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European Banking Authority  
European Insurance & Occupational Pensions Authority  
European Securities & Markets Authority

18 March 2015

Dear Sir, Madam,

## **Joint Committee Consultation Paper on guidelines for cross-selling practices**

This is the response of the Financial Services Consumer Panel (FSCP) to the consultation by the European Supervisory Authorities' Joint Committee on guidelines for cross-selling practices.

The UK's Financial Conduct Authority (FCA) is required to set up and maintain a panel to represent the consumer interest. The Panel represents the interests of all groups of financial services consumers and operates independently of the Financial Conduct Authority. The emphasis of its work is on activities that are regulated by the FCA, although it may also look at the impact on consumers of activities that are not regulated but are related to the FCA's general duties.

The Panel welcomes the work the ESAs have undertaken to draft these guidelines. Complaints about cross-selling practices, especially relating to add-on insurance products and packaged bank accounts, have risen sharply in the UK in recent years. We hope that these guidelines, once finalised, will provide firms with direction needed to eliminate the problems that have been identified. However, the Panel would urge the ESAs to give serious consideration to restrictions on the practice of 'tying', given that this inherently reduces flexibility for consumers.

As regards the content of the draft guidelines, we largely agree with the problematic aspects of cross-selling that have been identified by the ESAs and the proposed examples of good practice. We have provided some comment on the potential benefits of cross-selling practices, as we do not think there is robust empirical evidence to support some of the assumptions made.

As a final point, we have also included some details on a recent Financial Conduct Authority market review of insurance add-ons, where insurance products are bundled with non-financial products and services. Consumers who purchase such bundled products would also benefit from firms' adherence to the guidelines.

Sincerely,



Sue Lewis  
Chair  
Financial Services Consumer Panel

## **List of consultation questions**

### **Question 1: Do you agree with the general description of what constitutes the practice of cross-selling?**

Yes, we agree with the general description. However, although we accept the focus of these guidelines is primarily on the packaging of two or more financial products and/or services, we would also like to draw the ESA's attention to the findings of the UK's Financial Conduct Authority's market study<sup>1</sup> on general insurance add-ons (e.g. travel or gadget insurance), which are bundled with a non-financial service or product.

The FCA found that such packaging practices have a clear impact on consumer behaviour. The negative effects found, mirror the potential detriments identified in the draft guidelines, such as limiting mobility, purchase of unsuitable products, and a lack of awareness that products were also available separately.

Crucially however, the claims ratios for add-on insurance products were "almost all very substantially lower than for more mainstream general insurance products". UK consumers alone are estimated to overpay for add-on insurance products by £108 to £200 million (€144 to €267 million) per year.

Given these findings, we would urge the ESAs (in particular EIOPA) and the national competent authorities to follow the lead of the FCA in establishing the potential level of consumer detriment in the market for packaged insurance products where these are bundled with non-financial services products.

In addition to a ban on pre-ticked boxes which is already recommended in the guidelines, the FCA is now considering a number of regulatory actions which we believe should also be considered at European level, including deferred opt-in sales for certain types of add-on insurance and requiring firms to publish claims ratios for different products offered.

### **Question 2: Do you agree with the identified potential benefits of cross-selling practices?**

Although the Panel agrees that cross-selling could under certain conditions entail the benefits as outlined on pages 10-11 of the draft guidelines, we note that no evidence is offered to support that these do in fact occur on a meaningful scale. In absence of an empirical evidence base, we are concerned that the benefits described could often be merely hypothetical.

We also believe it should be clarified in the guidelines that the potential benefits by definition do not apply to situations where products are 'tied', as the consumer will have no choice but to purchase the products jointly at a higher cost, irrespective of need.

More concretely, the Panel notes that the positive effects listed under point (a)(i) and (ii), on reduced overall price and superior financial conditions, do not necessarily logically result from the practice of cross-selling itself. It is not clear to us that the benefits of the efficiencies enjoyed by the firm through bundling products are indeed passed on to the consumer in the way described.

Instead, a lower overall price or superior financial conditions may simply reflect a conscious decision by a firm to make a package more attractive to potential customers. Similarly, the benefit described under point (c) (access to a wider range of products) is entirely at the firm's discretion.

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<sup>1</sup> <http://www.fca.org.uk/static/documents/market-studies/ms14-01-final-report.pdf>

In our view, the key consideration should be whether the consumer has a need for the package of products, and whether the individual components are all suitable to his or her needs. The overall cost of a package will be higher than if the customer had purchased merely a single component product. Therefore, any benefit for the consumer is entirely predicated on the customer's need for *all* products bought as part of the package. This also necessarily requires the benefits and limitations of each of the products to be conveyed accurately and comprehensibly to the customer. We are concerned that this requirement is, in practice, often not observed by firms.

