Leveraging Services and Digital Potential for Inclusive Economic Growth
25 January 2016 | Nairobi, Kenya

Session I: Services, inclusiveness, SMEs and the SDGs

Sonja Grater, Associate Professor, North-West University (NWU)
Outline

- Background
- Role of services in LDCs
- Role of service sector SMEs
- Factors driving SME performance
- Service sector SMEs and sustainable development
Technological change, especially developments in ICT, has caused shift in demand and production patterns

Some developing countries and Least Developed Countries (LDCs) are struggling to adjust

Hampered by limited financial, physical and human resources, poverty, low per capita income, unemployment, poor education and health standards

Limited capacity to integrate technological changes into economic activities

34 LDCs are in Africa, 9 in Asia, 4 in Pacific Islands, 1 in Caribbean

Agricultural sector absorbed much of the labor traditionally – this sector has seen decline

Increased development of informal sector, engaging in survivalist-type economic activities

Urgent need for economic diversification and developmental boost to drive sustainable growth
**Role of Services in LDCs**

- Service sector, fueled globally by technological change, could be a new avenue of opportunity fostering new growth and development
- Services now account for 75% of global economic activity, and more than 70% of employment in many countries
- OECD (2008) correlates growth in services with poverty reduction and higher employment levels
- Many LDCs, especially in Africa, were traditionally commodity reliant, but more recently services have become more prominent (in some 50% of GDP)
- LDCs have singled out tourism as the most important services sector for growth, but much can still be done to develop other services sectors
Sector contribution (%) to services exports in LDCs (2013)

(Source: ITC, 2016)

(Source: UNCTAD, 2017)
Role of Services

- Even though services is contributing to the economies of LDCs, they are still traded at large deficits (importing much more than exporting)
- Room for diversification and expansion of service exports into other sectors
- Demand for business services is on the rise globally, yet LDC countries contribute very little
- Developing countries in East Africa like Kenya and Rwanda have led by example with innovation-led growth (mobile banking M-Pesa and RSwitch)
- The creative economy has been recognized as an area of promising growth, as well as the health and education sectors
Role of service sector SMEs

- Most common definition of SMEs:
  - Medium: 50-100 employees
  - Small: 10-49 employees
  - Micro: less than 10 employees

- Many SMEs in developing countries (and LDCs) are in the informal services sector

- Account for 60-70% of employment in low-income countries, service sector SMEs employ large amount of women

- "Missing middle" (i.e. lack of medium-sized enterprises that are growth-oriented and sustainable)

- SMEs are less productive, engage in more labour-intensive economic activities (such as farming or mining) that are driven by survivalist-activities

- SMEs in LDCs could be key instrument in driving development and growth, and contributing to achieving Sustainable Development Goals (SDGs)
## Role of SMEs in East Africa

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>GNI per Capita, Atlas Method</th>
<th>Income Group</th>
<th>Size Breakdown (% of all MSMEs)</th>
<th>MSME Participation in the Economy</th>
<th>Micro Enterprises: Sector Distribution</th>
<th>SME: Sector Distribution</th>
</tr>
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<td>Manuf.</td>
<td>Trade</td>
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<tr>
<td>Kenya</td>
<td>2006</td>
<td>570</td>
<td>Low</td>
<td>96.8</td>
<td>0.1</td>
<td>43.5</td>
<td>9.14%</td>
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<tr>
<td>Rwanda</td>
<td>2006</td>
<td>290</td>
<td>Low</td>
<td>33.2</td>
<td>0.4</td>
<td>6.9</td>
<td>2.4%</td>
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<tr>
<td>Tanzania</td>
<td>2009</td>
<td>440</td>
<td>Low</td>
<td>97.5</td>
<td>2.5</td>
<td>1</td>
<td>8.9%</td>
</tr>
<tr>
<td>Uganda</td>
<td>2006</td>
<td>340</td>
<td>Low</td>
<td>95.0</td>
<td>4.6</td>
<td>0.3</td>
<td>6.2</td>
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</tbody>
</table>

(Source: IFC, 2016)
Service sector SMEs and sustainable development

- Service sector SMEs can help contribute to achieving sustainable development
- SMEs in education, healthcare, energy, transport, logistics, tourism, construction, business services
  - Some address SDGs directly, others indirectly
- Technology important driver, creating more opportunities for service sector SMEs
- SMEs can act fast and respond to market needs, if they have the skills and know-how
- Developing service sector SMEs can contribute to economic growth, in turn contributing to employment, poverty
- SMEs need a supporting policy environment and practical support to grow and develop
- Need to address their constraints and factors that affect their performance
Factors driving SME performance

- "SMEs can only start to become drivers of economic growth when they have scaled up production capacity, are generating sizable returns and are contributing to the tax base." (Fjose et al, 2010)
- Acknowledge the difference between small survivalist firms vs medium-sized firms that have more experience and have developed further
- Largest barrier for services sector: domestic policy and regulatory restrictions
- Supportive regulatory environment – often difficult to weigh domestic policies with trade policies (help domestic firms but not firms that trade)
- Access to finance – survey of banks showed only 20% of SMEs in sub-Saharan Africa have a line of credit from a financial institution (compared to 44% in Latin America) (AFDB, 2012)
- Knowledge of market, information on trade opportunities, ease of access, reliable transport, ICT
- Opportunities for learning, training, development (both from government but also from other firms)
Policy options for development of competitive SME services sector

- Ensure there is an adequate focus on SMEs at a policy level
  - Incorporate differences in size, sector, location, stage in life cycle

- In addition, also a focus on the services sector in compliment to existing industrial, trade and investment policy (synergy between goods and services must be recognized)
  - Key is the level of services liberalization (balance between protecting local industry and creating export opportunities)

- SME development centers, platforms for discussion, support and assistance, clustering of firms that offer complimentary services, access to market information, skills training and capacity building

- Encourage large firms and multinationals to source from small, local suppliers (joint ventures)

- Build strong institutions, infrastructure

- At a policy level recognize the role of digitized commerce (which relies heavily on services)
Conclusion

