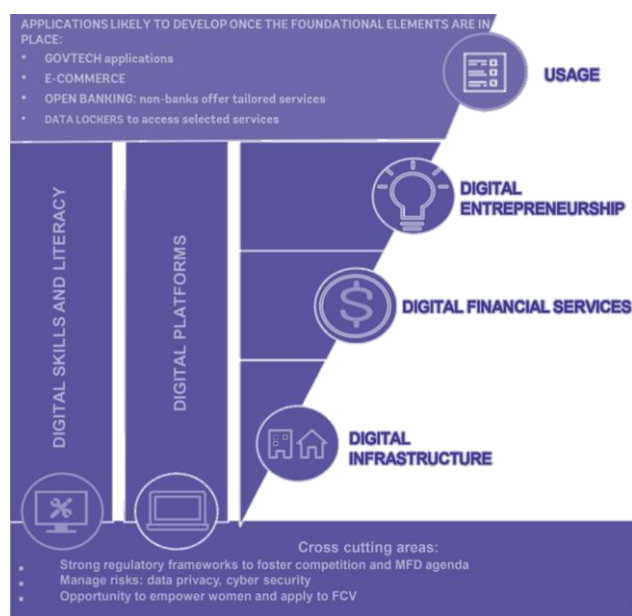
- **Two centred pillars:** Digital platforms and digital financial systems, together forming the nucleus for the spread of e-commerce start-up and businesses across Africa.
- **Four founding enablers:** Digital skills development, Digital infrastructure, Enabling entrepreneurship and innovation and an Enabling regulatory framework.
- **Cross-cutting issues:** Digital content and applications; Digital ID; Emerging Technologies; Cybersecurity, Privacy and Personal Data Protection; Research and Development.

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<sup>11</sup> Smart Africa is an alliance formed based on the Smart Africa Manifesto document adopted at The Transform Africa Summit held in Kigali, Rwanda on 28th-31st October 2013. It started by seven (7) African Heads of States then it was endorsed by all Heads of State and Government of the African Union at the

22nd Ordinary Session of the Assembly of the African Union in Addis Ababa (when, kindly give the year). Smart Africa represents a leading programme that aims to accelerate socio-economic development through ICT’s and broadband access.

## Figure 9: A bottom-up strategy for a digital economy ecosystem and e-commerce promotion



Source: WB. (2019b).

When it comes to AfCFTA's role in that vision, the strategy is to: *'Promote intra-African integration in digital trade to achieve wider participation by enterprises in national, regional and international e-commerce (especially cross-border).'*

It also highlights how AfCFTA negotiations are opportune to fostering policy harmonisation, coordination and interoperability (See box. 4 below on interoperability) at the national and regional policy levels, thus creating integrated digital ecosystem and markets (e-AfCFTA) capable of positioning the continent in the digitally networked global economy, Big Data value chains and 4<sup>th</sup> Industrial Revolution.

*'Digitalization offers new opportunities to boost the economy (through e-commerce and digital financing), cut red tape and reduce trade costs (through e-payments, e-government and the digitalization of public services), leap frog and participate in the 4th industrialization revolution'* (AU, 2019a).

### Box. 4. Interoperability, Standardisation and Regional Digital Integration

In a digitalised interconnected economy, interoperability between the different networks, devices and services will be central at the national level but particularly in the context of regional integration. Yet, interoperability is a complex concept with no agreed upon definition. According to Palfrey and Gasser cited by Kerber & Schweitzer (2017), interoperability is defined as the *'ability to transfer and render useful data and other information across systems, applications, or components'*. According to the EU Software Copyright Directive and the EU Draft Directive on Digital Goods and Services cited by the same source, Interoperability is the *'ability of two or more systems or components to perform their required functions while sharing the same hardware or software environment'*.

It is important to distinguish between horizontal and vertical interoperability. *'The degree to which complementary products (e.g., digital goods as music files or e-books) can be shared across different platforms, and complementary products of one platform can be accessed from rival platforms is said to characterize the horizontal openness of a platform. While the ability of independent firms to offer complementary products on a platform stands for its vertical openness'* (Kerber & Schweitzer, 2017). And there is a wide range of designs that exist between both extremes of no interoperability and full interoperability closer to compatibility (Ibid, 2017).

According to Azmeh & Foster (2018b), Interoperability relate to *'policies that look to provide alignment and interconnection between digital systems, data and services for broader gains'*. At the national level, interoperability in payment systems is a key example that allows smoother flows of data and facilitates transactions that are central to e-commerce. In regional settings, interoperability facilitates cross-border exchange of data, financial services and products. Azmeh & Foster (2018b) consider interoperability is *'fundamental to expanding digital markets and facilitating the growth of regional digital economies'*. They also advance that interoperability and national-regional strategic alignments allow *'attracting foreign firms, and increasing leverage vis-à-vis these firms.'*

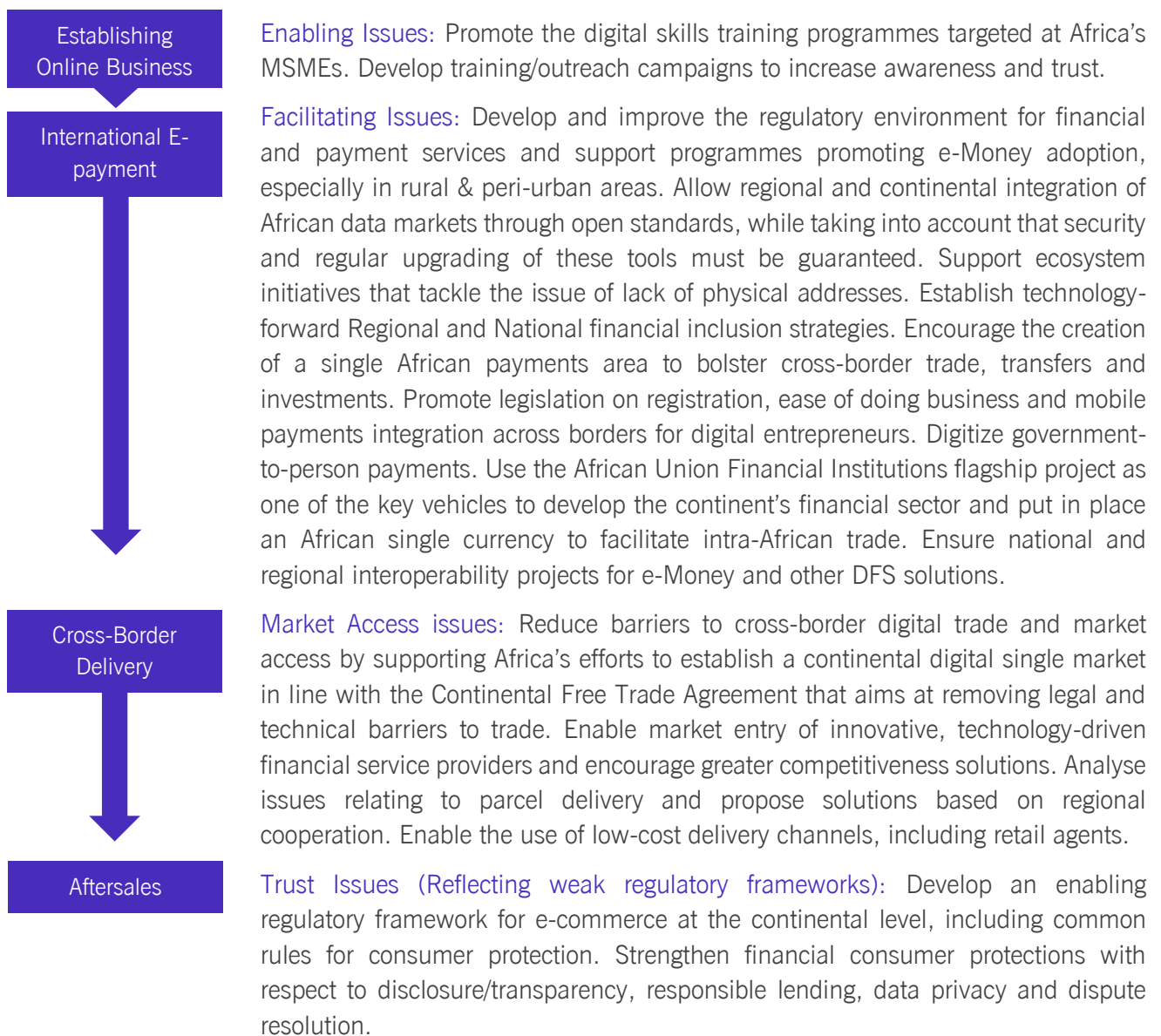
The EU Commission, consistently indicates that interoperability of the ICT sector and e-government services is a key element in its Digital Single Market Strategy, and to achieve it, the EU adopts a collective standard-setting approach.

According to the European Commission Communication on A digital Single Market Strategy for Europe (2015): 'Standardisation has an essential role to play in increasing interoperability of new technologies within the Digital Single Market. It can help steer the development of new technologies such as 5G wireless communications, digitisation of manufacturing (Industry 4.0) and construction processes, data driven services, cloud services, cybersecurity, e-health, e-transport and mobile payments.

Interoperability and standardisation policies eventually attempt to intervene into the market-driven determination of degree of interoperability which necessities trade-offs between the various ICT firms and market agents, which can come at a cost (Kerber & Schweitzer, 2017). However, the AU-EU DETF (2019) believe that 'due to its small legacy footprint, the African continent has the opportunity to create interoperable building blocks based on common standards from the start, avoiding a fragmented eServices environment.'

Sources: AU-EU DETF (2019); Azmeh & Foster (2018b); Kerber & Schweitzer (2017) and European Commission (2015).

The following are select policy objectives based on the AU-DTS for AfCFTA role in digital economy, grouped according to the cross-border e-commerce value chain phases and their corresponding challenges:





The Strategy also promotes AfCFTA as an opportunity to formulate a common position to emerging e-commerce issues at the regional and global levels. In-line with this objective, the AU urged its Member States in its 33<sup>rd</sup> Assembly decision to initiate a phase three negotiation for an e-commerce protocol, to adopt a critical approach when entering in bilateral partnerships and to ensure that Africa preserves its policy space to negotiate and implement e-commerce provisions at the continental and global level, particularly when it comes to data issues and their related products.

