Trade, Postal Regulation and the Express Industry in Africa

Executive Summary

The African Continental Free Trade Agreement (AfCFTA) seeks to promote intra-African trade by strengthening the continent's trade infrastructure for the efficient and timely movement of goods across borders. Africa's express industry, including the three largest firms, DHL, UPS and FedEx, is part of that trade infrastructure. As around half of all newly generated trade will be facilitated by express delivery services is important that regulations governing express carriers be aligned with the fundamental goals of the AfCFTA.

Problematic rules governing express services arise from national postal legislation which typically views the express industry as a mere subset of the postal sector. Rules designed for stated-owned, postal monopolies are extended to express firms providing trade-related services in competitive markets. Express delivery networks are distinct and separate from postal networks and separately subject to all relevant national and international regulations, covering general commercial law, consumer protection regulations, customs and aviation security regulations. Among the restrictions that African express companies face are:

- **Postal Monopolies That Are Too Broad in Scope**: National posts' reserved area can include all items, including those containing goods, up to 1kg in weight potentially foreclosing some 65% of the market and items sent across borders for trade purposes.
- **Licensing of Express Carriers**: Postal regulators license express carriers in a manner which add costs, complexity and frictions, and so restrains efficient and effective trade. Express carriers (though not other transporters of goods) must pay a license fee of up to 7 % of gross annual revenues. These levies are often labelled as a contribution to the universal service fund and, as such, represent a tax on trade conducted through express networks.
- **Imposition of Terms and Conditions**: Licensing of the express industry is used to impose obligations on express operators which should otherwise be determined by the market including weight and item restrictions; regulating services levels; inspection requirements and the imposition of postal liability limits.

- **Funding Universal Postal Services**: Some African governments see the express industry as a source to fund financial deficits of the public postal provider.
- **Level Playing-Field**: As the volume of letters have declined so national Post Offices have expanded into the competitive express market, with little or no oversight exercised by postal regulators in respect of cost allocation; unfair cross-subsidies and pricing. The OECD demonstrates that far from being a threat to postal services, a competitive express sector incentivises improvements in the infrastructure for postal delivery.

The AfCFTA further aims to improve customs and trade facilitation. It is clear that current customs procedures impose a significant constraint, delay and cost on trade. GEA data show that the delays at borders for express items are significantly higher than the global average and have increased across all African sub-regional groupings.

Africa's express industry is a facilitator on intra-African trade by linking continental-wide importers and exporters to suppliers and markets with the speed, security and reliability demanded by modern manufacturing and just-in-time supply-chains. The modernisation of rules governing the express sector, and their alignment with the goals of the AfCFTA, is necessary if the sector is to support the African Union in its mission to promote Africa's international competitiveness and connectivity for trade.

Geneva, July 2021

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Introduction

The African Continental Free Trade Agreement (AfCFTA)[1] seeks to promote economic growth, employment and prosperity across the continent by stimulating intra-African trade. The aim is to integrate Africa's otherwise fractured economies and support the shift of economic activity from a commodity to an industrial goods basis. The AfCFTA further seeks to improve the competitiveness of Africa's industries by promoting competition, placing limits on state aids and strengthening the trade infrastructure to reduce costs and support timely cross-border flows, including in respect of customs procedures.

Part of that trade infrastructure is Africa's express industry including the three largest firms, DHL, UPS and FedEx, represented by the Global Express Association (GEA). The GEA supports cross-border commerce within other trade blocs such as the EU, Mercosur and USMCA, so the industry seeks strengthen its ability to connect African exporters to their suppliers and end- customers by working with both the African Union and national governments to modernise the regulations governing express operators.

