

Towards a Common Investment Area in the African Continental Free Trade Area

Levelling the Playing Field for Intra-African Investment



Published By



United Nations
Economic Commission for Africa

Published in 2021

Contact:

Publications Section

Economic Commission for Africa

P.O. Box 3001

Addis Ababa, Ethiopia

Tel: +251 11 544-9900

Fax: +251 11 551-4416

E-mail: eca-info@un.org

Web: www.uneca.org

Cover Photograph

Shutterstock

Design

Dilucidar / www.dilucidar.com

© UNITED NATIONS ECONOMIC COMMISSION FOR AFRICA, ADDIS ABABA, ETHIOPIA,
All rights reserved

Towards a Common Investment Area in the African Continental Free Trade Area

Levelling the Playing Field for Intra-African Investment



United Nations
Economic Commission for Africa

TABLE OF CONTENTS

Acknowledgements.....	1
Foreword.....	2
Acronyms.....	4
Overview.....	7
Linking investment with behind-the-border issues	9
Competition	9
Intellectual property rights	10
The digital economy.....	11
Link, leverage and learn	12
The AfCFTA Investment Protocol.....	14
Domestic investment law	15
National investment policies and laws.....	15
Regional and bilateral investment treaties.....	15
Investment promotion and facilitation.....	16
Investment protection	17
Investor obligations	17
Other state commitments.....	18
The AfCFTA Competition Protocol.....	18
The AfCFTA Intellectual Property Rights Protocol	21
The digital economy and investment.....	24
Complementary and flanking policies.....	27
The trade policy nexus	27
The fiscal policy nexus.....	29
Private sector development policy nexus	29
COVID-19 and investment in Africa	31
The AfCFTA after the pandemic	33
References	34
End notes	39
Chapter 1 Regional integration advances and foreign direct investment in the era of the African Continental Free Trade Agreement.....	42
Regional integration advancements	45
The African Continental Free Trade Area	46
The investment landscape and trends in investment since 1990	47
Drivers, barriers and top destinations for foreign direct investment in Africa	48
Intra-African foreign direct investment	52
Imperatives to level the foreign direct investment playing field for efficiency, welfare gains and economic growth	54
References	56
End notes	57
Chapter 2 Theory and evidence linking investment with behind-the-border issues.....	58
Theoretical literature on the underpinnings of investment.....	59
Theoretical and empirical underpinnings of investment and trade in the context of regional integration theory.....	62

Trade theory and regional integration theory perspectives	62
Empirical evidence supporting theoretical investment underpinnings in Africa	64
Linkages between investment, competition, intellectual property and the digital economy.....	67
Competition and investment.....	67
Intellectual property rights and investment.....	68
Digitalization and investment	70
A conceptual framework for the interplay between investment and the three behind-the-border policy areas	73
References	80
End notes	86
Chapter 3 The AfCFTA Investment Protocol: Reshaping the African investment regulatory landscape for sustainable development.....	90
Impact of the Investment Protocol on the African investment landscape	92
Interplay between international and domestic investment laws.....	95
Legal regimes and investment policies at the national level.....	99
Regional and bilateral investment treaties in Africa	104
Investment promotion and facilitation	107
Investment protection.....	115
Investor obligations.....	130
Other state commitments	135
Conclusion and policy recommendations	140
References	143
End notes	157
Chapter 4 The nexus between competition and investment: Competition as an investment enabler	160
Links between competition, open markets and investment	161
The status of the AfCFTA Competition Protocol and challenges to Phase II	163
Competition policy in Africa: State of play and challenges	164
Anti-competitive business practices	166
Cross-border competition issues	169
Protecting intellectual property rights and enhancing competition	171
E-commerce and the digital economy	174
Internet use in Africa, e-commerce, competition and foreign direct investment	176
Public procurement policies and their effect on competition.....	177
Anti-trust bodies and capacity building	179
Competition provisions in regional and international trade agreements.....	180
Policy recommendations.....	181
References	183
End notes	185
Chapter 5 Intellectual property rights and African development	186
The development of IP legislation in African regional arrangements	188
TRIPS minimum and TRIPS plus standards	190
TRIPS minimum standards.....	190
TRIPS plus standards	193

IPRs and technology transfer	195
Greenfield foreign direct investment projects	195
Licensing IPRs.....	200
Research and development financing, patent protection and inventive activity.....	201
Public investment in research and development.....	201
Investment in research and development by business enterprises	202
Trends in patent protection and patenting activities in Africa	204
Policy recommendations.....	208
References	212
End notes	215
Chapter 6 The nexus between the digital economy and investment.....	216
Defining the digital economy.....	218
The digital economy in Africa	219
Context	219
Information and communication technology and other supporting infrastructure in Africa— electricity, mobile phones, the internet and digital payments	221
Quantifying the digital economy in Africa.....	223
Business models of e-commerce firms operating in Africa	227
National, regional and continental policies on the digital economy	229
National e-commerce and digital economy strategies, policies and initiatives	229
Regional initiatives, policies and regulations	235
Continental initiatives, policies and regulations	237
Linkages between e-commerce policies and investment	241
Policy recommendations.....	242
References	245
End notes	250
Chapter 7 Complementary and flanking policies.....	254
Identifying complementary measures reinforcing the policy nexus	254
The trade policy nexus.....	259
The fiscal policy nexus	262
Private sector development policy nexus	265
References	268
End notes	269
Chapter 8 COVID-19 and investment in Africa	270
More than a health emergency	270
Foreign direct investment flows before COVID-19.....	270
COVID-19's impact on foreign direct investment in Africa	271
Channels of transmission	271
Lockdowns and travel restrictions	273
Demand shocks and supply/input disruptions.....	273
Other transmission channels.....	274
Vulnerabilities and feedback loops.....	274
Oil and tourism as vulnerable sectors	274
COVID-19's economic impact on major home countries/regions.....	277
Magnitude of impact	279

