The European Consumers' Organisation

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RETAIL BANKING SECTOR INQUIRY

PRELIMINARY REPORT II

BEUC Reply

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Europejska Organizacja Konsumencka
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Type of organisation: representative organisation of almost 40 independent national consumer organisations from almost 30 European countries

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Have you received a request for information as part of the sector inquiry: No

☐ Yes

☐ No

Preliminary remarks

We have welcomed the publication of the Commission's Interim Report as a first preliminary step to address the issues consumers have to face in this market. For consumer organisations, many of these are not new, and have been documented at length.

However, we strongly disagree with a number of aspects of the Report.

In particular, self regulation is mentioned in the report as one of the options for regulation. However, self regulation is not necessarily panacea, as there are different traditions in different Member States as far as self regulation is concerned (codes of conduct are more widespread in the UK than on the continent for instance).

There is also a problem of implementation linked to governance of codes of conduct. As exemplified by the limited implementation of the code of conduct on pre-contractual information in the area of Home Loans, there are inherent difficulties in having European associations monitoring the performance and asking their national associations to promote the implementation at the companies' level. In fact, the experience of consumer organisations as regards the efficiency of codes of conduct is mixed at best, including at national level. In Belgium for instance, one year and a half after the entry into force of the code of conduct on facilitating consumer mobility in the area of bank accounts, only 200 consumers had used this service[1].

According to our member VZBV, in Germany, a code of conduct on access of consumers to a bank account is still not working, although it has been place for 10 years. The banking industry had been quoting irrelevant statistics on increasing numbers accounts without overdraft without stating how many of these accounts actually served the intended purpose of the code of conduct. They had also failed to inform about the number of cancellations as well as refusals of applications. A recent high court decision by Oberlandesgericht Bremen[2] ruled that this code of conduct does not grant any legally enforceable rights to consumers.

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[1] As reported by our member Test Achats in February 2006 in Budget et Droits n°178.
[2] OLG Bremen, *Urteil* vom 22. 12. 2005 - 2 U 67/05

Complex issues might need complex solutions and binding regulations cannot be dismissed as irrelevant that easily. The over emphasis on self regulation is too often the triumph of hope over experience[3]. We do not agree with the chapter dedicated to these aspects in the Report[4].

Consumer protection is not a barrier to competition. A high level of consumer protection is key to promote consumers confidence, at national level and in the Internal Market. The differences in national consumer protection regimes reflect also an adaptation to the problems encountered at national level or the national market structures.

Hence the argument about Member States "goldplating" practices having to be avoided is largely unconvincing, especially since the efficiency of regulation might impose an adaptation of rules to the specific market situations, and in any case a watering down of national consumer protection provisions has to be avoided – otherwise consumer confidence would be shattered.

This factors into the discussions on maximum harmonisation and mutual recognition, which we do not think are the right way forward. We therefore object to the Report's wording on this.[5]

Consumer confidence has to be considered when examining the issue of (lack of) cross border competition (with a view for instance to bring down prices regarding payment services). In the realm of financial services, it is not the quantity of choice that matters but rather the quality of choice. To take one example, consumers would have many difficulties in making a choice of applicable law.

Financial services have a great economic and social importance for consumers. **Access to basic financial services** to avoid financial exclusion of consumers on discriminatory and non-transparent grounds has to be ensured.

For instance, without access to a basic bank account, a huge variety of important financial services remain inaccessible. Even finding a job might become difficult if one does not have a bank account, due to the administrative burden associated with paying the salary in cash. One needs to underline also that few consumers in the 'new' Member States have access to bank accounts. In fact, less than 40% of consumers have a bank account in Poland, Lithuania or Latvia for instance[6].

Universal Service Obligations in the field of financial services have to be duly considered (a EU-wide right to a current account perhaps). A 'basic' banking service is already in place in some Member States.

Specific questions from Executive Summary:

A. Market structure and fragmentation

1. What are the main reasons for market fragmentation in Europe's retail banking sector? Please identify whether they are mainly of regulatory, structural or behavioural nature.

As mentioned above, consumer protection rules are not obstacles to competition as they foster consumer confidence. The specificities of the financial services have to be taken on board, for the analysis of the Demand side of the market not to be biased to the detriment of consumers.

Markets in financial services generally, do not exhibit the same characteristics as markets in goods. In particular, there is a high degree of asymmetry of information and (technical) knowledge between the consumer and the financial service provider. Market integration or liberalisation of retail financial services might not necessarily lead to improved consumers welfare.

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3 'Green Paper on Financial Services Policy (2005-2010) - BEUC position' BEUC/X/030/2005 of 1st August 2005.
4 Interim Report §3.1.2.1, p 28.
5 Interim report §3.3.4 p 37.
6 Cf. Candidate countries Eurobarometer 2003.5 May 2004.

For example, in the UK five years ago there were at least 30,000 financial products – this could be seen as good news for consumers in terms of increased choice. In fact, what really matters from the consumers' perspective is the quality of choice, not the sheer quantity of products available on the market[7] .