Problematic rules governing the express sector mostly arise from national postal legislation. Regulations designed for national, state-owned Post Offices, but broadly applied to the express sector, add unnecessary complexity and costs for African businesses and consumers.; costs which are ultimately reflected in the price of traded goods flowing through the express networks. As around half of all newly generated trade will be facilitated by express delivery services,[2] it is important that regulations governing express carriers be reformed and aligned with the fundamental goals of the AfCFTA, including:

- removal of barriers to trade, including unnecessary costs and burdensome levies;
- proportionate and focused regulation, with minimal intrusive oversight;
- the promotion of fair competition and a level-playing field between operators of all kinds; and
- improving the seamlessness of customs and border processes.

This paper sets out the regulatory issues impacting African express networks and our ability to efficiently support the needs of African businesses and exporters.

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[1] Agreement Establishing The African Continental Free Trade Area.

[2] Frontier Economics (2015). Express Delivery and Trade Facilitation: Impacts on the Global Economy, January 2015.

Intra-African Trade and The AfCFTA

While distance matters in trade,[3] for economists, "distance" is a catch-all term for trade and transport costs, including taxes and tariffs; border controls and customs delays; and differences in regulatory regimes. Trade is not just a function of physical distance but also of more subtle creators of distance caused by policies, regulatory practices, levies, costs and frictions experienced by operators in the movement of goods across border. Studies suggest that a halving of transport costs would almost double the volume of trade[4] and the World Bank found that "a 10% increase in customs delays results in a 4% decline in exports."[5]

The AfCFTA understands that that any economic dividend from continental trade liberalisation must be accompanied by advances in trade-related infrastructure and the physical transport of goods across Africa's vast distances. Sub-Saharan Africa is the world's most fragmented region, demarcated by 156 borders and 48 states, many of them landlocked. These divisions make barriers to trade worse because small national markets limit scale economies and increase unit costs of trade movements.

Against this background AfCFTA aims to:

- create a single market for goods, services, facilitated by movement of people and capital and deeper economic integration of the African continent;
- progressively liberalise national markets and intra-African trade in goods and services, including by the elimination of duties, tariffs and non-tariff barriers;
- lay the foundation for the establishment of a Continental Customs Union and the implementation of trade facilitation instruments;
- enhance competitiveness, promote industrial development and strengthen regional value-chains;
- reduce business costs associated with trade and market access, foster foreign investment, facilitate the creation of scale economies and enhancing trade-related infrastructures;

The achievement of AfCFTA's goals will require a modernisation and liberalisation of the rules governing express carriers in their mission to support Africa's exporters and traders, particularly micro, small and medium-sized enterprises.

Express and Postal are Distinct and Separate Sectors

Across Africa, postal legislation treats express firms as if they were postal operators; the sector is viewed as a mere subset, or an otherwise derivative of, "postal services" or "non-reserved postal services". The economic and legal case for oversight of Post Office's by

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[3] There is a strong negative effect of distance on trade in physical goods: each one per cent increase in distance between two countries is associated with a fall of between 0.7 and 1.0 per cent in trade Krugman, Paul R. and Maurice Obstfeld (2006), International Economics, Longman.

[4] Department for International Development, 2000. Eliminating World Poverty: Making Globalisation Work For the Poo*r*, HMSO, London.

[5] World Bank, Doing Business 2020 Report. Washington.

national postal regulators[6] rests on the monopoly rights that they typically enjoy and the obligation that their governments require of them to deliver a range of universal postal services for which they may receive state financing. Express delivery networks are not, however, postal networks, neither in terms of market definition; operations, services or products offered; nor cost characteristics.

Express delivery and postal services are separate and distinct services, each with specific features catering to different consumer needs, with express carriers operating in competitive markets, both domestically and cross-border, and the post enjoying monopoly rights. The express sector is further subject to all relevant national and international regulations, including general commercial law, competition law, consumer protection regulations, customs and aviation security regulations. Moreover, express delivery networks are designed with a far greater focus on cross-border trade as compared to national Post Offices. For these reasons, express carriers should not be regulated in a manner similar to local Post Offices. The extension of postal regulation to the private express companies is inappropriate; according to UPU data, Africa's posts account for a tiny proportion of parcel exports (just 0.2% of global parcel exports).