For example, it is clear from thousands of complaints on packaged bank accounts that have been lodged with the Financial Ombudsman Service (FOS) in the UK that consumers are often unaware of the exact nature of the and cost of the package they have purchased. In 2013-2014, there were 5,667 complaints made to the FOS about packaged bank accounts, an increase of 248% on the year before<sup>2</sup>.

Similarly, the Financial Ombudsman Service has also stated that where consumers lodge complaints with it on Guaranteed Asset Protection (GAP) insurance sold with cars, they often claim that they later discover that the policy cover was not correctly described or its terms were unreasonably restrictive.<sup>3</sup>

### **Question 3: Do you agree with the identified potential detriment associated with cross-selling practices?**

The Panel agrees with the different types of detriment that are listed in the draft guidelines.

Although the guidelines do not take a specific position on 'tying' products, where consumers are not given the option of purchasing all products separately regardless of the overall package's suitability, the Panel queries whether this is a practice that works in the best interest of the consumer. Tying reduces flexibility for the consumer, limits their ability to switch between providers and negatively affects cost transparency.

In our view, particular detriment also arises from the fact that consumers are often not properly informed of the cost of the different components of a package, which prevents them from accurately assessing whether they are receiving value for money.

In a study<sup>4</sup> carried out on behalf of the Financial Conduct Authority in the UK on 'add-on' insurance products<sup>5</sup>, researchers concluded that consumers who purchase insurance as an add-on to another product or service suffered a number of disadvantages compared to consumers who purchased their insurance separately. During add-on sales, consumers were:

- Less likely to be well-informed about their purchase;
- More likely to be subjected to pressure selling;
- Less likely to shop around for a better deal;
- More likely to have the price of the add-on product obfuscated.

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<sup>2</sup> <http://www.financial-ombudsman.org.uk/publications/ar14/ar14.pdf>

<sup>3</sup> [http://www.financial-ombudsman.org.uk/publications/technical\\_notes/GAP-insurance.html](http://www.financial-ombudsman.org.uk/publications/technical_notes/GAP-insurance.html)

<sup>4</sup> <http://www.fca.org.uk/static/documents/market-studies/gi-add-ons-qualitative-consumer-research-report.pdf#page=8>

<sup>5</sup> Add-ons are a wide range of general insurance products that are sold alongside or on the back of 'primary products', either at the same time or subsequently i.e. if considered by that consumer to be part of their same purchase decision.

For these reasons, we support efforts by the European Commission and European Parliament to ban tying practices for insurance products under the recast of the Insurance Mediation Directive.<sup>6</sup> We also believe that similar restrictions should be considered within the context of any future legislative proposals governing the sale of other retail financial products.

The Panel would also note that the 'limitation of mobility' identified as a potential detriment under points 10) and 11) is not based purely on long-term contractual obligations entered into by consumers. The lack of transparency of costs of packaged products also has a structural negative effect on competition in the markets for the products involved more generally: pricing signals are a key incentive for consumers to switch providers, but bundling of products can significantly reduce price transparency.

Consumer mobility is further restricted by the fact that consumers are frequently not provided with sufficiently clear information about the distinguishing features of the component products of a package, making it difficult to compare products between different providers. By its very nature, the practice of packaging creates an array of possible combinations of products. The resulting packages may appear similar to consumers but in fact are not comparable, for example because of different interest rates on a loan or differing limitations in an insurance policy. The more complex the component products of a package are, the less likely it is that the average consumer can effectively compare it to competing bundles.

Concretely, in the UK cross-selling practices have led to problems with price transparency for bank accounts, because of the 'free-if-in-credit' model. British banks usually offer a 'free' account bundled with a range of other (paid for) products, which creates an opaque fee structure that prevents consumers from fully understanding how much they are paying for their account. As the precise nature of the package also varies from provider to provider, consumers are prevented from comparing different offers as they are not like-for-like.

For more information on the UK's FIIC banking model and its impact on fee transparency, we would refer you to outcome of the Vickers Independent Commission on Banking<sup>7</sup>, which concluded that the resulting lack of transparency about the true cost of banking services meant people could not assess whether they were receiving value for money, or whether they would get a better deal elsewhere. Similarly, French consumer organisations have found that packaged bank accounts were often sold at higher prices than the cumulative price of the services if purchased separately<sup>8</sup>.

The Consumer Panel itself in 2014 also published a discussion paper on cross-subsidisation in the British market for personal current accounts<sup>9</sup>. This echoed the concerns above, noting that vertical and horizontal cross-subsidisation made it difficult to isolate the costs of personal current accounts (PCAs) and revenues from other banking products, and whether or not PCAs deliver good value for consumers. This creates a significant challenge in assessing the competitiveness of the market.

