

# DIGITAL TRADE REGULATORY INTEGRATION

## COUNTRY PROFILE

### **Nigeria**



United Nations  
Economic Commission for Africa





# INTRODUCTION

The African Trade Policy Centre of the United Nations Economic Commission for Africa (ECA) has embarked on a Digital Trade Regulatory Integration (DTRI) initiative with four primary objectives:

- Provide information on digital services trade regulations that could facilitate the negotiation and implementation of the African Continental Free Trade Area (AfCFTA) Protocol on Digital Trade.
- Inform the development of a digital trade integration index that could become a component of the Africa Regional Integration Index.<sup>1</sup>
- Inform the addition of African countries to the Digital Services Trade Restrictiveness Index (Digital STRI), as developed by the Organisation for Economic Co-operation and Development.
- Offer a solid basis for further analytical work by ECA and others on digital trade.

The DTRI initiative researches the legal and regulatory environment associated with digital trade and will help African countries bet-

ter understand and address barriers to the growth and development of digital trade and e-commerce. Addressing the issues DTRI identifies will help promote digital trade and e-commerce and make it a more plausible choice for commercial transactions between businesses and consumers.

This country profile is based on observations from two datasets developed from the DTRI initiative. The first includes information on restrictions to digital services trade from 2014 to 2021 and is modelled after the Digital STRI. The second covers measures related to digital trade integration, beginning with the effective date of each measure, and reflects the latest available information. The legal and regulatory measures researched are categorized into policy areas in both digital services trade restrictions and digital trade integration, and the results are presented in the corresponding section of the profile. Where policy areas overlap, the profile presents results only once, to the extent possible.

This country profile presents the key findings for Nigeria. By population, Nigeria is the largest country in Africa. It is also en-

<sup>1</sup> See <https://arii.uneca.org/>.

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dowed with a vast pool of young people, who help position the country to develop a robust digital economy. The development of a digital economy is aligned with the broader priorities of the continent, but if Nigeria is to take advantage of its vast potential and reap the gains from transforming its economy, the country must ensure that its regulatory landscape serves the needs of digital development.

Nigeria has taken steps to foster digital growth. It has several institutional structures that are capable of setting digital policies, including:

- The Federal Ministry of Industry, Trade and Investment which was created to develop an environment for stimulating domestic investment and attracting foreign direct investment.
- The Federal Ministry of Communications and Digital Economy, which has a mandate to facilitate the development of digital technologies for economic growth and to coordinate and supervise the Nigerian Communications Commission and the National Information Technology Development Agency.
- The Nigerian Communications Commission, which oversees the telecommunication industry in Nigeria.

- The National Information Technology Development Agency, which fosters development and growth in the information technology sector.
- The Central Bank of Nigeria, which has jurisdiction over monetary policy and rulemaking for the financial sector.
- The Standards Organization of Nigeria, which establishes and monitors industrial quality standards.

In addition to these institutions, Nigeria also has legislation and decrees intended to guide investors in the digital services sector, including the Nigerian Communications Act of 2003,<sup>2</sup> the National Information Technology Development Agency Act of 2007,<sup>3</sup> the Companies Income Tax Act of 2011,<sup>4</sup> the Central Bank of Nigeria Act of 2007,<sup>5</sup> the Trade Marks Act of 2004,<sup>6</sup> the Nigerian Copyright Act of 1999,<sup>7</sup> the Nigerian Investment Promotion Commission Act of 1995,<sup>8</sup> the Companies and Allied Matters Act of 2020 (amended)<sup>9</sup> and the Nigeria Data Protection Regulation of 2019.<sup>10</sup>

Further analysis is required to understand Nigeria's regulatory framework and how conducive it currently is for digital trade.

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2 <https://ncc.gov.ng/documents/128-nigerian-communications-act-2003/file>.

3 <https://nitda.gov.ng/wp-content/uploads/2020/11/NITDA-ACT-2007-2019-Edition1.pdf>.

4 <http://lawsofnigeria.placng.org/laws/C21.pdf>.

5 <http://www.placng.org/lawsofnigeria/laws/TRADE%20MARKS%20ACT.pdf>.

6 <https://iclg.com/practice-areas/trade-marks-laws-and-regulations/nigeria>.

7 <https://www.wipo.int/edocs/lexdocs/laws/en/ng/ng001en.pdf>.