In conclusion, AfCFTA, e-commerce and development are interdependent, and the African Union was able to envisage this relation in the Agenda 2063 and to move towards its formalisation through the AU DTS. The AU-DTS

has an embedded vision for the role of AfCFTA as platform for consolidating e-commerce rules and regulations across the continent with the ultimate objective to establish Africa's own integrated digital market business. It also enlists a number of policy responses that future e-commerce negotiations under AfCFTA can explore. This set of policies is in-line with the requirements to build an inducive digital ecosystem for SMEs, to respond to various challenges across the cross-border e-commerce process chain, and to offer a comprehensive set to policy makers. The work that still needs to be done is to build on the existing best practice policies and strategies that were or are being adopted at the national and regional (REC) level, and also to look at how recent RTAs dealt with e-commerce provisions as well as the multilateral debates on emerging e-commerce regulation issues.

## SECTION 3

# Promoting Digital Ecosystems and E-commerce: African Best-Practices

The interest in locally promoting ICT and e-commerce is not new, especially with regards to infrastructure plans and projects, which have been deployed by different countries and regions since the 1990s. The African Information Society Initiative, launched by the ECA in 1996, played a particularly important role in promoting the adoption of national ICT infrastructure initiatives and strategies in many countries. However, it is important to note that while a lot of those strategies do not specifically address e-commerce, they encapsulate other areas now considered the building blocks of a digital economy ecosystem.

As E-commerce booms in Africa, the Africa Regional Economic Communities (RECs) as well

as individual countries across the continent are increasingly adopting strategies, policies and legislations to promote regulate and maximize the benefits of e-commerce. This chapter aims to highlight some best practices adopted at the REC and national levels that can inspire AfCFTA e-commerce protocol discussions.

## 3.1 RECs: Promotion of E-commerce Businesses Regional Scale-Up and Interoperability

**Table 2: E-commerce Strategies, Instruments and Initiatives, in Selected African RECs**

REGIONAL GROUP	REGIONAL E-COMMERCE STRATEGY?	REGIONAL LEGISLATIONS/ REGULATIONS	OTHER E-COMMERCE RELATED TOOLS/INSTRUMENTS
COMESA	Yes (e-legislation, e-trade, e-logistics)	Proposed e-legislation Digital signatures etc. Electronic transactions act, Computer misuse Act, Cyber security Act,	Regional payment and settlement system (REPSS)
EAC	No	<ul style="list-style-type: none"> <li>• Framework for Cyberlaws 2010</li> <li>• Electronic transaction bill 2014</li> </ul>	Operational <ul style="list-style-type: none"> <li>• Website for reporting and resolving non-tariff barriers</li> <li>• Biometric passport</li> <li>• East African Payment System</li> </ul> Proposed <ul style="list-style-type: none"> <li>• East Africa Single Customs Territory</li> <li>• Trade information portals</li> </ul>

ECOWAS	No	Supplementary Acts <ul style="list-style-type: none"> <li>• Harmonization of policies and the regulatory framework for the ICT sector (2007)</li> <li>• Access and interconnection for ICT Sector networks and services (2007)</li> <li>• Legal regime applicable to network operators and service providers (2007)</li> <li>• Universal access/service (2007)</li> <li>• Personal data protection (2010)</li> <li>• Electronic transaction (2010)</li> <li>• Fighting cybercrime (2011)</li> </ul>	Operational <ul style="list-style-type: none"> <li>• Biometric passport</li> </ul> Proposed <ul style="list-style-type: none"> <li>• ECOWAS postal service master plan</li> <li>• ECOWAS customs code</li> <li>• Customs interconnectivity</li> <li>• Digital single windows</li> <li>• E-certificate ECOWAS rules of origin</li> <li>• Joint border posts</li> </ul>
SADC	Yes 2010 ICT development strategy and e-SADC strategy framework	Developed <ul style="list-style-type: none"> <li>• E-commerce/e-transaction model law, data protection model law and the cybercrime model law</li> </ul>	Operational <ul style="list-style-type: none"> <li>• SADC integrated regional electronic settlement system</li> </ul>

Source: UNECA et Al. 2019, p. 233.

Not all RECs have developed specific digitalisation and e-commerce strategies encompassing multiple tools, policies and harmonisation. For example, ECOWAS and EAC have not developed specific e-commerce strategies, but have worked on coordinating efforts and on promoting the adoption of key e-commerce legislations on cybersecurity, consumer protections, etc. On the other hand, COMESA and SADC are in the frontline when it comes to elaborating comprehensive strategies (See Table 2. Above).

## COMESA

Significantly the theme for the Common Market for Eastern and Southern Africa (COMESA) for 2018/19 was declared “COMESA: Towards Digital Economic Integration”. COMESA is implementing the Digital Free Trade Area (DFTA) concept and is aiming to empower traders to engage in cross-border trade using ICT to minimise physical barriers and providing them with the necessary digital tools for the enhancement of internal and global trade (Hope, 2020). That said, COMESA’s DFTA can be considered the closest amongst the RECs experiences to what the AU DTS has envisaged for AfCFTA to promote intra-regional and cross-

border e-commerce. ‘If e-commerce is to be negotiated at the continental level, COMESA’s steps towards developing as a digital free trade area will be important building blocks for a continental free trade e-commerce agenda’ (Hope, 2018, p.9).

COMESA’s DFTA concept comprises three trusts, namely (UNECA et Al., 2019a; Hope, 2018):

**e-Trade:** a platform for online trade, an e-payment gateway and mobile apps for small-scale cross-border traders.

**e-Logistics:** the use of ICT to improve logistics.

**e-Legislation:** legislation which allows countries in the region to carry out e-transactions and e-payments. This means ensuring the regulatory environment supports paperless trading and e-signatures, but also that the government itself is digital, making trade laws, procedures and regulations governing trade available online.

Hope (2020) believes that COMESA’s DFTA strategy is an example for addressing and boosting e-commerce and digital trade facilitation issues, thus enabling the sale of goods cross borders by SMEs e-commerce tools. She finds the DFTA similar in many ways to the digital free trade

zone of Malaysia launched in 2017, especially when it comes to its e-services component. The Malaysian e-services platform is also designed to connect to other national (or potentially, regional) e-services platforms in the future, in particular, revenue and customs authorities and other organisations such as chambers of commerce that often issue certificates of origin (Hope, 2020). This interoperability feature, with similar systems in other countries and regions, should also be sought by COMESA when establishing DFTA to ensure COMESA will be able to better connect with foreign trading partners and with the African continent under the AfCFTA agreement in the context of growing digital economy (UNECA et Al. 2019a; Hope, 2020)

COMESA uses an approved multilateral netting system that realises interoperability between Central Banks and Commercial Banks in the regional block. This system is called the Regional Payment and Settlement System (REPSS). The aims of the REPSS netting system are to be compliant with international best practices, to provide efficient centralized environment for intra-regional payments and to achieve finality and irrevocability in the payments/settlements environment. The REPSS also helps the Central Bank and commercial banks manage liquidity and offers the choice of payment in either USD or EUR across COMESA countries. The common

clearing house is in Zimbabwe, and the Bank of Mauritius is the settlement bank responsible for debiting and crediting the accounts of the participating central banks on its books. Any payments made between participating countries are cleared daily on a net basis. Cenfri (2018) has reported that the drawbacks of the REPSS system are that it is expensive and takes longer to perform transactions. For that reason, REPSS is found to be used infrequently and primarily for wholesale or trade transactions.

## SADC

The vision of the Southern Africa Development Community (SADC) E-commerce Strategy, adopted in 2012, is to enhance B2B trade between countries and promote B2C e-commerce inside countries. It consists of an action plan of 4 pillars. The pillars encompass 4 policy areas identified by the AU DTS as foundational for a digital eco-system: enabling e-commerce environment; developing capacity for e-commerce in each member state; strengthening e-commerce regional and sub-regional infrastructure and establishing an institutional and governance structure to undertake capacity building, support data collection and setup a data base (Tralac, 2019). Table 3 below mentions more examples of activities set by SADC's strategy.

**Table 3: Summary of the SADC E-commerce Strategy Framework**

PILLAR	EXAMPLES OF PLANNED ACTIVITIES
Pillar 1: Enable e-commerce environment	<ul style="list-style-type: none"> <li>• Develop country specific e-commerce strategies.</li> <li>• Harmonize cyber legislation through the identification of best practice legislation in the region.</li> <li>• Set up of a regional label to increase trust and confidence in websites used for e-commerce.</li> </ul>
Pillar 2: Develop capacity for e-commerce in each member State	<ul style="list-style-type: none"> <li>• Engage with various stakeholders including legislators, the financial sector, logistics actors, SMEs, IT companies and end users, including knowledge-sharing platforms that would allow member States to benefit from each other's experiences.</li> <li>• Conduct human development activities.</li> </ul>

Pillar 3: Strengthen e-commerce subregional and national infrastructure	<ul style="list-style-type: none"> <li>• Promote subregional broadband backbones and Internet access points.</li> <li>• Build cost-effective, affordable and secured ICT infrastructure and broadband network.</li> <li>• Deploy ICT infrastructure beyond major cities and towns.</li> <li>• Produce a PPP protocol to support local and external investment in ICT infrastructure.</li> <li>• Elaborate a universal access strategy to connect those who are unconnected.</li> <li>• Establish a regional electronic payment gateway and associated online and mobile payment banking services.</li> </ul>
Pillar 4: Institutionalize a framework to implement, evolve and govern the current strategy at regional level	<ul style="list-style-type: none"> <li>• Establish a SADC observatory for e-commerce with representatives from the various member States to undertake capacity building, support data collection and set up a database.</li> <li>• Establish a structure that would oversee regional dispute resolution relating to e-commerce.</li> </ul>

Source: UNECA et Al. 2019a, p. 232.

It is worth noting that SADC aims to create a DFTA, a relatively more advanced objective requiring the implementation of advanced technological platforms and systems. Given that SADC has nine country members in common with COMESA, it could be encouraged to leverage the DFTA implementation by those common members and elaborate a compatible vision or strategy which would also facilitates eAfCTA's mission to harmonize the adopted regulations across countries and regions of the continent (Hope, 2018).

According to Cenfri (2018), SADC is also taking steps towards advancing payments integration with its Payment Integrations System project that was approved in May 2009. The System aims to be interoperable and to bring member countries and their banks together on a single platform to facilitate cross-border payments. The project created the SADC Real Time Gross Settlement System (RTGS), which became operational in July 2013 in four countries of the Common Monetary Area (CMA)<sup>12</sup>. Banks within SADC can settle payments between them in real time through the RTGS. Cenfri (2018) found that there has been a significant increase in RTGS usage and in the value and volume of the transactions processed since its adoption in 2013. According to Cenfri (2018) approximately 500 transactions

(valued at 813 million USD) were processed in July 2013. This grew to 26,845 transactions (valued at 8.1 billion USD) processed in February 2018 – a tenfold increase in the space of 5 years. Thus, it can be said that SADC RTGS has played an important role in promoting regional financial integration in a short time.

