

CONSUMER WELFARE AND THE AfCFTA: THE NEED FOR A PROTOCOL ON CONSUMER PROTECTION

I. ABSTRACT

Africa is now recognised as the fastest growing continent, mainly fuelled by improved economic governance in the continent. As enshrined in Agenda 2063: The Africa We Want strategic framework for delivering on Africa's goal for inclusive and sustainable development, The African Continental Free Trade Area (AfCFTA) is intended to build an integrated continental market for goods and services with unhampered trade and investment to deepen economic integration.¹ The aim of business is profit maximization. It is always expected that by promoting effective competition, consumer welfare will be enhanced. On the contrary, in the quest to make profits, businesses have often ignored the welfare of consumers. Enhancing the ability of consumers to exert pressure on businesses to give them quality goods and services is likely to contribute to a vibrant and competitive business environment. This chapter points to the need for proactive conversations revolving around the protection of consumers in Africa from unfair and misleading business conduct, and the likely contribution of consumer protection to the success of AfCFTA. It also points to the need to include consumer protection as a standalone protocol in the phase three negotiations.

II. INTRODUCTION

The African Continental Free Trade Area (AfCFTA) as one of the main projects of Agenda 2063: The Africa We Want aims at eliminating trade barriers in Africa with the objective of boosting intra- Africa trade.² The potential of the AfCFTA to diversify the sources of growth to enhance cross- border trade to do what?? cannot be understated with estimates indicating that by 2030, combined consumer and business spending has the potential to reach an estimated \$6.7 trillion.³ It is also projected that there will be substantial expansion of intra- African trade during implementation of the AfCFTA, where the focus is on trade facilitation rather than just tariff liberalization. The projections show that cross-border trade could increase by \$85 billion. The implementation of the AfCFTA is expected to, in a great way, shift the trade potential across Africa especially with the improved competitiveness and productivity in industrial goods and manufactured products. It is noted that 1.4 Billion people were living in 54 countries in Africa in 2024, which is equivalent to 17.89% of the total world population. It is projected that by 2050, the population in Africa will reach 2.5 Billion. The potential can also be measured in terms of sectors that will generate the most value. The projections are that there will be strong growth in consumer goods, hospitality and recreation, healthcare, financial services and telecommunications. Food and beverages, education and transportation as well as housing will generate the greatest value which is likely to total more than \$6.7 trillion by 2030. Consumer expenditure continues to grow rapidly

¹ Bassey, O.B., *Leadership and The Success of African Integration And Development Agenda: Juxtaposing The African Continental Free Trade Area-Afcfta And Agenda 2063* (2023)..

² Yaw A. Debrah a, Oluwaseun E. Olabode b, Femi Olan c, Richard B. Nyuur. *The African Continental Free Trade Area (AfCFTA): Taking stock and looking ahead for international business research* (2024). Journal of International Management

³ Hippolyte Fofack. *Making the AfCFTA work for 'The Africa We Want* (2020). Africa Growth Initiative at Brookings

with statistics indicating that since 2010 it has grown at a compound rate of 3.9 percent reaching \$1.4 trillion in 2015. It is expected that by 2025 consumer expenditure will hit the \$2.1 trillion mark.⁴

Africa's e-commerce marketplace is also considered as one of the fastest growing with projections estimated to reach \$2.5 trillion by 2030, which will present an opportunity for women and youth who own cross border businesses to tap into.⁵ The potential therein lies in the recent trends indicating that, whilst the majority of consumer spending in Africa takes place in informal settings, even in countries with relatively advanced retail markets, there is a shift to formal forms of consumption such as supermarkets and shopping malls, and eventually e-commerce. This is seen across Africa, and now more and more Africans are going to shopping malls and supermarkets to make their purchases. The growth of e-commerce is also unprecedented. This has been buoyed by advancements in technology in the form of relatively high speed internet, availability of reasonably priced smart phones to the majority of Africans, and advancements in the digital financial services.⁶ Consumers seem to trust informal settings of consumption due to certain factors that are within their control: an ability to obtain information on a good or service enabling them to make a reasonable decision on the quality of the product; ability to negotiate the price and other terms of the good or service; and the ability to obtain quick redress due to their proximity to the business.⁷

The AfCFTA intends to utilize this potential to promote intra-Africa trade for the benefit of Africa and Africans, through amongst others: enhancing trade in goods; promoting trade in services; promoting competition amongst businesses in Africa; and growing digital trade – while ensuring effective resolution of disputes.⁸ The question remains, how do we enhance this growth to phenomenal levels? How do we take advantage of this potential? As consumers adopt more formal forms of consumption in Africa such as e-commerce, how do we ensure that their welfare is enhanced, so that they may trust the emerging forms of business such as the digital economy, for the overall success of the AfCFTA?

The aim of business is profit maximization. It is always expected that by promoting effective competition, which is aimed at making markets work, consumer welfare will be enhanced. Ordinarily, competition only looks at consumer welfare from the perspective of increased choice of products made available to consumers due to innovation and availability of competitively priced products which are of high quality. However, in the quest to make profits, businesses have often ignored the welfare of consumers.⁹ They have been known to perpetuate conduct that would be unfair and misleading to consumers thus eroding the trust consumers have on businesses. Another way of making markets work is to employ consumer policy. This looks at the vertical relationship between businesses and consumers.¹⁰ Consumer policy aims at enhancing the ability of consumers to exert pressure on businesses to consider their welfare through: making available quality goods

⁴ Signé, Landry and Chelsea Johnson. *Africa's consumer market potential Trends, drivers, opportunities, and strategies*. (2018)

⁵ Mene, Wamkele. *Deepening Regional Economic Integration AfCFTA and Trade Facilitation in The Post-Covid Era* (2022) Opening Remarks at TICAD8 Side Event- Online Webinar.

⁶ Centurion- Lawyers and Business Advisers. *The E-Commerce Protocol of the AfCFTA: Possible Considerations* (2022).

⁷ Cheskin Research/Studio Archetype/Sapient: *'eCommerce Trust Study'* (1999) (electronic publication),

⁸ Abrego M. L.de Zamaroczy M. M.Gursoy T.Nicholls G. P.Perez-Saiz H.Rosas J. N *The African Continental Free Trade Area: Potential economic impact and challenges*.(2020) Washington, DC International Monetary Fund

⁹ Barak Y. Orbach, *The Antitrust Consumer Welfare Paradox*, Journal of Competition Law & Economics, Volume 7, Issue 1, March (2011), Pages 133–164,

¹⁰ Armstrong, M. 2008. "Interactions between Competition and Consumer Policy." *Competition Policy International* 4 (1): 97–147.

and services; ensuring the availability of information necessary for consumers to benefit from goods and services; protecting the health, safety and economic interests of consumers; and redressing consumer issues through appropriate remedies.¹¹ This is likely to contribute to a vibrant and competitive business environment.

