

4 Collaboration among financial, telecommunication and competition authorities

4.1 The complementary roles of authorities

It will be plain from this paper that mobile financial services involve a range of technical and market, and thus regulatory, issues relating to the fields of telecommunications, finance, and competition. This is not surprising, as the subject concerns competing financial services providers over telecommunication networks operated by competing MNOs, and where the MNOs are sometimes also the financial services providers.

As a result, sometimes these fields are tightly interlinked, as is the case where network effects in telecommunication markets and in financial markets reinforce one another and prevent competition. Many of the issues discussed in this paper have such linkages.

4.1.1 Agent networks

It is initially for the financial regulator to determine the permitted or required agency relationships between mobile financial service providers and their agents, but the fact that many agents double up as agents for both telephone services and financial services means that the telecommunications side cannot be ignored.

Competition authorities and financial regulators need to encourage investment in agent networks to increase density of penetration and drive coverage to rural areas. As the market develops, it may become important to examine arrangements between mobile money providers and their agents to ensure that exclusive dealing does not impede competitors from entering and growing in the market. Alternative independent agent network models also merit exploration.

4.1.2 Telecommunication platform

Regulating the underlying telecommunication service is primarily a telecommunication regulatory matter. A key area for focus in some markets will be the terms and pricing of access of competing mobile money providers to the MNO USSD channels. There is significant evidence of discriminatory and excessive pricing, margin squeezes and refusal of service that appears to have the effect and possibly intent of restricting competition.

Yet understanding whether the charges for USSD are part of a margin squeeze requires both an understanding of the charges for the financial services and competition analysis, and so likely involves both the financial and competition authorities. Indeed, in countries where there is a strong mobile money market, the telecommunication regulator probably cannot properly understand the market power dynamics in the mobile telecommunication market without examining the mobile money market. Failure to do so risks mistaken findings and regulatory decisions in telecommunications.¹²¹

4.1.3 Account-to-account interoperability

Financial regulators will typically benefit greatly from coordinating discussions on interoperability with both telecommunication regulators and competition authorities. Both have an understanding of competitive markets in a network industry, network effects and the need for interoperability. The telecommunication regulator will also typically have extensive experience with the practicalities of telecommunication network interconnection, including flow-through problems of wholesale

¹²¹ The Ugandan Communications Commission (UCC) market review found cross-side network effects between telecommunication and mobile money markets. It did not look in detail at mobile financial services, but it did consider them: www.ucc.co.ug/data/pubs/115/Market-Definition.html

pricing for cross-network transfers. While telecommunication interconnection and mobile money interoperability are not the same thing, there are lessons worth sharing among regulators.

4.1.4 Consumer protection

Consumer protection in mobile financial services primarily arises as a financial regulatory matter. However, it also involves various issues relating to the underlying telecommunication service, including how fees are charged to consumers. Transparency about charges and the features of services is not only important to protect consumers, but is also crucial to effective competition because of its importance in enabling customers to compare offers. Many competition authorities also have responsibilities for consumer protection.

Similarly, questions of data protection and security require the engagement of both financial and telecommunication regulators. The financial systems operate over telecommunication networks, making data protection and security a combined concern of both sector regulators.

4.2 Collaborating in the use of powers

In addition to the substantive themes described in section 4.1, the structure of legal powers and regulatory regimes makes cooperation among authorities important.

Sector specific regulators, such as telecommunication and financial authorities, typically have a combination of *ex ante* powers (authorising them to introduce forward looking regulations) and *ex post* powers (authorising them to enforce against violations of the law and regulations). Competition authorities tend to have *ex post* powers, principally to investigate and enforce against anticompetitive behaviour. However, these sometimes overlap, particularly in respect of competition and consumer protection issues, where both the sector regulator and competition authority may have functions and powers.

