

Exploring the New Market Opportunities and Policy Challenges for Africa's Private Sector under AfCFTA

A Report of the ALP Private Sector Engagement Townhalls on AfCFTA

Introduction

The African Continental Free Trade Agreement (the AfCFTA) private sector townhalls are a series of dialogues undertaken by the Africa Law Practice law firms¹ over the course of 2021 and 2022 to discuss the opportunities and challenges arising from the AfCFTA and to provide the African private sector and potential investors with the opportunity to engage in and contribute to the implementation of the AfCFTA.

Feedback from our clients across the continent since the implementation of the AfCFTA has suggested that there is a distinct lack of information and knowledge across the African private sector about the AfCFTA and the opportunities it holds for cross-border trade. Further, that government and multi-lateral institutions need input and support from the private sector in order to ensure the successful implementation of the Agreement. This is particularly the case where there are significant changes required to national policies, legislation and regulations.

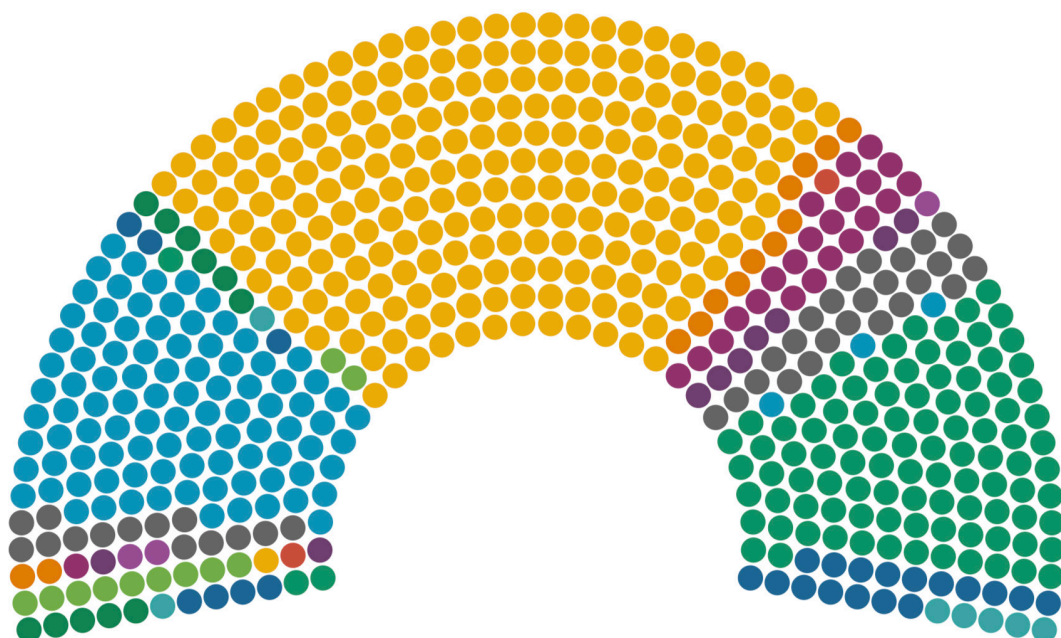
Governments (national and regional) have a responsibility to ensure that a favourable business environment exists for all private sector actors, in particular SMEs, women-owned and youth led enterprises. They therefore need to be aware of the key constraints for private sector entities in realising their potential to contributing to the success of the AfCFTA and continental economic growth.

The ALP Townhalls are a mechanism for diagnosing the problems and opportunities for private sector engagement with the AfCFTA and a channel for communication with relevant public sector authorities tasked with delivering the Agreement at continental, national, sub-national, local and sub-sector levels.

Each Townhall draws on the expertise of renowned professionals from both the public and private sectors across the continent and beyond to discuss the implications and opportunities of the AfCFTA for their sectors and industries. So far, Townhalls have discussed the provisions of the agreement itself and the implementation process to date. They have also explored three key protocols under negotiation – Investment, Competition and E-Commerce.