Policy implications	280
Short term: Protect lives and livelihoods.....	280
Medium term: End lockdowns safely	281
Long term: Build back better.....	282
References	284
End notes	286

FIGURES

Figure 1.1	Average foreign direct investment inflows, by continent, 1990–2019.....	48
Figure 1.2	Africa foreign direct investment inflows, by subregion, 1990–2019	51
Figure 2.1	A conceptual framework linking investment to IPRs, competition and digitalization.....	77
Figure 2.2	Applying the lens of the link, leverage and learn framework to the AfCFTA.....	79
Figure 3.1	Market and FDI openness, world comparison, 2017	101
Figure 3.2	Bilateral investment treaties negotiated by African countries	105
Figure 3.3	Overlaps between regional investment treaties and intra-African investment treaties.....	106
Figure 3.4	Breaches claimed and found in investor–state disputes against African countries	121
Figure 3.5	Availability of arbitration mechanisms to foreign investors in African countries through national investment codes	129
Figure 4.1	What investment policy can do.....	161
Figure 5.1	Total greenfield projects announced by African countries that have adopted TRIPS plus, 2012–2018.....	197
Figure 5.2	Total greenfield foreign direct investment projects announced, by destination, 2012–2018	198
Figure 5.3	Greenfield projects announced, by destination, 2012–2018.....	198
Figure 5.4	Charges for the use of intellectual property, receipts in African and comparator countries, 2010–2018.....	200
Figure 5.5	Gross expenditure on research and development, 2000–2016	202
Figure 5.6	Higher intellectual property rights protection and enforcement do not necessarily give rise to increased gross expenditure on research and development	203
Figure 5.7	Patents application in Africa, 1995–2018	204
Figure 5.8	Patent applications by country, 1995–2018.....	205
Figure 5.9	Total patent applications by sector, 1995–2015.....	207
Figure 6.1	The three scopes of the digital economy	219
Figure 6.2	Individuals using the internet, 2005–2019	222
Figure 7.1	Policy review process	259
Figure 8.1	FDI inflows, 2000–2018	271
Figure 8.2	Channels of COVID–19 effects on foreign direct investment	272
Figure 8.3	Oil rents as a percentage of GDP, top 20 countries, 2017.....	275
Figure 8.4	International tourist arrivals, top 10 African countries, 2018	276
Figure 8.5	Top home economies for foreign direct investment in Africa.....	277

TABLES

Table 1.1	Foreign direct investment, inflows and annual percentage change, top 5 African host economies, 2017–2019	52
Table 2.1	Summary of theoretical and empirical literature portraying the relationship of FDI and trade openness in Africa.....	66
Table 3.1	Key policy objectives and risks of four pillars suggested for the African Continental Free Trade Area Investment Protocol	91
Table 3.2	The three dimensions of investment laws	95
Table 3.3	Investment facilitation provisions in African regional treaties	110
Table 3.4	Criteria for investments in the COMESA and ECOWAS investment treaties	120
Table 3.5	Expropriation laws in selected African countries	126
Table 3.6	Investor obligations in African regional investment treaties	132
Table 3.7	State commitments besides investment protection in African regional treaties.....	137
Table 4.1	Sample cases of anti-competitive trade practices.....	167
Table 5.1	Egyptian prices and Jordanian prices for the same active pharmaceutical ingredient dosage for the same medical use.....	195
Table 6.1	E-commerce business models in Africa	228
Table 6.2	Payment methods available on different e-commerce platforms.....	229
Table 6.3	e-SADC strategic framework themes and strategic objectives	236
Table 6.4	Top 10 countries in the UNCTAD B2C e-Commerce Index and top 10 FDI destinations.....	241
Table 7.1	Complementary and flanking policy measures	256
Table 8.1	Top 30 countries for COVID–19 cases.....	278

BOXES

Box 1.1	iGuides and assistance to Member States	43
Box 3.1	Interactions between international and domestic law in disputes between investors and host states	96
Box 3.2	Investment promotion and facilitation in Rwanda	112
Box 3.3	Access to best available treatment via the most-favoured nation clause under the 1981 OIC investment agreement	123

预览已结束，完整报告链接和二维码如下：

https://www.yunbaogao.cn/report/index/report?reportId=5_157