- Development of service sector SMEs has a crucial role to play in driving economic growth and job creation in LDCs, especially in Africa.
- Policies need to recognize the role of services and SMEs for sustainable economic development.
  - Complementarity between different policies.
- Create cooperation between government, SMEs and other private sector stakeholders.
- Creating a supportive environment for service sector SMEs will contribute to employment growth and sustainable development.
- Collect more information on service sector SMEs in different countries and sectors.
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25 January 2016 | Nairobi, Kenya

Session I: Why gender matters for services

Julia Lipowiecka, Consultant, Law and Development Partnership

The Law & Development Partnership
Women in services

- Services account for 50% of female employment globally
- Women moving out of agriculture in developing countries & out of industry in developed countries, and into services

Figure 2: Employment in the service sector by gender in 2013

- Services: 49%
- Agriculture: 33%
- Industry: 17%

Women in services (continued)

- Horizontal labour segregation
- Vertical labour segregation
- Women’s participation in ownership of services firms higher than in manufacturing
Services matter for women’s empowerment

ECONOMIC GROWTH

JOB CREATION

MORE AFFORDABLE & HIGHER QUALITY SERVICES
Gender equality, economic growth & competitiveness

Increase gender equality in households, markets, and societies

- Women have better access to markets
- Women have better education and health
- Mothers have greater control over decision-making in households

Increase labour force participation by women, productivity and earnings

- Income/consumption expenditure
- Differential savings rates

Current poverty reduction and economic growth

Improved well-being for children

- Better health and educational attainment and greater productivity as adults

Future poverty reduction and economic growth
Opportunities for women in trade in services

Mode 1: cross-border trade
Ex. Provision ICT-enabled business, professional and technical services to consumer abroad

Mode 2: consumption abroad
Ex. Tourism and health tourism

Mode 3: establishment of a commercial presence abroad
Ex. Establishing a subsidiary company, branch or joint venture abroad

Mode 4: temporary movement of natural persons
Ex. Highly qualified business professionals
Leveraging Services and Digital Potential for Inclusive Economic Growth
Session II: Gender dynamics in key service sectors: interactive sectoral discussions

Julia Lipowiecka, Consultant, Law and Development Partnership
Gender issues in policy & regulation

Policy and Legal Framework

• 90% of countries have at least one law impeding women’s access to economic opportunities (World Bank 2015)

• Customary laws

Regulatory and Administrative Framework

• Ways in which policies, laws and regulations are enforced and managed have different implication for men and women

Institutional arrangements

• Fail to adequately represent women’s voice in the policy and regulatory review process

• Lack gender-disaggregated data
Conceptual framework for the methodology

Women have limited voice in public decision-making
- Gender balance in private/public organizations
- Access to networks
- Engagement in public-private dialogue

Gender-based outcomes of policy & regulation
- Discriminatory provisions/gender bias
- Gender-neutral laws

Access to Opportunities & Resources
Access to employment, land, capital, information

Formal & Informal Barriers
- Legal rights & entitlements
- Social norms & customs
The Methodology

**Step 1:** Understand the **roles and status** of women as entrepreneurs & wage workers in the services sector

**Step 2:** Analyse **formal and informal barriers** faced by women due to unequal rights and entitlements and social norms and customs

**Step 3:** Identify **laws, regulations, procedures and business obstacles** that are perceived differently by men and women

**Step 4:** Design **solutions** that at appropriate, involve women and link with existing reform strategies
Step 1: Understand the role of women in the economy

1. What **types of firms** do women tend to run?
   - Micro/small/medium/large
   - Formal/informal
   - Rural/urban

2. What **type of employment** are women concentrated in?
   - Different parts of the supply chain
   - Types of occupations by skill level
   - Informal/formal
   - Wage/non-wage
Step 2: Analyze formal and informal barriers

1. Do men & women have equal *land & property rights*?
2. Do men & women have equal access to and control over *assets and finance*?
3. What differences exist between men & women in *education & literacy levels*?
4. What are the implication of women’s *time poverty* for their participation in economic & business activities?
5. How do *cultural norms* limit women’s mobility and participation in economic & business activities?
Step 3: Identify laws, regulations and obstacles that are perceived differently by men and women

1. What are the **main laws and regulations** governing the sector? Are any of these provisions explicitly biased or discriminatory?

2. Do any other formal or informal barriers identified in Step 2 restrict women in accessing the **opportunities** awarded by legislation or regulation or make it difficult for them to **comply**?

3. What **sectoral constraints** are perceived differently by women than men?

4. Are women excluded or absent from **government decision-making or public-private dialogue** mechanisms that might allow them to influence policy and regulation in the sector?
Step 4: Design solutions that at appropriate, involve women and link with existing reform strategies

Policy and Legal Framework

• Develop a gender strategy for the sector.
• Amend or supplement existing sector law and policy to correct gender biases or gaps.

Regulatory and Administrative Framework

• New organizations or institutional mechanisms that improve the accessibility and responsiveness of existing institutions for women business owners.
• Set and adopt sector targets for women business owners’ participation in government-to-business services
• Promote licensing criteria that give preference to woman-owned companies or companies with women in top management positions.
Step 4: Design solutions that at appropriate, involve women and link with existing reform strategies (continued)

Institutional arrangements

• Train government staff on gender awareness and gender-responsive implementation of the sector law and policy.

• Recruitment and promotion of additional female staff in relevant government ministries or agencies.

• Recruitment of gender champions in government ministries and agencies.

• Strengthen partnerships between economic management ministries and ministries responsible for women or gender.

• Work in conjunction with National Statistics Bureaus or other statistics agencies to develop sex disaggregated statistics.

• Ensure women are adequately represented in public-private dialogue structures.
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25 January 2016 | Nairobi, Kenya

Session III: Regulation as an enabler of service sector competitiveness

Nicholas Frank, Programme Officer, ICTSD
Services are regulation – intensive

- Key services, such as electricity, water, and health services, are often provided by the public sector and, as such, are subject to a more regulatory-intensive environment.