The need to enhance the rights of consumers has been the subject of discussion since the Industrial Revolution which represented a period of unparalleled rise in average income and population which led to improved infrastructure, leading to the rise of consumerism resulting from the massification of the consumer market.¹² There was no form of protection of consumers – until the 18th century consumers were responsible for verifying the quality of the goods they purchased. The seller of goods could only be held liable where gross negligence was detected.¹³ Many goods produced during this period, such as cars, radios and telephones were becoming increasingly complex for the average consumer to evaluate, which brought the need for consumer protection law.¹⁴ Consumer protection law developed in most western economies at the second half of the twentieth century when the focus in the world economy moved from a production oriented standpoint to a consumer oriented standpoint.¹⁵

This gained traction and was adopted by many countries across the world. Africa has not been left behind with an increased number of African Union member states now broaching the subject of how consumers can be protected from conduct that is unfair and misleading. However, despite this progress, consumer protection is often one of the last areas that developing economies focus on regulating.¹⁶ In fact, consumer protection does not receive the focus it deserves internationally. The lack of standard expectations among global consumers and jointly established rules for businesses, especially in the digital economy has created vagueness in legal processes across the world, and is slowly eroding the trust in the digital economy.¹⁷ Regional trade blocs such as the European Union have recognized the importance of consumer protection by adopting an overall strategic framework – the EU consumer policy on 13 November 2020.¹⁸ There is an inherent risk of harming the potential of the growth of consumer spending if consumer protection is not prioritised within the AfCFTA.¹⁹ There will be need to kick start conversations regarding the likely challenges consumers in Africa will face when trade commences, the solutions to enhance their welfare and ultimately, engage in negotiations to grow this potential through the consumers' perspective.

III. THE LIKELY CHALLENGES THAT WILL FACE CONSUMERS IN AFRICA

The AfCFTA will be bringing together 55 countries of the African Union (AU) and eight Regional Economic Communities (RECs) to create a single market that will enable the free flow of goods

¹¹ Howell, N. *Developing a Consumer Policy for the 21st Century*. (2008). *Alternative Law Journal*, 33(2), 80-85.

¹² Eiselen and Naudé. "Introduction and overview of the Consumer Protection Act" (2019) *Commentary on the Consumer Protection Act* () Introduction-6 to Introduction-18.

¹³ *ibid*

¹⁴ *ibid*

¹⁵ *ibid*

¹⁶ CIPE and New Markets Lab. *Digital Economy Enabling Environment Guide: Key Areas of Dialogue for Business and Policymakers*. (2018). *Digital Economy Enabling Environment Guide: Key Areas of Dialogue for Business and Policymakers*.

¹⁷ *ibid*

¹⁸ European Union. *New Consumer Agenda 2020 – 2025 Actions to Protect European Consumers- Factsheet*. (2020).

¹⁹ Fiattor, E., *An In-Depth Analysis of Choice of Law Rules in Consumer Contracts: A Focus on the African Continental Free Trade Area* (2023). *Journal of Law, Society and Development*, 10, pp.19-pages.

and services.²⁰ Whilst this creates a great potential to significantly boost intra-Africa trade, it also presents the biggest challenge to the upholding of consumer rights and protecting them from unfair and misleading market conduct by businesses.²¹

Consumers will likely face key challenges in the form of false or misleading misrepresentations, unconscionable conduct, and issues of product safety.²² Other consumer issues they may face include: the lack of disclosures and transparency of key terms and conditions; the lack of protection of their data; and dark commercial patterns especially when engaging in e-commerce. With regard to false or misleading representations, businesses may falsely represent that goods are of a particular standard, have certain qualities, possess a particular value or grade, contain certain compositions or are of a particular style or model; or have had a particular history or previous use.²³ In the quest to maximize profit and ward off stiff competition, businesses may employ various tactics. Some of the tactics employed may include representing that goods or services are new, or have certain performance characteristics, accessories, uses or benefits which they do not have; or sponsorship, approvals or affiliation. Businesses may also make false or misleading representations with respect to the price of goods or services, regarding the origin of goods or availability of a warranty, guarantee, right or remedy.²⁴ These are some of violations against the rights of consumers that may undermine the possible success of the AfCFTA, unless a framework for dealing with such violations is formulated.²⁵

Consumers will likely encounter conduct by businesses which is unconscionable in the quest by businesses to make profit. Unconscionable conduct has been defined as conduct that is inconsiderate of the needs of consumers.²⁶ It exemplifies the bargaining strength of a business against a consumer, in the trade of goods and services. Unconscionable conduct often manifests in contract terms that are unfair – where a business exhibits a higher bargaining power as compared to the consumer, such that the consumer cannot exert their rights to negotiate due to the unavailability of information necessary to make a decision.²⁷ Businesses are likely to impose certain conditions on consumers which are not reasonably necessary, to protect their own interests. These may include conditions that once a consumer purchases a product, it cannot be returned, or once the package is opened, it is considered as sold.²⁸ This type of conduct is perpetuated across most sectors of an economy including the financial sector where there is lack of disclosure of certain information such as fees, charges and conditions of a contract, as well as conduct relating to imposition of unilateral fees and charges.²⁹

²⁰ <https://au-afcfta.org/about/>

²¹ Juma, C., Mangeni, F. *The Benefits of Africa's New Free Trade Area*. (2015). Harvard Kennedy School. Belfer Center for Science and International Affairs.

²² Mohammed T. Nuseir. *Impact of misleading/false advertisement to consumer behavior*. (2018) Published Online: pp 453-465

²³ Kathryn, B.G. and Jan, H., *Customer Expectations and Perceptions of Service Quality in Retail Apparel Specialty Stores* (1994).. *Journal of Services Marketing*, 8(1), pp.60-69.

²⁴ Grazioli, Stefano and Jarvenpaa, Sirkka. *Tactics Used Against Consumers as Victims of Internet Deception* (2001) AMCIS 2001 Proceedings. 158.

²⁵ Fiattor, E., *An In-Depth Analysis of Choice of Law Rules in Consumer Contracts: A Focus on the African Continental Free Trade Area* (2023). *Journal of Law, Society and Development*, 10, pp.19-pages.

²⁶ <https://www.accc.gov.au/business/selling-products-and-services/unfair-business-practices#:~:text=a%20referral%20link,-,Unconscionable%20conduct,towards%20consumers%20or%20other%20businesses.>

²⁷ Goldberger, J., *Unconscionable conduct and unfair contract terms* (2016) *Commercial Law Quarterly: The Journal of the Commercial Law Association of Australia*, 30(2), pp.17-44.

²⁸ *Ibid*

²⁹ *Ibid*

Consumers' lack of knowledge and expertise in legal matters becomes a challenge in customer to business transactions, with businesses taking advantage of this vulnerability by consumers. Due to the inability of the consumer to understand any documents relating to the transaction, certain clauses in agreements may be one-sided, and therefore disadvantageous to the consumer.³⁰

The safety of products sold to consumers is of paramount importance. As noted earlier, the massification of goods made it difficult for consumers to verify features such as quality and price. The growth of e-commerce has eliminated the personal connection consumers would have with suppliers and made it even more difficult for consumers to verify product features for purposes of determining the quality, and minimized their ability to negotiate terms and conditions.³¹ Marketing and advertising has also moved from the traditional use of print media such as newspapers and magazines to electronic media such as radio and television, and now digital advertising through social media.³² The unprecedented growth of ecommerce in Africa means that business to consumer transactions within the AfCFTA will mostly be ecommerce related.³³ The vulnerability of consumers in verifying the quality, price and features of a good or service, or the transaction requires a setting within the AfCFTA, where suppliers will be held responsible for enhancing the welfare of the consumers.

