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**SUMMARY OF RESPONSES  
TO THE PUBLIC CONSULTATION  
ON THE STUDY ON  
TYING AND OTHER POTENTIALLY  
UNFAIR COMMERCIAL PRACTICES  
IN THE RETAIL FINANCIAL SERVICE SECTOR**

## **1. INTRODUCTION**

On 15 January 2010, the European Commission published an externally contracted *Study on tying and other potentially unfair commercial practices in the retail financial service sector* and invited stakeholders to send their reactions by 14 April 2010. This document is a summary of the contributions received.

The study and the results of the public consultation are a first step in the European Commission's evidence-gathering process in this area. Further discussions with stakeholders will follow before the need for any possible policy action is assessed.

## **2. CONSULTATION DOCUMENT**

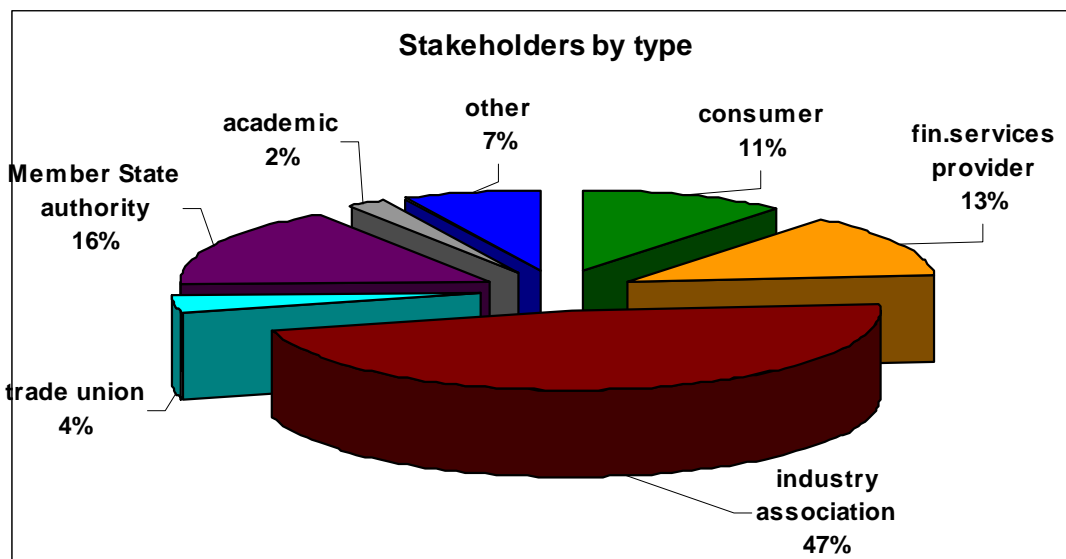
The objective of this public consultation was twofold. Firstly, the consultation document asked stakeholders to comment on the *Study on Tying and other potentially unfair commercial practices in the retail financial service sector*. Stakeholders were in particular invited to complete or correct the evidence provided by the study. Furthermore, the consultation document sought stakeholders' views on the best way to address the problems identified.

## **3. RESPONSES TO THE CONSULTATION**

The European Commission received 55 responses to the public consultation. The respondents can be classified in seven categories: consumer and user representatives, financial sector trade unions, financial services industry federations, financial services providers, Member State authorities, academia, and others. The chart below shows the percentage of responses received from each category.