SADC is also seeking to facilitate retail cross-border payments using an automated regional clearing house (RCH) for low-value payments, such as card and ATM payments, to make cross-border retail payments within SADC less expensive and faster. To realise this objective, SADC member country governments and financial institutions have to consider joint ownership of costly infrastructure and shared processing platforms and the adoption of widely accepted international standards. In addition, efforts at the government level require moving to paperless processes and enhancing consumer protection and cyber security legislations at the national level with a view to ensuring harmonisation between the various cross-border legislations and rules (Cenfri, 2018).

## EAC

According to UNECA & Al. (2019a), 'the (East African Community) EAC is the most advanced

<sup>12</sup> The CMA consists of Lesotho, Namibia, South Africa and Swaziland.

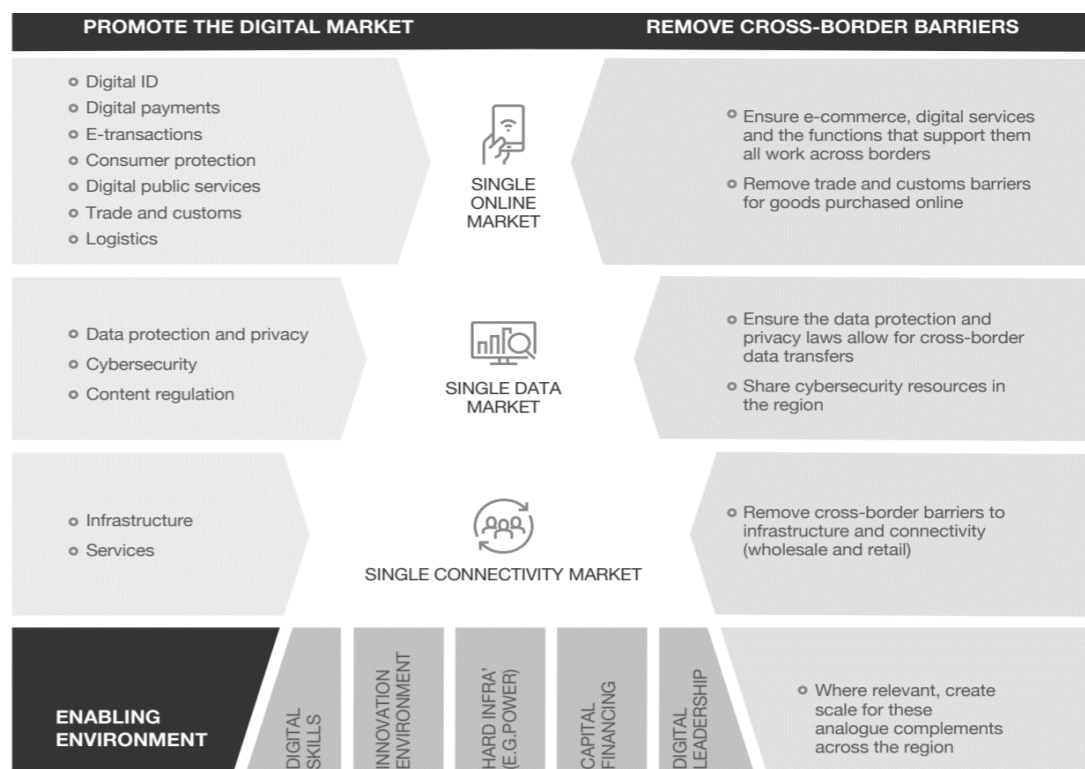
REC in regional integration, establishing a common market in January 2010 that provides for the free movement of goods, services, capital, labour and persons, plus rights of establishment and residence'. EAC has been making progress in terms of adopting ICT applications in trade and facilitating e-commerce, for example by advancing on common documentation, creating a single window for intra-EAC customs ports and developing cross-border mobile telephone services (including for cross-border financial transactions). The regional block also has an electronic transaction bill, developed in 2014, and has adopted a set of e-transaction policy recommendations for EAC countries to promote the development of the regulatory framework in the region.

In 2019, the World Bank published a report on establishing a Single Digital Market (SDM) in East Africa. According to the report, establishing an SDM requires a three-step approach: establishing

a single connectivity market, then a single data market, and finally a single online market. Figure 10 shows this bottom-up approach and outlines the set of policies corresponding to each phase, the objectives of which are as follows:

- A single connectivity market will remove barriers to regional telecom infrastructure and services to encourage investment.
- A single data market will support regional deployment of data infrastructure and enable secure exchange, storage, and processing of data across borders.
- A single online market will allow firms, governments, and citizens to access and deliver both public and private services online; undertake e-commerce transactions; and access digital content and information seamlessly from anywhere in the region.

**Figure 10: Overview of SDM Vision and Strategic Framework for EAC**



Source: WB (2018), p.7

It is not clear from the WB 2019c report whether this vision is in progress or stalling. The report, however, remains an interesting source to African policy makers when preparing for eAfCFTA negotiations. especially since the vision is compatible with that of the AU DTS to establish a continental DSM and is inspired by international best-practices on developing a DSM strategy and its implementation. Finally, it is worth noting that apart from Tanzania, the remaining EAC countries are also member states of the COMESA Regional Community.

While the fact that SADC and EAC sharing members with COMESA can help with facilitating digital spillover between them, it makes trade-offs, negotiations and harmonisation of those regions' regulatory frameworks rather complex, especially when taking negotiations to the continental level. Here the role of the COMESA-EAC-SADC Tripartite free trade area (TFTA), signed on 10 June 2015 by twenty-four of the twenty-seven member states, can be significant by beginning discussions on a shared vision towards harmonising the various policies and legislations across the regions and eventually identifying a common position to continental e-commerce negotiations under AfCFTA. However, the agreement requires 14 ratifications to enter into force and, as of February 2020, only eight countries have ratified the Agreement: Burundi, Kenya, Egypt, Rwanda, Uganda, South Africa, Namibia and Botswana.<sup>13</sup>

## ECOWAS

As previously mentioned not all RECs developed a comprehensive strategy with the aim of promoting e-commerce growth. The Economic Community of West African States (ECOWAS) is an example where ICT was recognised as a priority since the beginning of its establishment

and the regional block has been working on advancing the sector and its application in favour of the block's integration. For example, the block has adopted various complementary acts and legislations, including key legislations related to e-commerce: act on harmonising the regulatory frameworks of the ICT sectors (2007); act on Personal data protection (2010); act on electronic transactions (2010) and act on fighting cybercrime (2011) (UNECA & *Al.* 2019a).

The Western African Telecommunications Regulators Assembly (WATRA) has allowed institutionalising the block's endeavours to harmonise policies and regulations targeting the ICT and financial sectors amongst others.<sup>14</sup>

## 3.2 E-commerce Strategies and Policies Adopted Recently by African Countries: Cases of Kenya and Egypt:

As covered in Chapter One, the continent is showing progress and growing potential for further adoption of e-commerce. UNCTAD B2C E-commerce Index of 2018 had a special focus on Africa as it found that 'since 2014, Sub-Saharan Africa has surpassed world growth on three of the indicators used in the index' (UNCTAD, 2018a, p. 12): share of individuals using the Internet, share of individuals with a mobile account and share of secure internet servers (table 4). Several countries across the continent are success stories in terms of promoting digital ecosystems that enable digital entrepreneurship to grow. Table 4 below shows how the top 10 African countries in the UNCTAD B2C E-commerce Index ranked in

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<sup>13</sup> For more information on TFTA, visit: <https://www.tralac.org/resources/by-region/comesa-eac-sadc-tripartite-fta.html>

<sup>14</sup> For more information on COMESA, visit <https://www.sigtel.ecowas.int/about/about-sigpost/>

2018 and the evolution of their score compared to the previous index conducted for 2016-2017.

**Table 4: Top 10 African countries in the UNCTAD B2C E-commerce Index, 2018**

	Economy	Share of individuals using the Internet (2017 or latest)	Share of individuals with an account (15+, 2017 or latest)	Secure Internet servers (normalized) (2017)	UPU postal reliability score (2017 or latest)	Index value (2017 data)	Index value change (2016-17 data)	World Rank
1	Mauritius	55	90	56	66	66.9	-7.2	55
2	Nigeria	42	40	52	85	54.7	5.5	75
3	South Africa	59	69	83	0	52.9	-1.9	77
4	Tunisia	56	37	51	63	51.7	2.1	79
5	Morocco	62	29	54	59	50.9	NA	81
6	Ghana	39	58	45	53	48.8	7.6	85
7	Kenya	39	82	37	27	46.2	3.7	89
8	Uganda	17	59	31	58	41.5	-3.2	99
9	Botswana	47	51	41	26	41.4	0.1	100
10	Cameroon	23	35	25	78	40.3	3.6	101

Source: UNCTAD, 2018a, p. 13.

In addition, more African LDCs are undertaking Rapid eTrade Readiness Assessments with UNCTAD to identify specific national challenges and develop national strategies and policies to address them. As of April 2020, UNCTAD has undertaken eTrade Rapid assessments for 10 African countries: Burkina Faso, Liberia, Madagascar, Senegal, Togo, Uganda, Zambia, Lesotho, Malawi and Mali<sup>15</sup>. However, according to ITC (2015), 'many African countries have particular strengths that are not clearly reflected in this index'. This study identified Kenya and Egypt as two case studies who have recently developed strategies targeting digital economy and e-commerce promotion.

## Kenya

A good example of the beneficial growth of digital ecosystems can be seen in Kenya. The country has a vibrant ICT sector and made remarkable achievements when it comes to developing mobile payment solutions such as M-PESA and others. (ITC, 2015). According to the Kenya

National Economic Survey report of 2019 cited in Communications Authority of Kenya (2019), the value of the ICT sector grew by 12.9% from Ksh. 345.6 billion in 2017 to Ksh 390.2 billion in 2018. According to CA of Kenya (2019), the penetration rates of the mobile telephony services as measured by subscriptions per 100 inhabitants surpassed the 100 percent mark to stand at 106.2 percent as at December 2018, meaning that each inhabitant has 1.06 subscriptions.

According to Insights2impact data portal and focus note titled *Africa's digital platforms and financial services: An eight-country overview (2019)*, consumers in Kenya access platforms predominantly through web-browsers and smartphone apps. The same source estimates that the most prevalent platform payment acceptance mechanisms for providers are bank accounts (58 per cent )and for consumers are bank cards (83 per cent). As for mobile money, it comes in second place as a payment method accepted for both providers (42 per cent) and

<sup>15</sup> According to UNCTAD Rapid eTrade Readiness Assessment of Least Developed Countries (eT Ready) webpage:

<https://unctad.org/en/Pages/Publications/E-Trade-Readiness-Assessment.aspx>



consumers (57 per cent). Moreover, 73 per cent of the adult population have access to mobile money compared to 57 percent with access to bank accounts.