Some competition authorities have stronger investigatory and information gathering powers (powers of production, evidence gathering and search and seizure powers) than telecommunication regulators. Some telecommunication regulators can impose larger fines than competition authorities, which are often still in their early years of operation and have not yet been trusted with power to impose high penalties. Or the opposite may be the case. Some agencies may have power to impose interim remedies to stop and desist certain anticompetitive action.

In light of all of the above, collaboration is beneficial:

- for efficiency purposes, as where powers overlap, collaboration may reduce duplication in resources;
- to reduce duplication and conflict between agency investigatory actions and remedies, for example in respect of anticompetitive behaviour; and
- to allow agencies to draw on each other's respective strengths, including ensuring that the agency with the stronger legal powers, larger budget or political credibility uses those optimally.

In some countries, the agencies are expressly required by law to consult with one another and coordinate intervention, and in other countries, they have taken it upon themselves to establish protocols for doing so.¹²² They might agree to consult and coordinate in defining relevant markets, determining dominance, mergers and investigations. In some cases, they will agree that one agency

¹²² In Tanzania, the Fair Competition Commission has concurrent jurisdiction with the telecommunications regulator but not the financial regulator, the Bank of Tanzania. On matters of market conduct, the FCC coordinates with both authorities. In Kenya, the Competition Authority of Kenya has entered into Memoranda of Understanding with each of the Communications Authority of Kenya and the Central Bank of Kenya to cooperate in areas where they have related functions and powers. The Kenyan Parliament enacted amendments to the Communications Act early in 2016 that require the Communications Authority to consult with the Competition Authority when assessing market dominance.

will take a lead in *ex ante* (e.g., the sector regulator) and the other in *ex post* (e.g., the competition authority) matters.¹²³

Good coordination among agencies can greatly enhance the effectiveness of interventions, particularly in the area of *ex post* investigations and enforcement where often both the sector regulator and the competition authority have a role.

Between telecommunication and financial regulators and competition authorities, many countries have sufficient legal powers that, if coordinated, can address the regulatory and competition concerns that are arising in mobile financial services. They only require the political will of these institutions to collaborate towards a common goal.

There is growing recognition of the importance of such collaboration, as indicated by the Guidelines and Guiding Measures adopted at the ITU Global Symposium for Regulators and the ITU Global Dialogue on Digital Financial Inclusion in 2016.

Box 11. Best practice for collaborative regulation

The ITU Global Symposium for Regulators (GSR) held a Global Dialogue on Digital Financial Inclusion (GDDFI) in 2016. The conferences produced guidelines and guiding measures aimed at digital financial inclusion, to:

- recognise the complexities of the multisided market and ensuring regulation supports the growth of the *ecosystem* as a whole;
- encourage *interoperability* at different levels, such as platforms, access points, agents and customers;
- encourage *public private partnerships* using collaborative approaches among telecom/ICT and financial public and private actors;
- emphasise the importance of *access* to reliable, secure and high quality ICT infrastructure (including USSD) on fair terms and conditions of for digital financial services;
- recognise the importance of *consumer trust*, and hence protection of client data, recourse and redress mechanisms, disclosure and transparency, fair treatment of customers, fair cost of services, protection of customer funds and agents;
- recognise the importance of developing *ID* systems to support KYC processes; and
- promote *collaboration and dialogue* among financial services and telecommunication/ICT regulators, ensuring that these have robust powers, as well as *harmonising* their respective regulatory frameworks as well as cross-cutting areas (e.g., consumer protection, cybersecurity, privacy and data protection), all the while taking a ‘light touch’ regulatory approach (e.g., a lighter licensing regime).

4.3 Making unilateral progress where necessary

The importance of collaboration among authorities raises the question of what is to be done where there is rivalry between agencies (e.g., if their powers overlap) or where they are not particularly interested (e.g., central banks famously treat competition as a lower priority than financial stability and prudential regulation). Different agencies are often territorial, competing directly or indirectly

¹²³ For a discussion of the relationship between sector regulation and competition regulation, see Dunne, N., *Competition Law and Economic Regulation: Making and Managing Markets*, 2015.