8 <https://investmentpolicy.unctad.org/investment-laws/laws/234/nigeria-nigerian-investment-promotion-commission-act>.

9 <https://r6a8n4n6.stackpathcdn.com/wp-content/uploads/2020/08/Companies-and-Allied-Matters-Act-2020-1-1.pdf>.

10 <https://nitda.gov.ng/wp-content/uploads/2021/01/NDPR-Implementation-Framework.pdf>.



# RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE

To assess the degree of restrictiveness among digital services trade in Nigeria, an in-depth review of policies, legislation and regulations on digital services trade restrictions was conducted under the five pillars of the Digital STRI:

- Infrastructure and connectivity.
- Electronic transactions.
- Payment systems.
- Intellectual property.
- Other barriers affecting trade in digitally enabled services.

## Infrastructure and connectivity

The Nigerian Communications Act of 2003 mandates interconnection for communications infrastructure.<sup>11</sup> MainOne is the dominant provider of fixed connection services in Nigeria. It provides undersea cables, including the GLO-1 submarine communications cable and the West Africa Cable sys-

tem. MainOne also provides data centres and other communications infrastructure. In the mobile space, there are four dominant operators that provide service to 99.5 per cent of Nigeria's 184.7 million active lines. As of December 2019, MTN was the largest, with a 37.3 per cent market share; Globacom, with 28.1 per cent; Airtel, with 27.2 per cent; and 9Mobile, with 7.4 per cent.<sup>12</sup> Of Nigeria's total active mobile lines, some 126 million (68 per cent) were connected to the internet (2G+/3G/4G). Other specialized companies provide services across the telecommunication value chain, including international gateway providers, internet service providers, value added services companies, private network operators and cell tower companies.

Nigeria's National Information Technology Development Agency has published guidelines on content development in information and communication technology (ICT) that affect cross-border data flows and data

11 <https://ncc.gov.ng/documents/128-nigerian-communications-act-2003/file>.

12 Nigerian Communication Commission, Nigerian National Broadband Plan 2020-2025 (Abuja, 2020). Available at [www.ncc.gov.ng/accessible/documents/880-nigerian-national-broadband-plan-2020-2025/file](http://www.ncc.gov.ng/accessible/documents/880-nigerian-national-broadband-plan-2020-2025/file).

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localization requirements.<sup>13</sup> The guidelines require that data and information management firms host government data (referred to in Nigeria as “sovereign data”) within the country. They also specify that government data may not be hosted outside the country without express approval from the National Information Technology Development Agency and the Secretary of the Federal Government.

Nigeria also requires all ICT companies to host their subscriber and consumer data locally. However, the transfer of personal data does not require registration or notification prior to approval by the National Information Technology Development Agency. Data must be transferred to a jurisdiction that has been whitelisted by the agency (under the supervision of the attorney general) or under specific exceptions.

### Electronic communications

Nigeria is not a party to the United Nations Convention on the Use of Electronic Communications in International Contracts or the United Nations Convention on Contracts for the International Sale of Goods. However, Article 17.1 of the Cybercrimes (Prohibition and Prevention) Act of 2015 states that electronic signatures are binding for purchases of goods and other transactions.<sup>14</sup> The act also lists transactions that are not valid with an electronic signature and specifies what it means to access a computer unlawfully (Article 6). Persons

who intentionally access a computer system or network without authorization for fraudulent purposes and obtain data vital to national security shall be liable to imprisonment of up to five years, a fine of 5 million Nigerian naira (₦) or both. The act further stipulates that if the offense is committed with the intent of obtaining computer data or securing access to any program, commercial or industrial secrets, or classified information, the punishment shall be imprisonment for not more than seven years, a fine of not more than ₦ 7 million or both.

The Nigerian Communications Commission examines and resolves disputes between licensed operators, subscribers or any other person involved in the communications industry. The commission has the authority to use such dispute resolution methods as it may deem necessary, including mediation and arbitration. Separately, the National Information Technology Development Agency manages domain name dispute resolution and has a related appeals mechanism.