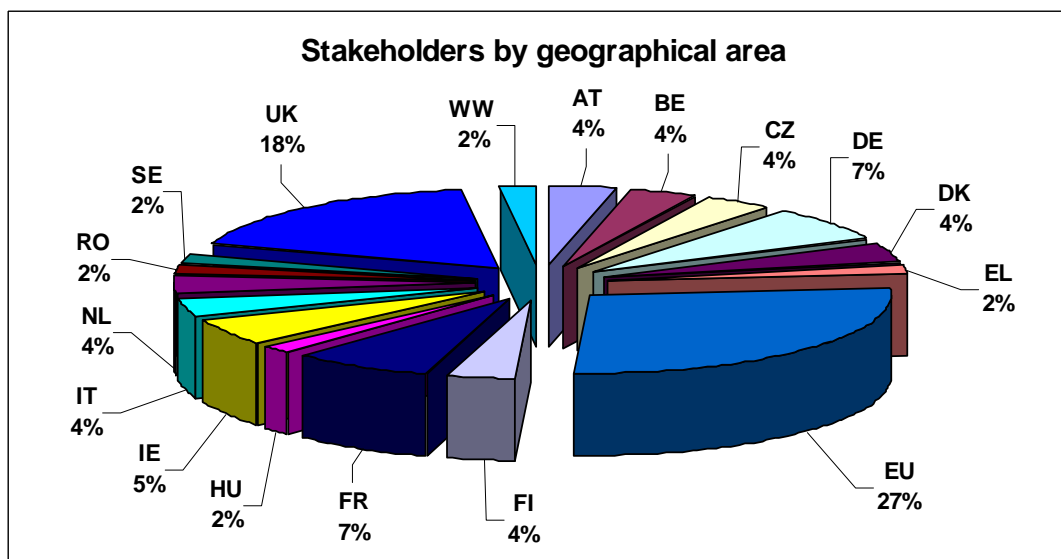
The category 'financial services industry federation' encompasses organisations representing essentially lenders and insurers. 'Financial services providers' refers to individual financial industry actors. (Both categories are referred as 'industry' in the following sections of this document.) 'Others' includes a chamber of commerce, an international lawyers' association, a trade sector association and a joint (industry and public authorities) answer.

**Chart 1: Contributions received by stakeholder category**



Contributions were received from stakeholders in 15 EU Member States and a world-wide association, as well as from representative bodies at EU level. Their distribution is set out in the following chart.

**Chart 2: Numbers of contributions received by geographical origin**



### **3.1. General comments**

The majority of the respondents welcomed the opportunity to provide input to the discussion on tying and other similar commercial practices. Important additional information on the situation in a number of countries was provided by respondents. This additional input completes the description of the regulatory or self-regulatory measures in place, and provides further examples of practices that are considered as detrimental for the consumer.

Many stakeholders (mostly on the industry side) criticised the low level of survey responses gathered by the consultant during the fact-finding phase of the study. A number justified this, arguing that the questionnaire prepared by the consultant was long, complex, not timely and drafted only in English. A few industry stakeholders considered that the low level of responses reflected a lack of interest, particularly on the part of consumers, who would not consider the issue as being important.

An important number of industry replies found that the disadvantages of the studied practices were more emphasised than the advantages. For a few, the title of the study was misleading since it already considered as 'unfair' a number of widespread commercial practices. A key message by many respondents was that the practices covered by the study offer benefits for both consumers and industry. A number of contributors also argued that those practices are the financial sector industry's response to consumers' demand and needs.

### **3.2. Responses to the consultation questions**

**Question 1** asked stakeholders whether they agreed with the study's findings and conclusions.

While industry representatives generally disagreed with the findings, consumers' representatives found them consistent with the experience at national level. Many industry respondents expressed the opinion that, except for aggressive commercial strategies, cross-selling practices were not detrimental per se to consumers. A certain number of them also recommended assessing the potential negative effects of those practices on consumers and on competition, following a case-by-case approach.

A number of industry's replies presented the view that the study did not provide evidence of any detriment caused by the practices covered. Some argued that they could be harmful only if the consumer had no choice but a majority of industry representatives argued that the consumer was always free to choose. They also strongly contested any suggestion of coercive behaviour on the part of the industry. In contrast, a consumer representative reported that consumers were often strongly encouraged to buy packages including products that were not in line with their needs. Likewise, another consumer representative was of the view that the conditions offered to consumers were most often on a 'take it or leave it' basis and that they were not in a strong position to negotiate the offers.

Industry respondents also generally disagreed with the study's assumptions and some criticised the methodology, e.g. the use of scorecards. A certain number of them considered that the value of a product/service should not be gauged only in monetary terms. Some also pointed out at inaccuracies or incomplete information regarding the situation in certain Member States. A few regretted the fact that industry initiatives, such as the December 2008 *Common Principles for Bank Account Switching*, were not mentioned in the study. Other weaknesses, according to a number of industry responses, were the inconsistent use of terminology and the fact that the financial services sector was considered as a whole despite not being a homogeneous area of activity.