Consumers may attempt to compensate for information/knowledge asymmetry by seeking advice or by basing their choice on other 'confidence-building' factors, such as the location/nationality of the financial services provider. The need for after sales services, language and traditions might also play a role.

This might explain in part at least the 'fragmentation' (at European and national level as a number of financial services markets are regional/local), although other factors have to be considered, amongst which lack of transparency, limited mobility, high opportunity costs of switching providers. All these will impact the level of competition on the national markets, and the market structure at national and European level, due to the resulting high(er) barriers to entry.

Retail banking services markets are characterised by and large with information asymmetry, customer immobility and limited bargaining power of consumers[8]. We see the risk of tacit collusion as favoured by the following characteristics of the market: homogenous products, information asymmetries; large number of small consumers with limited buying power, similar cost structure amongst suppliers, stable demand, lack of enforcement of competition rules. Apparent price parallelism in the new member States can only reinforce our suspicions in that respect. These aspects deserve further consideration by the European Commission.

2. What are the main causes and implications of the different level of concentration in the EU retail banking markets?

We share the analysis of the Commission regarding the mild level of concentration, and the fragmentation of the Internal Market. We would like also to point out to the important Commission finding of a higher level of concentration of regional markets, as due to the characteristics of financial services, a number of relevant markets are local.

Hence, there is no certainty, contrarily to what the Commission is stating[9] that greater cross-border competition would necessarily bring down prices, particularly in those countries where these are still relatively high. Information asymmetries and obstacles to consumer mobility would mitigate the potential impact of wider choice.

Also, the experience in the new Member States as regards the benefits of entry for consumers is more mixed than what is reported by the Commission. It appears that the large number of foreign banks which have entered the market have by and large mimicked the uncompetitive offering of the incumbents[10].

By and large in the new Member States, transparent and comparable information is missing, and banks tend not to provide consumers with the necessary information on switching procedures, while the transfer of credits and debits can prove complicated, costly and time consuming.

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7 For a more detailed analysis of these issues, cf. 'Green Paper on Financial Services Policy (2005-2010) - BEUC position' BEUC/X/030/2005 of 1st August 2005.

8 As a consequence, the concept of 'contractual freedom' hardly applies in the sector. Hence, the need for instance for a formal right of early repayment to be bestowed upon consumers.

9 Interim Report p.9.

10 'Common Statement and call for action', Slovene Consumers' Association (ZPS), Association of Polish Consumers (SKP), Estonian Consumers' Union (ETL), Consumers Defence Association of the Czech Republic (SOS), National Association for Consumer Protection in Hungary (NACPH), Romanian Association for Consumer Protection (APC), Latvian Consumer Association (PIAA), 14th July 2006.

B. Banks' financial performance and pricing

3. What are the main reasons for the varying rates of profitability and income in retail banking across the Member States?

As reported to us by our UK member Which?, in 2005, the 'big five' banks made a combined profit of £33 billion. Of this, £9.36 was made from retail banking. Subsequent to these annual profit figures for 2005, the banks have recently announced a further increase in overall profits for the first half of 2006, albeit with a squeeze on retail profits, largely as a result of bad debt provisions[11], as a consequence of a sustained period of high levels of unsecured lending.

One worrying development in reaction to this decrease in profits is the growing desire by the banks to raise the question of ending 'free' banking. Since the 1980s, UK domestic consumers have received standard current accounts free as long as the account remains in credit at all times (no charges for account management, cheque clearing, ATM use etc). However, banks are increasingly looking for ways to bring in new charges. One notable trend is the rapid increase in the number of packaged accounts, which provide a package of supplementary services such as travel insurance or reduced overdraft interest rates in return for a monthly fee.

Back in 2000, the Cruickshank report had concluded that the UK banking sector was generating 'excess profits' in the order of 2 billion to 3.5 billion per year and that the majority of this 'excess profit' was being generated through personal banking services.

The Cruickshank report concluded that there are fundamental problems with the competitiveness of the UK banking sector that are increasing profits at the expense of the consumer: *"The lack of effective competition in retail markets means that the welcome increased efficiency for the sector as a whole does not feed through to lower prices and better service for retail customers, but is reflected in higher overall profits".*

More recently, a company called Group 1 software have suggested that average profit per customer for UK banks was approximately £75 in 2005. This analysis also suggests that this profit level per personal customer is high relative to a basket of other UK industry sectors (including utility firms and mobile phone companies) for which average profit is £52.

We would find it useful if the Commission would undertake the same comparison of the level of profits of the EU banking sector with other network industries for instance.

The Cruickshank report indicated that a second key indicator of competitive markets in retail banking is low(er) prices. In the current account market, whilst there are an increasing number of high interest accounts, especially for those who pay in a substantial sum of money each month and remain in credit, average rates are low. Indeed, two-thirds of UK current accounts pay an interest rate of 1% or less and the 'big five' banks are particularly likely to have such low interest paying accounts.

