POLICY ROUNDTABLES

Competition and Regulation in Retail Banking

2006

Introduction

The Competition Committee debated retail banking in October 2006. This document includes an executive summary and the documents from the meeting: an analytical note by MM. Hans Degryse and Steven Ongena for the OECD, written submissions from Brazil, Chinese Taipei, the Czech Republic, Denmark, European Commission, France, Hungary, Indonesia, Ireland, Israel, Italy, Japan, Lithuania, Mexico, the Netherlands, Norway, Poland, the Russian Federation, South Africa, Sweden, Switzerland, Turkey, the United Kingdom and the United States as well as an aide-memoire of the discussion.

Overview

Competition can improve the functioning of the retail banking sector without harming prudential regulation. The efficient functioning of the sector is important for economic performance. The sector is considered special primarily because of externalities related to potential "contagion" effects stemming from (i) the withdrawal-upon-demand characteristic of some bank deposits and (ii) the role banks play in the payment system, and (iii) the fact that banks are important for the funding of consumers and SMEs.

Customer mobility and choice is essential to stimulate retail-banking competition. An important observation is that the degree of customer mobility is low and the longevity of customer-bank relationships is long. Financial information sharing platforms should therefore be promoted and, where limited by privacy laws, privacy laws should be modified in a way that maintains the goal of protecting privacy while also allowing consumers to receive the benefits of credit ratings.

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COMPETITION AND REGULATION IN RETAIL BANKING

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FOREWORD

This document comprises proceedings in the original languages of a Roundtable on Competition and Regulation in Retail Banking held by the Competition Committee in October 2006.

It is published under the responsibility of the Secretary General of the OECD to bring information on this topic to the attention of a wider audience.

This compilation is one of a series of publications entitled "Competition Policy Roundtables".

PRÉFACE

Ce document rassemble la documentation dans la langue d'origine dans laquelle elle a été soumise, relative à une table ronde sur la concurrence et la réglementation dans le secteur de la banque de réseau, qui s'est tenue en octobre 2006 dans le cadre du Comité de la concurrence.

Il est publié sous la responsabilité du Secrétaire général de l'OCDE, afin de porter à la connaissance d'un large public les éléments d'information qui ont été réunis à cette occasion.

Cette compilation fait partie de la série intitulée "Les tables rondes sur la politique de la concurrence".

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EXECUTIVE SUMMARY

by the Secretariat

Considering the discussion, the delegates' submissions, and the background paper, several broad results emerge:

1. *Competition can improve the functioning of the retail banking sector without harming prudential regulation. The efficient functioning of the sector is important for economic performance.*

   The efficient functioning of the retail banking sector in all OECD countries is important to promote the economic potential of these countries' economies. Retail banking is delineated as banking services for consumers and for small and medium sized enterprises (SMEs) having a turnover of less than 10 million Euros. Consumers as well as SMEs rely heavily on the banking sector for their financial services and external finance. The access of retail customers and SMEs to finance is particularly crucial for economic growth, given that much growth in employment and GDP comes from the development of SMEs. Banking competition can play a role in improving the conditions for access to finance, such as lower interest rates for loans, or a lower degree of collateralisation. However, competition does not always seem to work properly in the retail-banking sector. Several broad results emerged on how to improve the competitive environment of retail banking without harming prudential regulation.

2. *Retail banking is a sector that in most countries is subject to a tight set of regulations.*

   Some retail banking regulations tend to soften competition. Examples include restrictions on the entry of new banks or limitations on the free deployment of competitive tools by banks. Other regulations restrict banking activities in space and scope, putting limitations on the bank's potential to diversify and exploit scale / scope economies. Finally there is prudential regulation that alters the competitive position of banks vis-à-vis other non-bank institutions. Using comprehensive cross-country datasets available at the World Bank and the OECD, it has been shown that restrictive regulation continues to be a major source of rents for banks in many countries. Estimates range from say 30 to 100 basis points on an average loan rate. Substantial heterogeneity in regulation is found in *barriers to domestic entry, barriers to foreign entry* (including restrictions on foreign ownership, screening and approval procedures of foreign entry, and other formal barriers), *barriers to activity*, and *government ownership*.

