

Consumer Panel response to DG Markt consultation document: on the study of tying and other potentially unfair commercial practices in the retail financial services sector

The Financial Services Consumer Panel was established under the Financial Services and Markets Act 2000 by the Financial Services Authority to represent the interests of consumers. The Panel is independent of the FSA. The main function of the Panel is to provide advice to the FSA, but it also looks at the impact on consumers of activities outside the FSA's remit. The Panel represents the interests of all groups of consumers.

This is the Panel's response to DG Markt's consultation paper on the study on tying and other potentially unfair commercial practices in the retail financial services sector. The Panel is not in a position to respond to the detailed questions within the paper and we have focused instead on the broader key issues.

The study

Panel members much welcome the Commission's initiative in this important area where there is considerable scope for consumer detriment. We were interested in the methodology used in the study to assess customer impact and found the tables on page 20 of the report particularly helpful.

The Panel was most concerned to note the disappointingly low level of responses from the industry, including in the UK. There may therefore be a good case for a further and more formal investigation, to build on the knowledge gained in this initial study.

We note the comments in the report on the limited level of participation of consumers and consumer associations in the research. As is no doubt the case for many other consumer organisations, the Panel does not have access to the information necessary to make a meaningful contribution to the study in terms of data, or the resources necessary to address the individual questions posed by the Commission.

Nevertheless the Panel is aware more generally of unfair commercial practices in the financial services sector. While extreme pressure selling is of course to some extent covered by the Unfair Commercial Practices Directive, other forms of pressure selling are not. A further example of an unfair practice is churning (the practice of encouraging switching or other forms of trading to maximise commission, regardless of the interests of the client).

There are also practices which, although potentially unfair, are in fact favoured by consumers who often find it convenient to buy financial products in this way and who are prepared to pay for them. Examples would include some off-set mortgages where broadly speaking, a customer's savings are off set against their borrowing and interest only charged on the net capital balance. Some packages are better than others and not all are

suitable for everyone. We would not wish to see all consumers denied access to products such as these as an unintended consequence of action to protect consumers from unfair commercial practices in this sector.

Potential remedies

As was made clear in the study, one of the practical difficulties of dealing with unfair commercial practices in the retail financial services sector is the capacity of industry to 'work around' or create an alternative to specifically banned practices in order to achieve the same result. It is important therefore that any future action to tackle unfair commercial practices focuses on the unfair outcomes for consumers, rather than the practices themselves. As I have already mentioned, we would not wish to see a blanket approach banning some practices outright when, if properly structured and fairly priced and sold, they can deliver products which are entirely suitable for some consumers.

Overall we favour the adoption of sectoral legislation rather than a review of the Unfair Commercial Practices Directive. We view the UCPD as a useful piece of horizontal consumer protection that primarily addresses misleading, aggressive and coercive practices. We see the practices in the report that are identified as causing consumer detriment as essentially competition issues that might be better dealt with through competition policy initiatives.

Adam Phillips
Chairman
Financial Services Consumer Panel

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