- Private professional associations are often involved in the development of regulatory standards (licensing requirement for certain services professionals such as engineers or lawyers).

- Given the regulation-intensive nature of services, the design of appropriate regulatory frameworks is of critical importance.
What is meant by regulation?

- Den Hertog (2010), defines regulation as “the employment of legal instruments for the implementation of social-economic policy objectives.”
  - Privatization vs regulation

- Addressing Market Failures
  - Monopoly
  - Information Asymmetry
  - Merit Services

- Achieving Specific Policy Goals
  - Environmental protection
  - Technology upgrading

- Caveat: depending upon how they are designed, regulations can also be economically inefficient and protectionist-having a negative impact on sustainable development
Key Challenges in Regulating Services from a Development Perspective

How to identify the most appropriate regulations for that will both

• Achieve legitimate policy objectives (discussed previously)
• Have the least restrictive impact on trade

The design and quality of regulations can impact strongly on economic efficiency in the national economy and thus on the ability of a country’s firms to participate in international trade
The Interface Between Domestic Regulation and Services Trade

- Services regulations can often act as a restriction to trade
  - Behind-the-border regulations on services may be discriminatory
    - De facto vs de jure discrimination
  - Market Access Restrictions (GATS Article XVI)
  - National Treatment Restrictions
Market Access Restrictions (GATS Article XVI)

- Limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

- Limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

- Limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

- Limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

- Measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

- Limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.
National Treatment Discrimination

- GATS Article XVII “(...) treatment no less favourable than that it accords to its own like services and service suppliers.”

- Measures include:
  - Discriminatory taxes for foreigners
  - Subsidies limited to nationals
  - Competition restrictions (number of outlets, etc.)
  - Residency requirement as a pre-requisite for obtaining license
  - Restriction on property and land use
## Regulatory Restrictions by Mode of Supply

<table>
<thead>
<tr>
<th>Services Modes of Delivery</th>
<th>Examples of Possible Regulatory Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mode 1: Cross Border Trade</strong></td>
<td>Localisation requirements for data and/or for servers; Taxes on electronic commerce trade</td>
</tr>
<tr>
<td><strong>Mode 2: Consumption Abroad</strong></td>
<td>Restrictive visa requirements for foreign students wishing to study; Exchange controls on nationals who wish to travel abroad;</td>
</tr>
<tr>
<td><strong>Mode 3: Commercial Presence (foreign direct investment)</strong></td>
<td>Restricted sectors for foreign investors; Limitation on amount of equity holding allowed in new or existing service activities; Restrictions on establishment of new businesses</td>
</tr>
<tr>
<td><strong>Mode 4: Movement of Natural Persons</strong></td>
<td>Application of labour market tests; Specific categories of labour allowed and/ or subject to approval;</td>
</tr>
</tbody>
</table>
East Africa: Overall Services Trade Restrictiveness Index

Services Trade Restrictiveness Index (STRI) by Sector

<table>
<thead>
<tr>
<th>Sector</th>
<th>Kenya</th>
<th>Rwanda</th>
<th>Tanzania, United Republic of</th>
<th>Uganda</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial</td>
<td>23.4</td>
<td>19.5</td>
<td>22.7</td>
<td>27.7</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>25</td>
<td>25</td>
<td>25</td>
<td>75</td>
</tr>
<tr>
<td>Retail</td>
<td>0</td>
<td>36.7</td>
<td>25</td>
<td>50</td>
</tr>
<tr>
<td>Transportation</td>
<td>31</td>
<td>32</td>
<td>29.4</td>
<td>38</td>
</tr>
</tbody>
</table>

Legend:
- **Blue**: Kenya
- **Orange**: Rwanda
- **Gray**: Tanzania, United Republic of
- **Yellow**: Uganda
Financial Sector STRI: East Africa

<table>
<thead>
<tr>
<th></th>
<th>Kenya</th>
<th>Rwanda</th>
<th>Tanzania, United Republic of</th>
<th>Uganda</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking</td>
<td>21.3</td>
<td>21.3</td>
<td>21.3</td>
<td>23.1</td>
</tr>
<tr>
<td>Insurance</td>
<td>26.7</td>
<td>16.7</td>
<td>25</td>
<td>35</td>
</tr>
</tbody>
</table>
Telecommunications Sector STRI

- Fixed-line telecommunications:
  - Kenya: 25
  - Rwanda: 25
  - Tanzania, United Republic of: 0

- Mobile telecommunications:
  - Kenya: 25
  - Rwanda: 75
  - Tanzania, United Republic of: 25
  - Uganda: 50
Evaluating the Impact of Services Regulations

- Types of regulatory failure
  - Analytical Failure
  - Intervention Failure
  - Co-ordination Failure
  - Design failure

- Principles of good regulatory practice
  - Proportionality
  - Transparency (due process)
  - Accountability
Evaluating the Impact of Services Regulations

Regulatory Impact Assessment (RIA) Guidelines

I. Identify the regulation in question

II. Assess the reason for the regulation.

III. Evaluate if the regulation is proportional to its desired objective.

IV. Evaluate if the regulation is applied in a transparent manner.

V. Determine if and how the regulation affects trade.

VI. Evaluate if there are other ways of achieving the same objective in a less trade-distortive manner.

VII. Evaluate if regulatory bodies are independent and able to implement the regulation effectively and without interference.
Thank You

Nicholas Frank
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www.ictsd.org/themes/development-and-ldcs/overview
Leveraging Services and Digital Potential for Inclusive Economic Growth

www.ictsd.org | www.trademarkea.com
Session III: Regulation as an Enabler of Service Sector Competitiveness

Katrin Kuhlmann, Founder, New Market Labs
About the New Markets Lab

• Legal and regulatory innovation lab created to use systems for economic law and regulation as driver for inclusive market development and entrepreneurship

• Unique methodology and set of tools with diverse partnerships and international team of lawyers