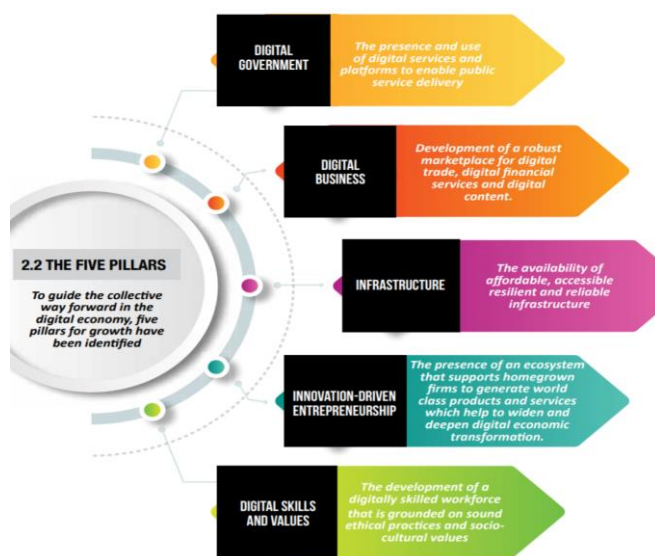
According to Foster & Azmeh (2019), mobile money expansion allowed the e-commerce sector to grow rapidly with an increasing number of local and foreign firms. As of September 2018, Insights2impact (2019) counts 62 active digital platforms in Kenya, serving 49.6 million people. It also found that 50 per cent of the platforms are homegrown. Kenyan platforms operate across nine sectors of which the most common are transportation, retail and wholesale. Several platforms have already begun to offer insurance, digital wallets and credit as additional financial services. 'This has led to rich ecosystems of financial services revolving around popular mobile money systems. Owing to the local nature of these ecosystem actors, a number of start-ups have focused on low-income groups such as savings groups and farmers' (Azmeh & Foster, 2018a, p.19).

In terms of E-commerce governance and related policies, Kenya enjoys a relatively advanced regulatory framework, potentially a benefit of being a member of both EAC and COMESA (Foster & Azmeh 2019). Kenya's ICT sector is governed by a broad range of rules and an independent regulator, generally following international norms (Foster & Azmeh, 2019; CA of Kenya, 2019). The regulator ensures that while internet is dominated by mobile operators, some levels of competition are possible, which allowed improving prices and quality (Foster & Azmeh, 2019). Kenya also has been very active recently in terms of adopting e-commerce legislations. According to UNCTAD, Kenya had an Information and Communication Act that includes provisions on e-transactions since 2009 (amended in 2013)

and Consumer protection regulations since 2010. Kenya has completed its 4 set of national e-commerce regulations by adopting the computer misuse and cybercrimes Act in 2018 and the Data Protection Act in November 2019.<sup>16</sup> The Kenyan Data Protection Act follows greatly the example and principles of the EU General Data Protection Regulation.

Until the adoption of the Digital Economy Blueprint in 2019, there was no overarching policy or strategic path for e-commerce growth in Kenya, but rather individual rules and policies (CA Kenya, 2019; Foster & Azmeh 2019). Kenya Digital Economy Blueprint provides a comprehensive Five Pillars policy framework focusing on enabling and facilitating issues for the development and growth of the digital economy ecosystem. Those are visualised in Figure 11 below.

**Figure 11: The Five Pillars of Kenya's Digital Economy Blueprint**



Source: CA of Kenya (2019), Kenya Digital Economy Blueprint: Powering Kenya's Transformation

<sup>16</sup> The four legislations' are documented by UNCTAD at: [https://unctad.org/en/Pages/DTL/STI and ICTs/ICT4D-Legislation/CountryDetail.aspx?country=ke](https://unctad.org/en/Pages/DTL/STI%20and%20ICTs/ICT4D-Legislation/CountryDetail.aspx?country=ke)

A particularly interesting point to raise here is Kenya's approach to regulating data. As per the digital economy blueprint, the Government of Kenya is currently developing the Konza National Data Centre and Smart City Facilities at Konza Technopolis saying that local data centres can have immediate benefits like 'reliability and reduced costs, a cloud-based infrastructure for flexibility and efficiencies and a unified communications and collaboration system for daily operations'. At the same time, it also stresses the importance of Open Data. 'Open Data is a standard that should be encouraged within the digital economy... Data platforms should be

open, secure and respect all privacy regulations to make it possible for citizens and innovators to work with the data and deliver additional value' (CA of Kenya, 2019, p. 67).

Another closely related element that appears in the cross-cutting section of Kenya's Digital Economy Blueprint is the regulatory approach outlined by the Government to address emerging trends in the digital economy, such as, Artificial Intelligence, Internet of Things and Blockchain Technology. Box 5 below includes an extract from Kenya's Digital Economy Blueprint document outlining this regulatory approach.

### **Box 5. Kenya's Regulatory Approach to Emerging Trends in Digital Economy**

General methodology for governments in addressing emerging technologies will consider how to best protect citizens, ensure fair markets and enforce regulations while allowing new technologies and business to thrive. This requires considering the implementation of:

- i. Adaptive regulation. Shift from "regulate and forget" to a responsive, interactive approach.
- ii. Regulatory sandboxes. Prototype and test new approaches by creating sandboxes and accelerators.
- iii. Outcome-based regulation. Focus on results and performance rather than form.
- iv. Risk-weighted regulation. Move from one-size fits-all regulation to a data-driven, segmented approach.
- v. Collaborative regulation. Align regulation nationally and internationally by engaging a broader set of players across the ecosystem.

Source: Extract from Kenya's Digital Economy Blueprint

## **Egypt**

With a large population of over 90 million, Egypt is one of the African countries that enjoys a lot of potential for e-commerce growth, especially since the country has been investing in ICT infrastructure since the 1980s. Over the past three decades, Egypt has developed a strong liberalised ITC sector and ITC enabled services industry, both able to support one of the largest prospective markets of online shoppers in Africa (UNCTAD, 2017b). Egypt also enjoys good infrastructure of data centres and has maintained

its position as one of the top global destinations for contact centre and business process outsourcing (BPO) services (Ibid). Egypt is ranked 14th worldwide in the 2019 Global Services Location Index by KEARNEY<sup>17</sup>. According to KEARNEY 'Technology parks have increasingly been created outside Cairo in cities such as Assiut, Alexandria, Sadat City, and Beni Suef. This expansion has benefited the ecosystem'. It also benefited from Egypt's talent pool of skilled engineers in ICT, as well as youth and workers who are university-educated, multilingual and

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<sup>17</sup> For full report and ranking, visit: <https://www.kearney.com/digital->

[transformation/gsli?utm\\_source=PRNewswire&utm\\_medium=pr&utm\\_term=DT&utm\\_campaign=2019GSLI&utm\\_content=](https://www.kearney.com/digital-transformation/gsli?utm_source=PRNewswire&utm_medium=pr&utm_term=DT&utm_campaign=2019GSLI&utm_content=)

well trained in digital business skills (Ibid, 2017b).

Egypt, however, was ranked 113th in the UNCTAD B2C index for 2018, which reflects how and the country's potential has not been tapped with barriers still limiting B2C ecommerce. Those barriers have less to do with enabling issues represented in ICT knowledge, skills and infrastructure, and more to do with less developed e-payment solutions and lack of consumer awareness and consumer preferences for face-to-face and cash-based transactions (UNCTAD, 2017b). It is also due to weak infrastructure for online payments and relatively high postal delivery costs (Stuart, 2019; UNCTAD, 2017). On the positive side, Egypt was one of the top three destinations (the two others are Nigeria and Kenya) for funding in fintech start-ups (Stuart, 2019). While most businesses are small and many are active in the informal sector, a mature retail market and various nationwide retail brands exist, primarily in major cities.

In terms of e-commerce related legislations; e-signatures are recognised by Law No. 15 of the year 2004. Egypt also updated its consumer protection regime by issuing the new Consumer Protection Law (Law 181 for the year 2018) and is in the process of ratifying a new data protection law approved by the cabinet in September 2018 (Stuart, 2019). According to PricewaterhouseCoopers (PwC) Middle East (2019), similar to the Kenyan Data Protection Act, the draft data protection law of Egypt is modelled largely on the EU General Data Protection Regulation (GDPR) and establishes the "Personal Data Protection Centre" (PDPC) to regulate data protection, enforce compliance and receive and study complaints. PwC Middle East (2019) considers EU GDPR as 'the leading data protection regulatory framework globally'. Other than revisiting its relevant regulations and

working on adopting new and more relevant ones, Egypt has also been promoting the development of infrastructure for digital payments and boosting mobile money through a new set of regulations from the Central Bank of Egypt since 2016 and the creation of a National Payments Council since 2017 (Stuart, 2019).

Egypt's case highlights the fact that the digital economy has moved beyond traditional ICT sectors, spreading to other sectors and transforming their business ecosystems. Egypt has been creating an ICT sector able to supply digital businesses and transactions, now it's unlocking demand from its own consumers. It is this consumer demand side that needed further attention and reform. According to a statistical study titled *Measuring the Digital Society in Egypt: Internet at a Glance: Statistical Profile*<sup>18</sup>, published in 2015 by the Ministry of Communications and Information Technology of Egypt, among the main barriers to engaging in e-commerce activities identified by households are the lack of knowledge about e-commerce (65%), followed by the non-recognition of electronic contracts by formal parties (25.5%). According to the study, during 2012, almost 53% of business enterprises that didn't use e-commerce claimed that they prefer direct transaction (face to face), while 40.3% claimed there was no need for e-purchase and e-sales transactions.

Realising that e-commerce represents the future of trade and the need to induce transformations beyond its ICT sector, Egypt has developed its own e-commerce strategy in 2017 in cooperation with the UNCTAD. The Strategy's vision is that 'by 2020, Egypt fully leverages the potential of e-commerce and the talents of her people to boost domestic trade, regional and international exports, to provide a channel for consumers and businesses to buy and sell, and to create jobs and innovation in the e-commerce ecosystem,

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<sup>18</sup> The study is available at this link on the website of the Ministry of Communications and Information Technology:

[http://www.mcit.gov.eg/Upcont/Documents/Publications\\_12720\\_15000\\_Measuring\\_the\\_Digital\\_Society\\_in\\_Egypt\\_12\\_.pdf](http://www.mcit.gov.eg/Upcont/Documents/Publications_12720_15000_Measuring_the_Digital_Society_in_Egypt_12_.pdf)

producing e-commerce products, services and applications' (UNCTAD, 2017b, p. 34). The core of Egypt's strategy is to raise consumer awareness for the benefits of e-commerce and mobilise the strength of its ICT sector to generate demand for e-commerce sector growth among SMEs.

