

**COMMUNICATION BY COMMISSIONER KROES  
IN AGREEMENT WITH COMMISSIONER McCREEVY**

**MEMORANDUM ON SECTOR INQUIRIES IN FINANCIAL SERVICES  
(RETAIL BANKING AND BUSINESS INSURANCE)**

**I. LEGAL BASIS**

1. Pursuant to Article 17 of Council Regulation (EC) 1/2003<sup>1</sup>, the Commission may conduct general inquiries into a particular sector of the economy or a particular type of agreements across various sectors where a trend of trade between Member states, price rigidity or other circumstances suggest that competition may be restricted or distorted within the Common Market. Indications that specific undertakings have infringed the relevant Treaty provisions are not required. Under Article 17, the Commission may publish a report on the results of its inquiry, and invite comments from interested parties.
2. Once the Commission has adopted a decision under Article 17 of Regulation 1/2003, it will have investigative powers to obtain all necessary information from undertakings and associations of undertakings.
3. The investigative powers available under this inquiry will be those pursuant to Articles 18, 19, 20 and 22 of Regulation 1/2003. Article 18(1) allows the Commission to request, or require by decision, all necessary information from undertakings and associations of undertakings, with scope for fines under Article 23 and 24 where information is misleading or incorrect, or where (following a decision that requires the provision of information) responses are incomplete or absent. Article 18(6) also allows the Commission to request all necessary information from governments and national competition authorities. Under Article 19, the Commission can take oral statements from natural or legal persons that consent to do so. The Commission will also have the power under Article 20 to undertake inspections in the framework of the inquiry or, in accordance with Article 22, ask a national competition authority to conduct such an inspection on its behalf.
4. Information can only be collected for the purposes of Article 17, namely giving effect to Articles 81 and 82 of the EC Treaty, either on their own or in conjunction with Article 86 of the EC Treaty. Conducting the inquiry under Article 17 will provide the necessary guarantees to undertakings that confidential information and business secrets will be protected.
5. To the extent that the inquiry confirms the existence of anticompetitive agreements or practices or abuses of a dominant position, the Commission or, where appropriate, the national competition authorities could envisage using the information collected in order to take the appropriate measures to restore competition in the relevant markets,

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<sup>1</sup> Council Regulation (EC) of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 04.01.2003

including addressing individual decisions to the entities concerned based on Article 81 and Article 82, on their own or, for the Commission, in conjunction with Article 86 of the EC Treaty.

## **II. BACKGROUND**

6. As pointed out in the Lisbon Strategy, well functioning integrated financial markets are a precondition to make the European Union “the most competitive and dynamic knowledge-based economy in the world”. However, retail financial markets in particular, have largely continued to show lack of integration, despite the successful introduction of the Euro.
7. In 1999 the Commission launched the Financial Services Action Plan (FSAP), which aimed at defining measures to promote the integration of European Union financial markets, as well as at enhancing overall convergence in supervisory practices. Now, in the agenda for the forthcoming 5 years, the objective will be to consolidate progress towards an integrated, competitive, more efficient and open European financial market and to remove the remaining economically significant gaps. Emphasis will be placed in this next phase on consolidation of legislation and a limited number of well-targeted new initiatives. In particular, two policy areas for further integration have been identified: asset management and retail financial services.
8. Sector inquiries will allow the Commission to identify ways of improving competition in financial markets in two complementary ways. Firstly, the core objective will be to understand the functioning of the sector with a view to ultimately identifying any concrete restrictive practices or distortions of competition that can be addressed under Articles 81 or 82 of the Treaty, either by the Commission or by national competition authorities within the European Competition Network. In order to do this, it will be necessary to take into account the proper legal and regulatory context. Secondly, enhancing transparency in relation to price-setting, and general practices in financial markets, could enable consumers to make better informed choices and contribute to strengthening of consumers’ bargaining power thereby increasing competitive constraints on the behaviour of banks and insurers.

## **III. INDICATORS OF DISTORTIONS OF COMPETITION**

9. There are a number of inter-related indicators of price rigidity and other circumstances which suggest that competition may be distorted or restricted within the common market.

### **A. Indicators of market separation and entry barriers in retail banking**

10. *Prices for comparable products* in retail banking appear to vary considerably across the European Union. For instance, in the area of payment card schemes there seem to be substantial differences in domestic interchange fees and merchant service charges. Although domestic pricing of banking products can also be quite diverse, pricing differences tend to be smaller within a given domestic market than between domestic markets in the European Union. In addition, in domestic markets there is a certain rigidity of pricing models with significant variations from country to country.

11. There is a noteworthy *variation in profitability* of banks across Europe. This may be indicative of, among other factors, lack of competition in some domestic markets, possibly due to entry barriers, as incumbents in certain markets remain able to extract high rents.
12. *Concentration levels* in domestic banking markets have been steadily increasing over the last years and across Europe (even though concentration indices vary significantly between different Member States).<sup>2</sup> This appears to be due mainly to domestic consolidation.
13. In contrast, *cross border mergers* in the banking sector have been quite limited in number. There is a large variation in the degree of foreign participation in the capital of banks. This participation reaches high levels in some of the new Member States but remains very low in other Member States. In some Member States, this could be due to certain inappropriate intervention by national banking regulators.
14. Opportunities for coordination are numerous in the financial sector through networks and bilateral arrangements between market participants. Furthermore, cross-shareholdings exist.