¹ ALP International is an affiliation of law firms from Nigeria, Uganda, Tanzania and South Sudan

Overview of Participants



- Benin
- Botswana
- Burkina Faso
- Burundi
- Cameroon
- Chad
- Democratic Republic of the Congo
- Ivory Coast
- Egypt
- Eswatini
- Ethiopia
- Ghana
- Kenya
- Lesotho
- Malawi
- Mauritius
- Namibia
- Niger
- Nigeria
- Rwanda
- Senegal
- South Africa
- South Sudan
- Sudan
- Tanzania
- Togo
- Uganda
- Zambia
- Zimbabwe

Diagram 1

AfCFTA Ratification

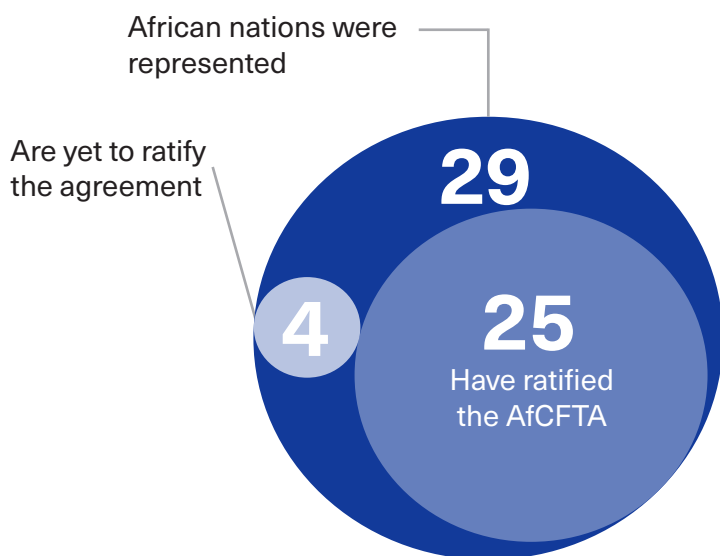


Diagram 2

Diagram 1 above illustrates the number of delegates from African countries at all four townhalls

Diagram 2 shows that the majority of delegates were from countries that have ratified the agreement.

Which sectors were best represented?

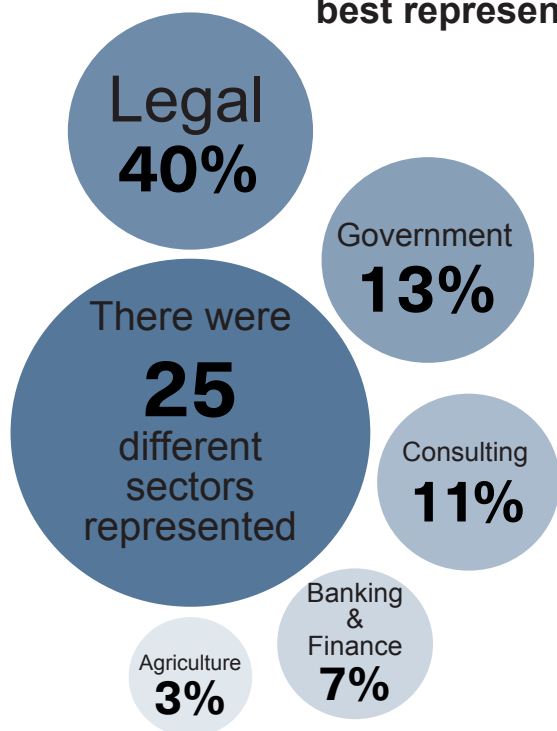


Diagram 3

The attendees came from a wide range of sectors with 25 different industries being represented.

Diagram 3 illustrates the sectors represented by percentage of total participants.

Which countries were best represented?

