Fédération Bancaire Européenne
European Banking Federation
Le Secrétaire Général

AMS/DB
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European Commission
Directorate General for Competition

comp-bank-inquiry-feedback@cec.eu.int

Brussels, 11 October 2006

Subject: **EBF contribution to the public consultation on the Interim Report on Current Accounts and related services**

Dear Sirs,

We are pleased to send you herein enclosed the contribution from the European Banking Federation to the public consultation on the Interim Report on Current Accounts and related services.

We would like to thank you for the extra time you granted us in order to finalise our internal consultative procedure and hope you will take the enclosed comments into account.

We remain at you full disposal, should you wish to receive further clarification on the enclosed document.

Yours faithfully,

Guido Ravoet
Secretary General

Enclosure: 1

European Banking Federation-Fédération Bancaire Européenne (aisbl)
Rue Montoyer 10 • B-1000 Brussels • Tel: +32 (0)2 508 37 11 • Fax: +32 (0)2 511 23 28
www.fbe.be • fbe@fbe.be
http://ebf.irisb2b.com (Extranet – members only)

Fédération Bancaire Européenne

European Banking Federation

FBE OBSERVATIONS ON THE INTERIM REPORT II ON CURRENT ACCOUNTS AND RELATED SERVICES

Sector Inquiry under Article 17 Regulation 1/2003 on retail banking

Set up in 1960, the ***European Banking Federation (EBF)*** *is the voice of the European banking sector. It represents the interests of over 4500 European banks, large and small, from 29 national Banking Associations, with assets of more than EUR 20 000 billion and over 2.3 million employees.*

Introduction

As the representative of the banking industry, the EBF fully supports the goal of the Lisbon Agenda to deliver an efficient and competitive financial services industry and commands the Commission for its on-going efforts to promote it.

The EBF would like first to thank the Commission for the opportunity to comment on the Interim Report on current accounts and related services (referred to as the "Report" throughout this text). In accordance with the 'better regulation principles' the EBF considers the present consultation to be a necessary step towards a proper assessment of the actual functioning of the banking market. Indeed, we trust that the preliminary findings of the sector enquiry, as presented by DG Competition, will not be taken as final conclusions without taking full account of market participants' contribution to the public consultation. Especially since the Public Hearing held on 17 July 2006 did not permit a first exchange of views on the preliminary report and curtailed the public discussions in a meaningful manner.

We do not intend to comment on the detailed figures provided in the Report, but will focus on some more general concerns. This should not, however, imply that the EBF agrees with those observations, findings and analysis set out in the Report on which the EBF has chosen not to comment.

As a general statement, even if the EBF and its members welcome appropriate initiatives leading to the enhancement of competition and market efficiency in the sector, we would like to express our serious reservations on many aspects of the present Interim report, the way it has been conducted so far and the methodology applied thereto.

We therefore urge the Commission, in light of the same limitations acknowledged by the Report's authors themselves - to refrain from drawing any conclusions that may affect the whole market in the absence of a complete and accurate knowledge and until due consideration is taken of all its different components.

Banks dedicated to competitiveness – Encouraging supply to develop demand

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Rue Montoyer 10 • B-1000 Brussels • Tel: +32 (0)2 508 37 11 • Fax: +32 (0)2 511 23 28
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The EBF has stressed the industry's commitment to achieve a high level of competitiveness in the sector and to provide a high level of service to European banking customers.

In that respect, we believe that we have already achieved a lot and that the sector is already one of the most competitive of the European economy.

Indeed the completion of the FSAP has allowed for significant progress in wholesale market but similar progress should now be achieved in retail banking by lifting those legal and regulatory barriers that remain, in order to allow those banks that wish to expand throughout Europe to do so.

The banking industry's willingness is evidenced by the recent history. While deregulation has been an enabler of the economic development, market-led innovations such as internet banking and the growth of more sophisticated banking products, together with automation of back-office processing have resulted in significantly enhanced efficiency and service quality.

The EBF remains convinced that a high degree of retail banking fragmentation in the EU is primarily caused by the various legal and regulatory obstacles to the provision of cross-border retail banking services.