In the case of Egypt promoting e-commerce is key not only to promoting exports but also to 'help in eliminating excess supplier production and in ensuring that supply is driven by demand. Through its marketing channel capacity to trigger product or service demand generation in the local, regional and global markets, e-commerce can help fuel export demand. This, in turn, helps drive supply, increased efficiencies and productive capacity to meet this demand. As suppliers expand their productive capacity and increase profits, they are able to invest and strengthen their production capacities, including through technological upgrading, to better meet global demand' (Ibid, p. 36). See Figure 12 below explaining the e-commerce supported demand-driven logic behind Egypt's Strategy.

**Figure 12: E-commerce-supported demand generation logic**



Source: UNCTAD, 2017b, p.36.

In conclusion, this chapter focused on strategies, policies and regulations that were recently adopted or explored at the regional level (as

represented by the RECs) as well as at the country level (by examining Egypt and Kenya). COMESA's DFTA, SADC's E-Commerce Strategy and the Single Digital Market strategy considered by the EAC, along with the various regional payment solutions being set up to facilitate cross-border payments, all showed how promoting e-government services, cross-border e-payment facilities (while ensuring their connectivity and interoperability), are a priority when trying to boost intra-regional trade and markets' integration. This means that they should be at the top of the AfCFTA e-commerce protocol negotiations agenda. Realising interoperability requires a degree of standardization and harmonisation between the various technologies and operating systems adopted by the governments as well as between their relevant regulations, it also requires governments to agree on the level of data they are willing to share.

At the national level, the Kenya and Egypt case studies show that the situation differs from one country to another. Challenges facing e-commerce growth across the continent may be similar in many aspects but not necessarily identical. AfCFTA should be able to promote cooperation between African countries to allow knowledge and best practices transfer and to leverage one country's strengths to fill in the gaps of another. The case of Kenya and Egypt also showed that AfCFTA should promote the adoption of e-commerce relevant legislations to ensure stable growth of e-commerce inside countries and among them. Finally, Egypt's experience shows that infrastructure and access to ICT technology, while necessary, won't induce e-commerce growth unless it is accompanied by policies that create incentives for generating market demand. The lesson therefore is that, whatever policies are subject to AfCFTA e-commerce protocol, they should be examined and negotiated while taking national, regional and global considerations of both supply and demand.

## SECTION 4

# E-commerce in the WTO: Implications for Africa's Development and the AfCFTA

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In The previous chapters explored how e-commerce is impacting the future of cross-border trade and how its growth offers many development promises, but also many challenges and risks. This is especially true for Africa. The continent includes more than thirty LDCs out of a total of forty-seven globally (UNCTAD, 2019d) and it is striving to cross the digital divide separating it from not only the developed world but also the rest of the developing world. Aware of the fast spread of e-commerce and related innovations, many African countries and RECs are adopting policies and legislation to promote connectivity and e-commerce growth. However, given its global nature, e-commerce is earning an increasing attention at the international level, particularly the WTO, where e-commerce discussions started more than twenty years ago. Therefore, negotiations for an AfCFTA protocol cannot take place without taking into account the evolution of e-commerce discussions in the WTO and their implications on Africa's development process (Macleod, 2018). This chapter will outline this evolution while highlighting recent developments and the related sensitive issues at the WTO that are of relevance to AfCFTA.

## 4.1 From the Work Programme (1998) to the Joint Statement Initiative (2017)

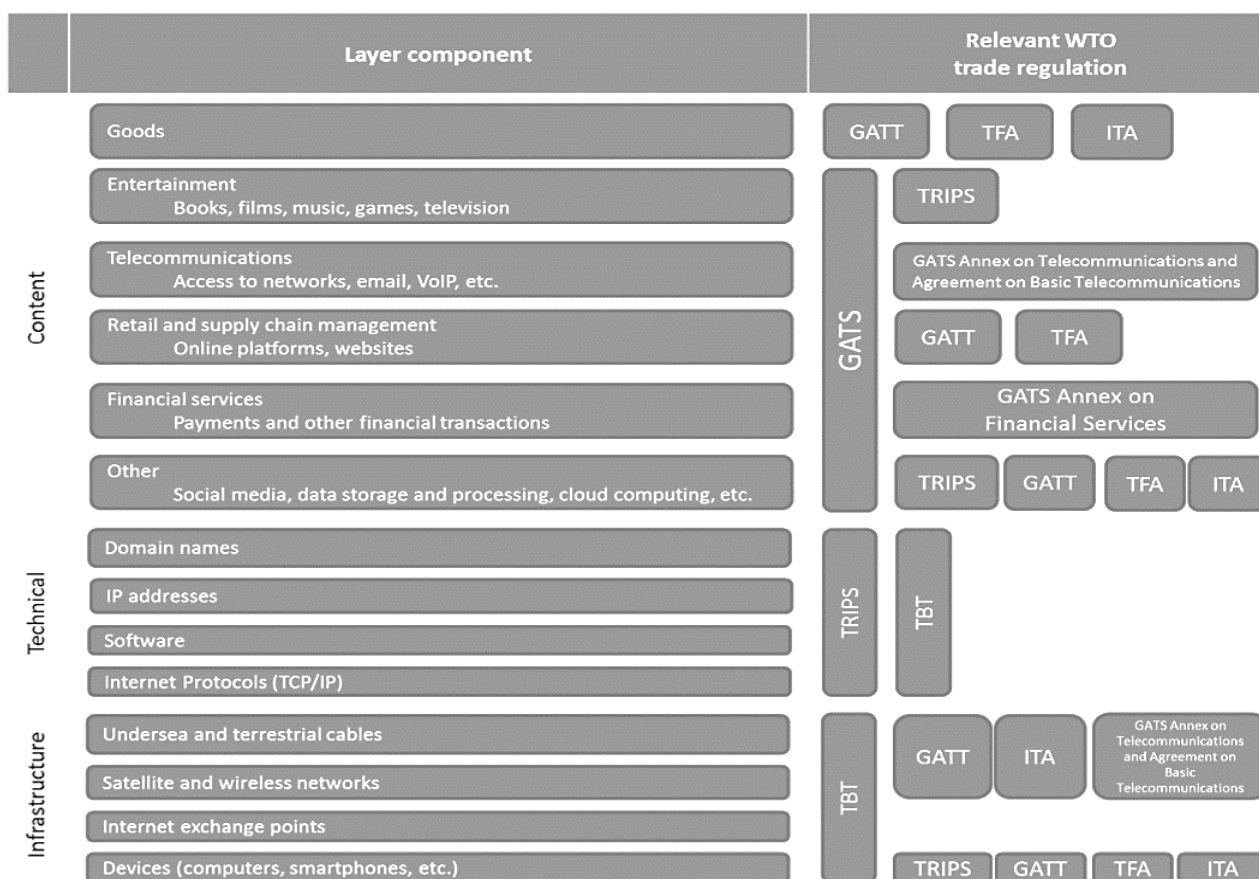
E-commerce was first recognized in the context of the WTO at the Second Ministerial Conference in May 1998 in Geneva where ministers adopted the 'Declaration on Global Electronic Commerce' calling for the establishment of 'a comprehensive work programme to examine all trade-related issues relating to global electronic commerce, including those issues identified by Members' (WTO, 1998a). The Declaration added: "the work programme will involve the relevant World Trade Organization ("WTO") bodies, take into account the economic, financial, and development needs of developing countries, and recognize that work is also being undertaken in other international fora" (Ibid). The General Council of the WTO established on the 25<sup>th</sup> of September 1998 the Work Programme on E-Commerce through decision WT/L/274. In this decision, the WTO, only for the purposes of the Work Programme, defined e-commerce 'to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means' (WTO, 1998b). As previously mentioned, this definition is broader than the one adopted by the OECD as it can cover transactions where the ordering of a good or a service took place over traditional telephone and not necessarily through internet and online network means (Ismail, 2020).

## Existing WTO rules and agreements and their relevance to E-commerce

The WTO agreements that govern today's multilateral trading system cover a broad spectrum of cross-border trade aspects. Understanding the degree of e-commerce relevance to those rules was one of the key objectives of the WTO Work Programme on E-Commerce. In Figure 13 below, López González & Ferencz (2018) provide a non-exhaustive

mapping of WTO agreements and the aspects they found most relevant across three e-commerce layers: the network infrastructure layer, the technical layer (codes that operate the network) and the content layer. This shows that some aspects of e-commerce are potentially covered under some existing WTO rules. Hence, when attempting to regulate e-commerce components at the national or regional levels or in the framework of AfCFTA negotiations, African countries will have to ensure compliance with their obligations under the relevant agreements in the WTO rules system.

**Figure 13: E-commerce components and their relevance to WTO rules and agreements**



Source: López González, J. & Ferencz, J. (2018)

The General Agreement on Trade in Services (GATS) is considered highly relevant to e-commerce. Figure 13 above shows that most of the content subject to e-commerce transactions falls within the scope of the GATS. It is distinct from the General Agreement on Tariffs and Trade (GATT) (Ismail, 2020a) as firstly, it provided the potential for “opting out” of Most Favoured Nation (MFN) treatment (wherein WTO Members could exempt themselves from obligations when drafting their respective schedules), and secondly, it uses a “positive list” approach to its schedules of commitments, coded to a classification of categories of services and modes of supply. These govern market access and national treatment obligations, irrespective of the technological means through which these are delivered. This “technological neutrality” also allows the GATS to address “digital products” such as e-books and downloadable movies and music. These are electronic and intangible products that, unlike their physical analogues, cannot be addressed by the GATT (Kende & Sen, 2019). In other words, the digitalization of the global economy also means that some products that would typically be classified as goods in their physical form can potentially be reclassified as services in their digital versions.

Commitments made for cross-border supply (Mode 1) are considered the most relevant to e-commerce, especially in the context of digital delivery. In addition, specific rules exist within the GATS legal framework for telecommunications services (the Annex on Telecommunications and the Agreement on Basic Telecommunications services) and financial services (the Annex on Financial Services).