Generally, the consumer in the African setting just like any other consumer across the world will likely experience infringement of their rights. These are: right to quality goods and services; right to information so that they may fully benefit from goods and services; right to their health, safety and economic interests; or even right to redress and compensation where there has been a defect in goods or services.³⁴

IV. RATIONALE FOR PRIORITISATION OF CONSUMER PROTECTION IN THE AFCFTA

Guided by its vision of “An Integrated, Prosperous and Peaceful Africa, driven by its own citizens and representing a dynamic force in the global arena,” the African Union, relying on the Constitutive Act and the Protocol on Amendments to the Constitutive Act aims at amongst others: Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.³⁵ Aspiration 3 of Agenda 2063 aspires for, “An Africa of good governance, democracy, respect for human rights, justice and the rule of law”.³⁶ Consumers have the right to information, right to protection of their safety, economic interest and right to redress – all designed to protect consumers.³⁷ What rights, if any are consumers being guaranteed within the framework of the AfCFTA? The point is that, the welfare of consumers is a human rights issue. That, even as we promote intra- Africa trade, what

³⁰ Petrucco, M., Pinkerton, J. and Free, K., *Unconscionable Conduct: Australia's High Court Issues a Warning to Lenders and Agents* (2023). *Banking & Finance Law Review*, 39(2), pp.299-304.

³¹ Eiselen and Naudé. *Introduction and overview of the Consumer Protection Act* (2019) *Commentary on the Consumer Protection Act* () Introduction-6 to Introduction-18.

³² Wuisan, D.S. and Handra, T., *Maximizing online marketing strategy with digital advertising* (2023). *Startuppreneur Business Digital (SABDA Journal)*, 2(1), pp.22-30.

³³ Tempest, A., *The digital economy and E-commerce in Africa-drivers of the African free trade area*. (2020) African perspectives Global insights, June.

³⁴ Sanco, D.G., *Study regarding the problems faced by consumers in obtaining redress for infringements of consumer protection legislation, and the economic consequences of such problems* (2008). Final report, 26.

³⁵ <https://au.int/en/overview>

³⁶ <https://au.int/en/agenda2063/aspirations>

³⁷ Wanja Wanjiru. *What is at stake for consumer in Africa free trade area.?* (2018)

we should also be advocating for businesses respecting the rights of consumers – incorporating processes that will enhance the welfare of consumers in the countries they will be doing business in. Consumer Protection is also about making businesses accountable – to enhance their compliance with the rule of law and compliance with the laws and regulations of member states. By getting businesses to enhance the welfare of consumers, peaceful and inclusive societies for sustainable development will be promoted, thus building effective and accountable institutions.³⁸

Discussions on the need to prioritise consumer protection in Africa did not commence recently. The Africa Conference on Consumer Protection held in 1996 in Harare called for action by Governments and consumer organisations at national, sub-regional, regional and international levels to protect consumers from unfair and misleading market conduct.³⁹ At the national level, it was strongly suggested that there is need to strengthen consumer laws and undertake systematic reform of laws and regulations. It was also suggested there is need to review cooperating treaties and structure them to address consumer concerns. The meeting recommended the establishment of an international body to monitor progress on consumer protection policy and legislation.⁴⁰ There is now an increase in the number of African countries enacting laws to protect consumers – pointing to the importance being placed on consumer protection.⁴¹ There has been a rise in consumer associations – working with consumers at the grassroots level to enhance their welfare. At the regional level, African countries are now collaborating through various forums to share experiences on consumer protection challenges, identifying solutions and ways to undertake joint enforcement. The COMESA Competition Commission (CCC) has been instrumental in bringing together COMESA member states to discuss consumer protection issues in the common market.⁴² The opportunity thus exists for AfCFTA to consider the recommendations of this Report and bring together African countries to focus on the protection of consumers for the success of intra-Africa trade.

The past ten years has seen the rise of digital technologies which is revolutionising trade across the world.⁴³ Digital financial services have grown unprecedentedly. In Kenya, the power of mobile phone technology – the ability to conduct person to person transfers as well as make payments for goods and services through the mobile phone is being replicated across Africa, however it has not worked in some countries such as Southern Africa.⁴⁴ Coupled with relatively high speed internet, the availability of smart phones and increased use of available social networks, consumers in Africa are now connected to each other more than as compared to 10 years ago.⁴⁵ This has led to innovations in digital credit and the development of products that have increased financial inclusion. Africa, is therefore recognized globally as a leader in the digital financial services due to the digital transformation it is spearheading.⁴⁶

³⁸ <https://sdgs.un.org/goals/goal16>

³⁹ United Nations. *Consumer Protection for Africa* (1996) - Report of the Africa Conference on Consumer Protection.

⁴⁰ *ibid*

⁴¹ Woker, T., *Consumer protection: an overview since 1994* (2019). Stellenbosch Law Review, 30(1), pp.97-115.

⁴² Mashido, E., 2013. COMESA: Consumer protection in Africa: consumer law. *Without Prejudice*, 13(3), pp.83-84.

⁴³ Cho, J., DeStefano, T., Kim, H., Kim, I. and Paik, J.H., *What's driving the diffusion of next-generation digital technologies?* (2023) *Technovation*, 119, p.102477.

⁴⁴ Ayodele, O., *African Governance in the Digital Age* (2023)

⁴⁵ CIPE and CIPESA. *Building an Environment for Inclusive Digital Transformation in Africa- Roadmap to Reform* (2021)

⁴⁶ *ibid*

A large volume of data is generated every day from the use of these digital innovations. The value of data has risen exponentially, with businesses and governments seeking to maximize on this potential.⁴⁷ However, there has been concerns about the misuse of personal data and infringement of the privacy of consumers necessitating countries to enact data protection laws. The digital economy has enabled goods and services to be sold within countries and across borders, and there is potential to expand digital trade. The African Union recognizes this potential through the African Union Digital Transformation Strategy (2020-2030) which aims at creating an integrated and inclusive digital society and economy in Africa for the purposes of enhancing the quality of life and strengthening the economy. The strategy sees e-commerce as vital in building a secure 'Digital Single Market' in Africa by 2030 and looks at harnessing digital technologies to transform African societies through job creation, promotion of African integration and reduction of poverty.⁴⁸ Therein exists the opportunity for Africa's digital economy and transformation through small and medium businesses. However, the challenge that looms is whether these small and medium businesses are ready to handle the demands of consumers for good quality products, to ensure effective customer resolution mechanisms, or provide effective delivery and payment solutions, in order to maximize their growth potential within the AfCFTA. With regards to payments, business to business payment has been made easy through the Pan- African Payment and Settlement System (PAPSS), where a business will receive funds into its bank account, in its local currency.⁴⁹ But what secure system is in place for the consumer who conducts transactions online?