In the credit card market, whilst there are frequently low rates (including 0% offers) for introductory APRs, especially for balance transfers, the typical annual APRs for credit cards are high and increasing. Recent Which? research has shown that since October 2005, APRs have risen on the credit cards of 11 providers, including Barclays Platimum Mastercard/Visa which has seen APRs rise from 15.9% to 17.9% and Halifax's One Visa which has risen from 12.9% to 15.9%.

In the market for personal loans, headline prices are frequently low. However, as a result of risk-based pricing these prices are only available to two-thirds of those offered a loan and many customers face rates that are substantially above this. In some cases, there is also evidence that some banks are not

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[11] HSBC saw a fall in retail profits from £392 million to £377 million. HBOS saw a 4% rise in retail profits whilst overall bank profits were up 13%. Lloyds TSB saw pre-tax profits rise 8% to £1.75billion, whilst retail profits rose just 2%. Barclays saw a better rise in retail profits but bad debt provisions rose by 50% to £1billion and Barclaycard profits fell 14%.

advertising prices on their marketing literature at all, which means that even more people are subject to risk-based pricing. This, coupled with the failure of lenders to use 'quotation searches' (i.e. searches that do not adversely affect a borrower's credit rating), raises even more serious questions about the transparency of this market[12].

In other member States, a number of increase in tariffs unconnected with costs have been reported to us[13]. There has also been a multiplication of banking fees[14], in an environment of 'healthy' level of profit for the sector.

Price differentiation between 'new' clients (in France the fresh graduates from "grandes ecoles" are considered as new good-risks clients) and 'captive' consumers has also been reported to us by our French member UFC Que Choisir.

A number of aspects can still be underlined regarding the UK market, as based on the comments from our UK member Which?. A high proportion of payment services in the UK, particularly those relating to money transmission, are 'free' at the point of use, which clearly does not reflect their cost. In contrast, fees charged for other services, such as unauthorised overdrafts and mortgage exit fees, are often large and would appear to be disproportionate to their cost. The major banks are also devoting considerable resource to promoting a range of charges for packaged accounts.

One in four current account customers are permanently overdrawn. The big five banks charge an average of 15.5% if you go overdrawn with permission. If you go overdrawn without permission, the interest charges are even higher and additional penalty charges are also likely to be incurred. It is hard to estimate the total revenue that is raised by these means, but Which? have estimated that unauthorised overdraft charges on current accounts in the UK raised £4.7 billion in 2005. This equates to around £120 per person. Based on the Unfair Terms in Consumer Contracts Regulations, Which? are currently running a campaign challenging the legality of the existing bank charges for unauthorised overdraft charges, as banks should not charge fees on unauthorised overdrafts that exceed the costs that they incur in addressing that problem[15].

Another growth area is the market for packaged accounts, whereby current accounts are sold for a monthly fee but include a number of additional features such as travel insurance or reduced overdraft rates. According to Mintel, there were some 8.1 million packaged accounts in operation in 2005. This represents 11% of all current accounts, up from 10% in 2004. Alliance and Leicester have estimated that the total fees paid by holders of these accounts were close to £1billion. Mintel puts it slightly lower at £874 million.

Redemption penalties are charged on many fixed term loans including unsecured personal loans and mortgages. New consumer credit laws mean that there is a limit to the levels of early redemption penalties that can be charged. However, Intelligent Finance (part of HBoS) estimates that redemption penalties cost borrowers £336million per year.

An additional source of banking income is Payment Protection Insurance (PPI). PPI products, which are sold alongside debt are thought to be a substantial source of bank profits[16].

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[12] The fact that there is little correlation between the size of the provider and the prices that they offer adds credence to this concern. Initial conclusions from the OFT market study have also suggested that Payment Protection Insurance may be subsidising low headline prices for personal loans.

[13] In Slovenia under the pretext of the introduction of the Euro, the implementation of regulation 2560/2001, or of SEPA. In France, the so called frais de gestion have increased 20% in 2006 as compared to 2005 at La Poste (3 euros instead of 2.5) and have tripled at Axa (7.5 Euros instead of 2.5).

[14] Commission de movement in France (Banque Populaire).

[15] This is evidenced by the fact the industry is claiming that banks may have to introduce monthly fees on current accounts if the Office of Fair Trading demands a fundamental reform of overdraft and credit card pricing.

[16] Based on figures from datamonitor, the recent emerging issues document from the OFT suggests that PPI generated £5.4 billion in 2003, of which 60% came from unsecured loan PPI. They have also concluded that the claims ratio - the percentage of claims paid as a percentage of earned premiums - is 17%, which indicates that profit margins are very high in this market. Based on figures from datamonitor, the recent emerging issues document from the OFT suggests that PPI generated £5.4 billion in 2003, of which 60% came from unsecured loan PPI. The claims ratio - the percentage of claims paid as a percentage of earned premiums - is 17%, which indicates that profit margins are very high in this

Cross-subsidisation in the UK market

As described, a high proportion of payment services in the UK, particularly those relating to money transmission, are ‘free’ at the point of use.