Non-resident firms are permitted to file online tax declarations but must first register in person at a Federal Inland Revenue Service office. The e-filing portal is available only to taxpayers who have registered for e-filing in person at such an office.<sup>15</sup>

### Payment systems

The Central Bank of Nigeria oversees payment systems through guidelines on point-

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13 National Information Technology Development Agency, “Guidelines on Nigerian content development in information and communications technology (as amended August 2019)” (Abuja, 2019). Available at <https://nlipw.com/wp-content/uploads/Guidelines-for-Nigerian-Content-Development-in-Information-and-Communications-Technology-ICT.pdf>.

14 [https://www.cert.gov.ng/ngcert/resources/CyberCrime\\_\\_Prohibition\\_Prevention\\_etc\\_\\_Act\\_\\_2015.pdf](https://www.cert.gov.ng/ngcert/resources/CyberCrime__Prohibition_Prevention_etc__Act__2015.pdf).

15 The Federal Inland Revenue Service e-filing portal is available at [www.firs.gov.ng/e-filing/](http://www.firs.gov.ng/e-filing/).

of-sale card acceptance services<sup>16</sup> and stipulates that information technology infrastructure for processing payments must be located in Nigeria. All domestic transactions carried out at point-of-sale card terminals and automated teller machines must be processed through local switches. Transactions may not be routed outside the country for processing. The Central Bank of Nigeria is accredited under standard ISO/IEC 27001 of 2015, published by the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), which defines standards for information security management systems and ISO 22301 on business continuity.

The Standards Organization of Nigeria requires that products such as payment cards and other electronic identification cards conform to international technical standards ISO/IEC 14443 and ISO/IEC 7816 before they are imported to Nigeria.

## Intellectual property rights

Nigeria's Copyright Act of 1988 (as amended in 1992 and 1999 and recodified in 2010) establishes the framework for intellectual property rights protection in Nigeria.<sup>17</sup> Since 16 January 2017, Nigeria has been a member of the Agreement on Trade-Related Aspects of Intellectual Property Rights among members of the World Trade Organization. It has been a party to the Berne Convention for the Protection of Literary and Artistic Works since 1993 and is also a party to the Performances and Phonograms Treaty

of the World Intellectual Property Organization (WIPO). However, Nigeria is not part of the Madrid System run by WIPO to register and manage copyrights worldwide.

Nigeria's enforcement mechanisms for addressing copyright and trademark infringement are spread across several agencies. Section 46 of the Copyright Act gives the Federal High Court of Nigeria exclusive jurisdiction in trials pertaining to intellectual property offences or terms disputes. Finally, the Nigerian Copyright Act does not define copyright exceptions such as "fair use" or "fair dealing," although exceptions related to fair dealing are covered in the second schedule of the act.

A foreign proprietor requires a local agent to register a trademark in Nigeria, according to the Trade Marks Act (Chapter T13 Laws of the Federation of Nigeria 2004).<sup>18</sup> The entity lodging an application to register a trademark must submit details, including a Nigerian entity's registration number with the Corporate Affairs Commission and a tax identification number.

## Other barriers affecting trade in digitally enabled services

Several other barriers to trade in digital services exist in Nigeria. For example, the guidelines on Nigerian content development in ICT specify performance requirements for telecommunication companies. Companies must provide a local content development plan that covers job creation

16 Central Bank of Nigeria, "Guidelines on point-of-sale (POS) card acceptance services" Abuja, 2011. "Guidelines on operations of electronic payment channels in Nigeria", Abuja 2020. The guidelines are available at [www.cbn.gov.ng/documents/PaymentsSystemGuidelines.asp](http://www.cbn.gov.ng/documents/PaymentsSystemGuidelines.asp).

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18 <https://nigeria.tradeportal.org/media/Trade%20Mark%20Act.pdf>.

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estimates, recruitment initiatives for Nigerians, human capital development plans and plans for the use of indigenous ICT products and services for value creation. Stemming from this, the use of locally developed or manufactured software components, equipment, cables and devices for the provision of communications services is mandated in Nigeria.

Indigenous companies should be used to construct network infrastructure (both active and passive), including cell towers, base stations, cables, software and network equipment. Companies must also locally source at least 80 per cent of the value and volume of ICT initiatives and must use Nigerian companies for at least 80 per cent of all value-added services and network services on their networks. Telecommunication service providers must also ensure that at least 80 per cent of the value and volume of the services are provided locally.