#### **B. Indicators of lack of demand power in retail banking**

15. Prices for certain retail banking products may be above the competitive level. A number of factors, for example, such as switching costs and product bundling, may lead to customer captivity or otherwise affect customer choice, and in turn limit the demand-side countervailing power.
16. Furthermore, not only consumers, but also small and medium-sized enterprises (SMEs) as customers of retail banking services can be affected by market imperfections.

#### **C. Indications for distortions of competition in business insurance**

17. Notwithstanding the FSAP measures already adopted in the last five years, the reality is that national insurance markets are not fully integrated. Cross border supply for certain types of business insurance may be limited by a variety of market entry conditions.
18. Possible distortions of competition in business insurance may, among others, arise from the way in which the insurance industry is organising itself, in particular, as regards the practice of close *cooperation*, both vertical and horizontal, between major economic actors.
19. For instance, in certain areas of business insurance, insurers associations and committees tend to set jointly *standard policy conditions*, possibly offering only limited scope for the demand side to negotiate (different) terms of coverage, even for large customers.

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<sup>2</sup> Financial Integration Monitor report (2004) compiled by DG Internal Market

20. Furthermore, possibly excessive cooperation may take place within the framework of *insurers' associations* and in the context of *coinsurance arrangements* between insurers.
21. Vertical agreements involving insurers, reinsurers and/or intermediaries are common in insurance markets. Existing methods of remuneration of insurance intermediaries and distribution networks may limit the incentives to compete.
22. There are also valid concerns about *conditions to entry* in certain markets, including the lack of access to risk data, the lack of statistics, and, finally, the lack of access to distribution channels. These concerns relate, in particular to cross-border entry.

#### IV. ISSUES FOR INVESTIGATION AND DATA TO BE COLLECTED

23. The scope of these sector inquiries covers respectively retail banking products and services, in particular with reference to consumers and SMEs, and business insurance and reinsurance products and services supplied in the European Union. Data to be collected will cover market structure, agreements between market participants, arrangements for associations and networks and other economic data, as well as regulatory aspects, as undertakings' conduct in these sectors can only be assessed in its proper economic and regulatory context.
24. The inquiry into *retail banking* will cover, in particular, the following three issues:
  - *Conditions for market entry and for the supply of retail products and services*, including conditions for both cross border supply of services and establishment of commercial presence in markets other than the home market. This part of the inquiry will, in particular, examine indications of the existence of possible relevant agreements or practices of domestic banks, or activities by associations or networks of banks that could, for instance, impose higher entry costs or affect possibility of access to networks. Additional areas of investigation may cover entry conditions, characterised, inter alia, by the lack of information (e.g. possibly restricted access to data bases), and possible effects of national legislation, as well as issues of exclusive distribution rights for subsidised products.
  - *Conditions of competition in selected networks or joint infrastructures for retail products, for example payment systems*. The investigation would include, among other things, collection of data on price differences and on access to payment systems. Furthermore, it will approach issues relating to the Single Payment Area in the European Union context.
  - *Degree of effective choice for consumers and SMEs*. In order to facilitate a complete assessment, the inquiry would also approach effects on the demand-side, such as the effect of switching costs and product bundling on consumers, existing price patterns and asymmetric information, or other factors that affect the access of consumers and SMEs to financing.
25. The inquiry could at a later stage focus on some particular products and services and concentrate, whenever appropriate, on a limited number of Member States.

26. The inquiry into *business insurance* would examine the provision of insurance products and services to businesses including relevant reinsurance aspects. Insurance and reinsurance intermediation would be an important part of the inquiry. Insurance and reinsurance products to be investigated would entail, for instance, but not necessarily be limited to, property and casualty insurance and reinsurance. The inquiry may, in particular, look into:

- conditions for entry (e.g. access to risk data, access to statistics, access to distribution channels, existing regulation, market structure),
- existence of possible vertical agreements between brokers or other insurance and reinsurance intermediaries and insurers,
- role of insurers' associations, coinsurance arrangements and other horizontal agreements, involving insurance and reinsurance market participants,
- the scope of pool agreements,
- the agreement on and use of standard policy clauses, and
- sharing of risk-relevant data (access to databases).

27. The data to be collected in the investigation phase may include: prices, pricing policy, profitability margins and cost data by activity and by product and volume data; product related specifications and standardised conditions, information on product range, parallel products, special products; contractual conditions with customers, upstream suppliers and other market operators; activity of industry associations; relevant national legislation, including possible granting of specific rights to distribute state-sponsored products; other descriptive feedback from the industry as well as relevant information from customers and customers' associations.

28. The actors to be contacted include:

- banking institutions and other institutions providing retail banking services and products, including providers of payments services, as well as providers of infrastructure and upstream services, as well as industry associations,
- insurance companies and other providers of insurance products and services, reinsurers, as well as industry associations,
- financial services intermediaries,
- users of financial services, including consumer organisations, where appropriate,
- Member State authorities.

## **V. PROCEDURE**

29. Article 17 of Regulation 1/2003 requires that the Advisory Committee on Restrictive Practices and Dominant Positions be consulted prior to proposing the decisions to launch sector inquiries to the Commission. The Advisory Committee agreed with the envisaged Commission decision to open sector inquiries in the retail banking and business insurance sectors and recommended publication of its opinion. In accordance with standard practice, the report on the outcome of this consultative

procedure is annexed to this Communication. The Commission will inform the national competition authorities regularly on the progress of the inquiries.

## **VI. PROPOSAL**

30. It is proposed that the Commission decides to open the following sector inquiries under Article 17 of Regulation (EC) No 1/2003 in the financial services sector relating to:

- Retail banking,
- Business insurance.