UNCITRAL International Colloquium on Microfinance

An enabling legal environment for mobile payments and peer to peer networks
The Kenyan Experience

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Brian Muthiora
Legal Counsel, Financial Services, Safaricom Limited

Financial Services

Safaricom

CURRENT LEGAL FRAMWORK

Payment Service Providers in Kenya are subjected to various laws:

✓**Central Bank of Kenya Act**
- Mandates the Central Bank to create enabling legal framework & policy in respect of payments
- Is the substantive law governing international remittances

✓**National Payments System Act, 2011**
- Is the substantive law governing payments

✓**Proceeds of Crime & Anti Money Laundering Act 2009**
- Is the substantive law on AML

✓**Kenya Information & Communications Act**
- Is the substantive law governing electronic transactions (borrowing from the 2001 UNCITRAL model law on electronic commerce)
- Non-bank providers of retail transfers are regulated under this law

✓**Competition Act, 2011**
- Is the substantive law on competition, consumer protection and fair market practices

✓**International best practices**
- Committee on Payments and Settlement Systems
- FATF recommendations

Guiding Principles for the Regulation of Electronic Retail Payments in Kenya

1. **The core: safety, soundness, efficiency and accessibility**

   The same policy objectives apply for electronic retail transfer as with the larger payment system as a whole.

   In 2006 the Committee on Payment & Settlement Systems (CPSS) added one more objective: **access** – more access to more people.

   Access considerations are premised on:

   - encouraging access to financial services by customers
   - reducing barriers to entry for new entrants
   - defining the requirements for prospective providers (i.e. who can play?)

Guiding Principles for the Regulation of Electronic Retail Payments in Kenya

2. Consumer Protection

Responsibility for appropriate customer protection lies with the provider (however providers not liable in cases of manifest fraud or mistake by the customer).

Accessible & efficient procedures and channels for resolution of customer complaints or queries (e.g. toll free call centre, social media, customer service desks in retail outlets, working arrangements with law enforcement agencies)

Appropriate standards for disclosure (e.g. publication of applicable transaction charges,

Appropriate awareness campaigns (e.g. on PIN security)

Guiding Principles for the Regulation of Electronic Retail Payments in Kenya

3. Competition & Market Structure

Competition is encouraged to enhance customer choice and efficiency.

Payment service providers are required to have open systems capable of interoperating or interconnecting.

What is meant by 'interoperability'?

- systems should be physically capable of exchanging messages
- systems should be capable of interconnecting between providers of different payment systems or payment instruments (e.g. mobile/bank; mobile/ATM; mobile/international remittance; or mobile/mobile)

Policy avoids prescribing mandatory interoperability i.e. payment service providers encouraged to agree on commercial terms.

Central Bank nevertheless reserves the right to intervene if interoperability is necessary to ensure an outcome in the public interest.

Guiding Principles for the Regulation of Electronic Retail Payments in Kenya

5. Technology Neutrality

Substance over form: the regulatory framework provides for electronic retail transfers irrespective of the underlying technology used. This makes it possible for new technologies to come under the ambit of existing regulatory framework.

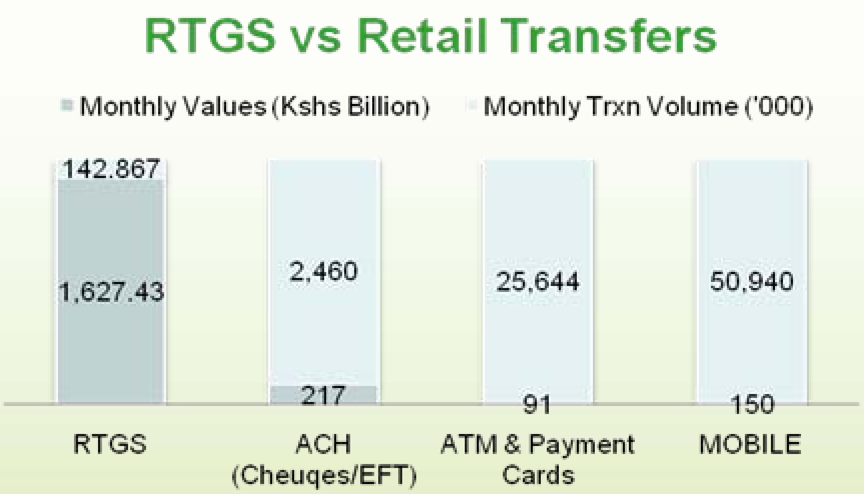
Differentiation in the approach to regulation only necessary if a particular instrument presents unique characteristics and risk features.

Guiding Principles for the Regulation of Electronic Retail Payments in Kenya

4. Proportionate Regulation

Adoption of a risk based approach to AML.

Proportionate regulatory effort in the oversight of retail transfers (the Central Bank applies greater effort in systemically significant payment systems e.g. RTGS and the ACH).



While electronic retail transfers (mobile payments) account for the larger volume of transactions, the values are insignificant to the overall financial system compared to values moved in the RTGS and the ACH.

Guiding Principles for the Regulation of Electronic Retail Payments in Kenya

6. Encouraging Innovation through Engagment – test & learn

Innovation often precedes regulation.

Service providers are encouraged to engage with regulators prior to, during and after deployment to understand complex regulatory problems in designing their products.

Similarly the Central Bank has consulted widely prior to promulgating new regulations for the sector.

NB: Consultation should include other arms of government to avoid the risk of policy reversal (e.g. in Kenya the Minister for Finance has recommended a 10% Excise Duty on charges levied on mobile financial services, invariably increasing the cost at which customers transfer funds. While larger players can absorb part of the tax cost, smaller players may not and may avoid investing further in their mobile money schemes).

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M-PESA: Fact Page

- ✓ Over 15.8 Million customers (December 2012)
- ✓ Over 51,000 Agent outlets countrywide
- ✓ Over 2 million transactions every day (customer deposits & withdrawals only)
- ✓ Over KES. 150 billion (USD 1.7 bn) billion transacted monthly (customer deposits & withdrawals only)
- ✓ Transaction bands between KES 10 (USD 0.11) to KES 70,000 (USD 830)
- ✓ 24 banks, 5 Deposit Taking MFIs, 3 ATM networks & 1 international remittance provider connected.

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