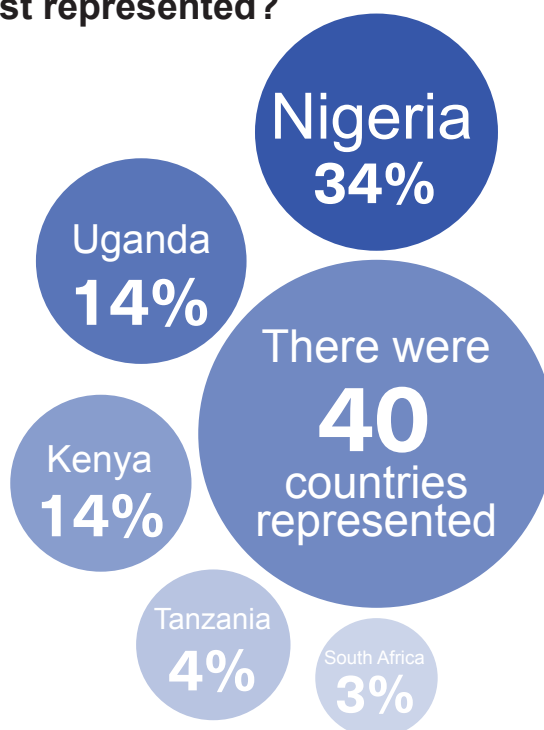


Diagram 4

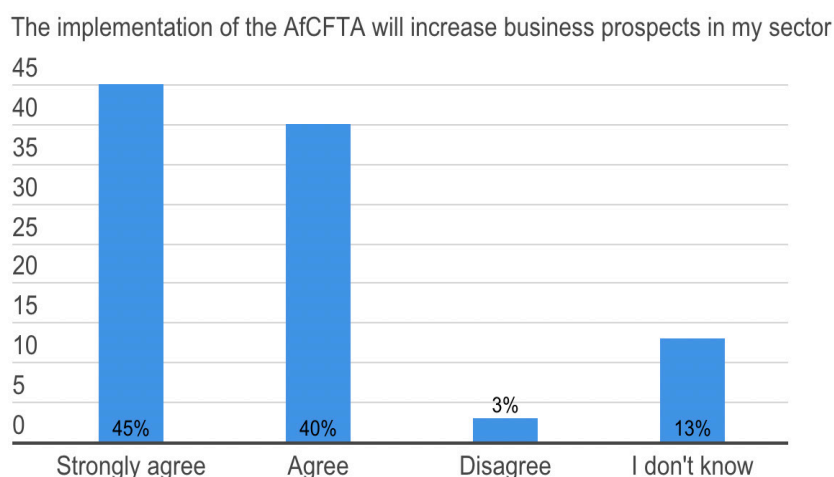
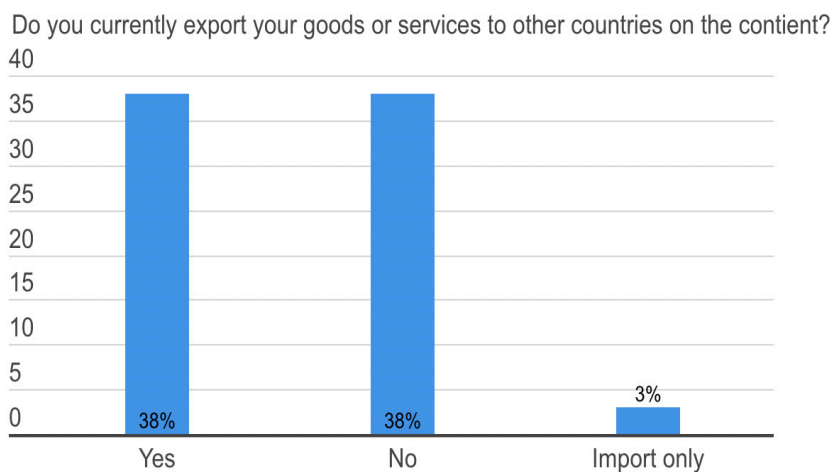
Delegates came from 40 different countries, 29 of which were African with a further 11 of from outside of Africa.

Nigeria was the best represented country with 34% of delegates across all four townhalls.

The United States and the United Kingdom were the best represented outside of Africa with 30 attendees each.