Suppliers have to meet different national legal and regulatory requirements and, hence, are unable to run pan-European retail banking operations and platforms without cost-intensive adaptation of their products and processes to local regulatory specificities. In addition, inconsistent implementation of EU regulation and the varying supervisory philosophies distort competition and contribute to preserve the current level of market fragmentation. This situation prevents financial services providers from exploiting economies of scale and offering retail customers a broader range of retail financial services at lower prices. We refer for more details to the main entry barriers that have been identified further in item B. There a more active policy role could be valuable.

Moreover, the view of the EBF is that in some areas priority should be given to market driven solutions, and that the merits of self regulation should be recognised.

In such an environment, market forces will continue to increase the competitiveness of the industry whilst competition policy is an important tool to correct anti-competitive behaviours.

Serious concerns on Methodology

The Report attempts to convey a description of retail banking in Europe. However, as expressed in the Introduction, the EBF has serious concerns about the methodology applied to draft the Report.

The Report presents, in our opinion, numerous *lacunae* that can have serious impact on the way the 'picture' of the retail banking market is projected. Moreover, what is particularly worrying to us, a number of conclusions seems already drawn by DG Competition without an accurate evidence-based approach and before the necessary analytical research is finalised.

To mention just a few examples:

- We believe that the merely descriptive analysis of the market, on one hand, and competition assessments, on the other, reveal a main contradiction. This causes a general confusion on the aim, the methodology and real outcome of the exercise undertaken.

  The Report itself contains contradictory statements: as stated in the Report (p. 12) the primary aim of these inquiries is to identify issues that require investigation and possibly remedy under the EU competition rules. This points in the direction of a case-by-case approach rather than a broad comparison of Europe's various and varied retail banking market. At the same time, however, it is also specified in the text (p. 15 and *infra*) that the analysis of *whether retail banking as a whole, cluster of products or individual products form relevant product markets in the sense of antitrust case assessment is* <u>*not*</u> *the purpose of the sector inquiry;*

- Sources of data used to construct the description of the market(s) do not seem to us consistent and homogeneous, in particular whenever the basis for calculation is different from one source to another (e.g. the coverage of available data, which does not always include all the EU 25 countries, in particular, the 10 new ones). This means that the Report is not comparing like with like:
  - the data collected on banks' retail income is based on an inconsistent interpretation of the terms 'retail banking' and 'retail customer', which evidently apply to different understanding across individual banks and countries;
  - the quality of the data surveyed may vary significantly according to the methodology/level of sophistication of banks' internal accounting systems.

- The analysis of the Commission is based on a sample of only 250 credit institutions active in retail banking in Europe. The way in which the sample was composed seems questionable as there appear to be major differences in the number of banks sampled in the different countries covered. Furthermore, in the light of the numerous references to OECD and ECB data, there is question of how much information provided by banks was actually used;

- Responding to the very detailed questionnaire sent by the Commission took the banks involved a great deal of time and effort. Moreover we have been informed about many difficulties encountered by national banking associations and banks in coping with the DG Competition's inquiry, due to (i) the timing of the sending and the length of the questionnaires, (ii) the poor level of accuracy in delivering the questionnaires to the right addressees, (iii) the unavailability of the questionnaires in any other languages than English;

We strongly believe that these divergences, limitations and inconsistencies in data and the way they were collected should caution the Commission against drawing any conclusions on the lack of competition in retail banking markets in the EU. Otherwise, this could lead to biased generalisations and misinterpretations.

Any investigation of this type would benefit, in our view, from the application of the better regulation principles. For example, pre-consultation on the format (including availability of recipients' linguistic versions) and contents of questionnaires, allowing adequate time for completion, avoiding the summer period and year end, as well as allowing the Commission adequate time for analysis, are basic criteria that should be respected.

<u>Specific Comments</u>

A. with regard to questions 1 and 2: Market structure and Fragmentation

As already stated above, we share the Report's description of a fragmented scenario in the EU retail markets. However, the Report refers to fragmentation - evidenced by the existence of different characteristics of the markets from country to country - as implying a lack of competition. We do not believe in such an approach and invite DG Competition not to underestimate the weight of the numerous factors, as also indicated in the Report (p.23 and 26-35), that cause such a fragmentation.