To be incorporated in Nigeria, local representation is necessary in line with the Companies and Allied Matters Act of 1990,<sup>19</sup> and a physical address must be supplied when applying for registration. For a multinational company to provide cross-border

services and register as a business, it is sufficient to have a local representative in Nigeria. The office of its local agent is sufficient proof of local presence.

It is mandatory for telecommunication equipment to undergo testing procedures in line with Nigerian Communications Commission guidelines. All equipment must obtain a certificate specifying that it meets the commission's type-approval standards before shipment into the country. In addition, import requirements set by the Standards Organization of Nigeria include compulsory product certification, as well as guidelines for exporting to Nigeria under an initiative called the Standards Organization of Nigeria Conformity Assessment Programme. Nigerian telecommunication equipment importers must also receive a certificate from the Conformity Assessment Programme before they can import. Finally, after an importer receives approval from the Nigerian Communications Commission and, where applicable for some telecommunication equipment, obtains the relevant certificate from the Standards Organization of Nigeria, the importer is required to receive an end-user certificate from the Office of the National Security Adviser.<sup>20</sup>

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19 <https://r6a8n4n6.stackpathcdn.com/wp-content/uploads/2020/08/Companies-and-Allied-Matters-Act-2020-1-1.pdf>.

20 The Office of the National Security Advisor provides details on ICT equipment that requires an end-user certificate on its portal. See <https://euc.nsa.gov.ng/telecommunication-equipment/>.

# INDICATORS OF DIGITAL TRADE INTEGRATION

This section discusses measures related to the level of digital trade integration in Nigeria. The regulatory regime of digital trade integration was assessed under 11 pillars:

- Tariff and trade defence on measures applied to intraregional imports of information and communications technology (ICT) goods.
- Public procurement of digital goods and services.
- Foreign direct investment (FDI) for digital trade.
- Intellectual property rights.
- Telecommunications infrastructure and competition.
- Cross-border data policies.
- Domestic data policies.
- Intermediary liability and content access.
- Quantitative trade restrictions.
- Standards.
- Online sales and transactions.

Since the findings for some of these pillars are discussed in the previous section on Dig-

ital STRI, to the extent possible, a duplicative discussion is avoided in this section.

## Foreign direct investment

Nigeria places no apparent restrictions on FDI in digital trade sectors. There are, however, some elements of discrimination against FDI. For example, original equipment manufacturers must maintain a minimum market capitalization of ₦ 2 billion (approximately \$4.9 million), and original design manufacturers of ICT products must maintain a minimum market capitalization of ₦ 5 billion (approximately \$12.1 million). Original equipment manufacturers must also meet the local content requirement of at least 50 per cent by value either directly or through outsourcing to local manufacturers engaged in any segment of the product value chain.

Although Nigeria does not place direct restrictions on FDI in digital trade, there are some barriers that make investing in Nigeria harder. For example, according to Article 31(1) of the Nigerian Communications Act



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of 2003, no person shall operate a communications system or facility nor provide a communications service in Nigeria unless authorized to do so.<sup>21</sup> Anyone wanting to provide internet services or internet exchange must receive licenses before providing data services. On the other hand, the provision of voice-over-internet-protocol services does not require a license.

The guidelines for Nigerian content development in ICT further require telecommunication companies that build active and passive network infrastructure, such as towers and base stations, to use indigenous companies and ensure that at least 80 per cent of the value and volume are locally sourced.

All investments with foreign participation must be registered with the Nigerian Investment Promotion Commission. After registration, investments are covered by the treatment and protection clauses of the Nigerian Investment Promotion Commission Act of 1995 (Sections 17 and 27).<sup>22</sup> No reports have been found that suggest that telecommunication investments have come under scrutiny on grounds of national security. However, it is mandatory that an end-user certificate be obtained from the Office of the National Security Adviser of the Federal

Government for the supply of specific telecommunication equipment.<sup>23</sup>

The guidelines on Nigerian content development in ICT state that multinational companies are required to provide a local content development plan for the creation of jobs, recruitment of local engineers, human capital development and value creation for the local environment.<sup>24</sup> No requirements for using Nigerian nationals have been found, however.

### **Domestic data policies**

The Nigeria Data Protection Regulation of 2019 provides the framework for domestic data policies and data protection.<sup>25</sup> It considers emerging data protection laws and regulations in the international community that aim to protect privacy, identity, lives and property and foster the integrity of commerce and industry in the data and digital economies.

