



The Consumer Voice in Europe

Consultation of the Joint Committee of the European Supervisory Authorities

GUIDELINES FOR CROSS-SELLING

BEUC RESPONSE

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Background

In December 2014, the Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA) published a consultation paper on draft Guidelines for regulating cross-selling practices (bundling, tying and conditional offering) in the financial sector across the EU. The aim of the Guidelines is to establish a coherent approach in supervising firms that offer cross-selling options, so as to enhance protection of EU customers.

Recent developments in EU sectoral legislation include provisions on cross-selling practices. The Guidelines will be addressed to national competent authorities with supervisory oversight of firms subject to the following Directives relevant to consumers: MiFID 2, Mortgage Credit Directive, Payment Accounts Directive, IMD 2, UCITS, and Electronic Money Directive.

BEUC general comments

BEUC welcomes the opportunity to comment on the draft Guidelines for cross-selling practices.

Retail financial services are ubiquitous in consumers' daily lives and assist consumers in achieving important goals, such as saving money for retirement, investing in education of their children, purchasing movable and immovable property, covering against risks, etc. However, the retail financial services sector is far from functioning properly. One of the crucial issues is related to cross-selling practices, particularly tying, which are not designed in the interest of consumers, limit competition and consumer choice. Such practices are widespread across EU Member States.

Please find below BEUC responses to the consultation questions, where we present our views on cross-selling and the draft Guidelines. Although BEUC supports the majority of the Guidelines, we consider their impact will likely be rather limited since sectoral EU legislation does not put virtually any limitation on cross-selling practices and addresses conflicts of interest in the remuneration structures of sales staff only in a very fragmented way.

Competent authorities should report regularly to the European Supervisory Authorities (ESAs) on the enforcement and impact of these Guidelines and the Joint Committee of the ESAs should assess whether further measures are necessary.

What is 'cross-selling'?

1. Generally, cross-selling is the practice whereby firms group, and sell, two or more separately identifiable products or services in a 'package'.
2. This practice is common within the financial services industry. At the point where a customer purchases, or intends to purchase, a 'core' (or 'primary') product or service, firms frequently cross-sell additional (or 'secondary') products or services.
3. Further, cross-selling two or more products or services can take place as:
 - a. a bundled offering, where each of the products/services offered is available separately and where the client retains the choice to purchase each component of the package separately; or
 - b. a tied or conditional offering, where at least one of the products/services offered in the package is not available separately to the customer from the provider.
4. The focus of the principles set out in these guidelines is on cross-selling practices involving only financial services and products, both from the same sector (e.g. two banking products) and to the combination of products from different sectors (e.g. a banking product and an insurance product). If competent authorities decide to apply cross-selling standards more widely than cross-selling practices only involving financial services and products, then they should apply these guidelines. The JC would like to mention that firms should not cross-sell packages of products which include non-financial services or products for the purpose of circumventing these guidelines.
5. However, in either case, the primary product is frequently the product of primary interest to the customer and is the platform from which the secondary product sale takes place. This is significant from a regulatory and firm conduct perspective since it is at this point that a customer is faced with a more complex purchasing decision and must assimilate additional information related to the bundled or tied package.
6. Whilst it is not the case that purchasing the component products separately (i.e. the products constituting the tied or bundled package) removes completely the information burden placed on the customer, it is reasonable to assume that a bundled or tied purchase complicates further what are already complex purchase decisions for customers.

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

BEUC comments

BEUC agrees with the general description of cross-selling.

Besides clear distinction between bundling on the one hand, and tying and conditional offering on the other hand, it would be relevant to also refer to cases where bundling tends to replace tying with practically the same harmful effects¹.

¹ See findings of the Commission study on "Tying and other potentially unfair commercial practices in the retail financial services sector", 2009:
http://ec.europa.eu/internal_market/consultations/docs/2010/tying/report_en.pdf

Potential benefits and detriment associated with cross-selling practices

Potential consumer benefits

1. The following potential benefits of cross-selling practices have been identified:
 - a. Financial benefits:
 - i. Reduced overall costs since often the package of products can be relatively cheaper for customer than buying the products separately;
 - ii. Superior financial conditions compared with buying the products separately: (e.g. reduced interest rate for a loan, increase interest for a deposit).