Key Findings

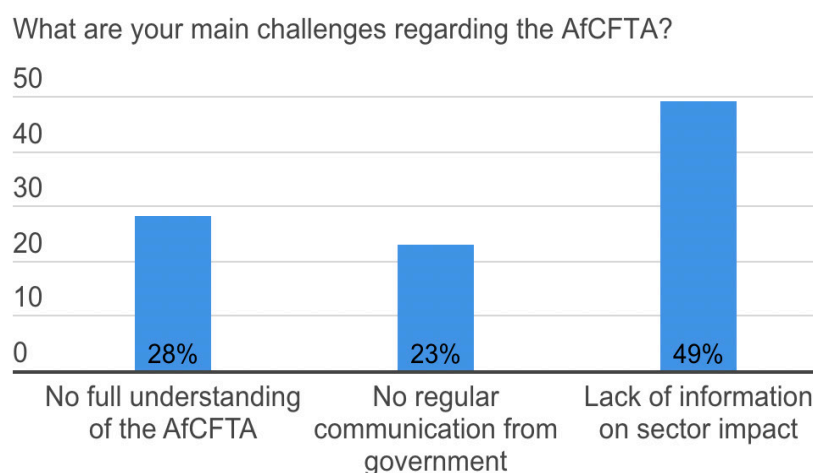
Thirty-eight percent of townhall participants already export goods or services on the continent. A further forty-one percent do not currently export at all. However, a majority (85%) were very positive about the prospects of AfCFTA increasing business in their sectors and industries. On the basis of the numbers of participants at all the townhalls and representation of countries and sectors and positive responses to the poll question on prospects for success, overall AfCFTA is considered a step in the right direction for African regional integration.



For private sector participants, a number of policy challenges arose in all the townhalls which included concerns about:

- Protection of infant industries;
- Restrictive visa regimes in some countries that curtail cross-border trade;
- Ease of doing business regulations;
- Inconsistent macroeconomic and monetary policy;
- Inconsistent rules within existing regional economic communities and the challenges of reconciling or harmonising those under the AfCFTA

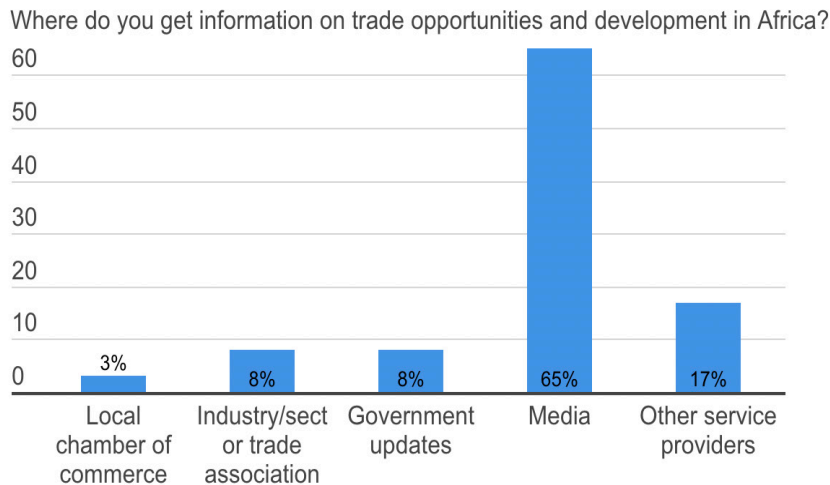
Through a series of polls run during the events and the Q/A sessions, the following were identified as the biggest overall impediments to private sector engagement in the opportunities AfCFTA has to offer. Forty-nine percent indicated a lack of sector-specific information as their main hurdle. Twenty-three percent suggested a lack of regular communication from national governments and twenty-eight percent noted a lack of understanding of the negotiation process and the implementation process as their main challenge.



Limited dissemination of information

SMEs play a significant role in economic growth as they contribute to their nation's GDP and development, especially in developing countries. Despite this, SMEs do not appear to have sufficient information on how trade policy changes in their respective countries will affect them.

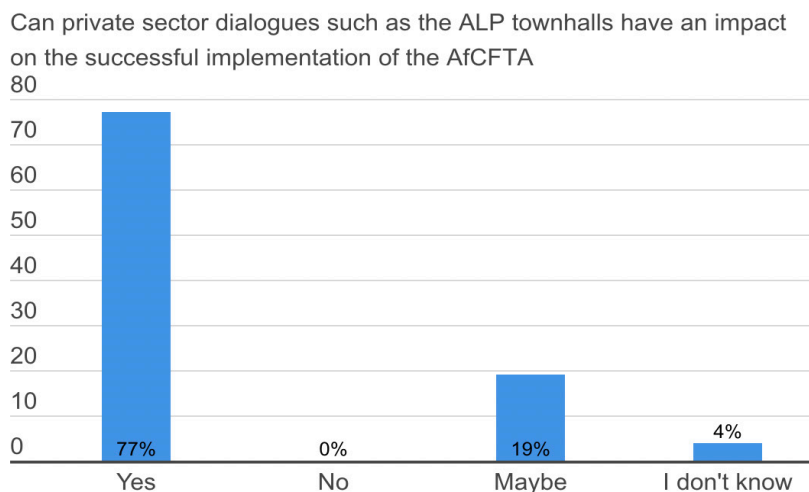
Delegates were asked where they found information on trade opportunities and development in their countries. The results show that sixty-five percent found information in the media, only eight percent was from the government and a tiny three percent from their local Chambers of Commerce.