Despite the gains being made from the evolving digital economy and the potential it is presenting to enhance intra-Africa trade, there are inherent consumer protection concerns that threaten to derail these gains across the world. Cybercrimes, and data misuse are increasing necessitating national, regional and international action to address them.⁵⁰ It is true that the digital financial services have increased financial inclusion through availability of financial products such as mobile loans, which are disbursed within minutes through the mobile phone. However, the financial health of consumers is at risk due to indebtedness.⁵¹ Fraud relating to digital payments is also on the rise. There is therefore need for discussions on how these threats will be addressed which can only be done within a consumer protection framework for the financial services sector.

The African Union Digital Transformation Strategy (2020-2030) recognizes consumer protection as integral and recommends Member States to adopt a complete set of legislation covering amongst others consumer protection.⁵² For this to receive full implementation by the member states, a standalone protocol for consumer protection needs to be considered and adopted. Some of the policy recommendations and proposed actions in the strategy include: developing a regulatory framework for e-commerce at the continental level, including common rules for consumer protection; strengthening financial consumer protection by ensuring disclosure and transparency

⁴⁷ *ibid*

⁴⁸ <https://au.int/en/documents/20200518/digital-transformation-strategy-africa-2020-2030>

⁴⁹ Mike Ogbalu III. *Boosting the AfCFTA: The role of the Pan-African Payment and Settlement System*. (2022)

⁵⁰ Carvalho, S., Carvalho, J.V., Silva, J.C., Santos, G. and Bandeira, G.S., *Concerns about Cybersecurity: The Implications of the use of ICT for Citizens and Companies*. (2023) *Journal of Information Systems Engineering and Management*, 8(2).

⁵¹ Chhatwani, M. and Sen, S., *Financial behavior and financial fragility. A Research Agenda for Consumer Financial Behavior* (2023). 0, p.273.

⁵² <https://au.int/en/documents/20200518/digital-transformation-strategy-africa-2020-2030>

and effective dispute resolution; and developing training and outreach campaigns to enhance awareness of consumers in order to increase trust.⁵³

This creates an opportunity to harness consumer power through creating systems that will create trust for consumers to rely on the internet as the go-to source of products across Africa. Therefore, to exploit the potential of the digital economy and reduce the risks that may create mistrust by consumers, there is need to develop a consumer protection policy for Africa.

V. ASSESSMENT OF THE LEVEL OF INCORPORATION OF CONSUMER PROTECTION CLAUSES IN THE AfCFTA MAJOR TRADE AREAS

In order to establish whether there is a need for a separate protocol on consumer protection, it is essential to assess the level at which consumer protection tenets have been included in the main protocols to the AfCFTA agreement.

The protocol of Trade in Goods is focused on facilitating the creation of a single African market.⁵⁴ The protocol has set in place conditions that will ensure smooth flow of intra- Africa trade. It has established guidelines relating to tariff concessions, rules of origin, non- tariff barriers, technical barriers to trade, sanitary and phytosanitary measures, trade facilitation, and trade remedies amongst others. These are vital rules to enable countries trade effectively. However, it is important to note that trade in goods can only take place effectively where there is an available consumer of those goods. In the absence of the consumer, no business will exist. Within the protocol of Trade in Goods there is no mention of how consumers will be protected from defective, unsuitable or unsafe goods. There is also no mention of how AfCFTA will work with countries on the setting of standards on quality of goods, or how it will rally member states to define product information standards for goods that will be supplied to consumers in Africa. Standards with respect to; disclosure of information relating to the performance, composition, contents, methods of manufacture or processing, design, construction, finish or packaging of the goods; or the form and manner in which that information is to be disclosed, has not been defined.

Specific rules and guidelines relating to the quality and safety of goods should be made available in this protocol, including guidelines for recall of goods, disclosing defects of goods to the public within a specified period and procedures for disposing of defective goods. The protocol needs to also define what obligations a business has towards redressing aggrieved consumers who have purchased unsuitable goods. The redress mechanisms could take the form of repair of goods, replacement of goods, or refund to a person to whom the goods were supplied. Establishment of such guidelines will implore on businesses to be considerate of the welfare of consumers when engaging in the manufacture and distribution of goods. Most importantly, the question of who bears the ultimate liability in respect to the supply of defective goods needs to be established. It should be clearly brought out in the protocol that a business that has supplied a defective good bears responsibility to compensate the consumer.

The protocol of Trade in Services envisions an African services market that is liberalised.⁵⁵ It is also envisioned that this will be achieved through eliminating restrictions that are unable to co-

⁵³ *Ibid*

⁵⁴ <https://au-afcfta.org/trade-areas/market-access/>

⁵⁵ <https://au-afcfta.org/trade-areas/trade-in-services/>

exist with the AfCFTA Agreement. It is expected that Member States will commit to the liberalisation through cross-cutting sectoral regulatory frameworks and Schedules of Specific Commitments.⁵⁶ The schedule of commitments specifies requirements regarding the treatment of service providers from other State Parties and nationals. According to AfCFTA, negotiations for liberalisation are ongoing for five priority sectors: Business Services; Communication Services; Financial Services; Transport Services, and Tourism and Travel related services.⁵⁷ However, the aspect of commitments towards the treatment of consumers in a fair way and protecting them from business practices such as unconscionable conduct where a supplier may have a superior bargaining power over a consumer, and thus impose conditions that infringe on their rights to choice or some form of control over the bargaining process is missing in the protocol.⁵⁸ There is need for commitments under this protocol to protect the African consumer who will ultimately consume these services – from the supplier taking unfair advantage of their position to infringe on their rights.

In any business transaction, there is a party with a higher bargaining power over the other.⁵⁹ In most circumstances, it is the business that possesses this power, in terms of information about the good or service; the terms and conditions of the contract; the clauses that have been included in a contract, which may be unconscionable or not; or even the power to exert undue influence and employ unfair tactics against the consumer. In the financial services sector, the financial service provider is aware of the vulnerability of a consumer who requires finances to meet a personal or business need.

Indeed, mobile money has in an unprecedented way contributed to digital financial inclusion.⁶⁰ The digital financial services has seen the growth and development of new areas of business such as the provision of short term credit through mobile loan applications (apps). Commonly known as payday loans, these apps lend money to consumers at exorbitant interest rates. It is true that financial inclusion has increased, however at the cost of financial health.⁶¹ They are also known to impose unilateral fees and charges for transactions undertaken. In most circumstances, the loan apps do not disclose key information necessary for the consumer to make a decision, and may likely change the terms of a contract without a consumers' consent. The contracts are drafted in legal jargon, which remains difficult for the average consumer to understand the documents and clauses relating to the transaction. Ideally, one should consult the services of a lawyer to review contracts. However, due to exorbitant costs associated with such services, a consumer will opt to forego that service, often to their detriment. This protocol does not envision how consumers in Africa will be protected in such circumstances.

The Dispute Settlement Mechanism protocol focuses on ensuring trade disputes between State Parties are resolved swiftly in an amicable and transparent manner. The protocol establishes key

⁵⁶ *ibid*

⁵⁷ *ibid*

⁵⁸ <https://en.wikipedia.org/wiki/Unconscionability>

⁵⁹ Shehryar, O., *Buyer-seller negotiation in consumer markets: an intention congruence approach* (2023) Journal of Consumer Marketing.