The source of these financial benefits may come from the efficiencies that providers realise due to cross-selling. By selling multiple products, they might realise economies of scope and most notably cost reduction in the field of advertising, marketing and sales costs.
 - b. Convenience benefits: Cross-selling can offer a 'one-stop shop' for customers with several potential benefits: reduced search costs; streamlining of the 'negotiations' for purchasing the products; speeding-up/facilitating of the administrative process (e.g. customers do not need to ensure that products acquired from several providers are compatible); reduced transaction costs (for example the customer incurs only one set of adviser fees as opposed to two or more sets of fees if they purchased the product/service separately); and
 - c. Access to a wider range of products: Cross-selling may enable customers to access products that might not otherwise be available to them separately or separately at an affordable price.

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

BEUC comments

Consumers are usually not in a strong position to negotiate individually the offers and contracts proposed to them. The conditions offered to them are most often on a 'take it or leave it' basis.

In theory, it is certain that if a large number of consumers oppose terms and conditions that are proposed to them, it could have an effect on the financial industry's practices. This would require that consumers have full awareness of the impact of conditions imposed on them and have enough time to thoroughly assess and compare different market offers. However, this is really far from real life experience, as the imbalance of bargaining power is one of the fundamental characteristics of relationships between professional suppliers and consumers, and this is even more true in the financial sector.

When referring to the potential benefits of cross-selling, it is important to distinguish between tying and bundling. Indeed, some of the above presented potential consumer benefits (financial benefits, convenience and wider choice) could be achievable through bundling, provided that the consumer has a real choice to purchase each component of the package separately. On the other side, we hardly see how tying can benefit consumers – in our view, the benefits are exclusively for financial service providers.

As regards the assessment of potential financial benefits, in practice, cross-selling too often simply makes it impossible for the consumer to estimate whether he is gaining from it or not. The financial benefits are not always obvious, although it is marketed in such a way. For example, bundled items are not included into the APR (Annual Percentage Rate) of credit products. It should also be strongly nuanced that, not only costs at the time of purchase, but overall costs for the consumer in the long run (i.e. in the life span of the contract) must be considered. This implies taking into account potential tariff increases for individual services included in the package as well as switching costs for the consumer. Cross-selling makes prices opaque and weakens the part of competition that is price driven. Packages must prove financial benefits for the consumer. Markets for mortgages, insurance, deposits, payment services are very price sensitive. It is fairly easy for a financial service provider to prove financial benefits at the point of purchase. Whether the financial benefit maintains in the life span of the contract should be addressed by relevant supervisory authorities.

As regards item (c) *Access to a wider range of products*, we have not found any concrete positive examples of consumer benefits. Not making a product available separately seems more like harmful tying than a benefit for the consumer.

See also our comments under question 3.

Behavioural drivers of potential consumer detriment

2. On the other hand, a more complex purchasing decision as a result of buying a tied or bundled package places additional burden on customers to assimilate the relevant product information and understand the potential risks. As a result, cross-selling may distort or limit customer choice and cause detriment.
3. In particular, customers at point-of-sale are often not able to make the best decisions because:
 - a. their main focus is on a product which represents the primary product for them (for instance a loan) and they may not be paying adequate attention to the impact the purchase of an additional product (e.g. insurance) will have on them; or
 - b. they are unable to effectively process the information given to them by firms; or
 - c. they are unable to differentiate or determine from the information given by the firm whether the purchase of an additional product and therefore the bundled package is an 'optional' or 'compulsory' purchase; or
 - d. they are reluctant to spend the necessary time and cost to shop-around for alternative component products or tied/bundled packages which might better suit their needs and their budget.

