



22 March 2015

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Dear Sir/Madam,

**Deutsche Bank response to ESAs Joint Committee Consultation on Guidelines for cross-selling practices**

Deutsche Bank appreciates the ESA's efforts to develop detailed guidelines for cross-selling practices

We welcome and agree with the guidelines objectives to ensure transparency on product offers and adequate protection of customers when they make joint purchases of different products, either in a tied or bundled package. Therefore, we only have remarks and suggestions for further clarification.

When implementing the future guidelines, authorities should take into account the different levels of experience and knowledge of customers. For example, institutional and corporate customers are professional investors and as such have different information needs and expectations compared to ordinary retail consumers.

We acknowledge the importance of the requirement to inform all clients in a timely and transparent manner, irrespective if they are retail or professional clients. However, unnecessary complexities and legal uncertainties arise if in particular in the application of the guidelines where cross-selling occurs with one component covered by one piece of sectoral legislation focused on 'customers' while another is covered by a different piece of sectoral legislation covering only 'consumers'. The ESAs should specify that in general the focus of these guidelines is on enhancing protection of consumers and indicate those cases where corporate customers would also come under the guidelines. This should be in line with the analysis the ESAs provide in the consultation document under the heading "Behavioural drivers of potential consumer detriment" (p.11 & ff.).

To avoid any unnecessary complexities, standardized retail banking products such as current accounts and debit cards are today are considered by customers as a single product should be taken into account. There may be additional costs if the prices of by-products or additional services that are in fact simple product features of such a basic product would need to be indicated in greater detail. For these products, customers do not expect an extended information or advice process. Ultimately the additional costs and expenses that enhanced disclosure and advice obligations would imply in these cases would not be proportional to the expected customer value.

Enclosed you will find our more detailed comments on specific points in the consultative document and we trust you find these helpful. Please let us know if we can provide further information.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Daniel Trinder".

Daniel Trinder  
Global Head of Regulatory Policy  
Deutsche Bank



## Answers to questions posed in the consultation paper

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

In general, we agree with the description of cross-selling practices provided in the consultation paper. In many Member States, a wide range of statutory rules already cover cross-selling practices in financial services, e.g. German Civil Code (BGB) Section 358, “Contracts connected to the revoked contract” and Section 360 BGB “connected contracts”, or Insurance Contract Act (VVG) Section 9, “Legal consequences of revocation”. These laws provide the basis on which our products in the German market are offered.

We welcome further clarity in Footnote 4 (p9), according to which the reference to “packaged” should not be confused with Packaged Retail Investment and Insurance-based Products (PRIIPs) as defined in the PRIIPs Regulation and that it follows that e.g. the sale of a structured bond is not a cross-selling practice. The same argumentation should apply with regard to OTC derivatives as they also “*may inherently involve a combination of elements*” but would not imply any cross-selling – the client deliberately buys a product comprising different components. We would welcome any clarification as to whether they can be considered as falling outside the scope of these guidelines. The obligation to indicate the costs and charges of each single derivative would be disproportionate and of no further interest to customers who are more interested in knowing the risks, costs and pay-out of the derivative. Should OTC derivatives fall under the guidelines nevertheless, this might in particular have an impact on the offer and availability of these products for SMEs.

We would welcome further clarity that the focus of these guidelines is on enhancing protection of consumers, which should also be consistent with the analysis the ESAs provide in the consultation document under the heading “Behavioural drivers of potential consumer detriment” (p.11& ff). When implementing the future guidelines, authorities should take into account the different types of customers covered by the EU sectoral legislation (level-1 legislation) as well as the different levels of experience and knowledge customers have. For example, Article 24 (11) of MiFID II allows for a differentiation among customers. Next to the general disclosure requirement applicable to all clients (para 1), it also provides for additional information obligations with regard to retail customers only (para 2). It is important that future guidelines take into account differentiations made in level-1 legislation.

Professional investors clearly could be provided with more details if required. However, institutional and corporate customers are professional investors and as such have different information needs and expectations as compared to ordinary retail investors. We acknowledge the importance of the requirement to inform all clients in a timely and transparent manner, irrespective if they are retail or professional clients. However, we also see the danger of legal uncertainty and unnecessary complexities arising, if the limits to pure consumer protection get blurred.