In **Question 2**, the Commission invited stakeholders to provide further suggestions and comments, including evidence in favour or against the findings of the study.

Considerable additional information was provided by respondents, namely industry and consumers' representatives. Contributions from the industry focussed on the legal and regulatory measures, including self-regulatory initiatives that were missing or incorrectly reported in the study. Consumer representatives provided a whole range of additional examples of financial sector practices that they considered unfair for the consumer. Those included also practices beyond the scope of the report, such as misleading advertising or lack of transparency regarding contractual terms.

Industry representatives strongly defended the existence of the practices covered by the study and many explained in their replies the advantages that those brought to both industry and consumers. The advantages most often mentioned were:

- reduced costs for industry and consumers;
- better risk management by the industry;
- access to a greater range of products for the consumer (some products/services would not be offered individually or their individual price would be prohibitive in the absence of such practices);
- possibility for the industry to respond to consumers' needs;
- convenience for the consumer ('one-stop-shop') and for the industry (client management, administration).

Further advantages also mentioned by some respondents were:

- greater access to credit;
- better service quality;
- the promotion of responsible borrowing and financial education.

A number of industry respondents but also some Member State authorities and consumer representatives opposed a general ban on cross-selling practices. Some noted that this would reduce the range of product/services offered to consumers and that, since consumers have different needs, they should be given a choice. On the other hand, a Member State authority recommended that financial service providers in all Member States be subject to a ban on tying in order to ensure a level playing field across the EU. On the consumer side, some replies suggested, instead of banning concrete practices, to focus on the outcome of the practice for the consumer or to introduce criteria to assess whether a practice is unfair or not.

**Question 3** aimed at gathering stakeholders' views on possible solutions to prevent the potential anti-competitive or unfair effects of certain practices.

Most of the industry responses to that question stressed that there are no negative effects for the consumer or argued that the legislation already in place is sufficient. A certain number of respondents, from different categories of stakeholders, put forward as a solution proper information and financial education (more details on this are provided in the next section). Some of them (financial sector trade unions) proposed greater transparency concerning the remuneration of financial services sector staff. The possibility to compare prices easily was highlighted in a few replies as useful for consumers. Others advocated a more proactive approach by the consumer, who is not seen as taking advantage of the possibility to shop around.

Further suggested solutions were to include in the Unfair Commercial Practices Directive (UCPD) a list of criteria to assess whether a practice is unfair or not; to guarantee consumers the right of recourse, as well as the right to decline or to cancel the additional product offered; to promote a competitive environment; to put in place control and sanction procedures; or to introduce annual reviews of bundled products by regulatory authorities. A Member State authority suggested the development of an EU-wide list of defined unfair commercial practices (black list) and of potentially unfair commercial practices (grey list) to facilitate easier interpretation of the UCPD. A consumer representative argued that the only solution was appropriate legislation and its effective implementation and enforcement at national level.

**Question 4** asked stakeholders whether they were aware of complaints regarding the practices under scrutiny.

Not many contributors responded to this question. Those industry representatives who did respond stressed that the number of complaints was negligible. Some Member State authorities commented that while the complaints regarding unfair commercial practices generally were numerous, those related to tying were not common. Consumer representatives referred to concrete problems faced by consumers in different countries.

**Questions 5 and 6** asked whether there was a need for action at EU level and, if so, what form should it take.

Industry respondents argued strongly against further regulation at EU level. The main reasons given were that the existing legal and regulatory framework is sufficient and that there is a lack of evidence of the alleged detriment caused by the practices under review. A certain number also expressed the view that financial services markets remain local in nature and therefore remedies should be addressed at a national level.

In contrast, consumer representatives and trade unions emphasised the need for EU legislative action. (Some even stressed its urgency.) The UCPD was considered by some of them not to protect consumers adequately and an EU solution was deemed essential.

The message from Member States authorities was more mixed. While one such authority was in favour of an EU-wide ban on tying and another considered that there are reasons for the EU to continue to address consumer issues, others seemed less convinced of the need for new legislation.