4. Equally, the action of some firms, particularly those distributing the tied or bundled package to their customers, can be characterised by the following behaviours:
 - a. firms may not always provide information in a timely, customer-friendly way/format or in a transparent manner at the point-of-sale. This includes firms making information on the additional products available only once the customer has agreed on the core product or at least quite late in the sale process. This makes the research and comparison of alternative products quite burdensome and in some instances virtually impossible for customers;
 - b. firms may not provide enough relevant cost/price information to the customer about the package or the component products or omit useful information on the non-price features of the component products or bundled/tied package (such as their key benefits, limitations and risks) which prevent the customer from making informed purchase decisions and proper assessments of the usefulness of a product or package;
 - c. firms may sometimes present or 'frame' important information in a way that is confusing for the customer to either compare prices across alternative component products or understand the true absolute cost of the additional product and the bundled package;
 - d. firms may sometimes frame their sales process towards an automatic purchase of the bundled package- for instance by pre-setting default options on their various sales channels and in particular their on-line sale channels to 'YES';
 - e. firms may not adequately consider and explain the suitability or appropriateness of particular packages for particular customers (where firms are subject to particular requirements on advice or non-advised services); and how the risks associated with packages may be impacted by different risk profiles of the components in the package;
 - f. firms may have remuneration structures so that their sales staff is strongly incentivised to promote a bundled product.
5. The consequence of such practices may be that the customer is not proactively involved in their purchase decisions and may not fully understand the costs and, where relevant, the risks attached to being cross-sold an additional product in the context of a package.
6. These behaviours from customers and firms may increase, in the sale of bundled or tied packages, the effects of the information asymmetry that normally exists between the firm and the customers in the financial sector.

Potential consumer detriment

7. As a result of the abovementioned types of behaviours on the part of customers and firms, the following potential sources of customer harm have been identified.

Extra costs for customers

8. Cross-selling may mean that customers pay more than they otherwise would for other competing products. This might be particularly the case for the additional products proposed to them, where the customer's attention is less focused on and where they are particularly ill-informed about price and costs of those products since their search efforts will have been mostly directed at the product in which they are more interested.

Consumption (and overconsumption) of unwanted and unsuitable products

9. Certain cross-selling practices may lead to situations where customers purchase products or services they do not need or cannot benefit from (e.g. subscribing to another product because it is cheap and not paying sufficient attention to decide whether they really need it).

Limitation of mobility

10. Cross-selling practices may result in long-term contractual relationships. Customers may wish to remedy the potentially unfavourable consequences of their decision in a cross-selling situation at a later point in time or seize a market opportunity.
11. However, cross-selling offers may sometimes set out contractual barriers limiting the mobility of customers (e.g. limiting the ability of a customer to terminate the agreement in relation to the additional product to get a more competitive offer from a competitor). Such barriers can be incompatible both with fair competition and with other consumer rights such as rights to switch payment accounts or other products and services.

Withdrawal from the market

12. As a result of the negative experience of being sold an expensive or unsuitable product, a customer may withdraw from the market and become reluctant to re-engage. It is possible under that any future bundled products that could confer genuine benefit for the customer would be viewed with circumspection and dismissed.

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

BEUC comments

Overall, we agree with the identified potential detriment.

Once again, there is a need to specify that potential detriment associated with tying and bundling may vary. Indeed, sectoral legislation on retail financial services sees tying practices as particularly harmful, distorting competition and negatively affecting consumers' purchasing options and mobility, while bundling at least leaves choice to the consumer².

² See Recital 81 of MiFID II, Recital 24 of the Mortgage Credit Directive, Recital 24 of the Payment Accounts Directive, Recital 41 of the draft Insurance Mediation Directive II (Council text).

The Guidelines should make reference to behavioural biases and the fact that firms exploit consumers' biases to design and market financial services in a way which does not always meet consumer interests and needs. BEUC calls on EU national regulators and supervisors to take behavioural insight into consideration in their policies, to make sure that retail financial products available to consumers meet their needs and expectations. They should monitor the application of the product governance policy adopted by financial institutions, if any, and not hesitate to intervene in case of consumer detriment (product intervention powers).

BEUC response to the Commission consultation on tying and other potentially unfair commercial practices (2010) contains numerous examples of cross-selling practices in different Member States and their potentially negative impact on consumers³. For example, bank account packages that include overdraft facility and credit card on a take it or leave it basis; ancillary products (bank account, multi-risk insurance contracts) tied with mortgage credit; "optional" insurance bundled with credit. In France, consumer associations regularly point out that bank packaged accounts sold in "package" are often more expensive than services bought separately. In addition, many packages include services consumers do not need⁴. In Slovenia, with travel or accident insurance linked to credit cards, consumers cannot opt-out or adapt insurance premiums.