Lack of engagement and consultation

Non-inclusion in the negotiation process of the Agreement is a source of concern in some sectors and countries (expressed by some government agencies in attendance) affected by various aspects of the agreement such as Rules of Origin provisions, for example.

As a result, there appears to be a disconnect between policymakers, political leaders, and negotiators on the one hand and the people affected by these policy decisions and regulations.



Townhall Summaries

Townhall one: Understanding the AfCFTA



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Director
Directorate of Trade in Services
Investment, AfCFTA Secretariat



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Dr. Muda Yusuf
Director General
Lagod Chamber of Commerce &
Industry



Claire Akamanzi
Chief Executive Officer
Rwanda Development Board



Francis Gimara SC
Head of ALP East Africa

The launch and maiden edition of the series was held on 8 June 2021 to discuss progress and key issues in the implementation of the AfCFTA and to set the foundations for engaging the private sector.

Topics

- The implementation and ratification level of the AfCFTA: An institutional and multi-lateral perspective
- Challenges and opportunities for services providers in the African context
- The importance of government investment in critical sectors for the AfCFTA's success
- The regulatory and policy environments required for successful intra-African trade in services
- Developing synergies amongst regional economic communities (RECs) and the AfCFTA

Townhall two: What could the forthcoming AfCFTA Investment Protocol mean to you and your business?



Dev Chamroo
Freelance Consultant
Chamroo Investment & Trade
Consultants



Tsotetsi Makong
Trade Facilitation Expert
The Trade Policy Training
Centre in Africa



Patricia Mutiso
Practice Director
ALP Kenya



Sanyade Okoli
Chief Executive Officer
Alpha African Advisory



Samallie Kiyingi
General Counsel
African Export-Import Bank

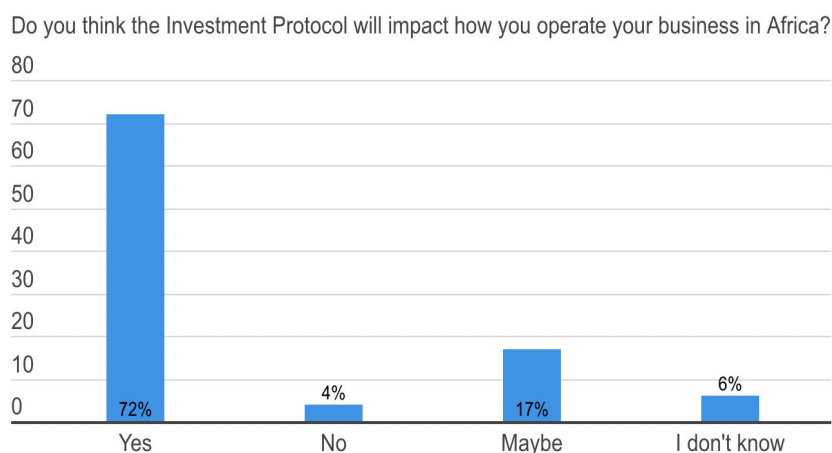
This townhall was held on 14th September 2021. The AfCFTA Investment Protocol (Protocol) represents a set of continental provisions on investment capable of regulating the investment relationship between AU member states.

