

Division Bank and Insurance/Austrian Federal Economic Chamber

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

In principal we agree with the proposed description regarding bundled package, tied package and component product.

We support the clarification mentioned in the guidelines that “Nothing in the guidelines is intended to prevent the offering of products which constitute an inherent or indivisible package (sectoral legislation permitting) which cannot by its nature be offered or sold separately because the components are a fully integrated part of the package” (e.g. certain multi-risk insurance policies, ...).

However, in some cases, the proposed description of “cross-selling” practices could appear too broad and is capable of capturing situations where the client acquires two or more „connected” products from the same firm, but where there is no intent of the firm to sell these products as a package; the acquisition of these products is no sufficient proof for the existence of cross-selling practices falling within the scope of proposed guideline.

We furthermore want to draw the attention to the unclear distinction between “customer” and “consumer” which are used in the guidelines.

In addition, we believe that the term “product” should be further defined and consistent with the existing legislation to avoid misunderstandings in more complex products resulting in different approaches (e.g. bundling or tied product). Ancillary services which are tied to a specific business/product should not be considered as a separate “product”.

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

We agree basically with the proposed potential benefits of cross-selling practices.

In particular we want to draw the attention to bundling as a widely used practice, also in many other sectors and which pursues additional aims to the one presented in the guidelines such as:

- Meeting customers’ needs with the provision of tailor-made products which are sometimes targeted to specific moment of life e.g. “student package, “senior package” etc.;
- Reducing the risks for the consumers. In the field of loans, we see that one of the most beneficial offerings is the combination of insurance products linked to a loan. Such a package enables firms to provide consumers with better deals, while, at the same time, it reduces risks for all parties concerned. In the case of loan insurance, it allows consumers to protect themselves against payment/ financial difficulties in the case of unforeseen events, such as unemployment, relationship breakdown or illness. This in turn allows providers to offer lower rates.
- One additional benefit that must be highlighted in this context is that cross-selling packages often make consumers aware of the existence and advantages of certain products which the consumer was not familiar with before but might suit to their needs.

As a final recommendation we suggest that the guidelines should adopt a more balanced approach with regards to potential consumer benefits and potential consumer detriment associated with cross-selling practices.

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

Once more we want to remind that cross-selling practices are not per se detrimental to consumers and/or competitors in the retail financial services market.

As a general observation we believe that the examples of potential consumer detriment (information overload, “withdrawal from market” because of negative experience, early repayment) described in the guidelines are not specific to cross- selling practices. Those examples correspond to mis-selling practices already prohibited by the UCPD and relevant national laws. As such, those examples do not seem to provide for a proper and proportionate introduction to the topic.

We believe that as long as consumers are provided with clear and transparent information on both the product characteristics and pricing, they have sufficient opportunity and flexibility to select the offer they find most attractive or in line with their expectations.

In addition we want to point out that it is important to preserve a competitive environment, where consumers may

compare products and providers and thereby forces the latter to improve the quality of their offer. However, 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 explicitly reject the assumption that the lack of, or the “low” level of mobility is synonymous to a lack of choice for customers or their ability to switch; nor can we subscribe to the finding that low customer mobility equates a lack of competition or originates from an unfair treatment of the consumer.

It is also important to stress that long-term contractual relationship is not necessarily negative and linked to limitation of consumer’s mobility. On the contrary the broader and longer the relationship between customer and financial institution, the better the level of service the financial institution can offer the customer, for example when it comes to risk assessment and pricing. We believe that long term relationships with customers in most cases lead to their benefit.

As regards point 4.e (page12), the guidelines introduce a sort of personal/individual suitability assessment on the adequacy of the components of bundle products which we believe is not appropriate. The guidelines should not go beyond what has been agreed at “level 1” in other legislations. The issue of suitability assessment was analysed by the EU Parliament, the Council and the Commission which rejected it since it was considered not appropriate for products such as mortgage and consumer credit. This applies also for payment accounts and any other payment service that are considered by European legislation as a prerequisite for financial inclusion, and whose offer is mandatory according to Directive 92/2014. We consider that this “stretching” of the investment product regulation to all retail financial services products is not appropriate. The focus should therefore be on proper enforcement of national and European existing rules.

Once more we point out that a more balanced approach in the guidelines between potential consumer benefits and detriments is absolutely necessary.

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.

Example 1:

We do not believe this example reflects the practice of the financial institutions and could be interpreted as a misleading practice prohibited by the Unfair Commercial Practices Directive as it would contain information that can deceive or is likely to deceive the average consumer, even if the information is factually correct (see article 6 of the UCPD).