• Changing way law and regulation developed and implemented to create sustainable and inclusive markets
New Markets Lab: Role of Law and Regulation in Building Sustainable and Inclusive Markets

- NML Focuses on Law and Regulation
  - Change agent in economic development and market growth
  - Tool for bringing innovation closer to enterprises
  - Potential vehicle for innovation itself
- NML Develops New Models/Approaches
  - Respond to changing nature of markets
  - Promote sustainability and inclusive application of law
  - Improve implementation of law and regulation
  - Enhance links between high-level policy frameworks and day-to-day reality
  - Create new generation of lawyers

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Services Regulatory Guides

• In partnership with ICTSD, NML developed Regulatory Guides for four service sectors:
  • Financial Services
  • Information and Communications Technology
  • Tourism
  • Transport

• Regulatory Guides assess the regulatory and development objectives of each sector

• Identify regulatory priorities, trade-offs, and approaches for each sector
In each sector, there are common regulatory goals, some of which cut across services sectors:

- *Good business environment*. Includes streamlined and transparent regulatory process, open climate for investment, and open competition.

- *Support for small- and medium-sized enterprises*. Includes informational infrastructure and digital and financial inclusion.

- *Fair and open competition*. Includes effective licensing, and effective regulatory authority.

- *Consumer protection*. 

**Regulatory Guides**
Regulatory Guides

• Different levels of regulation impact growth of each services sector

  • **Domestic laws and regulations** (discretion in how to design regulatory systems)

  • Regional and international frameworks

    • EAC is a particularly important regulatory authority and platform

    • At the international level, the WTO General Agreement on Trade in Services provides the framework for trade in service sectors

    • WTO members also recently operationalized an LDC Services Waiver

    • Sector-specific annexes, such as Annex on Financial Services
Regulatory Guides

- **Regulatory Authority.** Who regulates a sector matters. There are multiple options for regulatory authorities, including sole regulators, multiple regulators, government regulators, and independent regulators. Best practices will depend upon the specific sector.

- **Related Areas of Regulation.** Each service sector is related directly and indirectly to many other areas of law and regulation, including: contract law, competition law, property law, foreign investment law, environmental law, and many others.
Relationship of Service Sectors to Other Areas of Law

Example: Tourism

Source: New Markets Lab, 2016.
Financial Services: Overview

• Financial services are central to economic growth and development across sectors

• Regulatory environment in the financial services sector is rapidly evolving and increasingly complex. **Global integration, product innovation, and technology** have driven change in the financial services sector.

• Financial services sector is also especially **relevant for sustainable development**, because reliable access to finance can enable people to expand their opportunities, better manage their needs, and improve their living standards, **thus improving a country’s overall welfare**.

• Regulatory goals can serve as reference points for policymakers looking to support regulatory changes that will drive sustainable development
Financial Services

Key Regulatory Goals

- Designing a framework for effective and responsive regulatory authorities
- Fostering a good business environment
- Improving financial inclusion and supporting small and medium enterprises
- Promoting consumer protection

Regulatory Objectives

- Public confidence and systemic stability
- Safety and soundness of financial institutions
- Economic efficiency
- Good business conduct
- Market integrity

Source: New Markets Lab, 2016.
Financial Services: Regulatory Mechanisms

• Several models for regulation:
  
  • (1) integrated under a sole regulator ("single peak" model);
  
  • (2) divided according to regulatory key functions, prudential regulation being the responsibility of one regulatory authority while market/business conduct is the responsibility of another ("twin peaks" model); or
  
  • (3) divided by industry subsectors: banking, investments, and insurance ("mountain range" model).

• Post-financial crisis, system for global financial regulatory coordination
Financial Services: Vertically Integrated Financial Regulatory Process

Source: New Markets Lab, 2016.
## Regulatory Objectives, Objectives, Trade-offs, and Options

<table>
<thead>
<tr>
<th>Regulatory Objectives</th>
<th>Trade-offs</th>
<th>Regulatory Options</th>
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</thead>
<tbody>
<tr>
<td><strong>Design a Framework of Effective and Responsive Regulatory Authorities</strong></td>
<td>Build public confidence and systemic stability</td>
<td>Maximization of economies of scale vs. specialization</td>
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<tr>
<td></td>
<td>Ensure financial institution safety and soundness</td>
<td>Bureaucratic or over-empowered regulator vs. regulatory arbitrage and jurisdictional conflicts</td>
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<td>Federal vs. local interests</td>
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<td>Private vs. public interests</td>
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<tr>
<td><strong>Foster a Good Business Environment</strong></td>
<td>Increase economic efficiency</td>
<td>Protection of domestic enterprises versus gains from FDI</td>
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<td></td>
<td>Establish favourable investment climate</td>
<td>Protecting public policy space balanced against gains from international and regional commitments</td>
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<tr>
<td></td>
<td>Ensure effective climate for competition</td>
<td>Market liberalization vs. financial stability</td>
</tr>
<tr>
<td><strong>Improve Financial Inclusion and Support SMEs</strong></td>
<td>Economic efficiency</td>
<td>Broadening and deepening of financial services vs. financial stability</td>
</tr>
<tr>
<td></td>
<td>Extension of financial services to underserved populations</td>
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<tr>
<td><strong>Promote Consumer Protection</strong></td>
<td>Good business conduct</td>
<td>Consumer rights vs. producer costs</td>
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<td>Market integrity</td>
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- **Trade-offs:**
  - Maximization of economies of scale vs. specialization
  - Bureaucratic or over-empowered regulator vs. regulatory arbitrage and jurisdictional conflicts
  - Federal vs. local interests
  - Private vs. public interests
  - Protection of domestic enterprises versus gains from FDI
  - Protecting public policy space balanced against gains from international and regional commitments
  - Market liberalization vs. financial stability
  - Economic efficiency
  - Broadening and deepening of financial services vs. financial stability
  - Good business conduct
  - Consumer rights vs. producer costs
  - Types of information that should be disclosed to consumers
  - Classes of unacceptable business practices
  - Design of mechanisms to resolve consumer differences
ICT Services: Overview