⁶⁰ Shaikh, A.A., Glavee-Geo, R., Karjaluo, H. and Hinson, R.E., *Mobile money as a driver of digital financial inclusion* (2023). Technological Forecasting and Social Change, 186, p.122158.

⁶¹ Mugo, C., *Fintech-driven Financial Inclusion and Consumer Protection: Kenya's Case Study*. (2023). Issue, 84.

institutions: Dispute Settlement Body, the Adjudicating Panels and the Appellate Body.⁶² This is important in facilitating trade between State Parties. However, it is also important to understand that in most circumstances disputes in business transactions arise between businesses and consumers due to the absence of formal contracts. This may happen where goods or services do not meet the expectation of the consumer or a business has reneged on certain terms that had been agreed upon when the purchase was being made. The only documents available to a consumer showing evidence of a transaction would include a proforma invoice and purchase receipt. Whilst enforceable in a court of law, they do not provide details of key terms and conditions. Businesses have been known to indicate in their receipts that goods once sold are not returnable – a condition that puts a roadblock on the resolution of disputes. There is no mention within AfCFTA how complaints by consumers against businesses will be handled – thus the African consumer will not have any recourse where their rights have been infringed upon. In order to consider the interest of the consumer in Africa, tough questions need to be asked. Where there is a dispute arising between a consumer and a business, what will need to be done to resolve it? Will the consumer resign to the fact that they cannot have a matter resolved, where a good or service rendered did not meet their expectation? What measures should AfCFTA put in place – in the form of guidelines for State Parties, systems and tools to ensure such disputes are resolved effectively for the success of the integrity of intra- Africa trade? Since the majority of trade will happen digitally, what online modes of dispute resolution can be employed?

Competition enhancement has emerged as a key component for efficient markets. Enhancing competitiveness creates more productivity and ensures better quality of goods and services.⁶³ Consumer needs keep changing – competition is therefore an incentive for innovation and enables companies to establish a better market position when they are able to satisfy consumer preferences.⁶⁴ Consumers are also able to enjoy a variety of goods that have been competitively priced. African countries are now embracing legal, regulatory and supervisory frameworks on competition enhancement. Regional Economic Communities in Africa are also setting up institutions to promote competition in their regions. In the East Africa region, there exists the East African Competition Authority, and the COMESA Competition Commission within the COMESA region. The protocol on competition policy aims at encouraging companies to offer favourable terms for goods and services and ensures the promotion of efficiency.⁶⁵ Adhering to competition policy principles ensures businesses continue to innovate based on consumer needs thus triggering growth.⁶⁶ Under this protocol, there is mention that effective enforcement of competition and consumer protection laws will enhance consumer rights and allow for consumers to actively participate in the market.⁶⁷

However, it is important to emphasise that consumer policy should not be placed as part of competition policy, although the aim of competition policy is to enhance consumer welfare.

⁶² <https://au-afcfta.org/trade-areas/dispute-settlement-mechanism/>

⁶³ Liu, C., Li, Q. and Lin, Y.E., *Corporate transparency and firm value: Does market competition play an external governance role?* (2023). *Journal of Contemporary Accounting & Economics*, 19(1), p.100334.

⁶⁴ Moisejevas, R. and Novosad, A., *Some thoughts concerning the main goals of competition law* (2013). *Jurisprudencija*, 20(2), pp.627-642.

⁶⁵ Gachuiiri, E., *African Continental Free Trade Area Phase II Negotiations: A Space for a Competition Protocol?* (2020) UN.

⁶⁶ <https://au-afcfta.org/trade-areas/competition-policy/>

⁶⁷ *ibid*

Consumer law and competition law are distinct disciplines.⁶⁸ Competition alone is not sufficient to protect the interests of consumers. Additionally, competition enforcement takes a wide approach in terms of action – it is not directed at the individual consumer as compared to consumer law – in many circumstances the issues faced by the individual consumer are being faced by a myriad of other consumers.⁶⁹ Competition policy focuses on the relationship of businesses at the horizontal level, where they compete with one another.⁷⁰ It is expected that when businesses compete, the benefits of competition will trickle down to consumers in the form of reasonably priced goods and services or innovative products. Although, this is not always the case. The vertical relationship, that is the business-to-consumer is being ignored in this aspect, and should be separated from the competition policy protocol. Consumer welfare involves enhancing the rights of consumers through awareness creation and providing tools which will enable consumers exert pressure on businesses to: produce goods and services of reasonable quality; provide adequate information to consumers on goods and services; protect their health, safety and economic interests; and put in place effective mechanisms for redress.⁷¹ Empowering consumers through awareness creation, establishing specific rules to be followed by businesses, and most importantly placing consumer law as a distinct area with its own resources will result in a consumer who is sovereign⁷² – enabling the shaping of markets in Africa.

The digital economy has become the universal way of the lives of consumers across the world. This is due to the ease at which trade is conducted, and the various potential new areas it continuously makes available, giving rise to new ways of doing business and generating new supply chains – and new challenges.⁷³ E-commerce is also vibrant in available social networks such as Facebook, Instagram, Twitter and TikTok.⁷⁴ Digital trade is considered critical to boosting intra-Africa trade and has been constituted into a Protocol within the AfCFTA.⁷⁵ Through the internet economy it is expected that Africa has the potential to reach \$180 billion by 2025, accounting for 5.2% of Africa's gross domestic product (GDP). By 2050, the projected potential contribution could reach \$712 billion accounting for 8.5% of Africa's GDP."⁷⁶ Therefore, consumer protection should be seen as an enabler of the digital economy as e-commerce grows, given that the digital economy is poised to provide the biggest gains in trade across Africa.⁷⁷ Having seen that the potential of digital trade lies on the protection of consumers, how has it been incorporated into the protocol and to what extent? The protocol on digital trade contains some online consumer protection provisions, which are however limited to returns, consumer safety and

⁶⁸ Riefa, C. *Consumer law enforcement as a tool to bolster competition in digital markets: a case study on personalized pricing* (2021) In: Competition and Consumer Protection Policies for Inclusive Development in the Digital Era. United Nations Conference on Trade and Development. United Nations, Geneva, pp. 15-29, v, 72.

⁶⁹ *ibid*

⁷⁰ Gaffard, J.L. and Quéré, M., *What's the aim for competition policy: optimizing market structure or encouraging innovative behaviors?* (2007) *Innovation, Industrial Dynamics and Structural Transformation: Schumpeterian Legacies*, pp.393-405.

⁷¹ Werden, G.J., *Consumer welfare and competition policy*. (2011) *Competition Policy and the Economic Approach*, Cheltenham: Elgar, pp.11-43.

⁷² Korthals, M., *Taking consumers seriously: Two concepts of consumer sovereignty* (2001). *Journal of Agricultural and Environmental ethics*, 14, pp.201-215.

⁷³ CIPE and New Markets Lab. *Digital Economy Enabling Environment Guide: Key Areas of Dialogue for Business and Policymakers* (2018)

⁷⁴ Rosiyana, R.N., Agustin, M., Iskandar, I.K. and Luckyardi, S., *A New Digital Marketing Area for E-Commerce Business* (2021) *International Journal of Research and Applied Technology (Injuratech)*, 1(2), pp.370-381.