Based on the prevailing model, the British Bankers Association have argued that UK consumers are getting a good deal. In addition to the ‘free’ money transmission services, they point out that the UK is one of the few countries to get interest on current accounts and that banks also pay for letters, bank statements and branch networks and rarely pass the cost onto the average customer.

Banking can be free for those consumers who stay in credit. However, because of this there is a substantial degree of cross-subsidisation occurring in the current account market. Certain elements of current accounts, especially the charges levied on debt, and the income generated through the savings (or positive balances) parts of current accounts can be seen to cross subsidise money transmission services.

This also means that there is cross-subsidy between types of customer, i.e. between those who make use of the debt facilities of current accounts towards those permanently in credit. It can be assumed that the losers are either those with negative balances or those with high positive balances who make few face to face transactions or transmissions. The winners are those with low positive balances and heavy users of face to face transactions and transmissions.

Cruickshank suggested that banks operate on a 80/20 rule. This means that 80% of profits are made from 20% of customers. Further to this, it is estimated that 50% of customers actually make a loss. The implication of this is that the majority of banking profits in the current account market are derived from 20% of customers, and these customers are likely to be largely those who regularly make use of their overdrafts.

Cross subsidisation leads to a lack of transparency, product complexity, and bundling and makes transparent pricing very difficult. On the other hand, whilst ending cross-subsidisation could bring prices more into line with costs, firms might use this to exploit their market power in the less competitive markets. The Cruikshank report also suggests that there is a danger that social exclusion could increase as a result.

C. Entry barriers in retail banking

4. Are there other types of entry barriers in retail banking that have not been identified in the preliminary report?

Limited information and cognitive/computational skills present an important restriction on substitutability in the case of complex products or services. Because of the overwhelming information and limited cognitive skills, consumers may be using (imperfect) proxies to identify alternative products, for example intermediaries or brands/reputation. In this case consumers might stick to well-known providers with deep advertising pockets or providers with contracts with intermediaries, with a detrimental impact on the level of competition/mobility.

We think the Report fails to integrate fully the consequences of this on the level of competition and entry barriers in the Internal Market but also at national level. Because of the narrow view which is taken of consumer protection, a full picture of the Demand side of the market is missing. For instance, even if the role of information asymmetries is acknowledged as a barrier from the Demand side[17], the Commission seems to be of the view that these asymmetries vary with the product in question, the

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market. Morgan Stanley estimates that up to a fifth of bank profits come from the sale of PPIs. Lloyds TSB is thought to make the most, about £450million, from selling PPI alongside unsecured loans.

17 Interim report p 22.

mortgage credit being characterised in the Interim Report with a more elastic demand than the current account market. According to the Report, 'this may be explainable by greater price transparency and by a higher cost proportion of mortgages in relation to the consumers' budget.'[18]

However, a number of the costs aspects or mortgage credit are not included in the APRC, and often consumers are 'strongly advised' to take on ancillary products to obtain a better rate or the advertised rate. Considering mortgage credit in isolation is certainly not the right approach to follow, owing to the degree to which they can be used to 'tie in' consumers to other products.

Beyond the size of the financial commitment as such, its length has also to be considered, especially in cases where Early Repayment fees are high/not capped and/or their application is not limited in time (the market practice in the UK seems to be that they are only claimed by providers during the first three years in the lifetime of the loan).

In fact, for mortgages, the (increasing) complexity of products, information asymmetry and weak consumer influence (lack of consumers' mobility for instance) mean that practices such as confusion marketing tend to develop, along with a proliferation of products whilst the risks and consequences of consumers making the wrong choice can be significant[19]. Whilst the volume of choice has a direct impact on consumers' ability to determine the type of products most suitable to their specific needs, consumers are also faced with increasingly complex terms and conditions, bundled products.

We have doubts about the level of competition being fierce in the field of mortgages[20]. Consumers tend to go local (to their bank and perhaps they visit a couple of other branches in the vicinity). The findings that on average gross income per customer in the EU is highest in mortgage products have also to be borne in mind. In fact, mortgage credit is an opportunity to tie consumers to their mortgage credit providers as it tends to remain a long term product, with more often than not consumers having to subscribe to other products (bank accounts) to get a 'good deal' on their mortgage.

5. Where and how does competition law have a role in tackling barriers to entry in retail banking?

Competition law has a significant role to play in tackling barriers to entry in retail banking, but we are of the view that this would not be enough. Joint dominance would also have to be tackled.

Binding regulatory measures have also to be considered.

Consumers must receive transparent information on offers so that they can make informed choices and benefit from the payment instruments best suited to their needs.