- ICT services are unique in their potential to enable unprecedented and widespread achievement of social and economic policy objectives.
- Regulatory frameworks can be designed to attract and harness private sector investment and stimulate local economic opportunities and skills development.
- Regulation of the ICT sector is particularly important in order to promote the achievement of universal and affordable access to ICT, encourage investment, and facilitate entry for new market participants, ensuring sufficient diversity in the market and safeguarding against monopolistic pricing.
ICT Services

Key Regulatory Goals

- Establish independent and accountable regulatory authority
- Promote fair competition and ensure market efficiency
- Address market failures resulting from natural monopoly
- Support achievement of universal and affordable access
- Foster enabling business environment
- Provide support for SMEs, small market participants, and women

Regulatory Approaches

- Measures to safeguard independence, accountability, and effectiveness of the regulatory authority
- Licensing regimes to ensure fair competition, promote inclusion of SMEs, and address market failures
- Fair and non-discriminatory allocation of radio spectrum
- Interconnection and unbundling measures
- Incentives to support network expansion in rural areas
- Streamlining regulatory and licensing processes
- Establishing a favourable investment climate
- Limiting restrictions upon foreign direct investment
- Entering into regional and international trade and investment agreements
- Ensuring strong legal and dispute resolution institutions

Source: New Markets Lab, 2016.
ICT Services: Regulatory Mechanisms and Institutions

• National Level Regulation
  
  • Regulatory approaches in the ICT industry depend largely upon the domestic context. These may include telecommunications laws and regulations, information technology laws and regulations, electronic transactions and communications laws and regulations, and broadcasting laws and regulations.

• Regional and International Regulation
  
  • GATS Agreement
  
  • WTO Telecommunications Reference Paper – outlines regulatory principles relating to telecommunications
<table>
<thead>
<tr>
<th>Goal</th>
<th>Regulatory Objectives</th>
<th>Trade-offs</th>
<th>Regulatory Options</th>
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</table>
| Independent and Accountable Regulatory Authority | ➢ Ensure independence  
➢ Increase transparency  
➢ Encourage accountability  
➢ Support ability to carry out mandate  
➢ Develop expertise  
➢ Ensure efficient dispute resolution | ➢ Institutional design options | ➢ Separate from policymaking function  
➢ Safeguard against financial dependency  
➢ Establish oversight and reporting mechanisms  
➢ Publish information |
| Fair Competition and Market Efficiency | ➢ Address market failures  
➢ Allocate scarce resources  
➢ Ensure pricing as competitive as possible | ➢ Balance between ensuring fairness and maintaining sufficient incentives to encourage market entry and investment  
➢ Balance efficiency, flexibility, and innovation | ➢ Licensing conditions  
➢ Interconnection  
➢ Unbundling  
➢ Ex post competition regulation  
➢ Spectrum allocation  
➢ Pricing |
| Universal Access | ➢ Consider need for regulatory or government intervention where the market does not support network expansion | ➢ Market based solutions versus direct government involvement  
➢ Cost effectiveness of options  
➢ Social considerations versus budgetary constraints | ➢ Specially designed licences  
➢ Reduced or eliminating spectrum costs for rural network expansion  
➢ Flexible tariffs to create incentives for network expansion into rural areas  
➢ Geographically asymmetric interconnection  
➢ Public-private partnerships |
| Good Business Environment | ➢ Streamline regulatory and licensing processes  
➢ Establish favourable investment climate  
➢ Implement limited restrictions on FDI  
➢ Ensure effective climate for competition  
➢ Support SMEs  
➢ Establish strong legal institutions | ➢ Protection of domestic enterprises versus gains from FDI  
➢ Protecting public policy space balanced against gains from international and regional commitments | ➢ Ease of market entry  
➢ Competitive ICT specific measures (interconnection/infrastructure sharing)  
➢ Technology neutral licences  
➢ Discriminatory measures only to the extent necessary  
➢ Entry into trade and investment and regional cooperation agreements  
➢ Reduced cost of business, for example through streamlining business registration and licensing  
➢ Publicly available guidelines  
➢ One-stop shops for investors  
➢ Tax incentives  
➢ Measures to increase competitiveness of local enterprises |
| Support SMEs, Small Market Participants, and Women | ➢ Facilitate market entry  
➢ Promote business linkages  
➢ Ease regulatory burdens | ➢ Protection of domestic enterprises against international competition or overly burdensome conditions upon foreign/local investors versus gains from FDI | ➢ Improved access to finance  
➢ Establishment of clear guidelines  
➢ Assistance and incubation for SMEs  
➢ Provision of facilities and access to tech hubs  
➢ Raised awareness of ICT uses  
➢ Development of ICT literacy  
➢ Support for the local economy and development of local skills through foreign investment  
➢ Implementation of licensing regime accommodating to SMEs |
Tourism Services: Overview

• Tourism is a booming sector, particularly in Kenya and other east African countries; globally, one in 11 jobs is supported by tourism

• Tourism plays a central role in economic growth through inter-sectoral linkages and employment opportunity, infrastructure development, and increased supply capacity

• Regulation of the tourism sector can ensure the health and safety of consumers and laborers, protect wildlife and the environment, reduce barriers to entry for women and small enterprises, and ensure quality of services

• Regulatory goals for tourism reflect the needs for effective regulation, coordination, licensing, classification, and standards

• Effective regulation of the tourist sector should promote a good business environment and encourage participation by SMEs, small market participants, and women
Tourism

Regulatory Goals

• Effective Regulation and Coordination
• Licensing and Classification
• Standards and Certifications
• Complementary Areas of Regulation
• Good Business Environment
• Support SMEs, Small Market Participants, and Women

Regulatory Objectives

• Promoting Business Linkages
• Streamlining regulatory and licensing processes
• Establishing transparent and independent licensing regimes
• Ensuring compliance with minimum safety, occupational, and environmental standards
• Establishing clear guidelines for inter-agency cooperation and communication
• Publishing regulations, guidelines, and decisions
• Cooperating with related regulatory authorities such as health, agriculture, labor, and environmental agencies

Source: New Markets Lab, 2016.
Tourism: Mechanisms of Regulation

• National Level Regulation
  • National level regulation should reflect a particular domestic situation and balance market growth with resource management.
  • Single ministry may regulate tourism, or tourism-related regulatory authority may be spread across several ministries.