⁷⁵ <https://au-afcfta.org/trade-areas/digital-trade/>

⁷⁶ CIPESA. *Advancing Consumer Protection across Africa in the Digital Age* (2021)

⁷⁷ *ibid*

supplier liability.⁷⁸ The limited focus on consumer protection is bound to present a challenge to AfCFTA, to convince the consumer in Africa to move from their reliance on the informal settings as a mode of consumption to the formal setting such as digital trade in light of the inherent consumer protection challenges brought about by the digital economy.

The challenges in digital trade, ranging from dark commercial patterns, unavailable return and refund policies, scams, fraud and other challenges have created mistrust amongst consumers, who shy away from trading through the internet.⁷⁹ Only 30% of Africa's population is engaged in online shopping.⁸⁰ This has created limits for business-to-consumer activities, and potentially business-to-business e-commerce activities from thriving.⁸¹ Regulatory approaches for protecting consumers online vary across the world. Some countries have specific laws on protecting consumers online while others rely on self-regulation by digital platforms, which has not been effective.⁸² Out of 54 countries in Africa, 25 had in place some form of legislation relating to online consumer protection. Additionally, only South Africa and Senegal had specific legislation on online consumer protection, while Nigeria and Kenya did not have any legislation.⁸³ This is an indication that the regulation of online consumer protection is still in its early stages, and not at par with the developments happening in the online space.⁸⁴ It is worth noting that African firms identified online consumer protection as a significant barrier to e-commerce, with additional concerns raised that consumers' trust was lacking as well as alternative dispute resolution services, both within countries and across other countries.⁸⁵ What strategy, if any, does the AfCFTA have to protect consumers in the digital economy? Under which protocol will it be placed? and will the strategy be effective in addressing online consumer protection issues in the pre-purchase, purchase and the post-purchase stages of a transaction?

For digital trade to take place effectively in Africa, there is need for AfCFTA to, amongst others, trigger the conversation on the need for African countries to enact specific legislation on online consumer protection. Additionally, within the digital trade protocol, in depth discussions into how disputes in a business-to-consumer relationship will be resolved should be undertaken. Implementation of strategies to resolve disputes will increase consumer trust in online transactions leading to the success of the AfCFTA.

As indicated, digital trade happens on a global scale. Given the risks that accompany digital trade, countries across the world have begun tackling cross cutting issues such as online consumer protection, including financial consumer protection.⁸⁶ General principles for the protection of

⁷⁸ Banga, K., Macleod, J. and Mendez-Parra, M., *Digital trade provisions in the AfCFTA* (2021) Supporting Economic Transformation.

⁷⁹ Swinyard, W.R. and Smith, S.M., *Why people (don't) shop online: A lifestyle study of the internet consumer* (2003). *Psychology & marketing*, 20(7), pp.567-597.

⁸⁰ Lemma, A., Mendez-Parra, M., and Naliaka, L. *The AfCFTA: unlocking the potential of the digital economy in Africa*. (2022) ODI report.

⁸¹ *Ibid*

⁸² Jones, E., B. Kira, D. Garrido Alves, and A. Sands. *The UK and Digital Trade: Which Way Forward?* (2021)

⁸³ UNCTAD. *Online Consumer Protection Legislation Worldwide* (2021)

⁸⁴ *Ibid*

⁸⁵ Tavengerwei, R., Mumbo, V. and Kira, B. *What to consider ahead of the AfCTFA Phase II Negotiations: Focus on digital trade policy issues in four Sub-Saharan African countries* (2022). Digital Pathways at Oxford Paper Series; no. 16. Oxford, United Kingdom

⁸⁶ Dias, D., *Implementing consumer protection in emerging markets and developing economies* (2013).

consumers in digital trade have been developed.⁸⁷ The principles are that: consumers should be accorded transparent and effective protection at the same level of protection afforded in the other forms of trade; businesses should not engage in false or misleading representations, or unconscionable conduct; disclosures made online should give a consumer sufficient information to make a decision; businesses should provide sufficient information about themselves for consumers to develop trust for the business; redress mechanisms and refund policies should be clearly highlighted and adhered to; and the protection of consumers data is vital – this should be adhered to by businesses.⁸⁸ Such principles may be adopted to suit the AfCFTA where applicable. There is also need for AfCFTA to coordinate how consumer protection agencies in Africa will work with one another to enhance online consumer protection, and including consumer associations in the conversations to address Africa wide consumer issues.

If digital trade is expected to contribute to the billions as envisaged, there is need for strong consumer protection laws across Africa, corresponding with appropriate enforcement action by State Parties on digital trade consumer violations, as well as effective resolution of disputes around digital payments.⁸⁹ Through a protocol on consumer protection, the AfCFTA can set guidelines on consumer welfare in the digital economy.

The protection and privacy of data is an important consumer protection issue. It is for this reason that countries around the world are enacting data protection laws.⁹⁰ Regional communities such as the European Union have approached data protection from the consumers perspective, requiring businesses to provide more control and guarantee certain rights to consumers.⁹¹ How has the protection of data and privacy of consumers been incorporated into the Protocols within AfCFTA? With a majority of intra- Africa trade expected to generate from online transactions, the rights of consumers with regard to their data needs to be a priority, to ensure the integrity of transactions where e-payments and e-signatures will take precedence.⁹² Since this is an important aspect in the protection of consumers, it is prudent that it is addressed within the context of a Protocol on Consumer Protection.

VI. THE NEED FOR A PROTOCOL ON CONSUMER PROTECTION IN THE PHASE III NEGOTIATIONS OF AFCFTA

In Kenya, the rights of consumers have been entrenched in Part 2: Rights and Fundamental Freedoms – Chapter Four the Bill of Rights, under Article 46 of the Constitution of Kenya, 2010.⁹³ Consumer protection is also enforced through sector specific legislation implemented by sector regulators. Under Part VI of the Consumer Welfare provisions of the Competition Act No. 12 of

⁸⁷ OECD. *Consumer Protection in E-commerce* (2016) OECD Recommendation, OECD Publishing, Paris.

⁸⁸ *Ibid*

⁸⁹ *Ibid*

⁹⁰ Solove, D.J. and Schwartz, P.M., *Consumer privacy and data protection* (2023). Aspen Publishing.

⁹¹ Hijmans, H., *Recent developments in data protection at European Union level* (2010). In ERA Forum (Vol. 11, No. 2, pp. 219-231). Berlin/Heidelberg: Springer-Verlag.