3. *The banking sector is considered special primarily because of externalities related to potential "contagion" effects stemming from (i) the withdrawal-upon-demand characteristic of some bank deposits and (ii) the role banks play in the payment system, and (iii) the fact that banks are important for the funding of consumers and SMEs.*

   Largely because of the possibility that increased competition may make contagion more likely, the desirability of competition in the banking sector has been questioned for a long time. Until the 1980s, the general idea was that in order to preserve financial stability, competition in the banking sector should not be too intense. That is, too intense competition would lead to excessive

risk-taking such that there would be a trade-off between competition and financial stability. Recent work provides a more balanced view suggesting that there could be either a positive or negative link between competition and stability. As a result, the view has been introduced that the banking sector should be subject to a stronger, more independent antitrust regime. This view has gained support from the increased ability of supervisory authorities to control bank stability though capital regulation (Basle I and II) and banks showing considerable capital buffers. Though branching and entry is mostly permitted now on both sides of the Atlantic, mergers and acquisitions are still sometimes blocked in Europe by regulators under the pretext of the safe and sound management doctrine. Pretexts for preventing mergers that disguise other motives should be limited. Putting competition policy issues into the hands of an authority not responsible for prudential regulation may help to promote further financial integration and greater competition.

4. *Customer mobility and choice is essential to stimulate retail-banking competition. An important observation is that the degree of customer mobility is low and the longevity of customer-bank relationships is long.*

Consumers and businesses may be tied to their bankers due to the existence of switching costs. Switching costs are costs that existing customers have to incur when changing suppliers. Conceptually, we can distinguish between the fixed transactional (or technical) costs of switching a bank and informational switching costs. We take a broad definition of *transactional switching costs*. Examples are shoe-leather and other search costs customers incur when looking for another bank branch, the opportunity costs of her time of opening the new account, transferring the funds, and closing the old account. Also contractual costs and psychological costs may be important transactional switching costs. Many but not all of these costs are independent of the banks' behaviour, but nonetheless allow an incumbent bank to lower deposit rates to captured customers. Switching costs are directly influenced by bank behaviour when, for example, banks charge exiting customers for closing accounts (closing charges). In loan markets it is often conjectured that, in addition to these fixed transactional costs of changing banks, there are *informational switching costs*. Borrowers face informational switching costs when considering a switch, as the current "inside" financier is more informed about a borrower's quality and its recent repayment behaviour. Such switching costs may provide the informed relationship bank with extra potential to extract rents.[1] Switching costs bind consumers and SMEs to banks, locking them into early choices. This lock-in provides banks with considerable ex-post market power.

Policymakers can often do more to enable switching. We consider three different but complementary means to reduce switching costs.

- *First, greater consumer education and financial literacy about financial alternatives may help to promote greater willingness of consumers to switch from one institution to another and reduce bank rents from switching costs. Information about prices and more transparency is desirable to promote consumers' possibilities to compare financial institutions.*

- *Second, switching "packs" that simplify the administrative steps for switching should be promoted. Setting up "switching arrangements" or "switching packs" can reduce the administrative burden and hence reduce the costs of switching.*

These arrangements typically are the result of the installation of a self-regulatory code between banks that helps customers switch banks. These codes are often introduced after investigations by competition authorities. The banking associations in these countries have established voluntary

1. See Berger and Udell (2002), Boot (2000), and Ongena and Smith (2000).

codes that establish standards of good practice. The switching arrangements also imply that banks perform a considerable part of the administrative burden by preparing "switching packs" ensuring smooth transition from one account to another. Experiences from two countries show greater customer mobility and increased switching rates.