More recently, BEUC position on the draft MiFID II proposal (2012) provided examples of tying of retail investment services: Which?, our British member, reported that tying practices happen frequently on the British market. In particular high interest rates are given on deposits sometimes tied with complex products as structured products or structured deposits sometimes with high charged product. Our Belgian and Slovenian members reported cases where clients were teased with a very high interest rate on a short term deposit if they invested a same amount in a UCITS or a structured product. In some Nordic countries, access to the best interest rate for a mortgage credit requires borrowers to invest in UCITS, shares or savings accounts. Such practices are detrimental for consumers as they are stimulated to borrow a higher amount to be able to invest⁵.

As regards consumption and overconsumption of unwanted and unsuitable products, we would also like to draw the ESAs attention to cross-selling practices involving insurance add-ons to non-financial products, i.e. small insurances which cover very specific types of risk such as mobile phone theft, payment services fraud, a lack of snow on a skiing holiday or cancellation of travel. They have proliferated widely and further to standard home, car and liability insurances. Insurances constitute an increasing portion of household budgets. Small insurances are sold mainly by non-professional insurers and are mostly ancillary to the purchase of a good or a service. We have identified three main problems related to small insurances and their cross-selling:

- Poor product quality: many small insurances include a broad range of restrictions and exemptions which makes them useless to victims of loss, accident or harm.

³ BEUC response to EC consultation on tying and other potentially unfair commercial practices in retail financial services sector, April 2010: <http://www.beuc.eu/publications/2010-00300-01-e.pdf>

⁴ <http://www.clcv.org/nos-enquetes/enquete-banque-2015.html>: "le choix du package s'avère à quelques exceptions près peu judicieux pour notre consommateur qui utilise peu de services. Il n'est également intéressant qu'une fois sur deux pour notre consommateur moyen ».

⁵ BEUC position on the draft MiFID II proposal, January 2012: <http://www.beuc.eu/publications/2012-00064-01-e.pdf>

- Unfair selling context: Ancillary, small insurances are often proposed to consumers when they buy a specific product or service. This puts them in a bad negotiation position by leaving them exposed to pressure and being misled. Information on the insurance is usually conveyed orally, in a casual way without bringing attention to many uncovered risks.
- Shoddy business models: Premiums paid by consumers are mostly used to remunerate the seller instead of funding compensation for damages. Intermediaries such as shop assistants are highly incentivised to sell small insurances, which creates conflicts of interests and consumer detriment.

BEUC advocates for inclusion of small insurances under the scope of the draft revised Insurance Mediation Directive, as well as for a ban on tying practices for insurance products⁶.

The Norwegian Consumer Council has reported another widespread example of overconsumption - mortgages that tie consumers to saving accounts or investment products (UCITS funds). It is a kind of bundling that does not respect consumers' interest. Consumers who need a mortgage are those with a deficit of capital. Saving products are products for consumers with surplus of capital. The rationale for allowing such bundling is obviously to provide some kind of security to mortgage providers and income from fees. It would be in the consumer interest not to invest or save capital they lack, but rather direct the amount to increased down payments on the mortgage.

The following non exhaustive list of criteria could be used to determine whether a cross-selling practice is unfair or not:

- Do consumers have freedom of choice?
- Are prices transparent?
- Can consumers make comparison with other products?
- Can consumers switch easily?
- What is the impact of the practice on the duration of the contractual relationship between a consumer and a financial service provider?

All the legislative proposals on retail financial services published following the EC consultation in 2010 contained provisions related to tying and bundling. Although, as already mentioned above, all those texts (MiFID II, MCD, PAD and draft IMD II) recognise the harmful impact of tying on competition and consumers, none of them has ultimately introduced a ban on that practice. In general, firms are only required to inform the consumer whether the service can be purchased separately and provide the price of individual items included in the package. Only the Mortgage Credit Directive instructs Member States to allow bundling and prohibit tying practices, but this general provision has been considerably weakened by a Member State option allowing all kinds of tying justified on the grounds of providing additional security to the creditor in the event of default.