The Data Protection Regulation mandates that personal data be stored only for the period for which it is reasonably needed. In situations where the retention period of personal data is not specified in a contract between associated parties or in applicable law, data should be stored for three years

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<sup>21</sup> <https://ncc.gov.ng/documents/128-nigerian-communications-act-2003/file>.

<sup>22</sup> <https://investmentpolicy.unctad.org/investment-laws/laws/234/nigeria-nigerian-investment-promotion-commission-act>.

<sup>23</sup> For example, telecommunication equipment listed as requiring an end-user certificate includes codes 85255040 frequency jammers equipment, 85255010 microwave equipment, 85291019 satellite dishes, 85291099 satellite transmitter and receiver, 85177090 signal boosters equipment, and 9031900000 "SIM box equipment" (of the Harmonized Commodity Description and Coding System). The Office of the National Security Advisor provides a list of items that require an end-user certificate on its portal, available at <https://euc.nsa.gov.ng/full-hs-codes/>.

<sup>24</sup> National Information Technology Development Agency, "Guidelines on Nigerian content development in information and communications technology (as amended August 2019)" (Abuja, 2019). Available at <https://nlipw.com/wp-content/uploads/Guidelines-for-Nigerian-Content-Development-in-Information-and-Communications-Technology-ICT.pdf>.

<sup>25</sup> Published by National Information Technology Development Agency and available at <https://nitda.gov.ng/regulations/>.

after the last active use of a digital platform or six years after the last transaction in a contractual agreement. For other situations such as death, data should be retained upon presentation of evidence of death by a relative of the deceased. Data must also be provided immediately upon request of a data subject or his/her legal guardian where no statutory provision provides otherwise and the data subject is not the subject of an investigation or suit that may require the data the subject is seeking to have deleted.

The Nigerian Identity Management Commission Act of 2007 prohibits unauthorized access to information.<sup>26</sup> However, the Nigerian Identity Management Commission allows personal information to be provided when the disclosure of such information is in the interests of national security or crime prevention. This restriction calls into question data privacy and protection since the Nigerian Identity Management Commission Act of 2007 does not hold the commission accountable for protecting individual personal information or provide remedy for any complaint against violations.<sup>27</sup>

Nigeria was ranked 117 of 134 countries on the Network Readiness Index 2020 published by the Portulans Institute, a think tank in Washington, D.C.<sup>28</sup> The index measures the drivers of the ICT revolution globally. The index assesses the state of network readiness in 134 countries based on their performance across 60 variables. A detailed examination of the indicators reveals that

Nigeria performs well for technicians and associate professionals, medium- and high-tech industries, business use of digital tools, cybersecurity and publication, and use of open data.

### Intermediary liability and content access

Nigerian law does not directly address intermediary liability, although laws such as the Nigerian Communications Act,<sup>29</sup> the National Information Technology Development Agency Act,<sup>30</sup> the Nigerian Copyright Act<sup>31</sup> and related regulations are relevant to the topic. However, legislation on intermediary liability is being drafted. Parallel regulations such as guidelines for the provision of internet service, published by the Nigerian Communications Commission, include a mechanism for notice and takedown. The guidelines also discuss limitations of intermediary liability for internet services providers as content intermediaries and stipulate a general obligation for internet service providers to disconnect subscribers upon being made aware of infringing conduct. However, it remains unclear what practical force or effective application the guidelines have. The uncertainty surrounding safe harbour for intermediaries is a roadblock to trade.

Nigeria has a user identity and monitoring requirement whereby the federal government has directed all phone subscriber identity module (SIM) cards to be registered with valid national identification numbers.

26 Published by the Nigerian Identity Management Commission and available at <https://nimc.gov.ng/policies/>.

27 [https://www.nimc.gov.ng/docs/reports/nimc\\_act.pdf](https://www.nimc.gov.ng/docs/reports/nimc_act.pdf).

28 For more information on the index see <https://networkreadinessindex.org/>.

29 <https://ncc.gov.ng/documents/128-nigerian-communications-act-2003/file>.

30 <https://nitda.gov.ng/wp-content/uploads/2020/11/NITDA-ACT-2007-2019-Edition1.pdf>.

31 <https://www.wipo.int/edocs/lexdocs/laws/en/ng/ng001en.pdf>.