• Regional and International Regulation
  • Several international agreements and organizations affect tourism, including:
    • International Labour Organization (ILO)
    • World Health Organization (WHO)
    • Environmental Protocols
    • Global Code of Ethics for Tourism (GCET)
<table>
<thead>
<tr>
<th>Goal</th>
<th>Regulatory Objectives</th>
<th>Trade-offs</th>
<th>Regulatory Options</th>
</tr>
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<tbody>
<tr>
<td>Effective Regulation and Coordination</td>
<td>➢ Establish clear mandates</td>
<td>➢ Assess need for routine audits of regulatory frameworks in light of limited resources</td>
<td>➢ Clear guidelines for inter-agency cooperation and communication</td>
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<td></td>
<td>➢ Ensure transparent regulatory processes</td>
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<td>➢ Clear mandates</td>
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<td></td>
<td>➢ Facilitate private sector input</td>
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<td>➢ Publication of regulations, guidelines, and decisions</td>
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<td></td>
<td>➢ Encourage effective cooperation among all spheres of government</td>
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<td>➢ Cooperation with related regulatory authorities, such as health, agriculture,</td>
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<td></td>
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<td>labour, and environmental agencies</td>
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<td>➢ Assess need for routine audits of regulatory frameworks in light of limited resources</td>
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<td>➢ Clear mandates</td>
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<tr>
<td>Licensing and Classification</td>
<td>➢ Ensure streamlined licensing processes</td>
<td>➢ Balance between ensuring quality of operators and overly burdening market entry</td>
<td>➢ Streamlined licensing processes</td>
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<td></td>
<td>➢ Increase transparency requirements</td>
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<td>➢ Transparent and independent licensing regimes</td>
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<td>➢ Support quality of services</td>
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<tr>
<td>Standards</td>
<td>➢ Ensure compliance with minimum safety, occupational, and environmental standards</td>
<td>➢ Weigh burden of compliance with standards upon operators against dangers to safety and environment</td>
<td>➢ Benchmarks against international standards</td>
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<td></td>
<td>➢ Encourage shift from informal to formal sector</td>
<td>➢ Balance compliance with ability of small market operators to enter market</td>
<td>➢ Public-private partnerships</td>
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<td>➢ Protect consumers</td>
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<td>➢ Transparent requirements</td>
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<tr>
<td>Complementary Areas of Regulation</td>
<td>➢ Promote business linkages</td>
<td>➢ Assess competing sectoral policy objectives</td>
<td>➢ Public-private partnerships</td>
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<td></td>
<td>➢ Ensure gains from tourism benefit local economy</td>
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<td>➢ Integrated voice of small market participants</td>
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<td>Good Business Environment</td>
<td>➢ Establish favourable investment climate</td>
<td>➢ Assess protection of domestic enterprises in international competition in view of gains from FDI</td>
<td>➢ Improved ease of market entry</td>
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<td>➢ Implement limited restrictions on FDI</td>
<td>➢ Balance public policy space with gains from international and regional commitments</td>
<td>➢ Simple, transparent licensing processes</td>
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<td>➢ Support SMEs</td>
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<td>➢ Discriminatory measures only to the extent necessary</td>
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<td></td>
<td>➢ Promote business linkages</td>
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<td>➢ Focus on regional agreements for cooperation on tourism, trade, and investment</td>
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<td>➢ Streamline regulatory and licensing processes</td>
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<td>➢ Reduced cost of business, for example through streamlined business registration</td>
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<td>➢ Establish strong legal institutions</td>
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<td>and licensing</td>
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<td>➢ Publicly available, transparent guidelines</td>
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<td>➢ One-stop shops for investors</td>
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<td>➢ Tax incentives</td>
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<td>Support SMEs, Small Market Participants, and Women</td>
<td>➢ Facilitate market entry</td>
<td>➢ Assess protection of domestic enterprises balanced against international competition</td>
<td>➢ Improved access to finance</td>
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<td></td>
<td>➢ Promote business linkages</td>
<td>➢ Reduce overly burdensome conditions on foreign/local investors versus gains from FDI</td>
<td>➢ Establishment of clear guidelines</td>
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<td>➢ Ease regulatory burdens</td>
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<td>➢ Assistance and incubation for SMEs</td>
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<td>➢ Support for the local economy and development of local skills through foreign</td>
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<td>investment</td>
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<td></td>
<td>➢ Implement licensing regime accommodating to SMEs</td>
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<td>➢ Support training for skilled workforce</td>
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<td>➢ Facilitate business linkages</td>
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</table>
Transport Services: Overview

- Transport services are central to the overall competitiveness of an economy and play a significant role in unlocking new economic opportunity across sectors as well as in achieving sustainable development objectives.

- Transport services are crucial for facilitating the trade of goods and also ease the movement of people, thereby enabling economic transactions, creating business opportunities, and generating tourism.

- Regulation of transport services can promote access to affordable transport and encourage foreign investment.

