



INTELLECTUAL PROPERTY PROTECTION UNDER AFCFTA: ADDRESSING ANTI-COMPETITIVE PRACTICES IN AFRICA'S SINGLE MARKET

1. Introduction

The African Continental Free Trade Area (AfCFTA), which commenced trading in January 2021 is one of the largest free trade areas in the world, by number of participating countries. It seeks to create a single African market for goods and services, facilitated by less regulation to promote the movement of capital and persons, and deepen the economic integration across the continent¹. As African markets become more integrated, intellectual property (IP) protection becomes increasingly important. Businesses are more likely to invest in markets where patents, trademarks, copyrights and other proprietary rights are recognised and enforceable.

However, while strong IP protection encourages innovation and investment, it may also be used in ways that limit competition. In a unified market, the challenge is therefore not only protecting innovation but ensuring that exclusive rights do not become tools for market dominance, price manipulation, or barriers to entry.

¹ African Union, *Agreement Establishing the African Continental Free Trade Area (2018)*, Art. 3.



2. Understanding the Role of IP in the AfCFTA Market

IP protection in Africa is more than a legal concept; it is a strategic tool for economic advancement. It is closely tied to growth, enterprise development, and long-term competitiveness. This is particularly relevant for small and medium-sized enterprises (SMEs), startups, and manufacturers. A startup building software for instance, needs some confidence that its product will not be replicated immediately after launch. In the same way, a growing consumer business may rely heavily on its brand identity, while a manufacturer may depend on a patented process or design.

IP rights also create incentives for research and commercial creativity. When inventors and businesses know that their efforts can be protected and monetised, they are likely to invest in new ideas. According to the World Intellectual Property Organisation (WIPO), intangible assets now account for an increasing share of enterprise value globally.² For African business owners seeking to scale across borders under AfCFTA, trademarks, patents and trade secrets may become key commercial assets.

The adopted AfCFTA Protocol on Intellectual Property Rights further demonstrates Africa's recognition that a harmonised continental framework can stimulate innovation, facilitate cross-border trade, and improve competitiveness.³

For businesses operating within Nigeria's Free Trade Zones and exporting under the AfCFTA framework, intellectual property assets such as trademarks, patents, software rights, industrial designs and trade secrets may represent some of their most valuable commercial assets. Protecting these rights while ensuring compliance with competition principles will become increasingly important as businesses expand into new African markets.

² World Intellectual Property Organization (WIPO), *World Intellectual Property Indicators*.

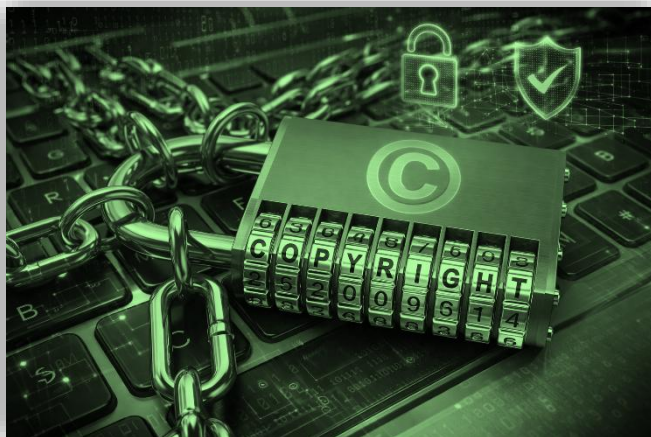
³ African Union, *AfCFTA Protocol on Intellectual Property Rights (2023)*.

3. **Where the Risk Lies: Anti-Competitive Use of IP Rights**

Although IP rights grant lawful exclusivity, these rights should not confer immunity from competition law. An abuse of these rights prevents, restricts, or distorts competition within the unified market, hindering the AfCFTA's agreement's goal of free trade.

A patent holder may lawfully exclude others from using an invention, yet an abuse may occur where rights are used to foreclose markets, rather than reward innovation. This is particularly relevant in sectors such as healthcare, agriculture, and digital technology, where excessive control over essential products may lead to inflated prices or reduced access.

For example, a pharmaceutical company holding a patent over an essential medicine may lawfully enjoy exclusivity. However, where such exclusivity is exercised in a manner that unreasonably restricts access or prevents competition, concerns may arise from a competition policy perspective.



Equally, the refusal to license essential technology on reasonable terms may prevent smaller African businesses from participating in regional value chains. Trademark rights may also be strategically deployed where larger firms register marks broadly across multiple jurisdictions simply to block market entry by competitors.

Restrictive licensing terms may create further difficulties. Agreements that divide territories, limit resale, or discourage parallel imports can work against the AfCFTA objective of freer movement of goods and services.

The issue, therefore, is not the existence of IP rights, but their potential misuse. If left unchecked, anti-competitive conduct may restrict competition and concentrate market power in a few multinational or dominant regional players, reduce consumer choice and stifle innovation.

4. **Legal Response Under AfCFTA**

Recognising the need for a fair, competitive, and integrated business environment across Africa, the AfCFTA addresses the anti-competitive use of IP rights through a combination of its Protocol on Intellectual Property Rights and its Protocol on

Competition Policy.⁴ The AfCFTA protocol on Competition Policy seeks to address anti-competitive practices that may affect trade within the continent.

The Protocol on Competition Policy seeks to:

- Provide an integrated and unified African continental competition regime.
- Enhance competition within the AfCFTA for improved market efficiency, inclusive growth, and the structural transformation of the African economies.
- Ensure that gains from AfCFTA trade liberalization are not negated or undermined by anti-competitive practices.
- Develop and strengthen the capacity of State parties to deal with anti-competitive business practices.
- Provide a continental platform for research, information, exchange, capacity building, training, consultation, cooperating, and coordinating on competition policy and law in Africa.
- Promote economic integration and sustainable development in the AfCFTA Market.
- Manage the interrelationships of competition regimes and sectoral regulatory laws at the national, regional, and continental levels.⁵

In practical terms, this means IP rights should be protected but not exercised in ways that distort markets and stifle innovation. The protocol seeks to establish a competitive, efficient, and inclusive market across Africa by regulating cross-border anti-competitive conduct, managing mergers of continental dimension, and fostering a “one-Africa” market. African states can adopt coordinated rules addressing abusive licensing practices, excessive pricing, refusal to deal and other exclusionary conduct.

Competition authorities should also collaborate closely with IP offices, particularly in sensitive sectors such as healthcare, agriculture, and telecommunications. Where public interest demands, tools such as compulsory licensing, as recognised under international law, should remain available.⁶ Most importantly, the continental framework should ensure that startups and SMEs are not priced out or shut out of markets by stronger incumbents.

5. Conclusion

The success of the AfCFTA will depend not solely on tariff reductions, but also on the creation of fair and innovative markets. IP protection is necessary to reward creativity,

⁴ African Union, *AfCFTA Protocol on Competition Policy* (2023).

⁵ Ibid

⁶ WTO, *Doha Declaration on the TRIPS Agreement and Public Health* (2001).

attract investment, and help African businesses grow across borders. Yet, when exclusive rights are used as a tool to suppress competition and monopolise markets, they may undermine the very market integration AfCFTA seeks to achieve.

The path forward lies in balancing strong IP protection, combined with effective competition regulation. If properly implemented, Africa can build a single market where innovation thrives, businesses compete fairly, and consumers benefit optimally.

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