Topics

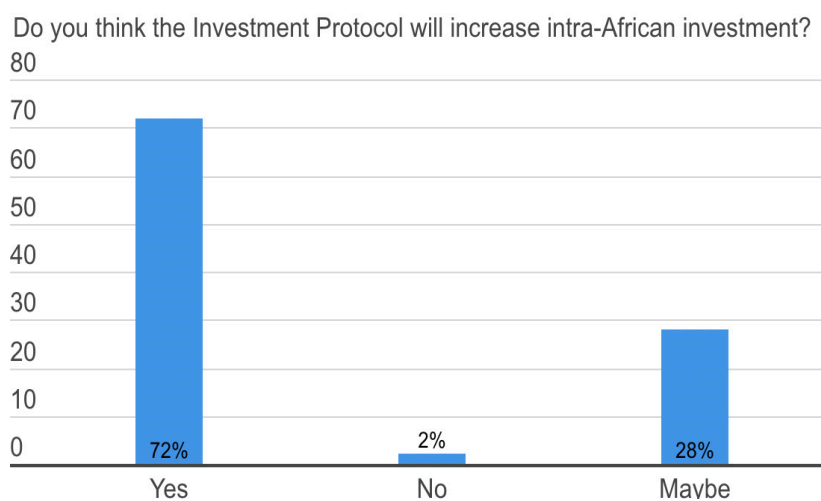
- Current status of negotiations and the impact of COVID-19
- Investor-State dispute settlement and the investment protocol
- Can the Pan-African Investment Code (PAIC) serve as a model for the AfCFTA investment protocol?
- RECs, Bilateral Investment Treaties (BITS) frameworks and potential conflicts

Participants agreed that the Protocol would have an impact on how their business operated across the continent especially by doing away with the need for Bilateral Investment Treaties (BITs).

A clear majority of seventy-two percent were positive about the potential impact of the Protocol on cross-border business. The same proportion of participants believed it would have a positive impact on intra-African investment.



The potential introduction of a dispute settlement mechanism, particularly investor-state dispute settlement is also likely to have an impact on Foreign Direct Investment (FDI). Sixty-six percent of delegates were of the view that it was likely to have a positive impact on investment coming into the continent, especially African diaspora investments which are critical to economic growth on the continent.



Townhall three: How can the AfCFTA Competition Protocol ensure the development of an optimal competition regime on the continent?



Dr Kamala Dawar
International Trade Centre Consultant
Senior lecturer, International Trade & Competition Law
University of Sussex, UK



Raphael Mburu
Manager, Mergers & Acquisitions
Competition Authority Kenya



Akinwale Goodluck
Deputy Chief Executive Officer
AfricaNenda, Kenya



Alexia Waweru
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Malawi



Sir Jonathan Faul
Acting Co-Head of Office,
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Alison Hook
Co-founder & Director
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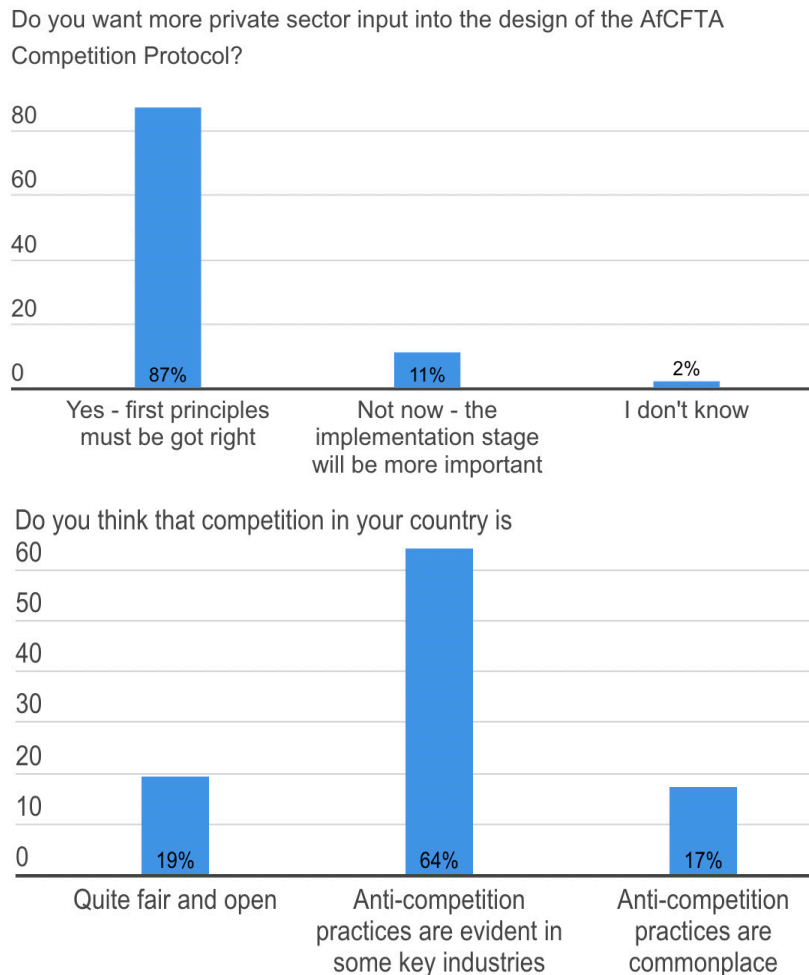
The third townhall was held on 21st October 2021 to discuss the competition protocol and its potential impact on existing African competition regimes. The discussion explored the potential/value for policy harmonization and integration and the development of optimal frameworks for promoting a competitive competition regime on the continent.