Stakeholders' responses also diverged on the most appropriate form of potential EU action. Among the stakeholders that expressed their preference for sectoral or horizontal legislation, half of them opted for sector-specific rules and half for a more horizontal approach. Concerning the respective stakeholder categories, consumer representatives and Member State authorities most often favoured sectoral legislation while industry representatives preferred horizontal rules. Among the reasons put forward to justify sectoral rules, the main argument was the specificity of financial services sector and the inability of the UCPD to address all the existing unfair commercial practices.

Some replies suggested amending existing directives, such as the UCPD. However, across the range of stakeholder categories, there was opposition to the idea of an amendment that would imply the removal of the exemption from the maximum harmonisation provisions of the UCPD for financial services. With regard to possible new legislation, the degree of harmonisation preferred by consumer representatives was minimum harmonisation. This would, according to them, provide Member States with some leeway to introduce rules better adapted to national needs. On the other hand, the few replies from the industry addressing this issue indicated a preference for maximum harmonisation.

If the legislative path were to be pursued, some replies, both from the industry and Member State authorities, recommended to conduct a sound cost/ benefit analysis to assess the impact of a ban on certain practices and to ensure a level playing field. A few replies also advised to wait for the review of the UCPD or for recent legislation, such as the Consumer Credit Directive, to bed down. A small number of respondents also recommended a stronger integration of behavioural economics concepts in the legal analysis of unfair commercial practices.

Finally, **Question 7** sought suggestions on how to avoid that, when tying is banned, bundling would replace it with the same effects.

Less than half of the replies addressed this question directly. Of those, many coming from the industry stressed the lack of any problem and some reiterated the advantages of cross-selling practices for the consumer. Other categories of stakeholders, including a Member State authority, suggested a strict enforcement of existing law or to improve the functioning of consumer protection authorities and mechanisms. Another contributor suggested to make use of soft law. Finally, an industry federation commented that circumvention was an inherent risk if the path of regulation was chosen.

### **3.3. Other comments/suggestions**

A significant number of respondents, mainly from the industry side, expressed concerns about the representativeness of the data collected by the consultant via the questionnaires. Many of them argued that it could not be considered as reflecting the diversity of markets in EU 27 and found that it did not offer a sufficient empirical basis from which to draw conclusions.

Some replies, from different categories of stakeholders, stressed the important role of financial education, which was presented as a pre-requisite or a solution in order to avoid consumer detriment. Among those replies, a few, from the industry side, argued that the consequences of insufficient financial education should not be tackled by banning commercial practices. A consumer representative, however, considered as useless the efforts and money invested in consumer education.

The provision of adequate information was also considered important by a number of respondents. Some clarified that the information provided should contain clear details on the prices and characteristics of each of the products offered in a package. For a few industry respondents, there was no risk of harm as long as the consumer was given clear information. Others recommended that financial services staff were adequately trained and prepared to provide adequate information. One Member State authority suggested extending the European Standardised Information Sheet for home loans to all credit products.

A considerable number of industry respondents criticised the approach taken by the contractor with regard to consumer mobility. Many of those regretted that other non-monetary factors, such as convenience and trust, had not been taken into account to explain the low mobility of consumers. Consumer satisfaction was the most frequently mentioned justification for consumers' loyalty. According to some other replies, also from the industry, mobility should not be considered as an aim in itself. Other industry respondents expressed the view that the depth and longevity of the relationship with the financial services provider should be considered positively. Some also mentioned that cross-selling practices were not an obstacle to consumer cross-border mobility; other reasons, such as language, were more relevant. A few respondents from the industry and academia found the study's switching estimations unrealistic.

Other recurrent comments, mainly from the industry side, referred to the fact that some products need to be sold together, either because it was technically impossible to split them or because it would be otherwise too costly for the consumer. The study's assumptions on the 'ideal consumer' and the study's allegations towards the industry of exploiting information or power gaps received criticism from a number of industry replies. A number of respondents from the industry also considered the extension of the conclusions of the study to SMEs questionable. Finally, some consultation replies, from different categories of stakeholders, recommended further research; including a suggestion from a Member State authority to carry out a similar analysis of consumer protection models outside the EU in order to identify international best practices.