⁶ BEUC position on the draft revised Insurance Mediation Directive, December 2012: <http://www.beuc.eu/publications/2013-00022-01-e.pdf>
BEUC factsheet "Small insurance, big nuisance", June 2014: http://www.beuc.eu/publications/beuc-x-2014-041_gve_small_insurances_factsheet.pdf

Examples of detrimental cross-selling practices

13. Based on the potential situations of detriment mentioned above, the JC has identified a non-exhaustive list of examples of cross-selling practices which the JC considers to be inconsistent with the general conduct of business obligations to act honestly, fairly and professionally.

Examples of detrimental cross-selling practices

Examples with a monetary detriment

Example 1

Offering two products together in a package where the price of the offer is higher than the price of each component separately offered by the same firm (as long as products have the exact same features in both cases).

Example 2

Inducing a customer to buy a cross-selling offer by advertising/promoting the fact that, as of the day of sale, the overall amount of costs and charges payable by the customer is below the cumulated price of each component as sold separately, where in reality this amount of costs and charges are already scheduled to be raised to a higher amount overtime due, for instance, to the accumulation of running costs/fees.

Example 3

Not returning a portion of the proportional part of the pre-paid premium of an insurance component of the package further to the early cancellation of a main product that was sold together with it.

Example with reduced mobility detriment

Example 4

Imposing disproportionate early termination charges for an ancillary insurance product if a customer wants to substitute the coverage offered by an alternative provider (or threatening with the termination of the contractual relationship regarding the other product included in the package).

Example of purchase of unwanted or unnecessary products

Example 5

Offer products bundled with others products not requested by customers and which unnecessarily duplicate a product that the customer already has and which a customer cannot benefit from (including because they are not eligible).

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

BEUC comments

BEUC agrees with the above examples of consumer detriment. See also our examples above.

Guidelines on cross-selling practices

Full disclosure of key price and cost information

Guideline 1

1. Competent authorities supervising firms which distribute a tied or a bundled package should ensure that customers are provided with the price of both the package and of its components products.
2. Competent authorities supervising firms that distribute a tied or a bundled package should ensure that customers are provided with a clear breakdown and aggregation of all relevant costs associated with the purchase of the package and its component products - such as administration fees, transaction costs, and exit or pre-payment penalty charges.

Illustrative example

- 1) When cross-selling an interest rate swap with a variable rate loan to allow a customer to hedge interest rate risk (i.e. the customer swaps their floating rate payment for a fixed interest rate payment) the firm provides key information to the customer on all aspects of the swap agreement which will materially affect the cost the customer finally incurs such as the customer's potential payment liability when interest rates change and the exit charges from the swap contract.

Prominent display and timely communication of key price and cost information

Guideline 2

15. Competent authorities supervising firms which distribute a tied or bundled package should ensure that information on price and all relevant cost of the package and each of its component products is made available in good time before the customer is bound to the agreement, allowing the customer to make an informed decision.

Guideline 3

16. Competent authorities supervising firms which distribute a tied or bundled package should ensure that price and cost information of the package and its component products is communicated to customers in a prominent, accurate manner and in a simplified or jargon-free language.
17. Competent authorities supervising firms which distribute a tied or bundled package should ensure that when promoting any of the component products that will form a bundled or tied package, firms ensure that equal prominence is assigned to the price and cost information of these component products so that a customer can properly and quickly discern the cost impact upon them as a result of purchasing both as a package.

Illustrative Examples

- 1) In whatever the marketing medium the firm uses, the font used to communicate the relevant price and cost information of each of the component products intended to be sold as a package is the same. Relevant information concerning one of the component products is not given more emphasis with the use of a bigger or bolder font.
- 2) Where the sale takes place on the internet or through another channel without a sales person directly involved, the price and cost information of both products that will form the package appears early-on in the relevant webpages and is easily navigated by customers i.e. the price and cost information of any product which will form part of the bundled package is not placed or 'hidden' further down in the firm's on-line sales form.

Guideline 4

18. Competent authorities supervising firms which distribute the tied or bundled package should ensure that the price and cost information is presented to customers in a way which is not misleading or which distorts or obscures the real cost to the customer or prevents meaningful comparison with alternative products.