While the AfCFTA does allow regulations to be imposed on suppliers of services to meet national policy objectives[7] such regulations must not impair the fundamental goals of the AfCFTA and must be reasonable, objective, transparent and impartial. The economic rationale for imposing postal regulations on express delivery service providers is not clear and, while some African postal ministries cite Universal Postal Union (UPU) regulations as the basis for national restrictions, no such requirements are mandated by the UPU.

Broadly Drawn Postal Reserved Areas

While it may reasonable for national governments to grant monopoly rights to national posts in respect of the provision of basic letter services there are negative economic and trade consequences if these rights are too broadly drawn and extend to express delivery services. South Africa's postal law, for example, arguably extends the monopoly rights of South African Post Office to all items up to 1kg in weight. Some 65% of express items fall under this weight threshold with the result that a large part of the market is potentially foreclosed to express operators who offer trades a distinct service compared to the public postal operator. Other African countries also attempt to extend local post's monopoly rights to items that contain any type of goods, irrespective of the features of the service provided, and thus limit the choices available to business and traders. As consumer bodies emphasise, where postal

[6] Postal regulators in Africa tend to approach their work from the perspective of postal organisations, rather than wider economic and trade interests. They may also operate with little or no consideration for submissions and representations made by private sector companies.

[7] Article 8 (p39).

monopolies are too broadly drawn consumers and business users of the service can be adversely impacted[8].

Licensing Express Carriers

Postal laws in many African states permit regulators to impose a postal license requirement on express carriers. In principle, there can be economic merit in licensing firms where they enjoy a franchise or monopoly status on behalf of a government or where there is some scarcity of resource which needs to be managed by national governments, for example in the case of the extraction of minerals or the use of telecom spectrum. There is, however, no principled case to license express firms providing networks for trade and commerce, particularly in markets with competing networks (such as freight transport) and for firms that are already subject to national and international regulations of all kinds.

The licensing of express carriers in Africa appears to have simply rolled-over approaches from the telecoms sector with the result that administrative costs, complexity and frictions are introduced hinder investment in express networks, and so restrains trade growth. The enforcement of license conditions is also disproportionate, often involving criminal sanction, potential imprisonment of company executives or significant financial penalties.

If a light touch licensing regime were judged to be necessary such a regime should be based on best-practice international principles: simple, stable and low cost; proportionate to the objectives to be achieved; impartial and non-discriminatory; and objective and transparent, with no intrusive regulation of commercial terms and conditions[9]. License fees should be limited to covering costs of the administration of the licensing regime.

To secure a license, express carriers (though not other transporters of goods) must pay a fee of between 1-7 per cent, typically not based on a set amount but on operators' gross annual revenues and often labelled as a contribution to the universal service fund. Such fees are often rationalized as a financial support mechanism for the national Post Office (or as a funding contribution to the national postal regulator[10]), additional to the funding secured for the Post through a reserved area. While a few countries do not levy a license fee, the trend across the continent is that regulatory frameworks are being adjusted to levy such fees even though this dis-incentivises express carriers from expanding their coverage and employing more staff. License fees ultimately represent an additional 1-7 % on intra-African and world exports.

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[8] https://www.businessinsider.co.za/parcel-delivery-times-could-double-if-the-post-offices-monopoly-ambitions-succeed-2021-5 See also https://www.itweb.co.za/content/JN1gP7OY6YdqjL6m

[9] A group of WTO members, for example, are developing a plurilateral agreement on Domestic Regulation, which may be an outcome of the 12th Ministerial conference in November 2021.

[10] For example, in one African country a 2% of net revenue is paid for the annual license fee; 2% for access in the postal sector; 1.5% for a universal fund and a further 0.5% of net revenue as a contribution to postal national fund - a total of 6% of annual net revenue. In another one, two forms of payments must be made by express companies to the postal regulator: a ten-year licence at a fixed fee of USD$50,000 and also monthly payments at 1.54% of monthly revenue.