Topics

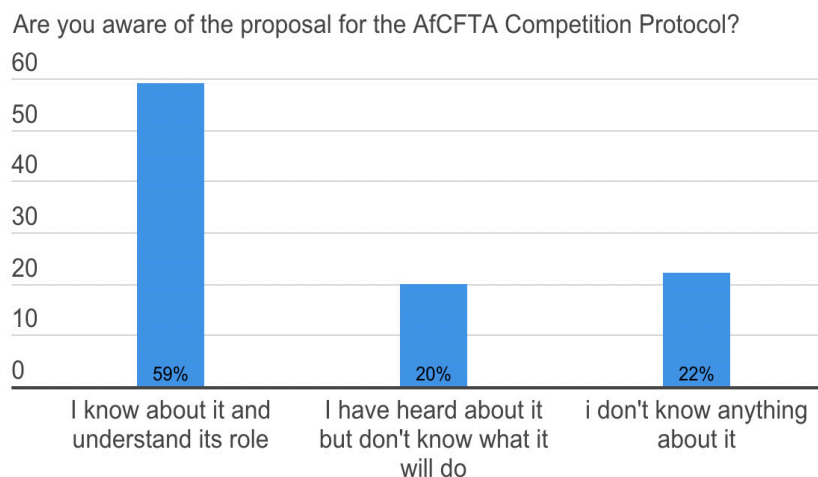
- Cross-border competition enforcement in Africa
- Competition and COVID-19 recovery
- Consumer protection
- Mergers control and sector regulation
- The challenge of policy harmonisation and integration of existing African regimes
- Engaging member states on public procurement issues
- What lessons can AfCFTA take from other RECs on the continent and beyond?

Fast-growing and thriving business sectors in industries such as telecommunication and construction have led to the need for policies to curb anti-competitive practice and protect consumers.

Delegates' responses to a question on competition in their respective countries showed that a majority – sixty-four percent - believed that anti-competitive practices were evident in some industries and a further seventeen percent believed they were commonplace.



Most delegates were aware of the proposed Competition Protocol, and understood its implications for African businesses. A clear majority are keen to participate or be consulted on the design of competition policy.



Townhall four: The AfCFTA e-Commerce Protocol: Unleashing Africa's Digital Economy?



Ron Kawamara
Chief Executive Officer
Jumia, Uganda



Chenai Chair
Special Advisor
Africa Innovation, Mozilla



Adetola Onayemi
Chief Executive Officer,
Norebase



Dr. Ify Ogo
Regional Coordinator
Specialist, United Nations
Development Programme