Illustrative examples

The firm avoids expressing either in cash or percentage terms the price of one product for instance, payment protection insurance relative to the price of another (for instance, a personal loan) in order to emphasize (in this example) that the payment protection insurance is 'relatively cheaper' than the loan, for the sole purpose of inducing a customer to purchase a bundled package of these products.

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

Guideline 5

19. Competent authorities supervising firms which distribute the tied or bundled package should ensure that customers are provided all relevant information relating to the non-price features and risks - where applicable - of each of the component products and the package, including in particular the information on how the risks are modified as a result of purchasing the bundled package rather than each of the components separately.

Illustrative Examples

A firm offers a preferential rate savings account only when purchased with a structured investment product. In this case, the level of risk posed by this total package is different from the risks posed by the savings account alone: the initial capital in a savings account is guaranteed, and the only variable is the interest paid. But initial capital invested in a structured investment product may not be guaranteed, and so could be lost in part or altogether. In such an example, the risk profiles of the components are clearly very different and, when combined, the level of risk associated with the structured product component could negate the safety of the savings product component to the extent that the overall risk profile of the package is significantly increased. The firm clearly informs the customer about how the risk is modified as a result of purchasing the bundled package rather than each of the components separately.

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

Guideline 6

20. Competent authorities supervising firms which distribute the tied or bundled package should ensure that key non-price factors and the relevant risks are promoted to customers with the same prominence and weight as the other key selling features of the component products or bundled/tied package and these should be made clear to customers in a simplified or jargon-free language in good time before the consumer is bound to the agreement.
21. Competent authorities supervising firms which distribute the tied or bundled package should also ensure that information on the non-price features and risks of the package is presented to customers in a way which is not misleading or which distorts the impact of these factors for the customer.

Illustrative examples

- 1) The firm draws to the customer's attention the limitations and risks (if relevant) of the tied or bundled package and the component products and guides the customer through the relevant information which sets out the key benefits, limitations and risks (if relevant) of the package and the component products. The sales person explains carefully how these non-price factors materially change according to whether and which component product is purchased and offers this explanation in good time before the customer is bound to the agreement. The firm alerts the customer of the tied package to the overall benefits, limitations and risks (if relevant) of the package.
- 2) The firm refrains from exclusively relying on a general reference to their Terms & Conditions to alert or disclose to key non-price information to customers. Instead, the firm explains the risks (if relevant) and non-price information to the customer in plain language.

Prominent display and communication of 'optionality of purchase'

Guideline 7

22. Competent authorities supervising firms which distribute bundled or tied packages should ensure that customers are properly informed whether it is possible to purchase the component products separately– i.e. whether customers have a choice as to which of the products to buy or, to the extent that this is permitted under sectoral legislation, whether one of the component products has to be purchased in order for the customer to be eligible to buy one of the others.
23. Competent authorities supervising firms which distribute a bundled package should ensure that firms design their internet default options in a way which enables customers to actively select a purchase and therefore to make a conscious decision to buy the component product or the bundled package.
24. Competent authorities supervising firms which distribute a bundled package should ensure that firms present their purchase options in a way which avoids giving a false perception that purchase of the bundled package is compulsory when it is in fact an optional purchase.

Illustrative examples

- 1) A bank might offer a range of different current accounts which, for different monthly fees, come with different packages of products and benefits (such as mobile phone insurance, travel insurance or access to savings accounts with preferential interest rates). The bank should set out the customer's options clearly. For example, it should be clear if a customer has the option to purchase a current account that comes with no additional products, rather than any of the packaged accounts offered. Similarly, it should be clear whether the customer's choice is restricted to particular bundles of component products, or if he/she has a free choice as to which ones they can combine together.
- 2) The default purchase option for a bundled package on the firm's sales internet pages is set or defaulted at 'No'. This triggers an active response from customers to 'opt-in' or click 'yes' to a simple question about whether the customer wants to buy the add-on product (and therefore bundled package) in addition to the 'core' product.

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.

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.

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.