Imposition of Terms and Conditions

Licensing of the express industry is used to impose obligations on express operators which should otherwise be determined by the market:

- **Weight and Item Restrictions**: In several countries, postal laws and express licenses prevent express networks from moving certain trade-related items. Express carriers may be blocked, for example, from delivering parcels under 1 kilogram. Restrictions are also imposed on express carriers from importing or exporting shipments over (or under) 20 kilograms, the international weight threshold for the exchange of postal parcels between post offices. Some countries impose a fee of up to 5% of express carriers' gross revenues for shipments below 30 kg and other African states prevent GEA members from shipping certain items (such as coffee; a restriction that does not apply to local courier companies).
- **Regulating Service Levels**: Licensed express firms may be subject to conditions which regulate service levels, typically required of the universal service provider. Express firms operate in competitive markets and the level of service provided should be determined by market forces.
- **Dangerous Goods**: Rules originally designed for postal networks are imposed on the more secure, more data-informed and more advanced express networks. The safe movement of dangerous goods, for example, is a necessary economic activity and the extension of prohibitions on their movement from postal to express networks (though not in freight forwarder networks) makes little sense in trade terms.
- **Inspection Requirements**: Item inspection regimes developed to maintain security in open postal networks are extended by national authorities to the inspection of trade flows in the express sector, irrespective of the far higher security protocols used by express operators from the controlled point of induction and the throughout the transport and delivery process.
- **Imposing Postal Liability Limits:** Licenses are further used by national governments to impose liability and other obligations on express operators in contradiction of the international standard set in the Montreal Convention 1999 (MC99).

Imposition of terms and conditions on commercial express companies are unnecessary. Such terms are subject to national horizontal legislation such as consumers protection laws. Imposition impairs a country's trade infrastructure and weaken local industries' supply-chains, such as being able to reduce inventory costs yet rely on secure, just-in-time spare parts express delivery needed to keep production lines working.

Funding Universal Postal Services

As volumes of letter mail continue to fall across the globe, some national governments see the express industry as a source to fund financial deficits of the public postal provider. Express services are not universal services nor part of a governmental obligation to provide basic, affordable, social communication network to its citizens. Express delivery carriers do not and cannot compete with the post and should not be brought into the scope of compensation funds.

This kind of thinking risks both removing the incentive on Post Offices to improve their own efficiency and effectively charges Africa's businesses and exporters using express networks, thus adding to the costs of trade and constraining its growth. Again, UPU regulations are usually cited to justify such policies. But the UPU does not determine a post's universal service obligations still less how these should be financed.

Fair Competition and A Level-Playing Field

A key goal of the AfCFTA is to promote Africa's international competitiveness by ensuring efficient and fair competition in goods and services. Specifically, while AfCFTA permits states to establish monopoly suppliers,[11] it requires that national monopoly suppliers of a service must not act in a manner inconsistent with overall goals of the Treaty.

Post Offices have historically had a government mandate to provide basic and affordable delivery services particularly in respect of letters and small packets. The express delivery industry, in contrast, developed to meet a commercial need for the delivery of time-sensitive shipments which require value-added features. To fulfil this mission, express operators have invested heavily in reliable national and international transport services, advanced IT, people and global logistics to support local businesses', particularly MSMEs' ability to export across Africa and around the world.

However, as the volume of letters has declined so national Post Offices have sought to expand their services into the competitive express market, with little or no control exercised by national postal regulators in respect of cost allocation and unfair cross-subsidies of postal EMS services. Postal EMS services are also not subject to corporation tax nor the license fees imposed on express operators. The GEA welcomes competition, but the AfCFTA and national competition rules require that such competition must be fair, free from state subsidy and based on cost-reflective prices. Indeed, a level-playing field can enhance the entire network of communications and delivery services. As the Organisation for Economic Co-operation and Development (OECD) put it, the more competitive the courier sector, with the fewest restrictions imposed on it, the better "the infrastructure for postal delivery."[12]

Customs and Trade Facilitation

Part IV of the AfCFTA sets out the signatories' ambition in respect of improving customs and enhancing trade facilitation and transit. Express carriers work with Africa's customs and border authorities every day and there is no doubt that current customs procedures impose a significant constraint, delay and cost on trade and so economic development. Table 1, for

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[11] Article 11 (p41)

[12] OECD Policy Responses to Coronavirus, Connecting Businesses and Consumers During COVID-19: Trade in Parcels (July 9, 2020), Paris.

example, shows data on the percentage of express shipments[13] held on arrival in the region for the completion of formalities and inspection.