The Information Technology Agreement (ITA) also plays a role when it comes to trade in ICT products. These products are essential as they form the infrastructure for e-commerce, such as computers and telecommunications equipment. The ITA covers MFN commitments among its participants to eliminate tariffs on certain ICT

products. It is worth noting that only a sub-set of WTO Members are participants in the ITA, unlike the other WTO agreements referred to here. While the tariff cuts under the ITA apply only to its participants, those benefits are extended to the rest of the WTO membership on an MFN basis. At the 2015 WTO Ministerial Conference, members moved to update the product coverage and classification system set by the agreement to reflect the new IT realities and goods of the digital era (e.g., new-generation semiconductors, GPS navigation equipment, etc.). This updated version is known as the ITA-II, though its participants do not include all WTO Members that are current participants in ITA-I.

The WTO Agreement on Technical Barriers to Trade (TBT) covers measures, regulations and standards applied by governments to ICT and electronic products (such as standards governing broadband networks or regulations on encryption).

The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) is also highly relevant to digital commerce; the TRIPS agreement sets out intellectual property rights protections for technologies that enable e-commerce, such as computers, software, routers, networks, switches, and user interfaces. In addition, e-commerce transactions can involve digital products with copyright-protected content that contributes to its value, like e-books.

The recent WTO Trade Facilitation Agreement (TFA), which was adopted by ministers in December 2013 and entered into force in February 2017, can also be relevant since it requires governments to implement and maintain measures facilitating import and export processes. Simplifying customs procedures to ensure they are fast, cheap and efficient are among the most classical facilitation measures in traditional trade. However, introducing technological means can increase the efficiency of such a process, for example, through electronic pre-arrival processing

or the acceptance of electronic documents by the relevant authorities.

## **The non-ending debate over the Moratorium on Electronic Transmissions**

The imposition of a temporary moratorium on customs duties for electronic transmissions was also agreed by the ministers at the Second WTO Ministerial Conference in Geneva in May 1998. This was an existing practice at the time, and it covers only the electronic transmission aspect of e-commerce, in other words, the sale and delivery of digital products (Kende & Sen, 2019). The moratorium has been extended at every subsequent WTO Ministerial Conference for an additional two years, including at the Eleventh Ministerial Conference in December 2017, though it is worth noting that the renewal of the moratorium was only agreed in the final hours of the conference. At the December 2019 meeting of the WTO General Council, members agreed to maintain the current practice of not imposing customs duties on electronic transmissions until the Twelfth Ministerial Conference scheduled to take place in June 2020 while also agreeing to discussing various relevant issues (WTO, 2019b).

In meetings of the TRIPS Council and at recent Ministerials, the moratorium has become the subject of intense debate given differing views among the membership over whether to continue the practice of biennial renewal, to end the renewal entirely, or to make the moratorium permanent. Various developing countries have noted, for example, that they would like to better understand the impact of the moratorium on their tariff revenues, especially as more digital products are developed and substituted for traditional physical goods. (Baliño, 2019; Banga, 2019). 3D printing technology, which creates three-dimensional objects from digital files, is one of the recent trends, where “the end-product is a good;

however it is intangible data (typically software) that can move across borders for a trade transaction using the Internet” (Kende & Sen, 2019, p.16).

## **Nairobi 2015: Doha Development Agenda (DDA) vs. New Issues**

The WTO’s 1998 Work Programme is of an exploratory and informative nature. It assigned four WTO bodies to be responsible for holding discussions on e-commerce dimensions and considerations: the Council for Trade in Services, the Council for Trade in Goods, the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPs), and the Committee on Trade and Development. The General Council reviews these bodies’ work and recommendations. It also considers the examination of cross-cutting issues (WTO, 1998b). It was mainly designed to build understanding around the trade-related aspects of e-commerce without a pre-set objective to take the process further to negotiate new rules.

Therefore, while the WTO’s established rules and agreements remain (to an extent) relevant to e-commerce, there is no global rule that specifically and comprehensively regulate e-commerce at the multilateral level. Some WTO Members and other stakeholders have asked whether the organization’s current rules “may not be entirely equipped” to deal with how the digitalization of the global economy is affecting the ways and means of business and trade (ICTSD, 2018). One of the key challenges of existing trade rules to comprehensively address e-commerce is how these rules rely on the ability to identify whether an exchanged product is a good or a service, and the specific physical borders they are crossing. These lines have become increasingly blurred in the digital and e-commerce era. For example, firms are now increasingly operating through global value chains (GVCs), deploying services across various locations. This phenomenon is referred to as the “servicification of



manufacturing” and it means that “the manufacturing sector is increasingly relying on services, whether as inputs, as activities within firms or as output sold bundled with goods” (Miroudot, 2017).

From the launch of the Work Programme in 1998 until the Nairobi Ministerial Conference in 2015, discussions in those bodies did not see significant progress or led to an effort toward a potential revision of the rules. This led some WTO Members to start calling for e-commerce to be a priority among “new issues” for discussion and consideration. But, various developing countries, including African countries, view ‘New Issues’ as a distraction from the Doha Development Agenda (DDA) which covers most of the priorities of developing countries on global trade and development, such as agriculture, cotton and Special and Differential Treatment (Macleod, 2017). ‘These topics have the potential to substantially improve trading terms for these countries, but have largely stalled as areas of negotiation’ (Ibid, 2017). The year 2015 was marked by the Tenth Ministerial Conference in Nairobi, Kenya, and its associated Declaration (WTO, 2015) which acknowledged some Members’ interest in exploring new approaches to the negotiations (para. 30). It recognized that “Many Members want to carry out the work on the basis of the Doha structure, while some want to explore new architectures” (para. 32). It concluded by stating that “any decision to launch negotiations multilaterally on such issues would need to be agreed by all Members” (para. 34).

## 4.2 The E-commerce Agenda Post Nairobi: Preserving Africa’s Policy Area

In the runup to the Eleventh Ministerial Conference in Buenos Aires in 2017, discussions under the Work Programme intensified, and several Members (or groups of Members), such

as Japan, Singapore, Russia, and the EU, issued statements and proposals on new potential e-commerce issues to consider. These included data flows, data protection, market access, infrastructure development and trade facilitation. Figure 14 shows key trade-related issues of e-commerce discussed over the period 1998-2015 and the period 2015–2017. The comparison shows the emergence of issues related to information/data flows, data localization, e-signatures, and electronic authentication in WTO e-commerce Work Programme discussions after 2015.

**Figure 14: E-commerce issues in WTO Work Programme before and after the year 2015 with reference to the council concerned with the issue**

1998 - 2015				
The Issue	Council on Trade in Services	Council on Trade in Goods	Committee on Trade and Development	Council on TRIPS
Classification	X	X	X	
Transparency	X			
Domestic regulation	X			
Competition	X			
Customs duties	X	X		
Interests of developing countries (access to technology/ capacity building ... etc.)	X	X		
Consumer/privacy protection	X			
SMEs and MSMEs			X	
Market access	X	X		
infrastructure	X		X	
Intellectual property and copyright				X

The issue	Council on Trade in Services	Council on Trade in Goods	Committee on Trade and Development	Council on TRIPS
Transparency and domestic regulations	X			
Flow of Information: Information flows and localization requirements	X			
Personal information protection and privacy	X			
Customs duties on electronic transmissions	X			
Facilitating e-commerce transactions: Electronic signatures, payments and authentication	X			X
Cooperation and interests of developing countries, LDCs and SMEs	X	X	X	X
Infrastructure and connectivity (Internet and data access)	X	X	X	
Market access (for digital goods and services)	X			
Business trust and copyright				X
Consumer protection	X			
Non-discrimination of digital products		X		

Source: Ismail, 2020c.

## The U.S. non-paper on Concepts for Constructive Discussions on E-commerce - July 2016

With the revival of e-commerce discussions post-Nairobi, the U.S. shared a 'non-paper outlining a number of trade-related policies that can contribute meaningfully to the flourishing of trade

through electronic and digital means' while emphasizing that this is not a proposal for advancing negotiations but rather some concepts to enrich the discussions (WTO, 2016). In the meantime, some developing countries and particularly African countries continued to submit arguments against negotiating rules to govern 'new issues' such as e-commerce and Investment Facilitation, while raising concerns of attempts to distract the WTO from concluding the DDA and of calls for extending liberalisation to new trade fields (Macleod, 2017).

Released in October 2017, the UNECA. AU & AfDB (2017a) Report on Assessing Regional Integration in Africa VIII: Bringing the Continental Free Trade Area About, identified nine out of the sixteen concepts developed by the U.S. which, with Africa's digital capacities lagging behind developed countries and preventing the continent from competing in this area, 'aim to limit policy space to ensure open access for businesses operating through these channels'. The report states that 'the concern is that these rules are being driven by established e-commerce companies that want to cement their market dominance in the digital world' (UNECA. AU & AfDB, 2017a). Those nine concepts and are outlined in Box 6 below.

### Box 6. The Nine E-commerce Concepts in the US Non- paper of 2016 Considered to be Limiting Africa's Policy Space

**Prohibiting digital customs duties** — no custom duties on electronically transmitted products, such as books, music, videos and software.

**Non-discrimination principles** — principles that require that national treatment be provided to e-commerce goods and services.

**Data localization rules** — Rules that prohibit requiring that the storage, routing, processing or other use of data be within the territory of a country.

**Safeguarding network competition** — Digital suppliers can build networks in the markets they serve or access such facilities and services from incumbents.

**Enabling cross-border data flows** — Companies and consumers can move data without restriction.

**Free and open Internet rules** — Rules that target governments that block certain websites for commercial or political reasons, as well as similar initiatives by private companies.

**Protecting critical source code** —Businesses do not have to hand over their source code or proprietary algorithms to their competitors or to pass them along to a state-owned enterprise. However, trade secrets (including source code) are not covered by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

**Ensuring technology choice** — Governments are prohibited from forcing foreign businesses to use specific local technologies when they invest in an economy.

**No technology transfers** —Governments are prohibited from requiring companies to transfer technology, production processes or other proprietary information’.

Source: UNECA. AU & AfDB, 2017a, p. 132.

## Latest Developments Under the Joint Statement Initiative (JSI) on E-commerce (2017 – to date)

At the WTO’s Eleventh Ministerial Conference (MC11) in December 2017, trade ministers failed to agree on a ministerial declaration and developed countries failed to advance multilateral negotiations on ‘new issues’, which resulted in the issuing of a joint ministerial statement on e-commerce by 71 members of the WTO, including only one African country, Nigeria. After a year of discussions, an expanded version of that group signed a second Joint Statement in Davos in January 2019 announcing the intention of the JSI’s signatories to begin negotiations. The e-

commerce JSI is, as of April 2020, supported by 84 Member countries, including six African countries, namely Benin, Burkina Faso, Cote d’Ivoire, Cameroon, Kenya and Nigeria. To undertake the negotiations, substance is divided into six Focus Groups to deal with similar sets of issues each. The negotiations so far covered around fifteen to sixteen issues, mirroring to a great extent the sixteen U.S. concepts shared in July 2016. Table 5 below outlines the six Focus Groups and the sub-issues each is tackling.