We are calling for the introduction of binding measures for financial institutions to provide consumers with clear, transparent and understandable information. This information has to be provided to consumers in good time before they are tied by a contract in an easily accessible format (on paper if the consumer requests it). This is key to allow consumers to compare services and reap the benefits of competition

We are also of the view that information alone will not suffice. Consumers shall therefore receive impartial, high quality advice – 'best possible advice', under which they are being advised the product(s)/service(s) best adapted to their needs and to their (financial) situation (e.g. ability to repay, personal employment and family situation). The need for this will only increase with cross border provision, enlargement of choice and higher involvement of financial intermediaries.

There is a need to deal with early repayment fees and other contractual terms which tend to 'tie in' the consumer with its current financial services provider, to allow for consumers to potentially benefit from a competitive market. Binding regulation in that respect should therefore be considered. It should also not be possible for the consumer to waive the right of early repayment, as this is likely to be to the

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[18] Ibid.
[19] 'Green paper on a Single Market in Mortgage credit –BEUC Comments', BEUC/X/051/2005 of 1st December 2005.
[20] Interim report p 24.

detriment of the consumer, who is by and large less knowledgeable about mortgage credit than the financial services providers.

Such fees must be appropriate in length (ERFs should only be payable within a limited time frame, for example, three to four years into the loan) and limited in amount. In order to stimulate competition and consumer mobility, and given the integration of wholesale markets resulting from a single currency and interest rate, we see some merits in considering a statutory ceiling on ERFs/legally enforceable caps on ERFs.

Penalties should be prohibited in case the early repayment:
• is made in a period where the rate may be revised at any time;
• Is made at the end of a fixed rate period;
• is related to the death of the borrower or changes in circumstances of the borrower and made in one settlement for the total amount outstanding.

The elimination/strong reduction of Early repayment Fees would contribute to mobility and to the development of sorely needed competition.

'Switching' fees must be reasonable and at a low level. They should in any case be in line with real costs, and an upper limit for closing fees should be considered. Such fees shall be banned when the decision to switch is due to non-acceptance of new banking or contractual conditions. Stricter measures exist already at national level and should be duly considered. Limiting fees is a first and necessary step in a sector where mobility is very limited. We very much welcome the provision in the original proposal for directive on payment services in the Internal Market for no fee to be requested to the user by the provider when the user is terminating a contract which has been concluded for a period of 12 months or more.

Binding measures have to be considered to ease the administrative burden. **The 'initial' bank should be in charge of transferring the account.** In particular, it should follow up permanent orders, transfer of payments entering into that account for a certain time and inform the ones having used the 'old' account of the 'new' account number.

Proper consideration should be given to the idea of portability with regard to bank account numbers. Savings and credits instruments, which are often linked to a bank account, need to be considered in that respect. Switching providers would be much easier – and transferring payments and following up on permanent orders would be smoother. Even if the construction of an international account number (IBAN, BIC) could be an issue at stake in that framework, a more simplified unique numbering system for bank accounts has to be promoted.

Consumers must be in a position to switch providers if they find a better deal or are not satisfied with a given service.

6. Access to credit databases and payment infrastructures are sometimes cited as a barrier to entry in retail banking markets. Are there significant barriers to access which merit further investigation?

We acknowledge the importance of credit databases as a competition issue in retail banking, with a view to assessing the creditworthiness of potential clients, and accurate risk pricing. We share the view of the Commission that the organisation and functioning of these databases might act as obstacle to newcomers and result in barriers to entry.

However, we are also of the view that the Commission should tread with caution in this area. As a result, before access to databases in other Member States is enforced, the rights of consumers in relation to the credit recording systems should be strengthened.

Consumers must have a right to be informed about the existence and content of collected data. It is important also to make sure that data collection is limited to the data necessary (to appreciate the solvency of the borrower for instance). It must be prohibited for the data to be collected, marketed, sold or stored by third parties having no direct link with the consumer.

Consumers must have access to clear and straight-forward procedures to correct data and to have the incorrect information deleted, to block information in cases of disputes, and to know to whom which information is disclosed. Sanctions should also be put in place for abuse of access. Improper checking of data could have detrimental effects on consumers hence the need for sanctions to cover this aspect.

D. Customer choice and mobility

7. What are the main reasons for the low mobility of retail banking customers?

Consumer mobility in retail banking is crucial to allow for competition to develop – at European level but also at national level.

We are of the view that demand in the sector remains inelastic because few consumers can switch due to lack transparency, and to the high level of switching costs and opportunities costs to switching. This inelastic demand coupled with the existence of economies of scale increases barriers to entry since the costs for new entrants of acquiring clients are high.

The ability of consumers to switch providers is linked to a number of practical issues such as: the transparency of contract terms and conditions as well as prices, the extent to which a bundle of services is being offered ('packages'); the existence of fees for closing bank accounts/terminating a contract; the degree of competition (materialised in the number of providers in the market, the 'stickiness' of prices or their parallelism over time, the margin between the retail price and the cost of providing the service).

