

DIGITAL TRADE REGULATORY INTEGRATION

COUNTRY PROFILE

Uganda



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.¹
- 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 Uganda.

¹ See <https://arii.uneca.org/>.

RESTRICTIVENESS OF THE REGULATORY REGIME FOR DIGITAL SERVICES TRADE

To assess the degree of restrictiveness among digital services trade in Botswana, 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

Interconnectivity of telecommunication operators is required by the regulator, the Uganda Communications Commission. Each operator must display prominently on its website and public premises any information relating to a reference interconnection offer. The prices regulated by the commission relate only to bulk access to any communications infrastructure. The commission

also determines whether the pricing or cost of interconnection is reasonable, transparent and non-discriminatory.

The commission has yet to designate a dominant firm among either mobile or landline network providers. Nonetheless, MTN Uganda has been recognized as a dominant operator because it has the highest number of subscriptions and has held a national telecom operator licence for the longest time, while Uganda Telecom Ltd has been the dominant landline operator by virtue of having a monopoly between 1993, when it was government-owned, and 2003, when the market was opened². It was predominantly a fixed-line network at the time and still has the largest fixed-line network.

The Data Protection and Privacy Act of 2019 gives guidance on data collection, processing and storage.³ Data transfer is conditional on the consent of the subject of the data and on having adequate measures to protect data in the jurisdiction where they are stored.

² <https://www.statista.com/statistics/671666/mobile-subscription-share-in-uganda-by-operator/>
³ <https://ict.go.ug/wp-content/uploads/2019/03/Data-Protection-and-Privacy-Act-2019.pdf>.

Electronic transactions

Provisions relating to electronic transactions require some information technology providers to acquire certification in addition to an ordinary license. The Electronic Signatures Act of 2011 gives electronic signatures the same validity as handwritten signatures,⁴ while the Computer Misuse Act of 2011 defines various offences relating to computer misuse and electronic transactions.⁵

Payment systems

The National Payment Systems Act (Act 15 of 2020) is intended to regulate the licensing of payment systems,⁶ but enforcement will begin only after its implementing regulations have been introduced by the Ministry of Finance. Thus far, no discrimination has been found in payment systems practices.

Intellectual property rights

One matter of concern regarding intellectual property rights is that Uganda has yet to

ratify the Berne Convention for the Protection of Literary and Artistic Works. Intellectual property protection and enforcement are ensured by administrative and judicial dispute settlement procedures such as the Trademark Regulations, under which disputes are first referred to the Registrar (administrative action) and then for judicial redress and remedies. Rights holders can also apply for an injunction if there is a likelihood of imminent infringement of their rights.

Other barriers affecting trade in digitally enabled services

No legislation requires a commercial presence for operators of cross-border services, nor are firms required to have a local presence or a local partner in order to operate. However, the “over-the-top” tax on social media platforms and various incidences of shutting down or blocking the internet and social media platforms are signs of restrictions in the sector.

4 <https://ict.go.ug/2019/12/03/the-electronics-signatures-act-2011/>.

5 <https://ict.go.ug/wp-content/uploads/2019/12/UGANDA-Computer-Misuse-Act-No.-2-of-2011-1.pdf>.

6 https://www.bou.or.ug/bou/bouwebsite/bouwebsitecontent/acts/supervision_acts_regulations/Payment-Systems-Act/The-National-Payments-Systems-Act-2020.pdf.

INDICATORS OF DIGITAL TRADE INTEGRATION



This section discusses measures related to the level of digital trade integration in Botswana. 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 communication technology (ICT) goods.
- Public procurement of digital goods and services.
- Foreign direct investment 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 Digital STRI, to the extent possible, a duplicative discussion is avoided in this section.

Foreign direct investment for digital trade

The Investment Code Act of 2019 stipulates certain screening measures for both local and foreign investors intending to invest in the priority areas listed under schedule 2 (one of which is information technology) or to seek incentives from the government.⁷ To qualify for registration and issuance of an investment licence by the Uganda Investment Authority, domestic investors must have minimum investment capital of \$50,000 (approximately 185 million Uganda shillings), and foreign investors must have a minimum of \$100,000 (approximately 370 million Uganda shillings). Investment capital below the threshold and outside the 26 priority areas does not require a licence from the Uganda Investment Authority and is not regulated under this act.