- *Third, account number portability may merit further consideration if its potential benefits would clearly outweigh the undoubtedly high costs.*

  Although switching arrangements help in reducing switching costs, they do not remove switching costs entirely, as customers must still change account numbers. A more structural approach is account number portability. Number portability implies that customers could transfer their number from one bank to another without facing an important administrative burden. Number portability can only happen when customers "own" the account number, and when payment systems and account numbers exhibit a similar structure and are standardised on a national or international scale. While number portability almost completely removes switching costs and therefore should result in more vigorous banking competition, it may require more standardisation and substantial fixed costs for its introduction. Number portability will only imply a level-playing field when non-discriminatory access to the payment system is implemented. The costs of investment to achieve number portability may be great. In fact, prudential authorities have suggested that the costs are likely prohibitively expensive compared to the likely benefits. One pragmatic concern with number portability is that, in many countries, the current numbering system provides features that help identify customer banks inherently through the structure of the number. Losing this ability to identify banks and branches could potentially increase the difficulty of identifying the correct bank in questions related to transaction errors.

5. *Financial information sharing platforms should be promoted and, where limited by privacy laws, privacy laws should be modified in a way that maintains the goal of protecting privacy while also allowing consumers to receive the benefits of credit ratings.*

   Individuals and SMEs may not be able to credibly communicate their credit quality to outside banks or other providers of external finance in the presence of asymmetric information. Asymmetric information between banks about borrower quality is therefore an important determinant of banking competition. In some countries, however, financial institutions often release limited borrower information through public credit registries, or private credit bureaus or rating agencies. Credit information sharing is an increasingly common way for banks (and other institutions for whom customer financial condition and reliability is important) to share and tap information about borrowers – and a helpful tool for reducing losses on unprofitable borrowers. Credit information sharing may alleviate some of the rents due to information asymmetries as long as the informational release contains sufficient, credible and up-to-date information, and is accessible to all parties. That is, credit information will reduce the difference in information between a customer's current bank and other potential financial service suppliers. Also, information sharing can operate as a borrower discipline device, and may reduce the possibilities for borrowers to become over-indebted by tapping loans at several banks simultaneously.

   The existence of public credit registries and of private credit bureaus or rating agencies may be shaped by privacy laws. Public credit registries will take into account how much information sharing already spontaneously occurs. Private and public initiatives can be substitutes in this respect. A private credit bureau or rating agency can issue several kinds of credit reports – ranging from "black" information (such as whether the customer has defaulted) over to "white" information (i.e. outstanding loan amounts), to even more fine-grained credit scores. While

public credit registries typically have a complete coverage above a certain loan-amount threshold due to the compulsory nature of reporting, private credit bureaus and rating agencies may be less complete in their coverage but provide more detailed information. Private credit bureaus or rating agencies will then more likely be established when the minimum reporting threshold at the public credit registry is high and when privacy laws allow useful and profitable operation of private rating agencies. Indeed, credit information provision often hits the boundaries of privacy protection. Privacy laws for example have shaped the access to files by potential users. More stringent privacy protection may therefore imply that customers become captive to their existing banks. Other financial institutions may have insufficient information to make competitive loan offers.

SYNTHÈSE

par le Secrétariat

Plusieurs résultats globaux émergent de la discussion, des contributions des délégués et du document de référence :

1. *La concurrence peut améliorer le fonctionnement du secteur des banques de réseau sans préjudice de la réglementation prudentielle. Le fonctionnement efficient du secteur est important pour les performances économiques.*

   Dans tous les pays de l'OCDE, le fonctionnement efficient des banques de réseau est important pour réaliser le potentiel économique. La "banque de réseau" se définit comme les services bancaires proposés aux particuliers et aux petites et moyennes entreprises (PME) ayant un chiffre d'affaires inférieur à 10 millions d'euros. Les consommateurs, comme les PME, comptent essentiellement sur le secteur bancaire pour l'achat de services financiers et leurs besoins de financement externe. L'accès des particuliers et des PME aux sources de financement est particulièrement important pour la croissance économique étant donné qu'une grande partie de la croissance de l'emploi et du PIB est générée par le développement des PME. La concurrence bancaire peut jouer un rôle en améliorant les conditions d'accès au crédit (des taux d'intérêt plus bas pour les prêts, par exemple, ou un plus faible degré de garanties demandées). Cependant, la concurrence ne semble pas toujours jouer pleinement son rôle dans ce secteur. Plusieurs solutions globales sont apparues quant à la façon d'améliorer l'environnement concurrentiel des banques de réseau, sans porter atteinte à la réglementation prudentielle.