We are not convinced that consumers may wish to 'maintain a long term relationship with their bank'[21]. Notwithstanding the benefits of long term relationships as such[22], the inability to exit long term relationships shall not be confused with the willingness to stay in the relationship. We share the view of the Commission that structural factors are at play 'which may 'unnecessarily raise the costs of switching bank and so reduce their mobility.'[23]

From our member organisations' reports, it is clear that consumers do not necessarily wish to maintain a long term relationship with their bank – many want a divorce but cannot afford it. Consumers are discouraged from switching, as the opportunity costs of doing so are so high.

By and large, there is widespread dissatisfaction amongst consumers with the way they are being treated. Financial services are often cited as industries characterized by systemic poor service and a chronic lack of transparency[24]. As mentioned in our latest publication on payment services[25], although a majority of French consumers are dissatisfied with their bank, each year less than 5% switch[26]. We strongly disagree with the Interim report in that respect[27].

For the sake of solidity of evidence, the extent to which reports from banks on the alleged consumers dissatisfaction should be considered would certainly deserve further discussion. We would urge the Commission to be much more cautious in this respect than in the Interim Report[28].

In the UK, only 1 in 20 consumers had switched banks between 2003 and 2005, in spite of consumers being able to make very substantial gains when switching to 'Best Buys' providers[29]. The UK retail

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21 P 10 of the Interim Report.

22 It has to be borne in mind that consumers' individual preferences in this respect might differ, and might evolve over time, reflecting societal changes. It may be the case that consumers are more prone to change supplier nowadays than they used to, as the banker was 'part of the family'.

23 P 10 of the Interim Report.

24 'The Stupid Company', National Consumers Council, February 2006: http://www.ncc.org.uk/publications/stupid_company.pdf

25 'Payment Services - tell me what I am paying', BEUC X/056/2006 of 11th September 2006.

26 UFC Que Choisir 'Argent', n°94, April 2004

27 Interim report p 92.

28 A recent survey from the Abbey Group in the UK is quoted as evidence in footnote 130 of the Interim Report p 93.

banking sector is characterised by a highly concentrated market, which is dominated by the so called ‘big five’ retail banks - HSBC, RBS, Barclays, HBoS and Lloyds TSB. This is particularly the case in the provision of current accounts, where the ‘big five’ have a joint market share of 78%. In 1998, the then ‘big four’ (the big five excluding HBoS), had a market share of 68%.

Research conducted for Mintel in March 2006 found that 64% of UK consumers have never changed their account provider. Of the 36% that have switched in the past, 4% had done so within the last year, 5% between 1 and 3 years ago, 6% between 3 and 5 years ago and 21% more than 5 years ago.[30]

In the new Member States, as reported by our member organizations, consumers face high charges for bank account services and a low level of quality. Service fees on bank accounts are high and rising.

In Belgium, 78% of consumers are clients of the 4 major banks[31] yet 65% are not satisfied with the service offered. Almost 8 in 10 consumers have not changed banks in the last 10 years[32]. In the Netherlands, according to our Dutch member Consumentenbond, in 2006 8% of consumers surveyed had switched banks in the last five years. This is confirmed by the Interim report findings that ‘customers tend to have fairly long relationships with their bank, especially in the EU15. Consumers in the EU15 tend to hold their personal current account for roughly ten years on average.’[33]

Besides, the level of satisfaction as expressed in surveys has to be taken with a pinch of salt – if the expectations are low, satisfying these expectations is not very demanding. For instance, our Belgian member Test Achats has highlighted that in case of problem with their provider, only 60% of consumers actually complain[34].

The Interim Report acknowledges that ‘cross-selling is widely practiced and that it has commercial advantages for banks’. ‘Cross-selling by banks is a popular practice across the EU, though less established in the new Member States. On average, consumers holding a current account with a given bank buy an additional 1.1 products from that bank, while mortgage customers buy an additional 2.0 products.’[35]

However, we would be much more cautious as regards the alleged ‘benefits for customers’.

This cross selling has a detrimental impact on the level of transparency. Contrarily to what the Interim Report is bravely stating[36], this is the case in particular as regards mortgage credit, where the consumer is often under ‘strong pressure’ to domicile its current account with the provider in order to secure a ‘better rate’ – or simply the rate advertised. (As underlined by the Report, this has also a detrimental impact on the intensity of competition among banks for new business since it ‘increases the breadth of a consumer’s relationship with one bank and hence increases the costs involved in moving their business to an alternative provider’).

For instance, if non recurrent costs are not included in the APRC, there is a sharp difference between the APRC as such and the total cost of the credit for consumers since these excluded costs would have to be borne by the consumer in the end. A survey conducted by BEUC member Austrian Federal Chamber of Labour (Bundesarbeitskammer) has highlighted that non recurrent costs charged by banks at the beginning of the credit agreement vary between 5.4% and 7.4% of the amount borrowed.