Table 1 Average Express Hold Data By Percentage and Region, 2018 and 2020

Region	2018	2020
MENA	19.7	25.1
COMESA	30.4	45.3
ECOWAS	26.8	35.8
SADC	36.4*	65.3
Global	12.5*	13.1

***2019**

Source: GEA Statistics, 2021

These data show that the average cargo hold rate carried by Africa's express carriers are significantly higher than the global average and have increased across all African sub-regional groupings. Such delays represent a daily challenge to express operators and impair the development of African businesses relying on predictable, speedy and affordable delivery in support of modern manufacturing processes. To address these impediments to the smooth flow of trade, the AfCFTA requires its member countries to make a number of commitments, reiterating those made for the WTO Trade Facilitation Agreement.[14]

The international best practice for the expeditious treatment of express shipments is based on advance electronic submission of data for risk assessment and the acceptance and promotion of digital trade. This includes the use of electronic paperwork; scanned soft copies of customs documents, through a digital imaging platform; immediate release upon arrival for low-risk and/or low value shipments; and allowing the payment of duties and taxes after the release of the goods. Art. 7 to 14 and Art. 20 of Annex 4 of the AfCFTA provide the measures to allow for such international best practice to be implemented throughout the African continent. A strong and reliable appeal procedure as stipulated in Art. 22 of Annex 4 is also indispensable for a trusted trading environment.

[13] GEA 'holds' measure the percentage of international express shipments containing goods (i.e. excluding documents) that are not released on import when expected by each member.

[14] Critical provisions of the WTO TFA, such as Art. 2 on consultation, are omitted from the AfCFTA. While the WTO TFA commitment will prevail, this omission confirms the experience in many African countries of the lack of consultation by authorities with the private sector, in particular with regard to new regulations and legislation. Too often the lack of consultation results in significant economic and commercial impact with increased trade cost and reduction in the competitiveness of the country.

Recent years have seen double-digit parcel and ecommerce growth in African and global ecommerce[15]. Such flows democratise trade allowing small traders and consumers to export and import items from world markets. These trade flows typically comprise very large volumes of small, light-weight and low-value packets. It is right that customs and border authorities will want to have assurance that such flows are safe and that due taxes and duties are paid. To support national governments in these tasks, while facilitating ecommerce flow, the GEA have developed a proposal to simplify the duty and tax collection. The aim is to meet the needs of both national border authorities and those of the trade flows concerned.[16]

Conclusion

The AfCFTA aims to strengthen economic efficiency and linkages between African business by eliminating barriers and other costs to trade across the continent. Africa's express industry is a facilitator on intra-African trade by linking the continental-wide importers and exporters to suppliers and markets around the world with the speed, security and reliability demanded by modern manufacturing and just-in-time supply-chains. As such, measures that constrain the flexibility of express networks or impose direct or indirect costs will ultimately impair the region's international competitiveness and connectivity for trade.

Many of the barriers that the express industry face arise from the uncritical transposition of rules designed for the postal sector to express networks. If the aims of the AfCFTA are to be realised it is necessary to re-align the regulations governing express operators in Africa to the principles that underpin AfCFTA.

Global Express Association
July 2021

[15] Apex Insight (2021). Global Parcels Market Insight Report 2019, London.

[16] GEA, (2020) Proposal to Simplify Duty and Tax Collection on Low Value Shipments, September, Geneva.

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