Cross-border data policies

Cross-border data policies regulate the collection of special personal data, which is permitted in the exercise or performance of a

⁷ <https://www.ugandainvest.go.ug/wp-content/uploads/2019/03/Investment-Code-Act-2019.pdf>.

right or an obligation conferred or imposed by law on an employer. The information must have been given freely and with the consent of the person concerned, or the collection or processing of the information must be for the legitimate activities of a body or association but must not involve the disclosure of the personal data to a third party without the consent of the person concerned.

Domestic data policies

Domestic data policies are also regulated by the Data Protection and Privacy Act of 2019, which regulates the collection and processing of personal data and the use and disclosure of the personal information collected.⁸ The act requires the subject of the data to assent to the collection and processing of personal data, and the data may not be retained any longer than necessary to achieve the purpose for which it was collected.

The Regulation of Interception of Communications Act of 2010 requires intermediaries to collect customer information (name, address and identification number); install surveillance equipment; and disclose information to the authorities upon presentation of a warrant or a demand from the Ministry for Information and Communications Technology and National Guidance.⁹

Intermediary liability and content access

Evidence was found of several incidences of the government denying access to or block-

ing digital content. For example, the government temporarily blocked social media and the internet before and after the 2016 and 2021 elections, and the Uganda Communications Commission ordered internet service providers to block the website of the Rwandan newspaper, *The New Times* and Igihe.com for two days in August 2019 amid tensions between the two countries.

Online sales and transactions

Uganda passed legislation on electronic transactions, electronic signatures and computer misuse in 2011. Online sales and transactions are regulated for the most part by the Electronic Transactions Act of 2011.¹⁰ As a consumer protection measure, the act imposes disclosure obligations on online service providers. The information that must be accessible to consumers includes a description of the goods and services offered; the full price, including taxes and transport fees; mode of payment; applicable guarantees; delivery timelines; code of conduct; and security procedures and privacy policy.

One restriction identified is the 0.5 per cent tax imposed on mobile money withdrawal, which increases the transaction cost.

The National Payments Systems Act of 2020 is relatively new and still requires additional statutory instruments to implement most of its provisions.¹¹ No restrictions are foreseen within the current provisions of the act, however.

8 <https://ict.go.ug/wp-content/uploads/2019/03/Data-Protection-and-Privacy-Act-2019.pdf>.

9 <https://old.ulii.org/system/files/legislation/act/2010/18/Regulations%20of%20Interception%20of%20Communications%20Act%2C%202010.pdf>.

10 <https://ict.go.ug/2019/12/03/the-electronics-signatures-act-2011/>.

11 https://www.bou.or.ug/bou/bouwebsite/bouwebsitecontent/acts/supervision_acts_regulations/Payment-Systems-Act/The-National-Payments-Systems-Act-2020.pdf.

CONCLUSION AND RECOMMENDATIONS

The Covid-19 pandemic and the restrictions on trade implemented to manage it and other recent global events have underscored the importance of digital trade as a key facilitator of trade in both digital goods and services. Digital trade is increasingly important in Uganda, and its regulation is of keen interest to investors and trading partners.

Effective regulation of digital trade does not necessarily mean deregulation. In fact, in some cases—such as in the telecommunication sector, which has major private sector players that also trade in financial services—a lack of regulation leaves room for anti-competitive practices and could be a major threat in a business environment consisting largely of small and medium-size enterprises.

Uganda has taken significant steps to regulate and monitor these sectors. For example, regulations covering the telecommunication sector, including new, amended and clearer licensing criteria, were published in 2019, and the National Payments Act of 2020 enables the provision of payment platforms and more modern financial products.

Greater transparency is needed in some areas, however, as opaque measures can discourage trade and investment. Recent sanctions on social media and the internet, which are key to facilitating digital trade, are a case in point. In addition, taxation of these products and mobile money services increases the cost of doing business in Uganda and stifles growth.

It is essential for Uganda to fast-track the creation of an autonomous competition authority and a body of laws governing competition and consumer protection. Although current legislation includes some provisions on consumer protection and restrictions on anti-competitive practices, they have not been effective in practice.

Digital trade is very agile and is constantly evolving. No single transaction can be completed without digital communication. Uganda must consider best practices for regulating it, protect transparency in the legislation and procedures affecting these sectors and, most important, ensure that due process is followed by all stakeholders to facilitate digital trade, investment and development.

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