BEUC comments

BEUC welcomes Guidelines 1-7. That being said, we believe that information disclosure alone will not ensure fair treatment of consumers by providers. The root cause of the problem must be addressed, i.e. clear rules on tying and bundling practices are needed. As already explained above, since sectoral EU legislation does not put virtually any limitation on cross-selling, the impact of these Guidelines is likely to be rather limited and will not change current business practices in countries where no specific national legislation exists in this area.

The Guidelines may potentially help to enhance consumer experience with bundling practices, oblige the financial service providers to better inform the consumer about his right to also purchase services separately.

The draft Guidelines outline what kind of information should be provided to the consumer, but do not provide for the supervisors' power to monitor the information provided. It would be relevant to have a reference in the Guidelines to such power and the competent authorities should be strongly encouraged to exercise their powers in this respect.

Assessment of demands and needs or suitability/appropriateness, including eligibility

Guideline 8

25. Competent authorities supervising firms which distribute bundled or tied packages should ensure that the overall package and the component products constituting that package are distributed in accordance with any applicable requirements to meet the demands and needs of the customer or to assess suitability or appropriateness. Such distribution may involve the firm providing advice to a customer or may be done without advice being provided.

Illustrative examples

- 1) Firms who distribute bundled or tied packages should consider whether or not a customer is likely to be able to benefit from the various component products. Where a firm provides a service such as advice, or is otherwise required by sectoral legislation to assess a client's demands and needs, or their knowledge and experience, these duties also extend to consideration of both the package as a whole and its component products. Regardless of the nature of the service offered (i.e. whether or not advice is being provided), firms need to consider the potential for customers to actually benefit from the tied or bundled products that they offer. So, a firm should not cross-sell a product to an individual customer where the firm is (or should be) reasonably aware that the customer is not able to benefit from the additional product (e.g. if a loan is extended to a self-employed person, he or she should not be sold a payment protection product that does not cover loss of income by someone who is self-employed).

- 2) Where the risks resulting from a permitted tied or bundled package offered to a customer are likely to be different from the risks associated with the components taken separately, a firm should consider the suitability of different components of a bundle and the way in which their interaction may modify the risks faced by the customer.
- 3) Where a product, such as an interest rate swap, is sold in a package with a loan in order to provide hedging, the swap should be a reasonable match for the loan. For example, firms should think carefully before packaging up a loan that has no early exit penalties with an interest rate swap which will be expensive to unwind before maturity; and such a package should certainly not be sold to a customer who is interested in being able to pay off their loan early. Similarly, a product that reduces risk in some circumstances, but could actually magnify it in others, should not be packaged up with a variable-rate loan to be sold generally across the market as though the package amounts to an ordinary fixed-rate loan.
- 4) In the example in Guideline 5, the firm considers the risk of the package when identifying the customers to whom the package is deemed suitable (different to those for whom a savings account alone may be suitable) - and therefore those individuals to whom the package is sold.

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.

BEUC comments

It is unclear how the proposed Guideline 8 would be implemented in practice and the illustrative examples do not help understanding different scenarios. For example, in the Mortgage Credit Directive, a rationale behind cross-selling is creditors' risk coverage, and not consumer benefit. Then, how suitability/appropriateness assessment would fit here?

Another example, MiFID 2 Art 24(1) provides that "*... when providing ... ancillary services to clients, an investment firm should act ... in accordance with the best interests of its clients...*" Yet, it is not specified how product tying can be in accordance with the best interests of consumers.

BEUC 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 necessary 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.

Adequate training for relevant staff

Guideline 9

26. Competent authorities supervising firms which distribute tied or bundled packages should ensure that adequate training, including cross-sectoral training when relevant, is provided to staff in charge of distributing each of the products sold as part of a package. Staff training should ensure that staff are familiar with the risks, where relevant, of the component products and the bundled or tied package and be able to communicate these to customers in plain (non-technical) language.

Conflicts of interest in the remuneration structures of sales staff

Guideline 10

27. Competent authorities supervising firms which distribute tied or bundled packages should ensure that suitable remuneration models and sales incentives encouraging responsible business conduct, fair treatment of clients and avoidance of conflicts of interest for staff selling the tied or bundled package are in place and are monitored by senior management.