In the interest of legal certainty, some further clarifications might thus be necessary as to which products/offers and which types of customers might be considered as being outside the scope of the guidelines.

In our view, the following scenarios should not be considered as cross-selling:

- Shared clients across business units: different business units within one company share the same client and the client has a contract with each business unit, offering independent services
- Rebates between business units: the client of one business unit gets a discount if he buys the product of another business unit



Institutional clients usually buy “solutions” rather than single products, i.e. clients often buy a bundle of products (e.g. accounts, payments, pooling, investments, FX...). If this is made transparent to the client, this should not create an issue in the context of bundled services.

Moreover, debit cards are today an inherent element of any payment account. We do not consider it cross-selling if such cards would be only a product feature of a payment account provide the clients would not consider this as bundled products.

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

We agree with the potential benefits described in the consultation paper.

We would suggest a further point to be considered as a potential benefit of cross-selling practices. In certain cases, cross-selling could offer risk mitigation solutions for the customer, e.g. the credit protection insurances in case of unemployment, occupational disability or event of death, especially if this is surrounded by adequate rules ensuring flexibility and choice for consumers (see for more details on system applicable under Q3).

Regarding the ESAs’ analysis of “superior financial conditions” (p11, pt. (ii)), we would like to point out that in Germany an insurance cover is not a condition for granting a loan at a reduced interest rate. It is the consumers who require this (see recent independent market study “*Fundamental study on Consumer Financing 2014*” issued by GfK Financial Market Research). Furthermore, the unemployment insurance offer is available only within a payment protection insurance tied to a personal loan, and not offered on a standalone basis within the market (ref. ‘wider range of products’)

In the investment space in particular, the aim of the bundling is not a higher margin for the producer but rather the opposite: as the focus is on creating products that are more attractive for investors through the integration of extra benefits. Generally speaking, product bundles are aimed at building bridges for investors where one component offers an attractive yield (the bridge) to a second component which is – on a stand-alone basis – less attractive for the investor for different reasons. The costs (which in the client’s view equals revenues for the producer) of one part of the tied product may be transferred to the other part, thereby improving the performance/yield potential for the investor.

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

Whilst the described detriments may occur in some individual cases, in most cases existing regulations and civil law do not allow the behaviours of firms as outlined in the consultation paper (esp. p.11-12, sections 2- 4). This is particularly true with investments, where regulated advisory process has to be followed, as product bundles related to investment products are subject to strict regulation (risk disclosure, cost transparency, suitability checks etc) to ensure that the customer has the required knowledge to buy these. Cases as described in section 5 should not occur in this context. Furthermore, it is commonplace that more than just one product is part of the advisory process, since most client portfolios contain several products (p.11, sections 2 and 3 are neither relevant). As a consequence, the potential sources of consumer harm (p.13) are not relevant for product bundles related to investment products.



For our principal retail banking products, we also see very little potential customer detriment in reference to the situations identified in the consultation paper. In many cases, the costs for products in combination with an account package lead to lower costs for costumers. They offer sufficient flexibility, as costumers can terminate the contract or change the payment account model at any time. We have no empirical basis for negative experiences in this regard. Instead, we witness an increasing consumer interest in products combining current accounts and different types of cards.

Of course, it is always important to analyze the needs of the consumers and to recommend suitable products accordingly. Our sales force is trained to this end. Nevertheless, the ultimate purchase decision should rest with the consumer.

With regard to institutional or corporate clients we would consider the described behaviours as not plausible in most instances (esp. those under sections 3), 4 a) and b), 8) and 9) e.g. that *“customers at the point of sale are often not able to make the best decision because.....they are unable to effectively process the information given to them ...”* or *“they are reluctant to spend the necessary time and cost to shop-around for alternative components....”*; *...may lead to situations where customers purchase products or services they do not need or cannot benefit...”),* showing that the focus of the guidelines should be on consumers.