2. *Les banques de réseau sont un secteur qui, dans la plupart des pays, est soumis à un ensemble de règles strictes.*

   Certaines réglementations visant les opérations de banque de réseau tendent à atténuer la concurrence. Citons par exemple les restrictions à l'entrée de nouvelles banques ou les limites fixées au libre déploiement d'instruments concurrentiels par les banques. D'autres réglementations restreignent les activités bancaires en limitant les possibilités de diversification et d'expansion géographique pourtant synonymes d'économies d'échelle. Enfin, il existe une réglementation prudentielle qui modifie le positionnement concurrentiel des banques vis-à-vis d'autres institutions non bancaires. Des séries de données transnationales complètes disponibles à la Banque Mondiale et à l'OCDE ont montré qu'une réglementation restrictive continue d'être la principale source de rente pour les banques dans de nombreux pays. Les estimations vont de 30 à 100 points de base sur un taux d'emprunt moyen. On trouve une grande hétérogénéité de réglementation dans *les barrières à l'entrée de banques nationales, les barrières à l'entrée de banques étrangères* (y compris les restrictions en matière de participations étrangères, les procédures de sélection et d'autorisation relatives à l'entrée d'entités étrangères et autres barrières réglementaires), *les barrières relatives aux activités* et *les participations publiques.*

3. *Le secteur bancaire passe pour un secteur sensible principalement en raison de ses effets de "contagion"éventuellement induits par (i) la possibilité de retrait à vue de certains dépôts bancaires, (ii) le rôle que jouent les banques dans le système de paiement, et (iii) l'importance des banques dans l'apport de fonds aux consommateurs et aux PME.*

L'opportunité de la concurrence dans le secteur bancaire est depuis longtemps remise en question par la possibilité, notamment, qu'une intensification de la concurrence augmente le risque de contagion. Jusque dans les années 80, l'idée générale était que la stabilité financière serait préservée tant que la concurrence dans le secteur bancaire ne serait pas trop intense. Dans le cas contraire, elle entraînerait une prise de risque excessive, obligeant à trouver un compromis entre concurrence et stabilité financière. Les travaux récents sur la question offrent un point de vue plus pondéré. Ces travaux concluent que la relation entre concurrence et stabilité est tantôt positive, tantôt négative. En conséquence, certains ont émis l'idée que le secteur bancaire devrait être assujetti à un régime de la concurrence plus indépendant. Cette idée a gagné du terrain à partir du moment où les autorités de surveillance ont su mieux maîtriser la stabilité du système bancaire par le biais de la réglementation des fonds propres (Bâle I et II) et où les banques ont affiché des réserves considérables. Bien que l'ouverture d'agences bancaires et l'entrée des banques soient autorisées de part et d'autre de l'Atlantique, les autorités de tutelle s'opposent parfois aux fusions- acquisitions en Europe au nom d'une doctrine de gestion saine et sûre. Les prétextes avancés pour empêcher les fusions, qui cachent en réalité d'autres motifs, devraient être limités. Les questions de politique de la concurrence devraient être traitées par une autorité non responsable de la réglementation prudentielle. Cela devrait encourager l'intégration financière et la concurrence.

