

Scenarios for the CFTA trade in services negotiations

June 2015, the Member States of the African Union (AU) launched the negotiations for the establishment of a Continental Free Trade Area (CFTA). The ambitious plan to integrate all the economies on the continent was set out in the Abuja Treaty which entered into force in 1994. Since then, many of the activities envisaged for the various stages, such as the establishment and integration of a number of regional economic communities (RECs), have for various reasons not been implemented. As a result, certain building blocks for the establishment of the AEC, as described in the Abuja Treaty, are not in place. In 2012, in an effort to accelerate the integration process, the Members of the AU adopted an Action Plan on Boosting Intra-Africa Trade (BIAT) and decided to fast-track the establishment of the CFTA by the indicative date of 2017. This, together with other AU initiatives such as the Action Plan for Accelerated Industrial Development of Africa (AIDA), the Programme of Infrastructure Development in Africa (PIDA) and the Minimum Integration Programme (MIP) provides the basis for a new pathway for continent-wide economic integration.

The negotiation mandate for the CFTA, as outlined in the objectives and principles; an indicative roadmap; the terms of reference for the CFTA Negotiating Forum; and the institutional arrangements for the CFTA negotiation, provides for the conclusion of a comprehensive and mutually beneficial agreement including trade in goods and services, investment, intellectual property and competition policy. The first phase of the negotiations is to commence in 2016 to conclude two separate legal instruments for trade in goods and services, respectively. The second phase will cover negotiations on investment, intellectual property rights and competition policy. The decision to adopt a piecemeal approach to the conclusion of a comprehensive trade agreement that can address the challenges facing trade in the



21st century was perhaps ill-conceived. However, it is not too late to change the sequence of the negotiations to allow for the effective management of cross-cutting issues.

To realise the objectives of creating a competitive, diversified, dynamic and freer intra-African market for trade in services, careful consideration should be given to adopt the best possible approach for the negotiations that could deliver results that are economically relevant within the space of a short negotiation period. This would require serious effort to reap an early harvest in the form of a framework agreement on cross-border trade in services covering general issues affecting trade in services such as most-favoured-nation treatment; market access treatment and national treatment set at prevailing market conditions (subject to reservations to be included in sector-specific annexes); good governance practices for the development, implementation and review of domestic regulation; disciplines on domestic regulation that would facilitate trade; transparency obligations to enable especially small and medium size enterprises to identify and use trade opportunities; and, electronic commerce. The conclusion of such a framework agreement would deliver tangible results that could be implemented with the least amount of negotiating effort. Such an agreement would not require the prior exchange of preferential trade offers or requests between and among Members. Members will be required to undertake national regulatory audits during the pre-negotiation period and share its results with all Members. The results of the regulatory audits attached to the framework agreement will form an integral part thereof.

Sector-specific annexes on financial services; telecommunication and information and communication technology services; transport, distribution and express delivery services; energy services; professional services; and others should be developed by continental, regional and national sector regulators, competition authorities, private sector stakeholders and Members to supplement the framework agreement. The existence of appropriate regulatory frameworks in many services sectors is often a precondition to market liberalisation. Therefore the focus of sector-specific annexes should primarily fall on the development of pro-competitive disciplines, regulatory standards for the formulation of domestic regulation and the minimisation of divergence between national regulations. Members to a sector-specific annex could agree to time-frames and formulae for the removal of exiting non-conforming market access and national treatment measures. Provision could be made for policy flexibility by allowing any remaining non-conforming measures or reservations on the introduction of new restrictions in support of national policy objectives. Such reservations could be attached to each sector-specific annex. This or a similar approach to the negotiation of trade in services at the CFTA level could assist to achieve the objectives of the AU Members to establish a comprehensive free trade area by 2017.

Negotiations in the RECs and the World Trade Organisation (WTO) highlight capacity constraints to implement liberalisation commitments; lack of awareness of their commercial meaning and their effect on domestic policy. The negotiation of market access and national treatment commitments based on approaches adopted in the WTO and the RECs may well be protracted and result in limited commitments. This will not enhance integration and deliver the worst possible outcome for the CFTA.