**Table 5: E-commerce JSI negotiating Focus Groups and the distribution of the current e-commerce agenda issues amongst them**

6 Focus Groups	15 Categories of issues covered (sub-issues in the Negotiating Brief)
Enabling e-commerce	Facilitating e-transactions-digital trade facilitation and logistics – customs duties
Openness and e-commerce	Non-discrimination (of digital products) and Liability – Flow of Information/Data – Access to internet and data (government data – platforms and competition issues..)
Trust and e-commerce	Consumer protection – Personal Information protection and privacy – Business Trust
Cross-cutting issues	Transparency, Domestic Regulation and Cooperation – Cybersecurity – Capacity building - legal issues
Telecommunications	Telecommunications reference paper and e-commerce related network equipment and products
Market Access	Services and goods market-access

Source: Ismail, (2020c).

By examining the reports of the facilitators for the JSI negotiating rounds, the following observations were made by Ismail (2020a) on the current e-commerce agenda and discussions under the JSI in the WTO and their implications for developing countries and LDCs in general:

- A first observation is the lack of clarity and consensus amongst JSI members on the scope and approach to negotiating new e-commerce trade-related rules. Hesitation is primarily between whether to create new rules specific to e-commerce or to review and update existing WTO rules. Regarding the former, members of the JSI raise questions on the relation of the JSI potential agreement and existing WTO rules and commitments. As for the latter, Members of the JSI question the legitimacy of suggesting amendments and updates to WTO rules through the JSI process. According to Ismail (2020a), ‘the many crosscutting issues related to e-commerce and the very wide definition used under the WTO Work Programme, along with the concurrent terms and definitions used in other contexts, have made it difficult to narrow down the scope of the discussions.
- A second observation is that the digital divide between developing and developed economies is overshadowing the course of the negotiations and represents an obstacle for developing countries and LDCs to engage fully in the negotiations and identify potential trade-offs. Ismail (2020a) points to the submission by Côte d’Ivoire, which particularly highlighted the issue of the digital divide and called for more proposals on cooperation and support to LDCs and low-income developing economies to ensure their capacity to commit and implement e-commerce new rules and obligations.
- Finally, Ismail (2020) observes several less controversial issues where members agree on the principles, for example: banning

unsolicited commercial electronic messages, ensuring the validity of electronic contracts for trade and investment facilitation, protecting online consumers from fraudulent or deceptive commercial practices and regulating competition in e-commerce. She also identified another set of issues that are controversial not only between developed and developing countries, but also between developed countries themselves. These include the Moratorium on electronic transmissions (as previously mentioned) and, more importantly, the various approaches to regulating cross-border transfer and access to data and software source codes. This is because proponents of free access and flow of data defend the interests of their large digital companies to continue to access and process the data of other countries without obstacles, to maintain their leverage over locally rising competitors and to lead the digital economy in the next decades (Foster & Azmeh, 2018).

## Positioning Africa in the Global Debate on Cross-border Data Flows

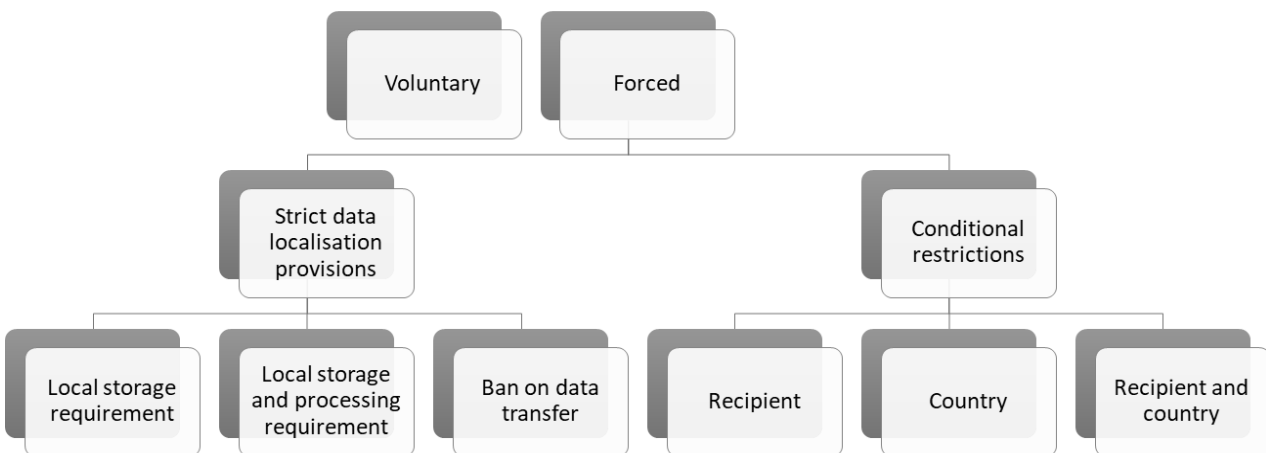
Data is often referred to as the ‘oil of the digital era’ and the rise of global platforms such as Amazon, Google and Alibaba are likened to the rise of oil giants in the 20<sup>th</sup> century (MacLeod, 2017). However, data has its particularities: unlike oil, data is not finite, and it can be reused in different sectors and for different purposes. Data is often generated by consumers, its extraction is not geographically pinned and companies are often the ones in technical control of its access. In that sense, controlling data access is not possible using the traditional market access barriers, like tariffs and quantitative limits, but instead requires non-tariff barriers by shaping digital and ICT sectors policies, referred to by

Macleod (2017) as ‘targeted digital protectionism’.

According to Ferracane (2017), ‘From a trade perspective, restrictions on data flows can be defined as all those measures that raise the cost of conducting business across borders by either mandating companies to keep data within a certain border or by imposing additional requirements for data to be transferred abroad. These measures are very different in how they are designed and implemented’. The choice of measures and policies determines the degree of data flow restrictions which ranges from no regulations allowing free flow of data to a ban on

data transfer (see Figure 15 below for a taxonomy of data flow restrictions policies). Ferracane (2017) adds that in between those extremes, there can be strict regimes also ranging from i) local storage requirement, ii) local storage and processing requirement and iii) ban on data transfer (i.e. local storage, local processing and local access requirement). Another choice of regime is the conditional restrictions to cross-border data flow which imposes certain conditions to recipient countries or on the data controller (processor) itself. In a conditional regime, the result can be either free flow of the data when conditions are fulfilled or a complete ban on the transfer of data.

**Figure 15: Taxonomy of data flow restriction regimes**



Source: Maciel, M. (2020) based on Ferracane (2017)

Given the rise of the role of data in many sectors of the economy, governments’ interest in exploring those options have been increasing together with the number of data regulations also adopted worldwide. Based on Ferracane (2017) calculations and analysis of restrictions to cross-border data flows in force between the years 1960 and 2017 in 64 economies, 42 per cent of the restriction measures were of conditional flow regime, 33 per cent were of local processing requirement and ban on transfer, while 25 per cent followed the local storage requirement

regime. According to the same source, 49 per cent of the restriction policies belonged to Asia-Pacific region, 36 per cent were adopted in Europe, 7 per cent in North America, 5 per cent in Latin America and Africa comes last with only 3 per cent of the cross-border data flow restriction policies.

Casalini & López González (2019) note that data flow restriction regimes can vary from one sector to another and from a data type to another (Personal, tax-related, financial, governmental,

etc.). According to Tempest (2020), ‘the debate on data flows often fails to distinguish between these very different types of data and seeks to impose a one-size-fits-all approach which is clearly inappropriate’. Macleod (2017) shows that restrictions on data transfer may need to be accompanied by other policies depending on the government’s policy objectives. He gives an example that data localisation keeps data within the country, but it does not necessarily make it accessible for local businesses as they remain in the servers of the data controller. Macleod (2017) adds that ‘mandatory data sharing can make data available to local competitors... (also) some countries allow access to their markets on the condition of technology transfer, meaning that investors are required to make technology available to local administrations or companies’.

There is no doubt that data regulation measures can lead to distorting effects in global trade of goods and services and that it can discourage foreign investments and have a negative effect on economic growth (Casalini & López González, 2019; Ferracane, 2017). However, the legality of data measures can be determined under the GATT or GATS agreement depending on the measure (Casalini & López González, 2019). Under the GATS, the general exception clauses exceptionally allow a WTO member to use a measure inconsistent with its obligations or commitments in order to serve a specific public policy objective, these include public morals, public order, public health, prevention of fraudulent practices and privacy of individuals (Mamdouh & Meltzer, 2019).

But other than the general policy objectives, some countries also use data flow and access restrictions to protect and strengthen the local capacity in digitally intensive sectors, like ICT and online selling platforms (Casalini & López González, 2019). China is considered the model of digital protectionism as it limits cross border data flows by imposing data localisation and

technology transfer, but also by protecting the internet and filtering and censoring its content (Macleod, 2017). ‘Chinese businesses used this shelter to clone and adapt the business models of international competitors before advancing towards the cutting edge of e-commerce’ (Ibid). ‘Currently, China alone accounts for nearly 50 per cent of all patent applications for technology families relating to blockchains’ (UNCTAD, 2019b). China is also now one of the leading countries in new technologies like 3D printing, IoT, Robotics and AI (Ibid).

However, according to Macleod (2017), the Chinese model of digital protectionism does not fit countries with small markets and who do not offer such economies of scale. He adds, ‘It may present a misleading example to small and fragmented African markets... What negotiators may remain cautious about is the speed with which the digital economy is growing and the uncertainty over how it may evolve, and so they may prefer to retain scope for such tools in the future. Nevertheless, should negotiators wish to preserve policy space for such methods of digital protectionism, they must appreciate that this allows their trading partners the same scope. They also need to consider the potential economic costs associated with data localisation and restrictions on cross-border data flows.

Foster & Azmeh (2018) suggest that African leaders need to craft balanced policies and positions that would allow foreign investments and for foreign e-commerce businesses to establish themselves locally while supporting the competitiveness of their local platforms and digital industries. They also need to avoid commitments to multilateral rules and trade agreements that would limit their policy space in the long term. Macleod (2018) suggests that a regional approach to formulating digital industrial policies can offer a middle way between signing off to multilateral rules that liberalise e-commerce and data (thus limiting Africa’s policy space and

aggravating the digital divide), and adopting costly digital protectionism policies that can burden their economies rather than promote growth. ASEAN gives a successful example for regional cooperation and coordination over e-commerce and digital industrial policies between developing countries (Macleod, 2018).