⁹² CIPE and New Markets Lab. *Digital Economy Enabling Environment Guide: Key Areas of Dialogue for Business and Policymakers* (2018)

⁹³ <https://www.klrc.go.ke/index.php/constitution-of-kenya/112-chapter-four-the-bill-of-rights/part-2-rights-and-fundamental-freedoms/212-46-consumer-rights>

2010, the Competition Authority of Kenya has the sector wide mandate to regulate consumer protection.⁹⁴ The infringement of the rights of consumers was witnessed during the COVID-19 pandemic where businesses across the world engaged in price gouging of key essential goods, and sold health products triggered by the COVID- 19 pandemic such as masks and sanitisers that did not meet set standards, necessitating governments the world over to intervene to protect their citizens.⁹⁵ The COVID-19 pandemic crisis which evolved from a health to economic crisis, due to supply chain disruptions, coupled with the Russian- Ukraine conflict has created food shortages and increase in food prices across the world, translating to a high cost of living.⁹⁶ Climate change effects have caused countries in Africa to experience ravaging drought – disrupting food production cycles and food supply. This has put millions of lives and livelihoods at risk – calling for strengthened protection of consumer rights.⁹⁷ It is in this confusion that the rights of consumers are infringed upon. The discussion on how the welfare of consumers in Africa will be enhanced in times crisis held. The AfCFTA needs to initiate the conversation for all member states to put in place concrete measures to uphold human rights and protect the rights of consumers across Africa. By doing this, AfCFTA will be delivering on Aspiration 3 of Agenda 2063 which aspires for, “An Africa of good governance, democracy, respect for human rights, justice and the rule of law”.⁹⁸

The protection of consumers is now seen as a vital element in the growth and success of trade. It is for this reason that regional communities are formulating strategies for the protection of consumers in their regions. At the height of the COVID-19 pandemic – recognizing the direction the world was heading in relation to digital trade and considering the widespread increase in scams and fraud affecting consumers, the European Union developed a new long term strategy to protect consumers – New Consumer Agenda to protect European consumers 2020-2025.⁹⁹ The strategy introduces action in five key areas to protect consumers and enable them play an active role in the digital economy. In the United States- Mexico- Canada Agreement (USMCA), and proposals submitted by US Japan and US at the World Trade Organisation, firm commitments to adopt or maintain consumer protection laws to tackle deceptive commercial practices that would cause harm to consumers have been presented and considered.¹⁰⁰ The EU proposals in the WTO, including for negotiations with Australia stipulates in detail how consumers are to be protected.¹⁰¹

However, in Africa, the detailed aspect of consumer protection is noticeably missing from the AfCFTA discussions, though there is some mention of it in the preamble and not the substantive text through the Protocol on Trade in Services.¹⁰² It is vital that in the journey towards developing

⁹⁴ <https://cak.go.ke/sites/default/files/Competition-Act-No-1-%20of%202010-Amended-as-at-2019.pdf>

⁹⁵ Borse, N.N., Cha, J., Chase, C.G., Gaur, R., Koduri, C.K., Kokai-Kun, J.F., Kwan, D.C., Lee, R., Moore, J.C., Raghavendran, V. and Takara, L.S., *Responding to the surge of substandard and falsified health products triggered by the Covid-19 pandemic* (2021) USP: North Bethesda, MD, USA.

⁹⁶ Artem, G. and Alexey, M., *Influence of coronavirus crisis on food industry economy. Foods and Raw materials*, (2020) 8(2), pp.204-215.

⁹⁷ Kituyi, Mukhisa. *Statement during the virtual meeting on Competition and Consumer Protection Priorities for Regional Integration in Africa*. (2020).

⁹⁸ <https://au.int/en/agenda2063/overview>

⁹⁹ European Union. *Actions to Protect European Consumers New Consumer Agenda 2020 – 2025 - Factsheet* (2020)

¹⁰⁰ Jones, E., B. Kira, D. Garrido Alves, and A. Sands. *The UK and Digital Trade: Which Way Forward?* (2021)

¹⁰¹ *ibid*

¹⁰² Wanja Wanjiru. *What is at stake for consumer in Africa free trade area.?* (2018)

the AfCFTA, Africa needs to take up this opportunity to build a consumer protection framework for the success of the proposed intra- Africa trade.¹⁰³

The challenge of detecting and preventing the sale of unsafe goods within the AfCFTA is imminent. There is indirect mention of the benefits and action for the benefit of consumers in Africa within the AfCFTA: inexhaustible choice of quality products at reasonable prices; and that AfCFTA will define standards that will ensure products are of high quality.¹⁰⁴ Although, this has not been clearly stated within the Protocol of Trade in Goods. Raising awareness of consumers on product safety issues is an important factor that will ensure AfCFTA keeps track of businesses selling unsafe, and defective goods, and working with the specific member states to address emerging concerns. This can be exhaustively addressed within a Protocol on Consumer Protection.

It is important that the AfCFTA set out an agenda for the African consumer, in all aspects of commerce, with regard to their protection. It should be noted from the outset that whilst the aim of AfCFTA is to develop the potential of businesses, this will only be successful when the needs of consumers is mapped out and prioritized.¹⁰⁵ Some of the key areas that AfCFTA needs to focus on to protect consumers include: setting standards to ensure unsafe and defective goods are not supplied, and businesses are held accountable through appropriate remedies that will lock them out of the market for supplying defective goods. Other areas include the protection of the online consumer in the digital economy from scams and fraud and establishing tools to ensure redress of consumer complaints – tools such as online dispute resolution systems and cooperation by Member States on consumer protection.¹⁰⁶ Additionally, international cooperation with other regional blocks on enhancing the welfare of consumers can contribute to the success of the AfCFTA as well as ensuring all Member States have consumer protection laws that are implementable.

As indicated earlier, Africa is a trailblazer in the digital financial services. Coupled with good internet connection and speed, the financial services sector has seen rapid growth and development, but created new risks to consumers, in the form of scams and fraud; excessive fees and lack of transparency and disclosure of key information in terms and conditions and lack of redress mechanisms for consumers. Consumer protection is a key factor in any financial ecosystem – where the consumer is protected, they are likely to trust and use the financial services.¹⁰⁷ The nature of transactions envisioned in the AfCFTA will involve multiple parties, especially in a financial transaction. Determining where to seek redress in a failed transaction is likely to present complications. How will such complaints be resolved and who bears the ultimate responsibility for resolving the consumer complaint? This needs to be addressed by the AfCFTA through a Protocol on Consumer Protection.

¹⁰³ *ibid*

¹⁰⁴ Mene, Wamkele. *A Vision for Development in Africa*. (2022) Remarks On Occasion of the Antalya Diplomacy Forum In Cooperation With The African Continental Free Trade Area (AfCFTA).

¹⁰⁵ Banga, K., Macleod, J. and Mendez-Parra, M., *Digital trade provisions in the AfCFTA* (2021) Supporting Economic Transformation.

¹⁰⁶ Dine, C., *Streamlining the law on digital trade: prospects for the African Continental Free Trade Area (AfCFTA) negotiations* (2023) In Research Handbook on Digital Trade (pp. 218-232). Edward Elgar Publishing.

¹⁰⁷ Mazer, Rafe. *Consumer protection for open finance ecosystems*. (2023)

One of the ways to enhance consumer sovereignty is through education and awareness to consumers. Consumer issues are constantly emerging, and countries need to keep abreast with the issues – jointly identifying how they can deal with them. For instance, dark commercial patterns is a term referring to practices commonly found in online user interfaces that influence consumers to make choices that would not necessarily be in the interest of the consumer.¹⁰⁸ So, the challenge is for consumers to identify such practices being perpetuated by businesses seeking to extract more data and money from consumers.

