



United Nations
Economic Commission for Africa



Digital trade regulatory integration

Country profile: Uganda



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Introduction

The present report outlines the findings of research on digital trade regulatory integration in Uganda, which was part of a pilot project carried out in 11 African countries by the Economic Commission for Africa through its African Trade Policy Centre.

The purpose of the research was to collect data on restrictions on digital services trade on the model of the digital services trade restrictiveness index of the Organization for Economic Cooperation and Development on the one hand and on digital trade integration on the other hand. The data collected provide insight into developments, regulations and practices affecting digital trade in Uganda. It could prove useful to policymakers and particularly in negotiations on e-commerce in the African Continental Free Trade Area. Moreover, the data are expected to help to improve the Africa Regional Integration Index, the purpose of which is to provide member States with up-to-date data on regional integration performance in support of policymaking and policy implementation on the continent. Finally, the data could help adding Uganda in the digital services trade restrictiveness index of the Organization for Economic Cooperation and Development.

Key findings on digital services trade restrictions

Data on the digital services trade restrictiveness index help to identify regulatory restrictions affecting digital trade regarding: infrastructure and connectivity; electronic transactions; payment systems; intellectual property; and other barriers, such as a commercial presence requirement or restrictions on advertising.

Infrastructure and connectivity

Interconnectivity of telecommunications firms is required by the regulator, the Uganda Communications Commission, each operator being required to 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 proposed prices are just and fair and ensures that 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 Limited 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 opened. It was predominantly a fixed-line network at the time and still has the largest fixed-line network.

Cross-border data flows

The Data Protection Act gives guidance on how data collection, processing and storage should be conducted. Data transfer is conditional upon the consent of the subject of the data and adequate measures to protect data in the jurisdiction where they are stored.

Electronic transactions

Provisions relating to electronic transactions require some information technology providers to acquire certification in addition to their ordinary licence. The Electronic Signatures Act gives electronic signatures the same validity as handwritten signatures, while the Computer Misuse Act creates various offences relating to computer misuse and electronic transactions.

Payment systems

The National Payment Systems Act of 2019 is intended to regulate the licensing of payment systems, but it will only be enforced once its implementing regulations have been introduced by the Minister for 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) 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 laws and restrictions

There is no legislation on commercial presence requirements for operators of cross-border services, nor are firms required to have a local presence or a local partner in order to operate, but the “over-the-top” tax on social media platforms and various incidences of Internet and social media platforms being shut down or blocked are signs of restrictions in the sector.

Key findings on digital trade integration

Data collection on digital trade integration focused on five pillars: digital trade-related foreign investment in the sector; cross-border data policies; domestic data policies; intermediary liability and content access; and online sales and transactions.

Foreign investment

The Investment Code Act 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, and to seek incentives from the Government. To qualify for registration and issuance of an investment licence by the Uganda Investment Authority, domestic investors must have a minimum investment capital of \$50,000 (approximately 185,000,000 Uganda shillings), and foreign investors must have a minimum of \$100,000 (approximately 370,000,000 Uganda shillings). Investment capital below the threshold and outside the 26 priority areas does not require a licence from the 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 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 purposes of 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. The Act requires: the consent of the subject of the data to the collection and processing of personal data; and that the data not be retained any longer than is necessary to achieve the purpose for which it was collected.

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

Content access

Several incidents of the Government denying access to or blocking digital content were highlighted. For example, it 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

Online sales and transactions are predominantly regulated by the Electronic Transactions Act. Uganda passed legislation on electronic transactions, electronic signatures and computer misuse in 2011. The Electronic Transactions Act, as a consumer protection measure, 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 translates into a more costly transaction cost.

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

Conclusion and recommendations

The coronavirus disease (COVID-19) pandemic and the restrictions on trade implemented in an effort to manage it have underscored the importance of digital trade as a key facilitator of trade in both 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 telecommunications sector, which has major private sector players that also trade in financial services, a lack of regulation leaves room for anticompetitive practices and could be a major threat to a business environment made up largely of small and medium-sized enterprises.

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

Greater transparency is needed in some respects, however, as opaque measures can have a negative effect on trade and investment. The recent sanctions on social media and the Internet, which are key to facilitating digital trade, are a case in point. In addition, the 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 anticompetitive practices, they have not been effective, in practice.

Digital trade is very agile and is constantly evolving but it has become a critical part of our way of life; no single transaction can be completed without digital communication. Uganda must therefore consider best practices for regulating it, transparency in the legislation and procedures affecting these sectors and, even more important, ensure that due process is followed by all stakeholders to facilitate digital trade, investment and development.

This country profile was prepared by Jacqueline Pimer, trade governance lawyer.

The country profile is part of the training and research initiative on digital trade regulatory integration in Africa, launched by the Economic Commission for Africa towards the end of 2020 to collect specific data on digital trade regulations and integration. Uganda was selected as one of the pilot countries for the initiative.