Emerging Market for M-Payments: Governance Issues

Jane K. Winn
University of Washington School of Law
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M-Payment Governance Issues

• Framework for analyzing governance issues
• Deregulation by Obsolescence versus Premature Regulation?
  • Move to the Middle?
Governance Spectrum

Private Law (Property, Contract, Tort) and Courts

Self-Regulatory Networks (Network Effects Enhanced)

Public Law (Command & Control Regulation) and Agencies

US Enforced Self-Regulation versus EU Co-Regulation
Governance Spectrum Examples in Payments Markets

• Private Law
  – Negotiable instruments law
  – Wholesale funds transfers

• Self-Regulatory Networks
  – Credit and debit card networks (interbank)
  – SWIFT and CHIPS
  – Check image exchange rules

• Public regulation
  – Regulation Z/CARD Act/Regulation E consumer protections
  – Anti-money laundering/counter-terrorism
Deregulation by Obsolescence?

• FTC Mail Order Rule versus EU Distance Selling Directive
• Limited Information Privacy Laws versus Data Protection Laws
• Unconscionability versus Unfair Contract Terms
  – But CFPB study of mandatory pre-dispute arbitration terms under Dodd-Frank
Premature Regulation?

• Electronic Signature Laws
• First EU E-Money Directive
• Rolling Contracts (terms now, pay later)
• ?
Economic versus Social Regulation

• Economic Regulation
  – Contracts
  – Antitrust/Competition
  – Trade practices regulation
  – *Consumer protection?*

• Social Regulation
  – Health and safety regulation
  – Social welfare programs
  – Environmental protection
  – *Consumer protection?*
Enforcement Pyramid

- Advice, Persuasion, Education, and Compliance Assistance
- Negotiation and Settlement
- Inspections and Examinations
- Notices and warning letters (perhaps with administrative fines)
- Civil Penalties (fines and injunctive orders short of suspension)
- Criminal Penalties
- Suspension
- License
Move to the Middle of the Spectrum?

• Anti-Money Laundering/Gramm-Leach-Bliley Adaptive Management Systems
• Credit Card Networks Payment Card Industry Data Security Standards
• Interchange regulation
• Single Euro Payments Area
  – Payment services directive + European Payment Council schemes
• **Application to mobile payments?**