The report takes also a benign view of cross selling as an existing relationship would allow consumers to ‘acquire additional services without an extensive search or much paperwork (…). Having more

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[29], ‘Give us back our money’, Which July 2005.
[30] As reported by our UK member organisation Which ?
[31] Fortis Banque, Dexia, KBC, ING.
[32] Budget et Droit, ‘Fidèles à leur banquier les Belges’, March April 2005.
[33] P. 10 of the Interim Report
[34] Budget et Droit, ‘Fidèles à leur banquier les Belges’, March April 2005.
[35] Interim Report p9.
[36] P 21 of the Interim Report.

information about the customer, the current bank should be able to price new products more accurately and thus, on balance, more cheaply than other banks.'[37]

Whilst the latter aspect raises also the issue of information asymmetries between providers (the discussion on access to credit databases being an aspect of this), the Commission seems to ignore that the easier 'access' to additional services does not necessarily mean that the consumer is in a position to judge whether the additional product is best suited to his/her needs. Even if there would be substantial savings in terms of looking for a particular product, in the absence of transparency and comparability, it has to be feared that cross-selling would rather increase the possibilities of consumers' detriment, especially since mobility is limited.

As reported by our German member VZBV, It also happens that tied products are even less suitable for the consumer than the purchase of the products separately. As an example, consumers who buy goods on credit and are obliged to take out Payment Protection Insurance at extremely high rates that increases the total cost of credit by more than 30%. Also **switching costs** may be much higher in case of tied products. In the case of mortgages tied with life insurance, the cost of early repayment is much higher because the consumer who wishes to pay early in order to switch bank will lose premiums he has paid for the life insurance.

Exclusionary practices by dominant firms may paradoxically seem beneficial to consumers in the short run in some cases (price cuts, fidelity rebates, low-priced packages of bundled products, etc). However, should these offers be part of a strategy to foreclose competitors, consumers could be damaged in the medium or long run. It is therefore key from the consumers` perspective to differentiate between legitimate and efficient competitive behaviour that is <u>permanently</u> beneficial to consumers and strategic exclusionary behaviour that would harm consumers in the medium or long run. We urge the Commission to take this on board in its analysis.

In 2004, our French member UFC Que Choisir assessed the opportunity cost of switching bank in France at around 335 Euros[38]. Besides the fees imposed on consumers when closing an account, other direct costs have to be considered (transfer of contracts for instance), costs of payment incidents linked to switching, the costs of red tape, i.e. the need to send letters, to fill in forms, the time lost in looking for a new bank. Finally, if the consumer had subscribed or subscribes to a package of banking services, there is a fair amount of chances that at least some of these services would overlap and consequently would lead to double billing.

- Closing charges: fees for closing a bank account + early repayment fees and/or transfer fees)
- Regarding transfer of contracts, fees are high when the costs (monetary costs or opportunity costs for instance tax rebates) of closing these products by consumers are high
- Process can be risky if lack of coordination between banks (payment instruments, direct debits or transactions might get lost)
- Hidden monetary costs – costs paid in advance say for payment cards
- Administrative burden (red tape, for direct debit the fact that the client has to contact the beneficiaries, etc…)

To highlight the need for bundled products to be duly considered in the analysis, it is worth pointing out that in France for instance, if you own savings products, transfers of these can be costly and time consuming. You may not be able to exit certain types of savings products (plan d'épargne logement, plan d'épargne populaire, PEA…) without losing out on many tax and financial advantages.

Banks apply high fees to transfer one of these types of products: 37.20 € at the CIC bank, 49.50 € at the postal bank, 67 € at the Crédit Lyonnais, 57 € at BNP Paribas, 62 € at the Caisse d'Epargne[39]. Our Danish member FBR reported to us the existence of fees for switching pension schemes, and for securities, for which many banks charge more than 30€ per share.

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37 Interim report p 95.
38 'Etude sur le coût des services bancaires', UFC – Que Choisir, July 2004.
39 UFC-Que Choisir, June 2006.

Information is also difficult to get, and lack of access to clear information allows banks to invoice all sorts of charges 'Advice fee', 'typing fee', 'business focus fee', 'pre-decision fee' or 'intervention fee' are very common. Pricy 'packages' often carry misleading or fantasy designations such as 'Zen', 'Passport to the Future' or 'Free Mind'. A number of services included in these packages are useless but they are presented as being 'indispensable and personalised'.

The vocabulary used is also incomprehensible or confusing and basic services are often not standardised and therefore more difficult to compare: the same name can mean a different service depending on the bank. Besides, there might be a mix of different tariffs applied to certain operations, tarification is often non linear (a service is free then above a certain threshold it becomes costly), hidden tariffs such as value dating are often applied.

Pricing complexity as mentioned in the Report has been confirmed by our member organisations. In France it had been estimated by our member organization UFC Que Choisir that 7 out of 10 French bank customers - an estimated 31 million consumers - did not know how much their bank was costing them. Over 180 different bank charges exist in France[40].