Underneath we offer more specific comments on the potential consumer detriment associated with cross-selling practices as identified in the consultation paper (p.13), based on the example of a loan coupled with payment protection insurance. Depending on the legal framework within which cross-selling is taking place (e.g. under German law), we would in general not agree with the potential sources of customer harm identified in the consultation document.

**Extra costs for customers:** A wide range of statutory rules, including precise duties on customer information, lead to a high level of product transparency and allows the consumer to perform a well-informed decision. In Germany, the approval of a loan is independent from an insurance contract purchase.

**Consumption (and overconsumption) of unwanted and unsuitable products:** The product offer is aligned to consumer needs. In the case of a personal loan and payment protection insurance, existing insurance coverage of the customer can be integrated due to product flexibility and the optional purchase of individual insurance components. Again, objective advice and the abovementioned duties on customer information allow for a well-informed decision by the customer.

**Limitation of Mobility:** The tied contract, in this case the payment protection insurance contract, can be cancelled independently. In addition the statutory provisions of the German Insurance Contract Act (VVG) in Section 9 re. “withdrawal of connected contracts” will be applicable.

**Withdrawal from the market:** Very low levels of customer complaints indicate a high quality of customer advice. A high share of business done with existing customers (top-up credits) including insurance coverage, point towards a high degree of customer satisfaction. The volume of the consumer credit market in Germany has been stable for years, according to Bundesbank statistics, and the personal loan market is growing steadily (+1,4% comp. 2013 to 2012).

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



We consider examples 1 to 2 as clearly not in line with our business practice and incompatible with our policies and our values and beliefs on how to do banking business. The rationale behind a combined offer should always be the benefit for the customer. We would expect that in all EU Member States these cases are considered as practices prohibited by the Unfair Commercial Practices Directive.

As for example 3, we refer to the current practice in Germany, where the portion of the proportional part of the pre-paid premium of insurance will be calculated according to mathematical rules recognized by supervisory authorities. Deductions for early cancellation may, according to the law, only be requested if they are foreseen in the contract. Calculation methods are described in the general terms and conditions handed out to customers in advance.

As for example 4 and in case amounts such as early termination fees or additional costs may be due, they should always be part of proper information provided to the customer in advance of the contract.

Moreover, in general no disproportionate early termination charges for insurances may be requested. For life insurances for example, technical calculation methods of the insurance sector take into account the higher risk at the beginning of the contract. In case of complementary insurances, the reimbursement will take place pro-rata-temporis without any deductions.

This example would also not be relevant for payment cards and payment account products. Clients who purchased a “special” credit card (e.g. “Gold”) including special insurances may convert this into a “normal” credit card at any time if they later realise that they do not need this insurance element anymore. Related annual fees will be reimbursed proportionally.

Concerning example 5, we consider these practices to be incompatible with any sustainable client relationship. Furthermore, appropriate guidelines for our sales employees and advice processes provide that clients are not sold products of no benefit to them. In addition, system restrictions built into our application process for insurance products would automatically prevent miss-selling of products to customers (e.g. taking into account the age and professional status of a client, a housewife would not be able to buy an unemployment insurance contract).

***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.***

For the reasons given underneath, we would argue that any additional supervisory measures should ensure coherence with existing legislation.

### ***Full disclosure of key price and cost information***

**Guideline 1, Sections 13 & 14:** In general, all mentioned price and cost elements are disclosed in a transparent manner and listed in our terms and conditions for banking products such as accounts, payments and cards. For mortgage products in particular, several consumer protection directives and guidelines provide precise details on disclosure of key charges and costs (e.g. German consumer credit law/ new Mortgage Credit Directive). Legal requirements in the insurance sector also ensure that we disclose costs and premiums to pay in detail. On the basis of the German Insurance Act (VVG) for life insurances, the costs for



distribution and management that are included in the premium must be disclosed. For our property insurance contracts, this is also disclosed.

In some cases, disclosure of individual prices of the different product features (e.g. of a payment card) is not expected by the customer and would not correspond to the way these products are calculated. The costs for such simple basic banking products would also increase if such a detailed disclosure would be required (please also see our response to Q11).