Illustrative examples

- 1) The firm refrains from operating remuneration policies, practices and performance-based competitions that encourage sales staff who may be remunerated on a commission basis to 'push', the sale of the bundled package and which may therefore encourage the unnecessary/unsuitable sales of either a component of the package or the package itself. For instance if sales staff were incentivised to cross-sell a loan with a form of payment protection insurance but the customer had the need of the loan only, then as a result of this remuneration structure, there would be the risk of incentivising a potential mis-selling of the payment protection product and therefore also of the bundled package.
- 2) The firm avoids remuneration policies and practices which reduce sales' staff basic salary substantially if a specific sales target in relation to the bundled/tied package is not met; thereby reducing the risk that the sales person will make inappropriate sales of the bundled package to avoid this outcome.
- 3) The firm avoids reducing bonus or incentive payments earned by sales staff because a sales target or threshold for the bundled package has not been met.

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.

BEUC comments

BEUC fully supports Guideline 9.

Guideline 10 is too general and raises concerns with regard to its efficiency. In fact, sectoral EU legislation already referred to above has addressed conflicts of interest in the remuneration structures of sales staff in a very fragmented way. For

example, MiFID 2 provisions on sales incentives are quite vague and unlikely to rule out conflicts of interests.

Illustrative example 3 is inappropriate: bonus is directly linked to a sales target; hence it will fluctuate depending on whether or not the target has been achieved.

In our view, there should be a horizontal approach to conflicts of interest: remuneration of firms' staff and intermediaries should be at least product-neutral, i.e. not related to the type and volume of products sold.

Post-sale cancellation rights

Guideline 11

28. Competent authorities supervising firms which distribute tied or bundled packages should ensure that where 'cooling-off periods' or post-sale cancellation rights apply to one or more components of a cross-selling package (if the components were sold on a stand-alone basis), these rights should continue to apply to those components within the package.
29. Competent authorities supervising firms which distribute tied or bundled packages should ensure that customers are subsequently allowed to split the products grouped in a cross-selling offer without disproportionate penalties – unless there are good and justified reasons why this possibility is not realistic.

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.

BEUC comments

Guideline 11 needs to be more detailed. The meaning of "*disproportionate penalties*" should be clarified. For example, in Belgium when a bundled financial offer is made for a mortgage credit, it generally offers a lower rate, as long as the different contracted services are maintained, e.g. mortgage credit with home insurance. Even if the offer gives the borrower a total advantage at the moment the contract is signed, this is not necessarily the case a few years later. The link which is created between those different contracts prevents the borrower from taking advantage of the market opportunities.

The last sentence of Guideline 11 should 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*".

Cost-benefit analysis

Impact of the guidelines

30. This section presents a qualitative assessment of the potential costs and benefits of the proposed guidelines

Costs

31. It is anticipated that these guidelines will generate additional compliance costs for those Member States where some of the proposed provisions/principles are not currently applied and therefore supervised/monitored.
32. However, for most competent authorities the incremental costs will be minor because much of what is contained in these guidelines implies no significant change in the procedure, oversight responsibilities or resource for NCA's from what is currently being done to ensure compliance with existing conduct and organisational standards regulating the sale of component products.
33. Since competent authorities must comply or explain with these guidelines the firms which they individually supervise will therefore be impacted. It is the view of the JC that firms will already be doing much of what is being proposed in the guidelines, in order to comply with the obligations aimed at ensuring a fair treatment of customers when providing services to them.
34. However, the guidelines may imply moderate incremental costs as far as firms have to modify their existing practices/systems/training. For example, firms distributing a tied or bundled package will already provide price information to customers, however to comply with the guidelines proposed in this consultation paper they may have to amend their websites and sales processes and re-order the information to make this information clearer and more prominent to customers.
35. Since firms should normally already incur the cost of training new staff and updating the training (and training material) for existing staff, there would again be moderate incremental impact on a firm's budget to design training for staff on new bundled or tied products which better meet the demands and needs of customers.

Benefits

40. The benefits of our proposals arise principally from improving the treatment of customers of financial institutions purchasing products in a package and increasing their protection by contributing to better information, improved training of firms' staff provision of more suitable products. They will also reduce the risk that customers purchase packages of products that they do not need or for which they are ineligible to benefit from.

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.

END