The conversation to address such practices needs to be made within the context of a standalone Protocol on Consumer Protection. Through the protocol, specific strategies will be identified to promote education and awareness on emerging consumer issues. Businesses, also need to be made aware of such practices which they may be perpetuating, knowingly and unknowingly infringing on the rights of consumers. Businesses, on the other hand may not be aware of the laws and regulations in place – in various countries to protect consumers. Therefore, through the Protocol on Consumer Protection strategies to work with businesses and identify initiatives to enhance their compliance with consumer protection laws – instituting effective dispute resolution mechanisms can be undertaken.

Looking at international best practice, minimum requirements for businesses to protect consumers as has been done in the European Union can be considered and aligned with within the AfCFTA.¹⁰⁹ Across the world, consumer associations have played and continue to play a key role in consumer welfare. Mapping and involving them in the discussion on protecting consumers in Africa will create an avenue and culture to protect consumers within the AfCFTA.¹¹⁰ Consumer protection frameworks, even within other regional communities call for sustained action by member states to commit to: instituting legal, regulatory and supervisory frameworks for the protection of consumers; to make available guidelines on disclosure and transparency, as well as on fair treatment and business conduct, including how jurisdictional consumer complaints will be handled.¹¹¹

The AfCFTA may need to establish what support member states will require in terms of skills and tools to effectively handle consumer issues that may arise during implementation of the AfCFTA, including organising dialogue on emerging consumer issues. Other important areas of consideration include providing information on products that have been recalled in other jurisdictions, and working with member states to ensure those products are not being dumped in the African countries. Dispute resolution is an important aspect of any business transaction.¹¹² It becomes more important whether there exists a business to consumer relationship. If handled in the right way, it can contribute to the success of the AfCFTA. Therefore, the Protocol on Consumer

¹⁰⁸ OECD. *Dark Commercial Patterns* (2022). Digital Economy Papers No. 336

¹⁰⁹ Mak, V., *Standards of protection: In search of the 'average consumer' of EU law in the Proposal for a Consumer Rights Directive* (2011). *European review of private law*, 19(1).

¹¹⁰ Abdulrahman, A.H. and Saleh, M.N., *The Role of Consumer Protection Associations in Protecting Consumers* (2023).. *Migration Letters*, 20(S2), pp.373-382.

¹¹¹ Winn, J. and Jondet, N., *A "New Approach" to standards and consumer protection* (2008) *Journal of consumer policy*, 31, pp.459-472.

¹¹² Velicogna, M., *Cross-border dispute resolution in Europe: looking for a new "normal"*. (2022) *Oñati Socio-Legal Series*, 12(3), pp.556-581.

Protection will provide mechanisms for online dispute resolution, and establish a pool of professionals to listen to disputes arising and identify solutions.

VII. CONCLUSION

The prioritisation of consumer protection cannot be overemphasised. Businesses that are known to treat consumers fairly develop good reputation, which increases their profitability and competitiveness overtime. There are benefits that will accrue in the form of economic growth as a result of effective markets created through enhancement of consumer welfare. Innovation will thrive and both businesses and consumers will experience benefits through reasonably priced and good quality products.

The main aim of the African Union is to promote Africa's growth and economic development by championing citizen inclusion and increasing cooperation and integration of African states – to ensure the realization of its objectives in the attainment of the Pan African Vision of an integrated and peaceful Africa.¹¹³ This is attainable if all countries rallied together to protect the rights of consumers in Africa, through the AfCFTA. A standalone Protocol on Consumer Protection will trigger the trust by consumers in Africa that they are an important piece of the puzzle that will contribute to the overall success of the AfCFTA. It will exemplify the fact that consumers in Africa are respected – that the relationship is two-way where both business and consumer benefits.

Overly, creating a standalone Protocol on Consumer Protection – prioritizing on the welfare of consumers within the AfCFTA will contribute to the acceleration of the AfCFTA and enhance benefits to businesses. Most importantly, it will contribute to the achievement of greater unity and solidarity between African countries and its people and promote sustainable development at the economic, social and cultural levels as well as the integration of African economies.¹¹⁴

VIII. REFERENCES

Abdulrahman, A.H. and Saleh, M.N., *The Role of Consumer Protection Associations in Protecting Consumers* (2023).. Migration Letters, 20(S2), pp.373-382.

¹¹³ <https://au.int/en/overview>

¹¹⁴ *ibid*

Abrego M. L.de Zamaroczy M. M.Gursoy T.Nicholls G. P.Perez-Saiz H.Rosas J. N *The African Continental Free Trade Area: Potential economic impact and challenges*.(2020) Washington, DC International Monetary Fund

Armstrong, M. *Interactions between Competition and Consumer Policy* (2008). Competition Policy International 4 (1): 97–147.

Africa Union. *Africa Union Digital Transformation Strategy for Africa (2020-2030)*. (2020)

Ayodele, O., *African Governance in the Digital Age* (2023)

Banga, K., Macleod, J. and Mendez-Parra, M. *Digital Trade Provisions in the AfCFTA: what can we learn from South-South trade agreements* (2021). Supporting Economic transformation (SET) working paper series. ODI, London.

Barak Y. Orbach, *The Antitrust Consumer Welfare Paradox*, Journal of Competition Law & Economics, Volume 7, Issue 1, March (2011), Pages 133–164,

Banga, K., Macleod, J. and Mendez-Parra, M., *Digital trade provisions in the AfCFTA* (2021) Supporting Economic Transformation.

Centurion- Lawyers and Business Advisers. *The E-Commerce Protocol of the AfCFTA: Possible Considerations* (2022).

Chhatwani, M. and Sen, S., *Financial behavior and financial fragility. A Research Agenda for Consumer Financial Behavior* (2023). p.273.

Cho, J., DeStefano, T., Kim, H., Kim, I. and Paik, J.H., *What's driving the diffusion of next-generation digital technologies?* (2023) Technovation, 119, p.102477.

CIPESA. *Advancing Consumer Protection across Africa in the Digital Age* (2021)

CIPE and CIPESA. *Building an Environment for Inclusive Digital Transformation in Africa-Roadmap to Reform* (2021)

CIPE and New Markets Lab. *Digital Economy Enabling Environment Guide: Key Areas of Dialogue for Business and Policymakers* (2018)

Dias, D., *Implementing consumer protection in emerging markets and developing economies* (2013).

Dine, C., *Streamlining the law on digital trade: prospects for the African Continental Free Trade Area (AfCFTA) negotiations* (2023) In Research Handbook on Digital Trade (pp. 218-232). Edward Elgar Publishing.

Eiselen and Naudé. *Introduction and overview of the Consumer Protection Act* (2019) *Commentary on the Consumer Protection Act* () Introduction-6 to Introduction-18.

European Union. *Actions to Protect European Consumers- Factsheet* (2020) New Consumer Agenda 2020 – 2025

Fiattor, E., *An In-Depth Analysis of Choice of Law Rules in Consumer Contracts: A Focus on the African Continental Free Trade Area* (2023). *Journal of Law, Society and Development*, 10, pp.19-pages.

Cheskin Research/Studio Archetype/Sapient: *'eCommerce Trust Study'* (1999) (electronic publication).