KEY CONTACTS

Bidemi Olumide
Managing Partner
bidemi.olumide@ao2law.com

John Oladapo
Associate
john.oladapo@ao2law.com

Benedicta Babarinsa
Associate
benedicta.babarinsa@ao2law.com

THE AfCFTA REGULATORY PARADOX: ONE AFRICAN MARKET, 54 REGULATORY SYSTEMS

A. Introduction

The African Continental Free Trade Area (AfCFTA) was established to create a single market for goods and services and deepen economic integration across Africa. But market integration does not necessarily mean regulatory integration.

The ambition is continental. The legal and regulatory machinery through which businesses operate, however, remains substantially national and regional. A Nigerian company expanding into Ghana, Kenya or South Africa may gain access to a larger market, but it does not thereby become subject to one uniform African regulatory framework. Data protection, tax, employment, licensing, product standards, consumer protection and local-content requirements may significantly differ from one jurisdiction to another.

AfCFTA can open the market without making the regulatory environment uniform. That is the regulatory paradox.

B. The Hidden Costs of Regulatory Fragmentation

Preferential market access does not remove the need to comply with the domestic laws of the destination market.

A licence obtained in one jurisdiction may not be recognised in another. A product approved in one market may require separate registration, testing or certification elsewhere. A business may need to adapt its employment, tax, data protection or consumer-facing practices for each jurisdiction.

The result is regulatory duplication: another licence, another registration, another compliance assessment, another set of local requirements. Non-tariff barriers (NTBs) are one manifestation of this broader problem. AfCFTA recognises the challenge and provides a mechanism through which economic operators can report and seek resolution of qualifying NTBs.

But removing individual NTBs does not, by itself, resolve the wider problem of divergent national regulatory systems. For businesses seeking to scale across Africa, the question is therefore not simply whether they can enter a market, but how many different regulatory systems they must interact with across these markets.

C. Where Regulatory Fragmentation Bites

Regulatory fragmentation becomes commercially significant at the point where a business moves from selling across borders to operating across them. The AfCFTA might make it easier for a Nigerian company to sell into another African market, but once that company establishes a local presence, employs people, processes local data, imports regulated products or participates in a regulated sector, it enters the domestic regulatory environment of that market. The friction tends to appear in four areas:

1. Market Entry

Businesses may face different licensing, registration, ownership and approval requirements in each jurisdiction. A company that has satisfied the regulatory requirements in Nigeria cannot assume that those approvals will travel with it into Uganda, Egypt or Rwanda. The result is that continental expansion can require a series of country-specific regulatory exercises before commercial operations can begin.

2. Products and Services

Regulatory divergence can also affect what a business is permitted to sell and how it must sell it.

Differences in product standards, labelling, packaging, certification and sanitary and phytosanitary (**SPS**) requirements may require businesses to modify products or obtain separate approvals for different markets. For service businesses, the equivalent may be different professional, sectoral or operating licences.

The larger the regulatory divergence, the harder it becomes to build a genuinely regional product or service model.

3. Data, People and Operations

The same problem extends beyond the product itself. A business operating across jurisdictions may need to navigate different data protection rules, employment requirements, tax obligations and consumer protection regimes. A fintech, for example, may be able to offer services across borders under AfCFTA while still having to assess licensing and cross-border data-transfer requirements separately in each jurisdiction.

The business therefore expands into one market commercially, but into several regulatory environments operationally.

4. Investment and Local Content

For capital-intensive sectors, regulatory divergence can influence the structure of the investment itself. Ownership restrictions, local-content requirements, procurement rules, licensing conditions and employment requirements may differ between jurisdictions. An investor seeking to replicate an infrastructure or energy project across several African markets may therefore need to redesign its structure for each jurisdiction.

This is where regulatory fragmentation becomes more than a compliance issue. It can influence whether a transaction is commercially viable, how it is structured and what it ultimately costs.

D. Bridging the Regulatory Gap

For businesses looking to expand across Africa, market-entry planning should go beyond confirming whether AfCFTA preferences are available. Businesses need to identify the domestic and, where relevant, regional rules that will continue to apply, such as licensing, ownership restrictions, local-content requirements, tax, employment, data protection, product standards and sector-specific approvals.

This is particularly important where a business intends to replicate a model across several markets. A structure that works in one jurisdiction may not translate directly into another. Understanding these differences early can influence the choice of market, transaction structure, operating model and ultimately the cost of expansion.

The same analysis should extend to contracts. Where regulatory requirements may change during the life of a transaction, provisions dealing with change in law, regulatory approvals, compliance costs, cooperation, renegotiation and termination can help allocate risks before they become disputes.

Businesses should also consider the interaction between AfCFTA and existing regional arrangements. The Economic Community of West African States (**ECOWAS**), East African Community (**EAC**) and Southern African Development Community (**SADC**) each provide additional layers of regional rules and integration. The relevant regulatory framework will therefore depend not only on the continental regime, but also on the jurisdictions and regional arrangements involved.

The practical lesson is straightforward: cross-border expansion requires more than knowing that a market is open. It requires knowing the rules that will govern the business once it enters and engaging solicitors who are conversant with the cross-border legal terrain.

For businesses pursuing regional growth, this makes regulatory mapping, transaction structuring and ongoing compliance part of the commercial strategy, not merely a legal exercise.

E. Conclusion

AfCFTA has changed the question for businesses seeking to expand across Africa. The issue is increasingly not whether a market can be accessed, but how that market can be entered and operated in compliance with the rules that still differ from one jurisdiction to another.

Greater regulatory convergence will ultimately be necessary if a single African market promises to translate into a genuinely seamless business environment. Until then, businesses that understand and anticipate regulatory divergence will be better placed to structure transactions, manage risk and scale across borders.