To conclude, engaging in e-commerce regulation at the multilateral level and agreeing to e-commerce provisions in trade agreements may come with benefits as it leads to consistent rules that promote foreign investments and cooperation in areas that would enable e-commerce growth in small economies like logistics and paperless trade (Foster & Azmeh, 2018). However, with a significant digital divide separating the African continent from advanced economies, agreeing to broad rules that allow open access to data and promote e-commerce liberalisation can limit African countries' policy space to support local digital industries and local platforms' competitiveness and ability to scale up beyond borders (Foster & Azmeh, 2018, UNECA & *AI*. 2017).

The now envisaged third phase of AfCFTA negotiations for an e-commerce protocol offers a timely opportunity to craft a regional digital industrial policy supported by a common position on regulating cross-border data flows. The negotiations can take into account different types of data and a cooperation framework that enables and facilitates national and regional e-commerce businesses and supports them in scaling up to serve Africa's large market and access Industry 4.0 global value chains.

# Conclusion: A Four-Step Approach to AfCFTA E-commerce Protocol

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This study sought to explore how the role of AfCFTA can be leveraged to secure its place in the rising platform-based cross-border e-commerce and data value-chains of the Industry 4.0 era. The study focused on B2C cross-border e-commerce given that it is growing significantly faster than B2B cross-border trade, especially in the context of developing countries. It started by examining the nascent B2C e-commerce cross-border chain described by ITC in the context of the African continent and found that e-commerce has been on the rise across Africa with the fast-increasing number of locally established e-commerce platforms in various economic sectors. It also found that e-commerce growth in the past few years has been bringing developmental benefits by stimulating growth in connectivity and financial access among women, youth and the poor in rural areas, and helping African SMEs (drivers of 80 percent of the continent's total economic output and employment) scale-up their businesses across borders and reach other African countries thus boosting intra-African trade.

By examining the recent and fast-paced steps that Africa is taking at the continental level towards realising its aspiration for integration and development, the study found that the African Union's development plan 'Agenda 2063' designed to bring the various continental development initiatives under one strategic framework has mandated the acceleration of the creation of an integrated and united Africa with an associated vision of '*a continent on equal footing with the rest of the world as an information society, an integrated e-economy where every government, business and citizen has access to reliable and affordable ICT services*' (AUC,

2015b). This means that while the AfCFTA negotiations starting in 2015 and the framework agreement signed in 2018 did not explicitly envisage e-commerce among the negotiation phases and protocols, it was indirectly there under the mandate to promote the digital economy.

With the significant growth of e-commerce globally and the rising prospects that e-commerce represents to the future of global trade as it spreads across the different economic sectors including the most traditional, the booming of e-commerce in Africa offers opportunities to boost intra-African trade and to integrate in global value chains. Finally, the rise of e-commerce provisions in RTAs and in negotiations in international fora, contributed to the AU Assembly 33<sup>rd</sup> Ordinary Session (held in February 2020) to adding a 3<sup>rd</sup> phase of AfCFTA negotiations for an e-commerce protocol to start right after the completion of phase II expected by end of 2020.

Against these facts, this study suggested a four-step approach to addressing e-commerce negotiations under AfCFTA while ensuring that the Protocol establishes a continental strategy and regulatory framework that promotes e-commerce growth and ensures it fulfils its promise of development and access to Industry 4.0 value chains.



## Step 1

Focus on SME needs to navigate a cross-border e-commerce process chain (bottom-up approach)

Representing 80 per cent of the continent output and employment, SMEs are the key drivers of the continent's economy. Empowering them to adopt online business models and scale their businesses across borders is the guarantee for an accelerated e-commerce growth supported by a digital consumer society. The cross-border B2C e-commerce process chain helps identify the steps that SMEs need to go through to cross borders. These are i) establish online businesses, ii) adopt international e-payment systems, iii) deliver across the borders and iv) manage after-sales issues. SMEs in Africa face several challenges under each of those phases. Following the order of the chain, the challenges faced are respectively: enabling issues, facilitating issues, market access issues and trust issues. Addressing those issues are what any e-commerce strategy should focus on.

In the first two phases the idea is to promote the establishment of a digital ecosystem at the national level and scale it up at the regional level through cooperation. In the last two phases, the idea is to remove trade barriers and manage cross-border risks. Those risks can be linked to lack of customer's trust, cybercrime or exposing SMEs to unfair competition with global MNEs. Facing those risks requires strengthening e-commerce regulations on consumer protection, cybersecurity, e-transactions, as well as data issues, particularly when it comes to cross-border data flows.

## Step 2

Build on the AU Digital Transformation Strategy (DTS) 2020-2030

Step two is based on the good news that the AU DTS (2020-2030), designed in February 2019, adopts a bottom-up approach and promotes a digital ecosystem at the continental level with a vision to creating Africa's Digital Single Market by 2030. While the strategy's scope is larger than cross-border e-commerce, it has dedicated a section to trade and envisaged a specific role for AfCFTA around supporting SMEs navigating cross-border e-commerce process. Quoting from the DTS, the role of AfCFTA is to *Promote intra-African integration in digital trade to achieve wider participation by enterprises in national, regional and international e-commerce (especially cross-border)*. Under this role, the strategy also recommends a number of policies for AfCFTA to promote and highlights that a key role for AfCFTA e-commerce is to ensure harmonisation between the various e-commerce regulations adopted at the national level. It also points to its specific role, given its regional nature, to facilitate negotiations for regulations on inter-connectivity and interoperability particularly of national e-payment systems. This will ensure a smoother boost for intra-African e-commerce.

## Step 3

Scale-up National and RECs Strategies and Policies to Promote a Digital Ecosystem

While examining national and regional case studies and recently adopted e-commerce strategies and regulations, this study advances the fact that African countries have a lot of lessons and best practices to share. The continent is rich with variety: LDCs, landlocked countries, developing countries. It is also rich with various country market sizes. While in terms of

digitalisation and e-commerce, one can say that they mostly share same challenges, they cannot adopt a one-size-fits-all solution and it didn't get them to their desired objective when they tried. There are a number of recent RECs initiatives that AfCFTA negotiations can learn from and upgrade from the regional to continental level, for example, COMESA's DFTA focusing on promoting e-Trade, e-Logistics and e-Legislations. EAC is also considering adopting a strategy for a Digital Single Market and the World Bank provided insights on DSM best practices like EU's DSM strategy. At the national level, Kenya has been recently very active and is now considered a leader in e-money solutions and is promoted as one of the best practices in promoting an ecosystem supporting SMEs. Kenya recently adopted its digital economy blueprint that gives a strategic framework for the country's future and promotes its experience. Egypt is another experience that shows that digital economy has now moved beyond ICT sectors and requires building a digital society. While Egypt enjoys one of the strongest ICT sectors in the region built over decades, it is the consumer's culture and lack of trust in online financial transactions that stand against e-commerce growth in the country.

## Step 4

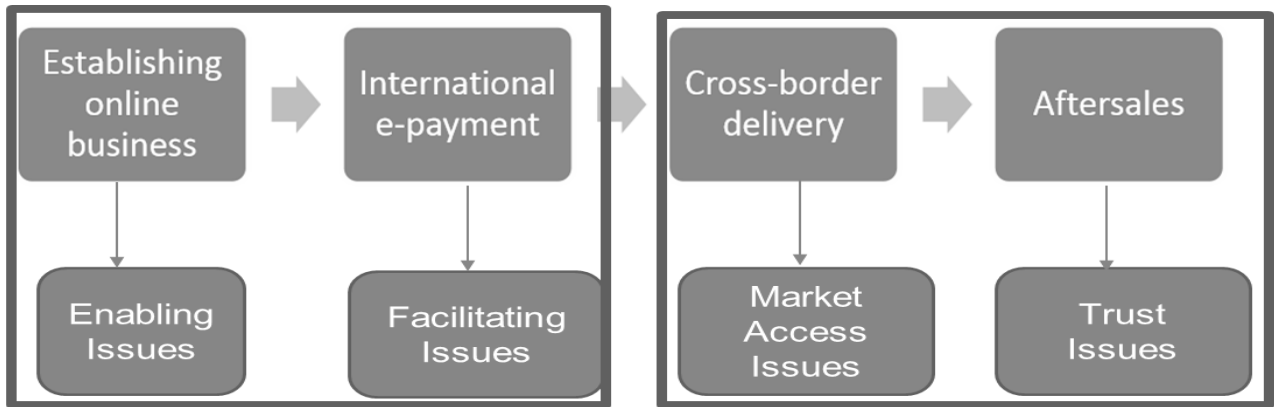
### Formulate a Common Position towards E-commerce Issues in the WTO

In the past years, developed countries have been pushing to bring e-commerce at the multilateral negotiation table of the WTO, but faced resistance

from developing countries, including African countries. Other than to support the completion of the DDA which would respond to long desired needs for development, African countries apprehend that agreeing to multilateral rules at this time may amount to kicking away the ladder while they are still climbing their first steps. They are also aware that it can bring them gains by promoting e-commerce facilitation and promoting cooperation in infrastructure and logistics and bringing in foreign investments. A key sensitive issue that developed countries are pushing is the liberalisation of cross-border data flows since data is the essence of E-commerce and MNEs of developed countries already enjoy leverage over a significant share of the data market. A multilateral rule giving unfettered access to data in cross-border trade may shrink African countries' policy space to support growth of its digital industries. AfCFTA e-commerce protocol should therefore seek to adopt a continental digital industrial policy framework and a common stand including on cross-border data flow, that facilitates the development of African digital industry and increasing its competitiveness.

The task for AfCFTA negotiators is monumental. They must rise to the occasion to provide Africa a pathway to digitalisation that is inclusive and in line with the needs of African stakeholders. On the positive side, they can count on the knowledge, best practices and experience of e-commerce rules, strategies and policies in many African countries and RECs, as well as from outside the continent. Figure 16 below gives a graphic presentation of the main elements of the task before them.

**Figure 16: A graphic presentation synthesising the suggested approach to e-commerce to be considered under AfCFTA’s e-commerce protocol forthcoming negotiations**



**Promote a Digital Economy Ecosystem**

Cooperate, scale up, promote e-government, foster inter-operability to facilitate e-transactions, provide capacity building

**Remove Trade Barriers and Manage Risks**

Liberalise to support Intra-African trade and digital ecosystem, regulate to manage aftersales risks (Consumer Protection; cybersecurity, privacy, IP... etc.), formulate common positions in global e-commerce negotiations to safeguard policy space and bridging digital divide (data, taxation... etc.)

Establish a strong regulatory framework (Cyber Security; Privacy Protection; Data Access...Etc.)

Source: Author, inspired by ITC, 2017 and Kaukab (2017) cited in Ebrahimi Darisinouei (2017).

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