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SIM cards failing this requirement must be blocked by service providers. The National Identification Management Commission confirmed that the registration of national identification numbers applies to all Nigerians and legal residents of Nigeria as provided under the National Identification Management Commission Act of 2007.<sup>32</sup> Section 5 of the act empowers the commission to create a national identity database, harmonize existing databases and register eligible persons.

Restrictions on Internet content lack transparency in Nigeria. For example, the blocking of 21 pro-Biafra websites in 2017, including the popular naij.com online news outlet, was not carried out transparently. The block was ordered by the Nigerian Communications Commission based on Section 146 of the Nigeria Communications Act 2003, which obligates internet service providers to cooperate with the commission to preserve national security and prevent crime.<sup>33</sup> Although access to the website was restored as of March 2019, at least a dozen of the pro-Biafra websites remained inaccessible. However, no blockage reports have been evidenced during recent elections.<sup>34</sup>

Entities that seek to provide communications services in Nigeria, including digital service providers, need to be licensed. Severe sanctions by the Nigerian Communications Commission are threatened for licensing violations. Foreign entities can be issued a communication license even if they have

no local ownership (equity) provided that they are incorporated in Nigeria and have fulfilled all the requirements for obtaining the requisite license. As an example of how these licenses work in practice, the internet services license permits an entity to provide and operate internet services in Nigeria but prohibits the licensed entity from offering any other value-added network service without prior written approval of the commission.<sup>35</sup>

### Online sales and transactions

The Standards Organization of Nigeria Conformity Assessment Programme (SONCAP), which became binding in 2005, applies to all online sales and transactions. It requires that imported goods undergo pre-shipment certification through authorized service providers. The programme is effectuated through two schemes: product certification and SONCAP certification.

Both certificates require imports to undergo verification and testing in the country of export. A product certificate can be issued following demonstration that the product meets Nigerian Industrial Standards and a physical inspection of the shipment. The cost to obtain this certificate is approximately \$300–\$1,300 for each product type; for mixed shipments, fees multiply accordingly. A product certificate is valid for six months to a year, so importers are required to re-new registration regularly even if there is no change in the product. SONCAP cer-

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<sup>32</sup> <https://ngfrepository.org.ng:8443/bitstream/123456789/946/3/NATIONAL-IDENTITY-MANAGEMENT-COMMISSION-ACT.pdf>.

<sup>33</sup> <https://ncc.gov.ng/documents/128-nigerian-communications-act-2003/file>.

<sup>34</sup> <https://freedomhouse.org/country/nigeria/freedom-net/2019>.

<sup>35</sup> [www.mondaq.com/nigeria/telecoms-mobile-cable-communications/1018550/introduction-to-licensing-in-the-nigerian-telecommunications-industry-part-1-](http://www.mondaq.com/nigeria/telecoms-mobile-cable-communications/1018550/introduction-to-licensing-in-the-nigerian-telecommunications-industry-part-1-)

tificates cost a flat fee of \$300 regardless of a shipment's value and can only be used once. The certificates are part of a package of clearing documents presented when the goods arrive at an airport or seaport.

The Nigerian Communications Commission is responsible for enforcing standards for all telecommunication equipment and ensuring that the equipment operates safely in the country. The type of approval standards set by the commission are based on international standards, but it is mandatory for suppliers to have a local representative.

There is a restriction on the allowable limit for external money transfers. The limit is \$2,000 or its equivalent per transaction and is subject to periodic review by the Central Bank of Nigeria.

There is no official de minimis threshold in Nigeria. De minimis thresholds are currently non-uniform and are based on internal instruction from the concerned Customs Area Command, a local division of the Nigeria Customs Service of the Federal Ministry of Finance.<sup>36</sup> The internal threshold is based on assessments of compliance level with express and postal services. For instance, DHL Nigeria is allocated a threshold of \$250, while others are allocated \$100.

The guidelines on Nigerian content require that ICT service providers use an ".ng" domain name. Draft legislation exists for electronic transactions in Nigeria, but it has not yet become law.

<sup>36</sup> [https://customs.gov.ng/?page\\_id=3119](https://customs.gov.ng/?page_id=3119) for the organizational structure of the Nigeria Customs Service.