In the context of investment products, we expect that the cost disclosure in the future KID in pursuance of the PRIIPs Regulation would cover this adequately and would not include internal financing costs, etc. Furthermore, certain cost elements are dependent on third parties or on future developments (e.g. number of orders placed). It would not be appropriate to provide a detailed breakdown in such instances.

### ***Full disclosure of key information on non-price features and risks, where relevant***

**Guideline 5, Section 19:** Several consumer protection directives and guidelines already require a disclosure of key non-price features (according to section 4b on p12) they would comprise; “key benefits” and “limitations”) as well as risks. For example, on the basis of the basic product information sheet (Produktinformationsblatt, PIB), all relevant information on risks and services are disclosed to the customer in a simple and clear language (Informationspflichtenverordnung, VVG).

For certain products, it should be defined more precisely what is to be considered as “key non-price features and risks”. In many cases it would not be necessary to go as far as what is foreseen for the KIDs regime. To avoid information overload of the customer a limitation of the information to costs and risks, as requested already by various consumer protection legislations should be sufficient in many instances.

Finally, we refer again to Art 24 (11) of MiFID II allowing for a differentiation among customers. Next to the general disclosure requirement applicable to all clients (para. 1), it also provides for additional information obligations on risks with regard to retail clients only (para. 2). It is important that future guidelines take into account differentiations made in level-1 legislation. We would, of course, not object to providing professional clients with more detail in case they request this.

***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.***

For the reasons given underneath, we would argue that any additional supervisory measures should ensure coherence with existing legislation.

### ***Prominent display and timely communication of key price and cost information***

**Guideline 2, Section 15:** For most of our products, the outlined guideline is fulfilled from our perspective. For example, for credit cards incl. insurances, consumers will be duly informed about relevant features for each product component. Several consumer protection directives and guidelines already require disclosure of key price and cost information as well as



information about the possibility to withdraw from the contract within a certain time period after purchase (e.g. German consumer credit law/ new Mortgage Credit Directive).

In case of investment products, it is however impossible to disclose costs in advance fully and definitively, as certain costs are dependent on the amount of orders given.

**Guideline 3, Section 16:** We agree with this section in principle, as it is always our aim to explain possible complexities to customers in a simplified and jargon-free language. Additionally, several regulatory guidelines and consumer protection directives require such practice already.

However, it should be further clarified what precisely is meant with "*prominent*" – should the cost information be prominently disclosed as indicated under the illustrative examples under section 17 - should in this case the same font be used for the total cost of a product as for the different cost components?

**Guideline 3, Section 17:** We agree and comply already with this requirement. However, in the case of investment products we wonder whether the requested information would possibly have to be provided in addition to existing German Key Information Documents (Produktinformationsblätter, PIB) or PRIIPs KID. Would a separate information sheet be necessary on the cost of the tied product and of the components if there are two separate financial instruments? This seems to be inferred on Annex 1: "Scope", section 3 (p.19). But we consider that this would lead to information overload for the customer.

**Guideline 4, Section 18:** For most of our products, the guideline is fulfilled. For example, for credits, the regulator requires a clear calculation of the annual percentage rate of charge in order to give the consumer a transparent overview and the possibility to compare different offers also including cross-sold products. For investment products, it is impossible to fully disclose all costs in advance, as some are depending on unknown factors in the future (e.g. the amount of orders).

#### ***Prominent display and timely communication of key information on non-price features and risks, where relevant***

**Guideline 6, Section 20, 21:** Several consumer protection directives and guidelines already require a full disclosure of key non-price information as well as risks. While our advisors will always try to explain the products in a language that is understood by the customer, in some cases, legal requirement impose the use of certain formulations, which may be considered as complex by some customers.

***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.***

For the reasons given underneath, we would argue that any additional supervisory measures should ensure coherence with existing legislation.