- Transport services sector is made up of several subsectors, including road, air, maritime, and rail; legal and regulatory frameworks can be tailored to the unique circumstances of each subsector and to the needs and priorities of the particular country.
Transport Services

Regulatory goals

• Achieve Transparent and Effective Regulation and Enforcement
• Encourage Fair Competition and Market Efficiency
• Reduce the Price of Transport
• Ensure Health, Safety, and Quality of Transport Services
• Promote Good Business Environment
• Support SMEs, Small Market Participants and Women

Regulatory Approaches

• Ensure Accountability and Effectiveness of the Regulatory Authority
• Design Licensing Regimes that Facilitate Market Entry
• Establish a General Competition Framework Capable of Effectively Addressing Challenges to Competition in Transport Sector
• Enact Measures to Enable Direct Contracting between Transporters and Clients
• Streamline Regulatory and Licensing Processes
• Establish a Favourable Investment Climate
• Limit Restrictions on Foreign Direct Investment
• Enter into Regional and International Trade and Investment Agreements
• Strengthen Legal and Dispute Resolution Institutions

Source: New Markets Lab, 2016.
Transport Services: Regulatory Mechanisms

• National level regulation
  • Each subsector (road, maritime, rail, air) may be governed by different legal and regulatory mechanisms

• Regional and international level
  • Bilateral Investment Treaties
  • Regional Trade Agreements
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<tr>
<th>Goal</th>
<th>Regulatory Objectives</th>
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</thead>
</table>
| Transparent and Effective Regulation and Enforcement | Establish accountable regulator  
Increase transparency  
Protect regulator from political or industry interference  
Increase effectiveness of regulator  
Improve expertise  
Establish efficient dispute resolution mechanisms  
Improve cooperation between regulatory institutions | Institutional design options  
Level of independence granted to regulator  
Providing regulator powers to enforce sanctions against SOEs  
Level of industry participation in regulatory processes  
Amount of expertise within regulatory authority versus subcontracting | Publication of regulations, guidelines, and decisions  
Accountability measures in enabling legislation of regulatory authority  
Diversified sources of funding  
Clear guidelines around funding and spending  
Appointment procedures to support neutrality  
Appeal processes  
Annual reports  
Including industry representatives on the board of regulatory institutions  
Clear mandate  
Clear guidelines for inter-agency cooperation |
| Fair Competition and Market Efficiency | Address market failures  
Achieve inclusion of SMEs  
Establish competition framework prior to reforms  
Ensure ability of regulatory authorities to sanction SOEs  
Ensure strong legal institutions  
Reduce challenges to market entry  
Reduce cartel and anti-competitive behaviour  
Ensure regulatory frameworks do not impede direct contracting  
Prevent informal practices that undermine fair competition  
Enhance regional and international cooperation | Balance between ensuring fairness and maintaining sufficient incentives to encourage market entry and investment  
Efficiency, flexibility, and innovation  
Leniency as incentive to defect from cartel agreements  
Level of power granted to competition authority  
Measures to deter anti-competitive behaviour | Licensing criteria and ex ante regulation  
Ex post competition regulation  
Market oriented pricing  
Granting specific and sufficient powers to competition authority  
Enable direct contracting  
Reform systems that allow freight sharing and allocation  
Reform of queuing regimes |
| Reduce the Price of Transport | Ensure fair competition and market efficiency  
Reduce delays in border crossing  
Increase transparency and predictability of border crossing processes  
Facilitate investment in infrastructure and logistics systems  
Reduce transport costs  
Prevent informal practices  
Implement regional and international agreements  
Strengthen political will for cooperation | Establishment of domestic industry (protection against competition) versus gains from enhanced inter-regional trade and reduced transport prices  
Public policy space versus gains from international and regional commitments  
Protection of certain industry interests versus increased access to transport services, increased quality of services, and increased competitiveness of economy | Measures to ensure regulatory transparency  
Streamlined customs procedures, for example, establishment of OSBPs and electronic-single window system  
Efficient processes related to cargo, driver, and vehicle  
Facilitation of investment in transport infrastructure and logistics systems  
Competitive pricing of transport services and prevention of anti-competitive behaviour  
Streamlined regulatory processes to reduce the cost of doing business  
Methods to reduce fuel costs |
<table>
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<tr>
<td>Health, Safety, and Quality of Transport Services</td>
<td>▶ Ensure compliance with minimum safety, technical, and environmental standards &lt;br&gt; ▶ Encourage shift from informal to formal sector &lt;br&gt; ▶ Ability of regulatory authority to enforce sanctions &lt;br&gt; ▶ Cooperation with health, labour, and environmental agencies</td>
<td>▶ Burden of compliance with standards upon operators versus dangers to safety and environment &lt;br&gt; ▶ Burden of compliance versus ability of small market operators to enter market</td>
<td>▶ System for accreditation of certification institutions &lt;br&gt; ▶ Linking of licences to compliance with minimum standards &lt;br&gt; ▶ Steps to ease compliance with regulatory requirements &lt;br&gt; ▶ Publication and availability of relevant rules and regulations &lt;br&gt; ▶ Establishment of consumer protection legislation</td>
</tr>
<tr>
<td>Good Business Environment</td>
<td>▶ Streamline regulatory and licensing processes &lt;br&gt; ▶ Establish favourable investment climate &lt;br&gt; ▶ Implement limited restrictions on FDI &lt;br&gt; ▶ Ensure effective climate for competition &lt;br&gt; ▶ Support SMEs &lt;br&gt; ▶ Establish strong legal institutions</td>
<td>▶ Protection of domestic enterprises against international competition versus gains from FDI &lt;br&gt; ▶ Public policy space versus gains from international and regional commitments</td>
<td>▶ Ease of market entry &lt;br&gt; ▶ Discriminatory measures only to the extent necessary &lt;br&gt; ▶ Entry into trade and investment and regional cooperation agreements &lt;br&gt; ▶ Reduced cost of business, for example through streamlining business registration, and licensing &lt;br&gt; ▶ Publicly available guidelines &lt;br&gt; ▶ One-stop shops for investors &lt;br&gt; ▶ Tax incentives &lt;br&gt; ▶ Measures to increase competitiveness of local enterprises</td>
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<td>Support SMEs, Small Market Participants and Women</td>
<td>▶ Facilitate market entry &lt;br&gt; ▶ Promote business linkages &lt;br&gt; ▶ Ease regulatory burdens</td>
<td>▶ Protection of domestic enterprises against international competition or overly burdensome conditions upon foreign/local investors versus gains from FDI</td>
<td>▶ Improved access to finance &lt;br&gt; ▶ Establishment of clear guidelines &lt;br&gt; ▶ Assistance and incubation for SMEs, including, for example, assistance with border-crossing processes &lt;br&gt; ▶ Support for the local economy and development of local skills through foreign investment &lt;br&gt; ▶ Implementation of licensing regime accommodating to SMEs &lt;br&gt; ▶ Measures to help SMEs consolidate cargo for transportation purposes &lt;br&gt; ▶ Measures to increase availability of information regarding transportation options and cargo flows</td>
</tr>
</tbody>
</table>
Thank you!