# CONCLUSIONS AND RECOMMENDATIONS

This country profile has provided an overview of key findings from research on digital services trade restrictions and restrictions to digital trade integration in Nigeria. As a summary:

- In Nigeria, there is a notable imbalance of treatment between foreign and domestic providers of digital goods and services.
- Nigeria's infrastructure and connectivity regulations include restrictions on cross-border data flows and data localization requirements. For instance:
  - » Data and information management firms must host government data locally. Firms may not, for any reason, host government data outside the country without approval from the National Information Technology Development Agency and the Secretary of the Federal Government.
  - » All ICT companies are required to host their subscriber and consumer data locally. This makes it difficult for foreign providers who offer services using subscriber and consumer data to operate from outside Nigeria.
- Nigeria has performance requirements for multinational companies wishing to provide services and trade within the country, such as:
  - » Companies must provide local content development plans for job creation, recruitment of Nigerians (including engineers as well as salespeople), human capital development and the use of domestic ICT products and services for value creation.
  - » Telecommunication service providers must use locally developed or manufactured software components, equipment, cables and devices for the provision of communication services.
  - » Telecommunication service providers must ensure that the companies they hire create at least 80 per cent of the volume and value of services they provide locally. This policy constitutes discrimination when compared to local entities that provide the same type of services within the country.



- Nigeria is a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights and a party to the Berne Convention for the Protection of Literary and Artistic Works and to the World Intellectual Property Organization Performances and Phonograms Treaty. Nigeria's accession to these agreements boosts confidence in its regulatory regime among foreign entities looking to trade within Nigeria's borders. Intellectual property protections are important in cross-border trade, although crucially for Nigeria's policy regime, fair use and fair dealing rules are not clearly addressed in any of the country's policies.
- Even though Nigeria places no apparent restrictions on foreign direct investment in digital trade sectors, there are barriers that can deter foreign investments. Discriminatory measures include requirements for original equipment manufacturers and original design manufacturers of ICT products to maintain minimum market capitalizations of ₦ 2 billion (approximately \$4.9 million) and ₦ 5 billion (approximately \$12.1 million), respectively. These huge capital requirements could discourage foreign entities from investing, especially since the same requirements are not imposed on local entities.
- SONCAP also entails some barriers to digital trade. The standards are applied to all online sales and transactions and require approval from the Nigerian Communications Commission to authorize the use of certain telecommunication equipment. They also require companies to obtain end-user certificates for some telecommu-

nication equipment. Conformity and testing requirements are also applied to ensure that products meet the requirements of the Nigerian Industrial Standards. These requirements are burdensome and repetitive, which makes cross-border transactions related to Nigeria unattractive.

- Restrictions to internet content are not transparent in Nigeria. For example, the blocking of 21 pro-Biafra websites in 2017, including the popular naij.com online news outlet, was not carried out through a transparent process. Although access to the website was eventually restored, as of March 2019 at least 12 pro-Biafra websites remained inaccessible. However, there were no reports of blocking around the time of the elections. The Constitution of Nigeria provides for freedom of expression, and the opaque blocking of websites undermines Nigerians' ability to exercise this right, thereby sending a poor signal to trade partners of the country.

Some requirements that Nigerian law places on digital trade inhibit the ability to do business in Nigeria and some with non-economic objectives are perceived as trade-distorting. Therefore, it is recommended that Nigeria create a digital trade policy framework that better considers Nigeria's value and potential in the digital sector. To facilitate a stronger regional system for digital trade, the following recommendations are suggested:

- Nigeria should identify proposed policy objectives and employ technical analysis before establishing restrictive policies. Any measures should be cal-

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ibrated to attain the proposed policy objectives and no more.

- Prior to enacting regulations, the government ought to engage in dialogue with concerned parties. Policy dialogue would provide needed insight on ways to achieve policy goals while also reducing the harm caused by restrictive legislation.
- Nigeria should consider restrictive measures only where the need for trade barriers is important, and the restrictions should be minimally invasive. Measures should be clear, and compliance requirements should not

discriminate between local and foreign entities.

- The government of Nigeria should consider harmonizing domestic standards frameworks, including Nigerian Industrial Standards, with regional and international standards and frameworks.
- The government should seek technical and financial support from regional agencies, such as the United Nations Conference on Trade and Development, to monitor firms' behavior outside of Nigeria. This will help ensure that firms conform to international best practices.

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