



# Consumer Experience & Protection Working Group

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ITU FOCUS GROUP ON DIGITAL FINANCIAL SERVICES

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# Achieving the promise of financial inclusion

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Financial inclusion can be an effective tool to achieve development goals

Can help reduce poverty, improve access to education and health services and more.

However, consumers must be served in a way that meets their needs, assures the safety of their funds, and enables trust and confidence in the system

Evidence shows risks are common and trust is low

Consequences: Globally more than a third of registered mobile money accounts are inactive

# Consumer risks are common and trust is low with DFS

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Global landscaping study by CGAP identified **7 key risks** reducing consumer uptake and use of DFS:

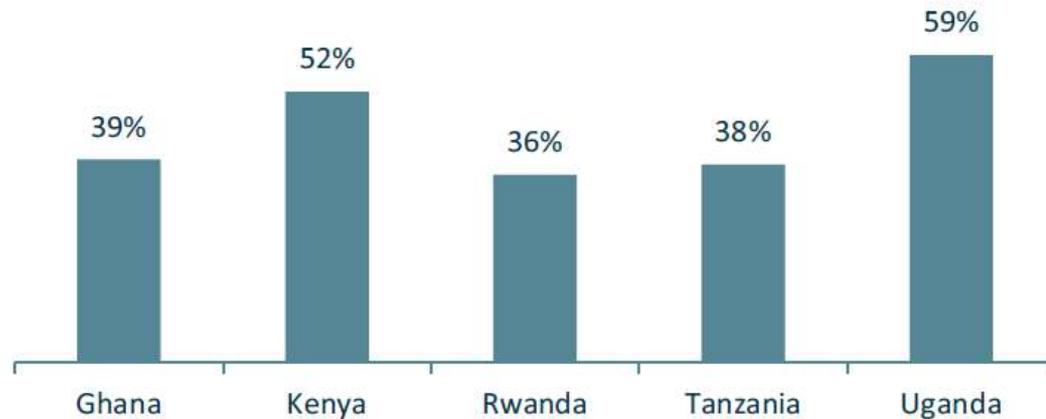
1. Inability to transact due to network downtime
2. Insufficient agent liquidity or float
3. Complex and confusing user interfaces
4. Poor customer recourse
5. Nontransparent fees and terms
6. Fraud
7. Inadequate data privacy and protection

# Consumer risks are common and trust is low with DFS

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## Poor network reliability

Figure 1. Percentage of mobile money users who have experienced service downtime when transacting



“Sometimes [mobile money services] are not operational....The money is in the phone, but when you want to withdraw, they tell you that the network is down.”  
- Urban man, Tanzania

# Consumer risks are common and trust is low with DFS

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## Low use of recourse

Figure 4. Of mobile money users who have experienced a service problem in the past six months, the percent who reported it to customer care



# Consumer risks are common and trust is low with DFS

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## **And unclear fees**

“The charging rate is not standard because in some places when withdrawing TSh 10,000 you are charged 1,200 (\$0.75) while in another place you are charged TSh 2,000 (\$1,25) There are posters...but the way they are written is different from what the agent says.” – Rural woman, Tanzania

# Consumer risks are common and trust is low with DFS

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Additional research shows **trust is low**: a survey of 8,000 consumers in 15 emerging and developed markets showed that:

**37%** of consumers trust traditional financial institutions and **24%** state they trust their fintech provider

These results resonate with consumer advocates who know that the financial services & telecommunications industries are **the most complained about sectors** by consumers each year.

# New research commissioned by ITU delved deeper

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## **Mystery shopping in Zambia showed:**

- A third of agents did not display fee charts, only 20% had a printed brochure with fee schedule
- Fees quoted to customers were inconsistent and mostly wrong
- 14 out of 20 customers were able to register without an ID – poor compliance
- All who tried were able to transact OTC over the transaction limit

# New research commissioned by ITU delved deeper

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## **SMS surveys showed:**

- In Ghana, Tanzania, and Philippines, 10 – 20% of DFS users have lost money to a fraud or a scam
  - PIN was stolen, SMS scam, agent taking extra money
- In Philippines, 83% have received an SMS scam
- 60%+ in all countries are concerned about advertisers seeing transactional data – data privacy concerns

# DFS User Agreements:

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#ROOMFORIMPROVEMENT

# Method & Rationale

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**Terms & conditions communicate company policies** and rules of engagement with consumers. And, they provide a keyhole through which to view how providers treat customers & thus a barometer for CP-- yet consumers rarely read contracts.

The CEP working group reviewed **18 contracts from 9 African countries** (Ghana, Kenya, Malawi, Nigeria, S. Africa, Tanzania, Uganda, Zambia and Zimbabwe).

Analysis of language & transparency; provider obligations, consumer obligations & recourse.

**Results in a nutshell:** contracts are not readable; language is usually English-legalese; contracts are long/verbose\*; have omitted critical information, such as fees/pricing, and have clauses which seem in contravention of local law.

Review conducted by a Kenyan lawyer w/ input of 2 American lawyers; caveat emptor: did not have lawyers from each of 9 jurisdictions review, but countries share common law origins.

# DFS specific findings on User Agreements

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100% of contracts reviewed were in **English**; but only 50% of Nigerians speak English; 30% of S. Africans and 18% of Kenyans.

**Too long!** Brevity should be the essence of legal drafting. Nietzsche said 'It is my ambition to say in 10 sentences what others say in a whole book.' A DFS contract could be 10 clauses long.