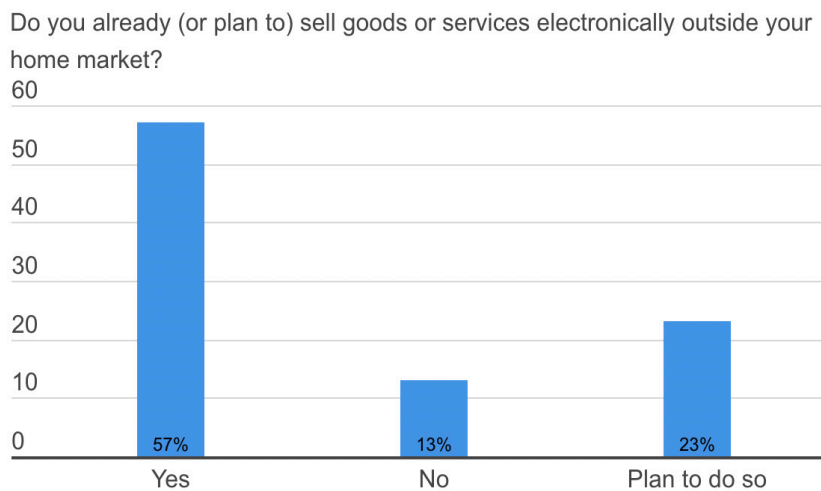
Nankunda Katangaza
Co-founder & Director
Hook Tangaza, UK

The fourth townhall was held on 2nd December 2021 to explore the proposed e-Commerce Protocol and the intellectual property regime required to underpin the fast-growing online trade in goods and services across the continent.

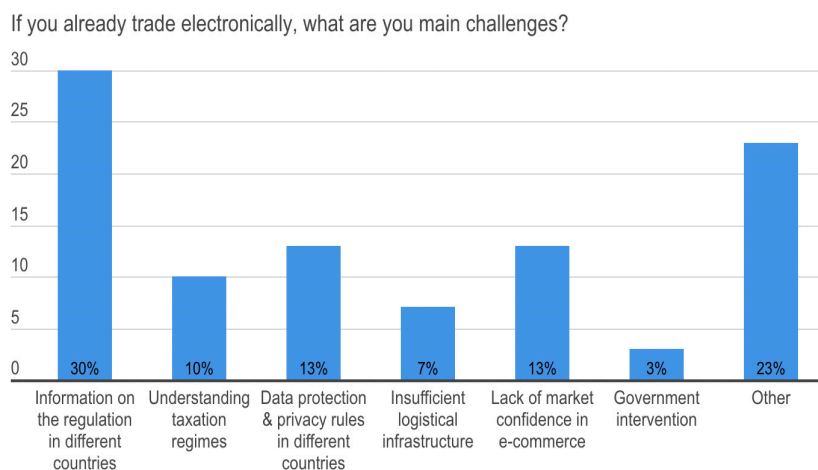
Topics

- The current state of e-commerce in Africa - infrastructure gaps, low digital skills, fragmented markets, low internet penetration
- The opportunities for inclusive growth on the continent arising from an African digital economy
- Designing the appropriate policy and governance framework
- The role of the e-commerce protocol in enabling the pan-African e-commerce ecosystem

The number of participants at this townhall (138 from 25 different countries) illustrated the importance of e-commerce in goods and services trade on the continent. The majority – forty one percent were in the services sector. Fifty-seven percent of delegates were already trading cross-border electronically.



Delegates were candid about their main challenges which fell largely in the policy and regulation area signalling a need for greater engagement by governments and regulators with e-commerce and the wider tech sector.



Recommendations

- i. The strategies for key stakeholder inclusion in policy decisions on the Agreement should be documented and made available to the public. This will go a long way to diffuse passive resistors. Improved communication of the ongoing negotiation process will inspire confidence amongst stakeholders on the AfCFTA.
- ii. The AfCFTA Secretariat (the Secretariat) in conjunction with Member States should ensure that the ongoing Phase II and Phase III of the negotiations which covers Intellectual Property Rights, Investment and Competition policy and E-Commerce respectively are accessible to all stakeholders.
- iii. The Secretariat in collaboration with Member States and governments should undertake stakeholder mapping and regularly consult with SMEs especially women's businesses and youth-led businesses and provide clarity to help them take advantage of cross-border trade opportunities under the AfCFTA.
- iv. Regional Economic Communities across Africa need to provide regular insight into the AfCFTA for the private sector as they remain the building blocks of the Agreement. This could be optimally done through the various city, national and regional Chambers of Commerce to ensure a seamless transfer of information amongst their members.
- v. The Secretariat should encourage innovation in dispute settlements on state-to-state disputes and investor-state disputes and usher in a new regime that favours the interests of Africa.

Coming up

The next Townhalls in 2022 will discuss:

- New continental payments and settlements systems
- The AfCFTA IP Protocol

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