In Italy, nearly 20% of consumers declare not knowing how much they pay for their current account. 51% declare not knowing how much they pay per year for using ATMs. And those who believed they knew were generally wrong[41]. Almost no Slovene banks provide complete information on charges, whether on their websites or on paper in their offices. Consumers usually find out how much they are paying for a service when they receive their statement at the end of the month, i.e. when they have already paid for it. [42] 7 out of 10 Danish consumers find bank prices confusing, as reported by our Danish member FBR.

The accessibility of tariffs is also difficult: since the 1st March 2005 in France, banks must supply a list of all the automatic and regular operations for a reasonable fee but this is billed 30€ by Credit Agricole, Credit Mutuel, and Societe Generale! In a survey conducted in 2006 by our French member CLCV, it appeared that out of 280 branches covering 10 networks only 50% provide leaflets with tariffs.

A worrying phenomenon in France is that information on accounts is provided to consumers only after they have signed the contract; consumers therefore encounter difficulties when trying to access information and compare banking offers[43]

All this might also explain partly why consumers' decision to switch is often based on dissatisfaction with their current bank[44]. If information is hard to get, and comparability difficult, it should be no surprise that consumers are not necessarily looking for best deals, even when better offers are available on the market.

We would support the additional measure, stated in the Report, of the ex-post disclosure of prices and charges applied by banks.

We are also of the view that information alone will not suffice. Consumers shall therefore receive impartial, high quality advice – 'best possible advice', under which they are being advised the product(s)/service(s) best adapted to their needs and to their (financial) situation (e.g. ability to repay, personal employment and family situation). The need for this will only increase with cross border provision, enlargement of choice and higher involvement of financial intermediaries.

Education as such is complimentary – and should not be used as an excuse to avoid (binding measures in terms of) better information/comparability and more professional and independent advice.

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[40] 'Frais bancaires : les Français exigent une facture séparée', UFC Que Choisir March 2003.
[41] As reported by our Italian member Altroconsumo in March 2005.
[42] As reported by our Slovenian member ZPS in 2006.
[43] 'Banques – le compte n'y est pas,' UFC-Que Choisir n°425, April 2005.
[44] Interim report p 94.

E. Development of payment infrastructures in the context of the Single Euro Payment Area

An important factor of a structural nature for market fragmentation is the **lack of an efficient infrastructure for non-cash payments**. Therefore, competition law has a role in tackling entry barriers. Nevertheless, it is not obvious that competition law alone is an efficient means to provide non-discriminatory access to the payment infrastructure.

To eliminate the risk of discrimination it is necessary to create a **clearer division for the respective responsibilities** – especially since many of the infrastructure providers within SEPA will remain owned and controlled by the larger banks.

That is why pricing of services provided by infrastructures cannot be determined through self-regulation alone. Furthermore, **efficient supervision and enforcement measures are essentia**l.

8. Are there features of the payment industry that limit competition either at the level of provision of clearing and settlement services or the provision of retail banking services? Please indicate areas that merit further investigation.

9. Are interchange fees necessary for the development of payment instruments (credit transfers and direct debits) in the EU?

The key aspects to consider in respect of an effective level of competition in SEPA include unbundling, non discriminatory access and a balanced representation and decision making process[45]. We underlined a number of these aspects in our submission to the Commission in the Groupement Cartes Bancaires case[46].

Even if we appreciate the merits of a more cost-based pricing in terms of 'market signal' to the consumer as regards the 'efficiency' of various payment options, a number of aspects should not be overlooked. The efficiency of payments needs to be assessed in terms of simplicity, user-friendliness and safety/perception of safety.

Electronic payments as such can be cumbersome or difficult to use for at least certain categories of consumers, the ones having difficulties remembering their PIN for instance. The relative security of payment instruments, beyond their 'theoretical' level (which could also be open to discussion), depends also on the practical use/behaviour of consumers and might hence vary from one consumer to another – or from one 'category' of consumer to another. For certain 'categories' of consumers, cash might not be less 'secure' than electronic payments.

Any discussion about 'efficiency' of means of payment shall take into consideration the need to ensure access to means of payment for all consumers, including vulnerable ones. We wonder also what could be the practical impact of allowing for surcharging/discounting on consumers/categories of consumers at the point of sale.

If some payment methods are subject to additional surcharges/discounts, this might call into question the 'equal' treatment of consumers/customers as they might not all have the same access to all means of payment. Ability to pay for a specific payment instrument might play a chief role here but other factors might enter into play, including the professional status (civil servant, etc…).

We are not entirely convinced that there would be a need for a MIF for SEPA direct debit. The potential detrimental impact of this on the pricing and use of direct debit would have to be considered.

10. Are there issues related to industry initiatives in the context of SEPA that should be assessed from a competition view point?

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45 Single Payment Area – 'Incentives' paper from the Commission, **BEUC/X/025/2006 OF** 12 April, 2006.

46 Soumission du BEUC et de l'UFC – Que Choisir - Case COMP/38606 Groupement des cartes bancaires', **BEUC/X/035/2004 DU** 2 décembre, 2004.

F. Other issues

11. Please provide comments on any other competition-related issues in relation to retail banking markets.

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