Example 2:

We consider this example as an unfair commercial practice which is clearly prohibited (see article 6 of the UCPD).

Example 3:

The example requires clarification. In some cases the insurance may subsist despite the cancellation of the main product (e.g. in case of a mortgage credit, the home insurance might be kept).

Example 4:

The example makes sense for long-term commitments, but less for a short term credit. This example clearly demonstrates the need to assess practices on a case-by-case basis. Furthermore, we would highlight that the terminology of ‘disproportionate charges’ is misleading. Any charges that a customer needs to pay are determined by recognised actuarial calculation methods.

Example 5:

We believe that there is a need to distinguish between eligibility and redundancy. We want to emphasise that products should not be sold to people who cannot claim the benefits. However, it must be a customer’s duty to know the cover of his or her products. Financial institutions may remind consumers to control their current coverage, but further requirements would be disproportionate in our view.

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.

Guideline 1, paragraph 13 and 14:

First of all we believe that consumers should be provided with sufficient and comparable information prior to the acquisition to allow for a rational decision on the (packaged or bundled) products.

In our view, further clarifications should be provided as regards the definition of cost/prices which should be understood as “the cost for the customer” and “the price paid by the customer”.

In the current guideline 1, it is unclear how the combined price of each separate component in the package will be calculated. Further we believe that such a combined cost could be confusing for the customer especially when fees and interest payments are combined in the calculation.

Moreover, the example of the interest rate swap does not seem relevant because as a financial instrument relating to investment services, it is already regulated separately from credit (MIFID II).

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.

As expressed above, we consider that consumers are provided with comparable, understandable information prior to sign a contract. Appropriate pre-contractual information is a prerequisite for the consumers to be enabled to make the right choice when buying financial services.

Guideline 2, paragraph 15:

The provision of pre-contractual information in relation to price, relevant cost, in good time before the customer is bound to the agreement, is required according to existing sectoral legislation such as MIFID II, UCITS, PRIIPs or for example in relation to the distribution of credit. Such requirements could even create contradictions.

Guideline 3, paragraph 16:

We want to alert the ESAs to the fact that technical terms may be required by law. Technical and legal jargon cannot therefore always be avoided or simplified. Furthermore, terminology ‘in a simplified or jargon-free language’ might lead to different interpretations in the Member States instead of adding clarifications.

Guideline 6, paragraph 20:

As mentioned above, we want to draw the ESAs attention to the fact that technical terms may be required by law. Technical and legal jargon cannot therefore always be avoided or simplified.

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.

The approach of the ESAs should comply with the European principle of proportionality and the European Commission’s objective of “better regulation”. Indeed as already mentioned above, it is important to note that the existing UCPD already sets a common framework for misleading and aggressive practices within the EU. The general clause enables the directive to adapt to specific sectors (including the financial services sector) and represent a flexible tool to adapt to changing market reality. It has notably complemented by established case law from the CJEU.

- We therefore believe that there are already sufficient requirements regulating the selling of products and that focus should be on proper enforcement of existing legislation, including the UCPD.
- We also believe that the provision proposing firms to design their internet default option might appear excessive.
- It is also important to clarify that “package” and “purchase option” have different meaning

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.

Once again we want to stress the fact that the guidelines should - for all legislations - not go beyond what has been agreed at the level 1 regulation in MIFID II. Regarding “Advice” we would encourage a view that providing advice should be considered as a service which is distinct from the provision of information and explanations on the products.

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.

Guideline 9, paragraph 26:

We support the view that relevant staff in charge of distribution should be adequately trained to fulfill the requirements set out in existing legislation. However, any training requirements should be proportionate to the products sold.

Guideline 10, paragraph 27:

We admit to practices that are fair and reflect responsible business conduct. However, remuneration models and levels should remain at the discretion of market operators, and incentives to sell more should not, by definition, be treated as inadequate sales remuneration structures. In addition we consider that the monitoring obligation by the senior management might be not appropriate and too detailed. We believe there should be a clear distinction between advisory functions on behalf of a customer and execution only function – i.e. distribution. There has to be a clear distinction between advised and non-advised sales.

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.

Guidelines 11, paragraphs 28 and 29:

The proposed guideline is in line with the consumer's right of withdrawal from existing legislation. The products in a bundled or tied package are normally designed to be sold together and the possibility for the consumer to cancel parts of the package during the duration of the contract may prove both complicated and costly. In fact, it may lead firms to withdraw certain products entirely.

Moreover, in certain cases, if the package components do not exist as a stand-alone product (it is specifically designed as part of the package), it may not be possible for the customer to split the products or at least terminating one agreement will necessarily impact the other product.