



The European Federation of Insurance Intermediaries
La Fédération européenne des intermédiaires d'assurances

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POSITION PAPER

Commission's Consultation on the study of tying and other potentially unfair commercial practices in the retail financial sector

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BIPAR, the European Federation of Insurance Intermediaries

is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 45 national associations, established in 31 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people.

Founded in Paris in 1937, BIPAR headquarters were moved to Brussels in 1989. It is today the official and recognised voice of insurance intermediaries with the European Institutions.

I. GENERAL COMMENTS

BIPAR welcomes the opportunity provided by the European Commission to comment on its consultation on the study of tying and other potentially unfair commercial practices in the retail financial service sector.

BIPAR would first like to comment on the methodology of the study. In its questionnaire, the consultancy firm asked each professional to answer in the capacity of his own activity. The consultancy study is therefore based only on answers of professionals who accepted to take part in this study. Given the limited number of answers received (66 answers to a questionnaire sent to 6,529 financial institutions and 430 national organisations and associations), BIPAR would like to highlight that these answers constitute a rather poor basis of analysis which may therefore not reflect correctly the diversity of the EU 27 national markets.

BIPAR is in general in favour of a well-balanced level of consumer protection, a basic condition for the much needed trust in our industry. At the same time, we welcome any initiative aimed at avoiding distortion of competition and obstacles to the smooth functioning of the internal market.

II. ANSWERS TO THE EUROPEAN COMMISSION

- General assessment

- (1) **Do you agree with the study's findings and conclusions, in particular, regarding the identified potential impact of tying and other identified potentially unfair practices in the different stakeholders groups?**

BIPAR answer:

BIPAR agrees in general with the study's findings. It is, however, important to underline that tying (or similar practices) can be beneficial for the consumer provided that he/she makes a free and informed choice.

- (2) **What other comments/suggestions would you have, including possible evidence supporting or rebutting the findings of the study? Please provide, where possible, concrete examples/quantitative information.**

BIPAR answer:

The issue of tying (and other similar unfair commercial practices) is a very delicate one. In some countries, such as France for instance, legislation is quite developed compared to other countries. In the UK, the emphasis on good practices vis-à-vis consumers in the retail financial services sector has led to pressure on financial institutions in adopting ethical codes and behaving responsibly with customers. However, it is often difficult to measure the existence of tying or other similar unfair commercial practices. Clients often admit that they have given in to this kind of commercial pressure, but they can seldom defend their rights on legal grounds for lack of proof.

BIPAR believes that it would be appropriate to conduct a survey directly among consumers in order to better determine the current practices and to find out why consumers have difficulties in starting legal proceedings. This would probably help to define the most adequate measures¹.

In 2009 in the Netherlands at the initiative of FIDIN, BIPAR's Dutch association of insurance intermediaries, tying practices were under discussion in the Parliament and within the Dutch Competition Authority (NMa). In its report on the issue, the NMA concludes that in 70% of the cases (2000 respondents), there is no tying. Only in 8 % of the cases there is hard tying, and in

¹ On 22 and 23 October 2009, AGEA, BIPAR's French member association representing insurance agents, took an IFOP poll of a cross-section of 999 French citizens aged between 20 or above (quota sampling). This survey highlighted the large number of cases of concomitant sales when taking out a loan or a savings product in a bank (49% of the people polled said that a related product was proposed to them on this occasion).

18 to 23% of the cases, there is soft tying. Tying practices can be an infringement of the competition law but only in the case where the bank has a dominant economic position. The NMa concluded that it has currently no proof of such infringements. FIDIN did not agree with the NMa conclusions. It considers that 8% of 2000 cases are hard tying and believes that these cases are unfair practices and should be prohibited by legislation.

- **Impact of tying and other identified potentially unfair practices**

(3) How could it be ensured that market participants do not suffer from the negative effects of these practices? What could help consumers to avoid being locked in by these practices?

BIPAR answer:

It is necessary to take into account the fact that the client may be more vulnerable in the case of an unsolicited sale (sale by phone, concomitant sale, ...), especially when a professional comes to him and is well informed about all the contracts that the client already has with competitors, which adds to the information distortion between the professional and the consumer.

This is why we believe that it is important to regulate also the aspects related to the confidentiality of personal data, which is often today transferred to business partners by the institutions that hold bank accounts, without the client being aware that he has authorised the removal of data confidentiality. In some EU countries, in France for instance, the waiver of bank secrecy for business purposes is included in a simple standard clause in the account opening form. Such a waiver of confidentiality should be only possible by a written request and not by the simple checking of a box².

- **Possible follow-up**

(4) Do you believe that, based on the findings of the study, the Commission needs to address the issue of tying and other identified potentially unfair practices? If yes, what are your views on the form that such a policy response should take?

BIPAR answer

We are of the opinion that consumer protection in this field requires, beyond the adoption of legislation prohibiting some practice or other, a reinforcement of all systems of prevention and sanction with regard to:

- relevant and appropriate information of the consumer. Indeed, tying (or similar practices) can turn out to be very positive for the consumer provided that he makes a free and informed choice. This requires adequate training of the professional on each of the products sold; the professional must also take enough time to explain the characteristics of each product besides providing the legally required documentation or underlining the proposed tariff advantage.

Also, for example, the client should be informed that he can take out somewhere else a product that is proposed to him with another product, and this should be done at the contract stage and also possibly as early as the advertisement stage (this is the case for instance of consumer credit and insurance).

² In this respect, AGEA's poll (conducted on 22 and 23 October 2009 by IFOP among a cross-section of 939 French citizens aged between 20 or above - quota sampling) gives very interesting results. 75% of the people polled believe that their bank does not have the possibility, be it through a legal provision or a contractual clause, to transfer even their contact details to other institutions of its financial group.

94% of the people polled would not be ready to authorise such a transfer of data. This percentage reaches 99% when it comes to the transfer – besides their contact details - of information on their profile and data related to the use of their banking current account.

Canadian legislation in this field could be a useful inspiration and food for thought. It imposes that the rules be displayed to the consumers, and imposes in particular marketing in two steps when several products are sold: the professional makes one offer and only after can he propose a second product and explains the advantages if both products are taken out at the same time.

Those same principles should be applied for packages: the client must have the possibility to choose from the package only the products that interest him, so that he has an offer that is really adapted to his needs and not a full package with products that he does not need. The client will also know immediately what the impact is of his choice on the global price.

- the possibility for the consumer to stand back before taking a decision, as some quiet thought is needed to guarantee an informed choice
- And also an efficient control of the respect of regulations. Respect of legislation is indeed essential in this field where professionals' oral arguments can strongly influence consumers' decisions.

(5) If you consider that a legislative solution at EU level is necessary, do you believe that the issues should be dealt with by sector specific legislation or by horizontal legislation (e.g. in the context of the review of the Unfair Commercial Practices Directive)?

BIPAR answer :

It would be difficult today to foresee a specific legislation by sector of activity because products/services are sold concomitantly (loan with insurance and alarm; telephone with insurance, etc.). The implementation of a horizontal regulation should not prevent, on the other hand, the existence of specificities per sector when necessary.

BIPAR remains at the disposal of the European Commission and looks forward to contributing in more detail to further discussions.