

Liberalisation of the African air transport Sector under the African Continental Free Trade Area (AfCFTA) Agreement in Africa

1. Introduction

The Agreement establishing the African Continental Free Trade Area (AfCFTA)¹ entered into force in May 2019², and now has 54 signatories and 44 State Parties³. The start of trading under the AfCFTA was launched from 1 January 2021⁴. The AfCFTA Agreement also includes the Protocol on Trade in Services (hereinafter “AfCFTA Protocol on TiS”). To Africa’s general public and businesses across the continent, the AfCFTA is considered a catalyst for growth: it aims to create a market environment that promotes certainty, predictability, and transparency, and leads to reduced trade and transaction costs. Africa’s market of 1.2 billion people and US \$2.6 trillion in GDP is expected to grow to as much as US \$16 trillion GDP and 2.75 billion people by 2060. This market is becoming steadily middle class, young, increasingly educated and by 2050 it will account for more than a quarter of the world’s working population.

Five (5) priority services sectors (Business; Communication; Financial; Transport, and Tourism and Travel), were selected as the subjects of the first round of liberalisation under the AfCFTA trade in services negotiations⁵. The choice of these sectors was

strategic: first, communication, financial and transport services are backbone or infrastructural services to many economic activities, with business services (particularly professional services) substantially contributing to services delivery through the movement of persons; second, most African countries have liberalised tourism in some form either in the WTO General Agreement on Trade in Services (GATS) or in their Regional Economic Communities (RECs), making it the most liberalised of the services sectors and presenting “low hanging fruit” in terms of the potential socio-economic impact on micro, small and medium sized enterprises (MSMEs), women and youth.⁶

The transport services sector comprises of air transport, land transport (both road and rail), maritime transport, pipeline transport and space transport. The transport services sector acts both as an enabler of trade in both goods and services, and a key factor in the facilitation of trade in general. The success of the AfCFTA partly hinges on establishing an efficient, cost-effective transport sector because transporting people, goods and services at competitive rates will foster the growth of intra-African trade.

¹ Agreement establishing the African Continental Free Trade Area available at: https://au.int/sites/default/files/treaties/36437-treaty-consolidated_text_on_cfta_-_en.pdf
Thirty days after the 22nd instrument of ratification was deposited.

² Thirty days after the 22nd instrument of ratification was deposited.

³ State Parties are signatories that have ratified the AfCFTA Agreement.

⁴ Thirteenth extraordinary session on the AfCFTA: The Assembly of the Union adopts decision on the start of trading | African Union (au.int)

⁵ Assembly/AU/Dec.690-712 (XXXI) found at 36130-assembly_au_dec_690_-_712_xxxi_e.pdf

⁶ Beatrice Chaytor, Creating a Single African Market on Trade in Services: Negotiating the Schedules of Specific Commitments under the Protocol on Trade in Services, Tralac Newsletter, Issue 14, October 2019, available at [tralac Newsletter](mailto:tralac@triac.org) | October 2019 (mailchi.mp)



Symbiotic relationship between trade and air transport

Together with associated logistics services, air transport services are essential for the development and optimal functioning of regional value chains envisaged under the AfCFTA. A well-functioning air transport service sector also delivers positive effects on intra-African passenger travel that is likely to spark growth in education, healthcare, and tourism services. However, intra-African trade has largely been constrained by the state of air transport services across the continent.

Africa has 925 airports, out of which 122 are considered international airports. Africa's air transport network includes a total of 14,762 air routes (connecting each airport with the other 121 airports).⁷

But current air travel route networks are inadequate and air fares are high compared with those in other regions of the world. In 2019, air transport accounted for only 0.09% of intra-African freight transport.⁸ The African airline industry supports more than 6.2 million people in Africa directly and indirectly, including in tourism and other sectors. Tourism alone accounts for 8.5 percent of Africa's GDP, and as much as 38 percent in some small island countries.⁹ COVID-19 has severely disrupted these service sectors, and generally the continent lacks effective and affordable air connectivity.¹⁰ In many cases, airport and air traffic management infrastructure are also inadequate for the growth that is expected to take place over the next 40 years.

That growth is likely to be driven by the implementation of the Single African Air Transport Market (SAATM) and the AfCFTA Protocol on TiS. The AfCFTA Protocol takes a hybrid approach to liberalisation, on the one hand, State Parties make specific commitments to open up service sectors through the



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four modes of supply, and on the other hand they agree to cooperate on broad regulatory frameworks.¹¹ A similar approach is taken as the GATS, so the Protocol restricts air transport services to those affecting aircraft repair and maintenance services and selling and marketing of air transport services.¹² It specifically excludes air traffic rights and services directly related to the exercise of air traffic rights. Since both the SAATM¹³ (which deals with air traffic rights) and the AfCFTA are flagship projects of the African Union, cooperation and joint implementation of SAATM and AfCFTA Protocol on TiS specific commitments in the air transport sector will be instrumental in aligning the two initiatives. The AfCFTA Protocol specifically references the Yamoussoukro Decision (YD) in its preamble, highlighting the significant contribution of air transport and SAATM in particular to boost intra-African trade and the AfCFTA in particular. Moreover, in Article 26.1 (c) reference is made to an Annex on air transport services as one of the legal instruments to be outlined under the Protocol.

According to UNECA, implementation of AfCFTA would double air cargo transport from 2.3 to 4.5 million tonnes.¹⁴ Air traffic is therefore expected to double in 2030 compared to 2019, with the AfCFTA requiring 254 aircraft by 2030, and the estimated cost of required aircrafts being estimated at US \$25 billion.¹⁵ The largest demand for aircraft to support the AfCFTA is within West Africa (13.5%). Demand from North to West Africa is 15.2% and within Southern Africa is 12.2%.