User agreements directed consumer to **web** to read critical info on pricing. Many customers can't access internet.

For credit products, **no disclosure of consequences of default** such as account set off (including airtime & other accounts), penalties, increased interest rate & in some cases creditor willing; incarceration.

50% of contracts reviewed do **not discuss** any obligations with regard to **fraud** or funds protection

# DFS specific findings cont'd

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Data sharing clauses were included in 83% of contracts; short on substance, long on sharing. Sharing of data allowed 'for reasonable commercial purposes...' This is of particular concern bc many countries do not have strong data protection nor data privacy legal frameworks.

Despite frequency of human error, only 6% of contracts discussed whether transactions done in error could be reversed.

Only 28% of contracts indicated provider would give notice of any changes in terms and conditions.

# DFS specific findings cont'd

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Pin security: 61% do tell the client to keep the pin secret

Only 28% of contracts discuss account dormancy. And, only 17% reference what happens in the event of death of account holder.

Only 39% of contracts reference a dispute resolution process.

17% of user agreements mandate arbitration which may restrict A2J for consumers. Further, 50% of contracts also mandate consumer 'indemnify' provider for legal fees –so broadly written as to cover legal fees when consumer has valid dispute with provider.

# Sample clauses from our review

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*In consideration of the Bank forbearing to demand the immediate payment of the outstanding amount due in respect of your Loan and rolling over the same pursuant to Clause 5.2.8, you shall, in addition to paying the outstanding amount in respect of the Loan and any outstanding Facility Fee, pay to the Bank a roll over fee being 7.5% of the outstanding amount in respect of the Loan (the 'Roll-Over Fee').*

Legalese translation: If you pay late; you pay 7.5% more.

$.075(\text{Old Balance} + \text{Facility Fee}) + \text{Old Balance} = \text{New Balance}$

# Another sample clause: Lingua Franca?

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This is from the same company; in Rwanda but text of user agreement is English and clauses appear to be in conflict with one another :

*Any dispute arising out of or in connection with this Agreement that is not resolved by MTN Rwanda customer care centre representatives shall be referred to the competent jurisdiction in Rwanda.*

*To the extent permissible by Law the determination of the Arbitrator shall be final, conclusive and binding on the Parties.*

# Sample clause from Gamestation UK

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On April 1, 2010, Gamestation, UK a retailer published a revised Terms & Conditions clause which stated that :

*By placing an order via this website on the first day of the fourth month of the year 2010 anno domini, you agree to grant US a nontransferable option to claim for now & forever your immortal soul.*

*Should we wish to exercise this option, you agree to surrender your immortal soul, and any claim you may have on it within 5 working days of receipt of written notification from Gamestation.co.uk or one of its duly authorized minions.*

# Lessons from Gamestation

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Consumers do not always act in their own best interests.

7,500 lost their immortal souls; representing 88% of consumers using the site on that day

a 5 £ credit was offered to consumers who clicked to opt out and 12% opted out.

Quite possibly a percentage of consumers read the clause and understood it to be a joke so did nothing; quite possibly a percentage of consumers did not read the terms & conditions at all. Possibly consumers who opted out did so bc of the monetary nudge?

A market conduct regulator would be better positioned than the consumer to inform the provider that such a clause is per se unfair and potentially violates natural law.

# Working group related recommendations on user agreements

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Regulators should regularly review industry terms and conditions; comparing to domestic laws.

Finding deviations or unfair terms, should recommend changes in policies to DFS providers; can also publish a sample list of unfair terms.

# Analysis of legal framework for DFS consumer protection

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Univ. Of Washington public policy graduate students at EPAR conducted a study for the CEP group analyzing DFS laws/regs in 22 countries;

challenge was they were not lawyers & not able to determine impact of laws/regs if any from desk review.

Still results were interesting and the same analysis can be done by in country law reform committees as well as regulators

# Legislative gaps exist for DFS consumer protection

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14 of the 22 countries had a competition authority

8 countries had a separate consumer protection entity

Regulations in 7 of 22 countries state provider is responsible for costs from consumer financial losses as a result of system malfunction; 3 countries hold provider liable for fraud, 3 countries for transfer failures and 16 countries hold provider liable for agent misconduct.

# Legal/Reg findings con't

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18 of 22 countries mandated **transparent communications** of pricing.

6 countries mandate that the regulator **review terms and conditions of user agreements**

18 of 22 mandate **security policies** including pin/password (11 countries); data security requirements (12); standards for accessing consumer funds or data (6); limits to sharing consumer data (9) and training of agents and employees (10); but only 5 countries specify training content must include: fraud, loss o funds & data treatment.

17 of 22 countries have regulations mandating communication of consumer **complaints mechanisms in writing (10 specify channel)** and in 8 of those, complaining must be free. 13 countries specify a max response time. 14 of 22 countries require reports to regulator on complaints.

# Approaches for regulators

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A baseline analysis of the domestic laws/regulations required as a bare minimum for DFS consumer protection (review financial sector & payments legislation, telecom, competition laws, generally applicable CPL, criminal law on fraud etc., civ pro—for remedies).

This will allow you to see where there are gaps. (if regulator has no time for this; outsource to a law faculty or student or law firm—you may be able to find pro bono support)

Compare DFS terms with the above analysis of minimum standards - Are the contracts following the law? Are they fair?

Do mystery shopping to determine actual CP experience as compared to law.

# The End

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For full reports; see ITU DFS Focus Group homepage

Or, ask CEP working group co chairs who are here:

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