Differences among markets are the result of a combination of factors including also historical, geographical and cultural elements that are maybe less explored and explained in the Report. Also, as already outlined in our assessment on the barriers to cross border M&A in the banking sector in the EU[1], there are factors originating, or contributing to fragmentation of EU markets – in the form of obstacles to the efficiency of cross-border M&A. *Mutatis mutandis*, the same factors can be seen as affecting more generally the efficiency of any cross-border activity.

The Report also rightly mentions those factors, namely banking supervision framework, ownership and legal structure of credit institutions, taxation, consumer protection legislation (see item B).

In our opinion however, the Report fails to demonstrate why fragmentation, i.e. differences between national markets, would necessarily be synonymous with lack of competition, due to market participants' behaviour.

We also note that no account is taken of the important divergences between the situations in the EU-25 from a macro-economic point of view, in particular – but not exclusively - in the new 10 Member States, not only as regards pricing, but also as to the level and sophistication of the demand for products/services.

B. with regard to questions 4 and 6 - Entry barriers in Retail banking

As mentioned above, we consider that the Report rightly identified a number of current obstacles to the supply of cross-border retail banking that might be substantially reduced via a range of policy measures, namely:

- A more streamlined and effective banking supervision;
- The removal of obstacles to corporate expansion on a pan-European basis, among others those of a fiscal nature; and
- A more effective convergence among national consumer protection regimes.

With respect to the latter, in order to boost consumers' confidence as an indispensable component of the performance of retail banking, the EBF believes that consumer protection rules should be robust and provide consumers with a good level of protection across the EU.

However, consumer protection rules should not have the effect of hindering, rather facilitating the sale of products, developed in one domestic market, throughout Europe without the need for substantial modification. The EBF believes that a 'targeted' full harmonisation of key legislative provisions aimed at consumer protection in the field of retail services across the EU is indispensable.

[1] See FBE letter of October 2005 and related annexes, available at: http://www.fbe.be/content/Default.asp?PageID=117

In addition, we consider extremely important the ongoing revision of the EU consumer law *acquis* undertaken by the EU Commission and wish to encourage the latter to take such a project forward taking in due consideration the views of the industry.

C. with regard to question 7 - Customer choice and mobility

We find that the reason why the issue of *customer mobility* is being raised as a central issue in the context of competition policy in the banking sector is not made clear in the Report. The DG Competition attempts to explain current levels of customer mobility in Europe but it does not provide any evidence that lack of mobility is a symptom of lack of competition.

First, customer mobility cannot be an aim in itself and does not *per se* reveal whether or not customers are given full choice of products/services. As a consequence, we strongly reject the assumption that the lack, or the ‘low’ level of mobility is synonymous with lack of choice for customers; nor can we subscribe to the equation that low customer mobility means a lack of competition.

Second, we deem it inappropriate to try to define what level of mobility should be achieved in order to have a well-functioning retail market, at national or EU level – the two contexts being very different from this point of view. As a consequence, we consider it inaccurate and arbitrary to define the level of customer mobility as ‘low’ or high, in the total absence of a reliable criterion to assess what is an ‘optimal’ level of mobility.

What we do not see sufficiently covered in the Report are the peculiarities of the retail banking relationship compared to the one customers can seek for other kinds of goods and services. Banks deliver their offer within a more complex context than the one in which other mass consumption goods or services are offered.

The range of products and services – that are in most cases ‘contracts’ *per se* – is large, differing from one provider to another and from one country to another. The technical and legal links with a variable number of private and public third parties also make the banking relationship even more complex. But above all, there are as many customer’s profiles as there are customers in a bank and the assessment of any ‘need to move’ from one bank to another depends greatly – if not mostly - on the individual’s preference which is in turn very much linked to his/her satisfaction and personal assessment of priorities. These aspects, in particular the causality link between the level of customer mobility and the level of customer satisfaction are largely taken for granted in the Report.

