

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Direct line: 020 7066 9346
Local fax: 020 7066 9728
Email: enquiries@fs-cp.org.uk

Gillian Hood
H M Treasury
Financial Stability and Risk Team
Room 4/22
1 Horse Guards Road
London
SW1A 2HQ

Our ref: Consultations HMT

2 October 2006

Dear Ms Hood

Discussion Paper: EU Proposal to Amend the Supervisory Review Process for Cross-Border Mergers and Acquisitions in the Relevant Banking, Insurance and Securities Directives

This is the Financial Services Consumer Panel's response to HMT's Discussion Paper on EU proposals to amend the supervisory review process for cross-border mergers and acquisitions in the relevant banking, insurance and securities directives. The EU proposals raise a number of issues of concern to consumers and our response focuses on those issues, rather than dealing with the individual questions posed in the Paper.

Overview

We support in principle the Commission's aim of ensuring consistency and fairness across all Member States and we would like to see consumers enjoying the benefits of greater choice and competitive pricing. However the proposals as they stand pose a threat to consumer interests that is in our view indefensible and unjustified. In addition we believe that the intended regime could be damaging to the financial markets as a whole.

Approval Requirements: Consumer Protection

As your Paper acknowledges, the FSA requirements imposed as part of the Financial Services & Markets Act's controllers regime include two key criteria: that the person who acquires/increases control is fit and proper to do so and that the interests of consumers would not be threatened by a particular acquisition or increase in control. Under the current proposals the requirement to consider the interests of consumers is simply swept away. This is in our view completely unacceptable and will, if carried through, place large numbers of consumers at risk across all Member States. Our understanding from HMT's paper of the rationale for this astonishing move is that the Commission seeks to ensure that an assessment is

made on prudential grounds only, prudential risk being regulated at a European level. We agree with the Commission that individual Member States should not be in a position to manipulate the assessment process in order to raise barriers to entry that are unfair. But removing the consideration of consumer interests from the assessment is too high a price for consumers to pay and may be contrary to the spirit of Article 153 of the Treaty which states that "consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities". Harmonisation and equality of treatment can and should be achieved in other ways.

Assessment: Burden of Proof

The Commission's proposal that in order to reject an acquirer's application the FSA would have to be **satisfied that the acquirer has not met the criteria** is inconsistent with the procedures for initial authorisation, where the FSA can reject an application if it is **not satisfied that the firm meets the criteria**. The burden of proof would be different depending on whether an individual or business decides to expand cross border buy buying/merging with an existing financial services firm, or by seeking authorisation itself. There is no rationale for such a fragmented approach. We strongly support HMT's view that there should be consistency between the two, based on the current burden of proof for authorisation.

Process: Time Periods

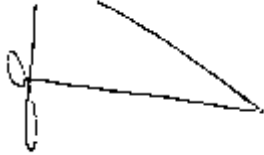
The Commission proposes that the time period during which the FSA would have to make a decision on an application be reduced to a maximum of 40 days in total, 30 days plus one chance to 'stop the clock' for up to 10 days. It is not clear how the process would work in practice, but we are not convinced that 40 days would give the FSA sufficient time to reach a view on applications that could involve complex chains of ownership and opaque funding. Such a reduction would endanger the interests of consumers by making it far easier for individuals and businesses to use financial firms to launder funds acquired illegally. We agree that the structure of the timing process should be transparent, clear and operated fairly – but a reduction in the overall time period will not achieve this and could well undo much of the good work that is being done to protect both the markets and consumers from financial crime.

The Consultation Procedure

We have concerns about the consultation procedure that is being used to deal with the Commission's proposals. We are not aware of any earlier detailed consultation or discussions with Finuse and the EU Consumer Committee - although the general areas of concern may have been raised – and yet it seems that the Council is seeking broad agreement on a text before the end of the year. The Commission's proposals raise important issues that cannot, we feel, be properly evaluated in this short timescale. We propose to raise this and other points with Commissioner McCreevy and will provide you with a copy of our letter.

Finally, we would be interested in the idea of a stakeholder group and would like to be represented.

Yours sincerely

A handwritten signature consisting of a vertical line with a small loop at the top, a horizontal line extending to the right, and a diagonal line extending upwards and to the right from the end of the horizontal line.

Chairman
Financial Services Consumer Panel