**Question 4: Please comment on each of the five examples in paragraph 13, clearly indicating the number of the example to which your comment(s) relate.**

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<sup>6</sup> [http://www.fs-cp.org.uk/publications/pdf/fscp\\_position\\_paper\\_on\\_imd1\\_20150120.pdf#page=4](http://www.fs-cp.org.uk/publications/pdf/fscp_position_paper_on_imd1_20150120.pdf#page=4)

<sup>7</sup> <http://www.parliament.uk/business/publications/research/briefing-papers/SN06171/the-independent-commission-on-banking-the-vickers-report-the-parliamentary-commission-on-banking-standards>

<sup>8</sup> <http://www.clcv.org/nos-enquetes/enquete-banque-2015.html>

<sup>9</sup> [http://www.fs-cp.org.uk/publications/pdf/discussion\\_paper\\_cross\\_subsidies\\_in\\_the\\_pca\\_market\\_20140911.pdf](http://www.fs-cp.org.uk/publications/pdf/discussion_paper_cross_subsidies_in_the_pca_market_20140911.pdf)

It is not clear to us why the five examples listed in paragraph 13 are outside of the text of the guidelines themselves, and whether they will be incorporated into the relevant individual guidelines before they are formally published.

The Panel believes that it would be helpful for both national authorities and firms to have each guideline accompanied by examples of both good and bad practice (clearly marked as such), to enable them to identify shortcomings and improve practices.

When deciding on the final list of illustrative examples, we would also urge the ESA Joint Committee to consult the detailed examples and case studies provided by the Financial Conduct Authority<sup>10</sup> and the Financial Ombudsman Service (FOS)<sup>11</sup> on actual consumer detriment that has occurred in the market for packaged products in the UK. Some additional examples include:

- Customers not being informed of important limitations to insurance policies sold as part of a package;
- Firms 'upgrading' customers from a free to a paid-for packaged bank account without obtaining the customer's explicit consent;
- Use of complex and lengthy documentation to accompany insurance policies which many consumers may not read or understand.

**Question 5: Please comment on the proposed guidelines 1 and 5 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

The Panel agrees with guideline 1 as drafted. For guideline 5, we would recommend a specific and explicit reference to limitations to any insurance policies purchased as part of a package, in particular exclusions or exemptions the customer is unlikely to expect (for example an age limit on travel insurance).

**Question 6: Please comment on the proposed guidelines 2, 3, 4 and 6 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

The Panel agrees with guidelines 2, 3, 4 and 6 as drafted. However, the examples provided in each of these guidelines appear to outline general principles to be observed (in contrast to the product-specific examples provided for guidelines 1, 5 and 7).

Accordingly, the ESAs should consider whether to incorporate these examples into the guidelines themselves. This would make it clear that these instances of 'good practice' are how the ESAs expect the guidelines to be interpreted, irrespective of the products involved.

More specific instances of how these may be implemented in practice could be provided as illustrative examples. Given the different detriments that can occur through cross-selling for different types of products (e.g. travel insurance, interest rate swaps, etc.), the Panel believes inclusion of specific examples for different products within each guideline also merits further consideration.

<sup>10</sup> <http://www.fca.org.uk/static/documents/market-studies/qi-add-ons-qualitative-consumer-research-report.pdf>

<sup>11</sup> <http://www.financial-ombudsman.org.uk/publications/ombudsman-news/112/112-packaged-accounts.html>

**Question 7: Please comment on the proposed guideline 7 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

In paragraph 23, we believe that “enables” should be replaced with “requires”, to clarify that consumers must actively and consciously select the component parts of a bundled package individually before committing to purchase.

**Question 8: Please comment on the proposed guideline 8 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

The Panel considers that it could be useful to include in this guideline a specific reference to the ‘suitability’ criteria contained in MiFID 2 (knowledge & experience of the products, financial situation and objectives & risk tolerance).

While we are aware that such a ‘suitability’ assessment will only be statutorily required for advised sales of investment products under MiFID 2, it would be constructive to encourage all types of financial services firms to consider, where appropriate and feasible, undertaking such an assessment to reduce the risk of miss-selling. This would be true in particular in the context of an advised sale.

**Question 9: Please comment on the proposed guidelines 9 and 10 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

We agree with the proposed guidelines.

**Question 10: Please comment on the proposed guideline 11 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

The Panel supports the ability of consumers to split the products they purchased as part of a package without incurring disproportionate exit charges or other fees. However, we are concerned that current wording - whether such a split is “not realistic” for “good and justified reasons” - is too ambiguous.

We believe the last sentence of this guideline could be strengthened by replacing “unless there are good and justified reasons why this is not realistic” with “unless there are technical links between two or more of the products which mean that one of the component products can exist only as part of a package, such as off-set mortgages”.

**Question 11: Please provide any specific evidence or data that would further inform the analysis of the likely cost and benefit impacts of the guidelines.**

No comment