As acknowledged by DG Competition, in a number of countries switching codes and procedures have been introduced, yet the level of switching remains low. Many factors particularly behavioural and social, influence consumers and SMEs to move or not to another service provider. Some will open another current account with another provider whilst others will shop around for loans and savings/investment products whilst maintaining their current account with their original provider whose service they are happy with. Could it be that mobility is considered a problem by only a small minority of bank customers? Is it not the case, as the DG Competition itself suggests, that low customer mobility may not imply the existence of high switching costs, rather that the main reason for not switching service providers is that customers are generally satisfied with their current bank (p92)?

The DG Competition should not down-play the importance of developing and maintaining consumer confidence in banking, recognising too that once customers have confidence in a bank, they generally look to stay with that bank for the long term, rather than changing every couple of years. Hence, there is a "natural" trend towards long-term relationships in retail banking. Operating in highly competitive markets, *customer satisfaction* is a key-driver for European banking players. For instance, a KPMG study carried out in 2004[2] found out that 78% percent of respondents declared being generally satisfied with their main bank.

In this respect, DG Internal market has just launched an expert group to identify whether there are any obstacles to customer mobility. We advise DG Competition not to take pre-emptive conclusions before the publication of the experts' report. There are already throughout Europe a number of existing solutions to facilitate customer mobility, resulting either from banks' own initiatives or from self-regulatory solutions. The Interim Report rightly points out (p 93) that, according to a 2005 Eurobarometer survey, 69% of respondents declared that changing bank was an easy or fairly easy process. As regards charges applied to customers wishing to switch their current bank account to a new provider, in a number of countries this facility is already free of charge for customers.

We believe that this part of the inquiry does not provide enough ground to draw any conclusion on the lack of customer mobility being related to a lack of competition. Even more so, if we consider that at the same time this area is being analysed from a structural point of view by DG Internal Market. On the contrary, we believe that a much more meaningful parameter would be the level of customer choice, regardless of the actual changes of provider that may or may not occur.

It is not clear from the Report what the DG Competition is likely to conclude on customer mobility in its final report to be published by the end of the year. It is important however that these conclusions do not pre-empt or nullify the results of discussions between experts that have been gathered by the Commission specifically to look at the issue of customer mobility in the banking sector.

D. with regard to questions 8 to 10 - Development in the payment infrastructures in the context of SEPA

We are aware of the fragmentation of payment infrastructures in Europe, which is one of the main reasons that underpin the implementation of the SEPA project by banks. Differences that can be observed among national systems are mainly due to the way the payment services have historically developed in each country. The creation of a network of providers following common banking regulations and practices, combined to the need to ensure a critical mass of operations to raise economies of scale, has led to a consolidation of payment infrastructures within, rather than across, national borders.

Usually credit institutions are admitted to participate in an infrastructure based on prerequisites allowing them to ensure the settlement finality of payments for smaller credit institutions which are relieved from much of the burden – and the related costs – of operating within the infrastructure, as well as the overall financial and operational stability of the system. This mechanism allows involving the biggest number of operators possible in the infrastructure, while involving in the daily running of the infrastructure those players that ensure the most significant volumes of transactions.

With reference to the analysis of payment infrastructures, the EBF is of the opinion that many aspects touched upon in the relevant part of the Interim Report will be positively

[2] Banking beyond borders: will European consumers buy it?, KPMG Audit Tax Advisory, 2004

affected by the SEPA project. Accordingly, the EBF invites the DG Competition **to give the SEPA project the time to be finalised, implemented and to deliver a critical mass result, before willing to seek for areas of potential concern**.

Indeed, if the emergence of one common infrastructure reflects a high level of 'maturity' of a given market, with the SEPA project not only is more efficiency expected but also higher level of safety and of competition among national infrastructures enabled to process in parallel the same kind of payments instruments - provided that a sufficient level of harmonisation of the legal background for payment instruments is achieved and that prudential supervision at national level does not provoke competition distortions.

Like many other achievements in the banking sector so far, the level of investment needed requires sufficient time for the benefit to be generated; at the same time, a decrease in the necessary support from public authorities and customers before that benefit is reaped may have a damaging effect on the outcome of the project.