Future air transport services shaped by the AfCFTA protocol on trade in services

The Schedules of Specific Commitments of State Parties in the five priority sectors that have recently been adopted by the AfCFTA Council of Ministers provide significant tailwinds for the air transport service sector, and will complement the tariff schedules in goods being implemented by State Parties, as the demand for air transport services to ship goods across the continent grows. The opportunities provided for increased trade in manufactures and agri-business means growth in economic activities and in job creation. Thus, increasing investments in vital infrastructure such as airports, warehousing and cargo aircraft will help African entrepreneurs, who trade in agricultural and food products and medicines requiring cold chain, storage, and long-distance transportation to access the markets of their trading partners on the continent. Such infrastructure will unlock Africa's trade potential under the AfCFTA, leading to improvements in airport facilities and security, and streamlined cargo handling procedures.

To complement the market opening commitments a regulatory framework on air transport services will be developed as envisaged under the Protocol reducing the impact of the diversity of national regulatory regimes, by providing key elements for harmonisation across the countries. The development of such a regulatory framework will be informed by developments in the RECs as well as continent-wide legal instruments

such as the YD framework. Trade in air transport on the continent is governed by an elaborate structure of bilateral air service agreements (BASAs) based on reciprocity – the granting of traffic rights to contracting states. BASAs determine the degree of market access and provide rules that give airlines the rights to fly on specific routes, define the capacity of designated airlines and limit the capacity of airlines from third countries. The system thus imposes a set of country-specific quotas in each market, as competition on each route is limited to suppliers designated by the relevant BASA. This can result in underdeveloped networks and a lack of competition, and leads to higher fares. Open skies agreements on the other hand, such as the AfCFTA Agreement and SAATM, remove restrictions on fares, capacity, frequency and aircraft type for designated airlines.¹⁶

Effectively the regulatory framework under the AfCFTA Protocol on TiS will seek to promote and guarantee free and fair competition in air transport services, and support the market access and national treatment commitments undertaken by State Parties in their schedules of specific commitments. The idea is that the specific commitments by State Parties and the regulatory framework in the air Transport sector should support ease of market entry by removing restrictions such as discriminatory licensing, giving other African service suppliers the opportunity to compete equally with domestic suppliers and as far as practicable, ensuring they are treated no less favourably than domestic suppliers.

⁷ Africa's Services Trade Liberalisation & Integration under the AfCFTA, Assessing Regional Integration in Africa (ARIA), Volume X, UNECA, 2021, Chapter 5, available at <https://repository.uneca.org/handle/10855/46739>.

⁸ Ibid, Chapter 5, pp 132-133.

⁹ Ibid.

¹⁰ The African aviation industry recorded revenue loss of US\$ 8.2 billion in 2021. ARIA X, pp.

¹¹ AfCFTA Protocol on Trade in Services, Articles 18-22.

¹² Ibid. Article 2 paras. 5 and 6.

¹³ 35 countries are signatories to the Solemn Declaration.

In an attempt to fast track the start of commercially meaningful trade under the AfCFTA, the *Guided Trade Initiative* (GTI) has been established, to enable those countries that are better prepared to begin to trade with each other.¹⁷ Eight State Parties are participating in the GTI,¹⁸ whose aims include (i) to allow commercially meaningful trading under the AfCFTA; (ii) to test the operational, institutional, legal and trade policy environment under the AfCFTA; and (iii) to send an important positive message to African economic operators that trade under the AfCFTA is possible and beneficial. About 100 goods are subject of trade under the GTI, which will be reviewed annually to expand the participating countries and available products eligible for trade. Shipments under the GTI have already commenced, with tea exports from Kenya to Ghana, transported by air, being the first among these.¹⁹

The Council of Ministers has also mandated the AfCFTA Secretariat to expand the GTI to include trade in services, incorporating the priority services sectors.²⁰ The potential for services trade under the GTI is huge, and will feature services sectors in their role as enablers for trade in goods (transport, finance, communication services) as well as trading in services in their own right (professional, tourism and travel services); in both

aspects air transport services have a huge role to play.

Conclusion

The liberalisation of air transport services as a trade-facilitating tool presents a game-changer for Africa's trade. A key factor in determining growth of the African aviation industry will be the extent of air transport market liberalisation under both the AfCFTA and the SAATM. It is particularly helpful that transport is being negotiated in the current round of services negotiations, in which significant progress has been made. Specific commitments in transport services undertaken by State Parties will spawn investments in infrastructure that can address bottlenecks among African countries, enabling them to increase cross border trade in manufacturing and agribusiness, driving industrialisation.

Regulatory frameworks to support market access openings will also ensure a level playing field among airline operators and reduce transaction costs. If the opportunities for investment in air transport infrastructure can be captured, the continent will be transformed beyond expectations. As the Guided Trade Initiative gets underway and more transactions among the participating State Parties are concluded, the more business confidence will be generated about the AfCFTA, and more likely the success of the free trade area generally. 

AfCFTA is considered a catalyst for growth: it aims to create a market environment that promotes certainty, predictability, and transparency.

¹⁴ African Continental Free Trade Area (AfCFTA) to significantly increase traffic flows on all transport modes | United Nations Economic Commission for Africa (uneca.org)

¹⁵ Ibid.

¹⁶ ARIA X, Chapter 5, pp.139-145.

¹⁷ The AfCFTA Guided Trade Initiative - AfCFTA (au-afcfta.org)

¹⁸ Cameroun, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania, and Tunisia.

¹⁹ AfCFTA's Guided Trade Initiative takes off, set to ease and boost intra-African trade | Africa Renewal (un.org)

²⁰ Report of the 10th Meeting of the Council of Ministers, 7 October 2022, on file with the author.