• For questions or additional information please email me at kkuhlmann@newmarketslab.org

• Or visit our website at www.newmarketslab.org
Leveraging Services and Digital Potential for Inclusive Economic Growth
“Regulation as an enabler of services sector competitiveness”: Case study on the Kenya’s tourism regulation
TRAVEL & TOURISM ECONOMIC IMPACT 2016

Kenya GDP Impact by Industry

- **GDP Size**
  - Travel & Tourism generated a total impact of $US 7 billion of Kenya’s GDP in 2014.
  - Travel & Tourism total GDP impact is larger than that of automotive manufacturing, mining, chemicals manufacturing and banking sectors.
  - In terms of its direct GDP, Travel & Tourism is nearly the same size as that of the financial services sector.
TRAVEL & TOURISM ECONOMIC IMPACT
2016

Kenya GDP Impact by Industry

Share

- Based on its direct, indirect, and induced GDP impact, Travel & Tourism generated 12.3% of Kenya’s GDP in 2014.
- This is nearly four times greater than the size of chemical manufacturing’s GDP impact at 3.1% and nearly half the impact of the education sector at 25.8%.
TRAVEL & TOURISM ECONOMIC IMPACT 2016

Kenya Employment Impact by Industry

Employment

Employment Size

- Travel & Tourism sustained a total of 544,000 direct, indirect, and induced jobs in Kenya in 2014.
- Travel & Tourism in Kenya directly employs more people than the automotive manufacturing, mining, chemicals manufacturing, banking, and financial services sectors.
- Of note, Travel & Tourism directly supports more than twice as many jobs as the financial services sector in Kenya.
TRAVEL & TOURISM ECONOMIC IMPACT
2016

Kenya Employment Impact by Industry

- Travel & Tourism generated, either directly or indirectly, 9.2% of employment in Kenya in 2014.
- For every job directly in the Travel & Tourism sector, nearly three additional jobs are created on an indirect or induced basis, making its linkages stronger than in the education sector.
TRAVEL & TOURISM ECONOMIC IMPACT
2016

Kenya Service Exports (2014)

- **Exports**

Tourism’s Share of Exports
- Travel & Tourism is a significant source of export revenue for Kenya.
- In 2014, visitor exports totaled $1.8 billion. This was 39% of all service exports and 16.6% of all exports (including goods and services).

Growth of Tourism Exports
- Between 2000 and 2014, Kenya’s Travel & Tourism exports expanded 264%.
- Travel & Tourism exports outpaced total exports of goods and services, which grew 295% between 2000 and 2014.
TRAVEL & TOURISM EXPERIENCE- WHAT YOU SEE
THE COMPLEX STRUCTURE THAT DELIVERS THE EXPERIENCE; TOURISM SERVICES GVC - HOW IT WORKS

[Diagram showing flow of consumers through Direct Booking, Online Package, Package Booking, and service providers including Leisure Tourism Inputs: International Transport, Domestic Transport, Lodging, Hospitality, Excursions.]

COLOR KEY: Activities performed by international actors, activities performed by domestic actors, activities performed by both.
TOURISM REGULATION: DRIVING PRINCIPALS

Due to the complex multiple stakeholders nature of the tourism value Tourism regulation is necessary to;

• Ensure compliance with minimum business, safety and security (immigration), occupational, and environmental standards – consumers, labourers and tourism assets
• Ensure an all-round quality service delivery in the tourism sector.
• Establish a favourable investment climate
• Improve sector competitiveness
• Contribute towards Sustainable Development Goals- Gender and youth- Inclusive Growth- environmental
BEFORE REGULATION – the false promise

Numerous complaints about;

• False advertising – star rating, tour van vs matatu PSV vs Private
• Tourist packages sold without a trace – insufficient self regulation – Role of Associations
• “Fake tickets”
• Cases of onwards supplier was not paid
• Poor skilled driver guides
• B2B fraud and default
• No recourse
TOURISM REGULATION IN KENYA

• Provided for under section 4 of the Tourism Act No.28 of 2011 to regulate the tourism sector in Kenya. – consultative process (Lawyers, Engineers, Architects, Accountants)
• Established the Tourism Regulatory Authority (TRA) operationalised in 2014/2015
• Mandate to develop regulations, standards and guidelines that are necessary to ensure an all-round quality service delivery in the tourism sector.
• Register, license and grade all sustainable tourism and tourist-related activities and services including cottages and private residences engaged in guest house services;
•
TOURISM REGULATION IN KENYA

• Develop and regulate, in consultation with the Ministry for the time being responsible for matters relating to education, tourism and hospitality curriculum, examination and certification.

• Vet and recommend expatriates seeking employment in the tourism and hospitality sector.

• Undertake annually, an assessment and audit of tourism activities and services, measures and initiatives at national level, and prepare and publish an annual national tourism sector status report, in consultation with the minister and relevant lead agencies; and
Benefits of regulation

• Consumer Protection

• Regulatory measures concerning licensing and food safety standards are important interventions that helped formalize informal sectors- curio sellers, taxi drivers, tour guides (licensing and badge regulations)

• Strengthen the relationships between the formal and informal sectors in order to continue to resolve conflicts and define operational relationships among various stakeholders in the tourism sector

• Better management of resources in a sustainable way

• Enhance competitiveness- destination perception, increase in arrivals
Challenges of regulation

- Cost: human capital
- Lack of transparency
- Political Interference
- Needs a long term view and consistency (Stable yet dynamic)
Leveraging Services and Digital Potential for Inclusive Economic Growth