#### ***Prominent display and communication of 'optionality of purchase'***

**Guideline 7, Section 22, 23, 24:** We agree that customers should be in a position to make a well-informed purchase decision. For current accounts for example, we advertise the differences of current account models transparently (e.g. on our website, in our terms and conditions and price lists or brochures for current accounts, in which we present a comparison of our current account models), and we give guidance to our customer accordingly. In addition, our staff will inform and advise our customers to allow them a



suitable decision if required. In certain instances, one of the component products may not be available separately but remains optional (e.g. payment protection insurance for credits)

**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**

For the reasons given underneath, we would argue that any additional supervisory measures should ensure coherence with existing legislation.

***Assessment of demand and needs or suitability/appropriateness, incl. eligibility***

**Guideline 8, Section 25:** We always aim to offer appropriate products to our clients. The analysis of their needs ahead of offering and selling them products is therefore built into our sales processes and internal guidelines. The contents of this draft guideline are already daily practice and a matter of course. In addition, in certain cases, system constraints built into the application process prevent mis-selling of products to customers (e.g. the system considers the age and professional status of the client and as a result, a housewife would not be able to buy a disability and unemployment insurance).

For investment products the advisory process is strictly regulated in terms of suitability checks etc. by existing laws. MiFID II and the PRIIPs Regulation will put further requirements in place in the near future. Therefore, for investment products no further requirements through guidelines should be implemented at this stage.

There is a further consideration worth noting for investment products sold only after an advice process. The obligation „to ensure that the overall package and the component products constituting that package are distributed in accordance with any applicable requirements....“, might lead to a somewhat confusing result for the client. The bundled product may be suitable for the client, as it corresponds with his investment targets, but the individual components might not be suitable. For example, a client does not want to take any risks and therefore takes out a variable credit plus an interest swap. Neither the credit nor the swap taken on their own would be suitable for the customer.

**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**

For the reasons given underneath, we would argue that any additional supervisory measures should ensure coherence with existing legislation.

***Adequate training for relevant staff***

**Guideline 9, Section 26:** All relevant product information is available to our sales organization. Our information processes are standardised and there is a well-established relationship between product management and sales. Training programmes are synchronised with complexity of products and are conducted on a regular basis.

***Conflicts of interest in the remuneration structures of sales staff***



**Guideline 10, Section 27:** Considering the already broad range of existing regulation on remuneration, including in MiFID II, we would recommend not to set any further rules on remuneration in the context of these guidelines on cross-selling practices at this stage. There is a danger of conflicting rules, leading to more regulatory uncertainty.

In the context of investment products, we have some further remarks regarding example 1. The expression “*to push the sale of the bundled package and which may therefore encourage the unnecessary sale of either a component of the package or the package itself*” could be misunderstood with regards to the term “sale”. In case no advice is provided, it cannot be determined whether a product as such or the components are relevant for the client who will take the ultimate decision on this aspect. We would therefore suggest using the term “to recommend”.

***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.***

For the reasons given underneath, we would argue that any additional supervisory measures should ensure coherence with existing legislation.

#### ***Post-sale cancellation***

**Guideline 11, Section 28, 29:** We fully agree with this guideline. For some products such as mortgages the sales processes are already well-regulated by consumer protection directives, including consumer rights to terminate or to withdraw products after purchase.

For basic products such as payment accounts and cards, the consumer can terminate the contracts or switch to another banking product at any time. The annual fees will be reimbursed proportionally.

***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.***

We would not foresee any major changes to our current processes and procedures on the basis of the current draft guidelines, although we would welcome clearer indications as to the precise scope of the guidelines with regard to the products and type of customers covered. Without this we are unable to carry out a more detailed cost assessment at the current stage.

If basic, standardized products such as current accounts and payment cards were to be included, we assume a significant increase in implementation costs. Indeed, there may be considerable additional costs if the prices of by-products or additional services (i.e. simple product features) of a basic product would need to be indicated in greater detail. In this case, we would not only have to review and update product information, product publications available online and in brochures, but we would also have to provide specific training for sales staff. We would also expect some adjustments to our IT systems. Principally, processing costs for these products would increase due to an extended advice service to be provided to customers. We do not believe that customers expect such extended information or advice service. Therefore, for basic standard products, the additional costs and expenses would be out of line with the expected customer value.