4. *Mobilité et choix du consommateur sont essentiels pour stimuler la concurrence dans le secteur des banques de réseau. On observe que la mobilité du client est faible alors que la longévité de la relation banque-client est grande.*

Les frais de transfert de compte peuvent lier les particuliers et les entreprises à leur banquier. Ces frais sont les coûts encourus par les clients pour changer de prestataire. D'un point de vue conceptuel, nous avons distingué les coûts fixes de transaction (ou techniques) et les coûts d'information associés au changement de banque. Nous prenons les *coûts de transfert transactionnels* au sens large. Ils comprennent, entre autres, les coûts de recherche d'une autre banque supportés par le client et les coûts d'opportunité liés au temps que celle-ci consacre à l'ouverture du nouveau compte, au transfert des fonds et à la fermeture de l'ancien compte. S'y ajoutent éventuellement des coûts contractuels et des coûts psychologiques qui peuvent être importants. Nombre de ces coûts, mais pas tous, sont indépendants du comportement des banques, mais permettent à la banque initiale de compenser partiellement les taux d'intérêt servis sur les dépôts des clients partis. Les frais de transfert de compte sont directement influencés par le comportement des banques lorsque, par exemple, celles-ci facturent aux clients sortants des frais de fermeture de compte. Sur le marché des prêts, aux coûts fixes transactionnels associés au changement de banque s'ajoutent souvent des coûts de transfert informationnels. Les emprunteurs souhaitant changer de banque seront assujettis à des coûts de transfert informationnels, car leur banquier d'origine connaît mieux que ses concurrents leur qualité d'emprunteur et leur comportement récent au regard de leurs remboursements. Ces coûts de transfert de compte donnent à la banque informée un avantage sur les autres pour dégager une rente économique supplémentaire.[1] Les frais de transfert de compte lient les particuliers et les PME aux banques en les enfermant dans leur choix initial. Ce verrouillage donne aux banques un pouvoir de marché *a posteriori* considérable.

1. Voir Berger and Udell (2002), Boot (2000), ainsi que Ongena and Smith (2000).

Les responsables des politiques peuvent souvent faire plus pour encourager la mobilité. Nous examinons trois moyens différents mais complémentaires de réduire les coûts de transfert de compte.

- *Premièrement, une meilleure information des consommateurs sur les alternatives financières devrait les inciter à changer de banque, réduisant ainsi la rente économique que les banques tirent des coûts de transfert. Il est souhaitable d'avoir plus d'informations sur les prix et plus de transparence afin que les consommateurs puissent plus facilement comparer les institutions financières.*

- *Ensuite, il faudrait aussi promouvoir les "packs de transfert" qui simplifient les démarches administratives. La mise en place de ces mécanismes de transfert ou "packs de transfert" permet de réduire la charge administrative et donc les frais de transfert de compte.*

  Ces mécanismes, fruits de l'instauration d'un code d'auto-réglementation de la profession bancaire, facilitent la mobilité des clients passant d'une banque à une autre. Ces codes sont souvent institués après enquête des autorités de la concurrence. Les associations bancaires des pays concernés ont établi des codes volontaires qui définissent les normes de bonne pratique. Les mécanismes de transfert impliquent également que les banques prennent en charge une grande partie de la charge administrative en préparant ces "packs de transfert" qui assureront une transition sans accroc d'un compte à un autre. L'expérience de deux pays témoigne d'une plus grande mobilité de la clientèle et d'un plus grand nombre de transferts.

- *Troisièmement, la portabilité du numéro de compte mérite peut-être d'être examinée plus à fond si les avantages potentiels devaient clairement dépasser les coûts certainement élevés.*

  Bien que les mécanismes de transfert de compte contribuent à réduire les frais de transfert, ils ne les suppriment pas totalement, car les clients doivent encore changer de numéro de compte. La solution de la portabilité du numéro de compte relève d'une approche structurelle. La portabilité du numéro signifie que les clients peuvent transférer leur numéro d'une banque à l'autre sans que la charge administrative soit trop lourde. Cela implique que les clients soient "propriétaires" de leur numéro de compte, que les systèmes de paiement et les numéros de compte présentent une structure analogue et qu'ils soient normalisés à l'échelle nationale ou internationale. Si la portabilité des numéros de compte supprime presque intégralement les frais de transfert, entraînant une intensification de la concurrence dans le secteur bancaire, elle demande une normalisation accrue et son instauration engendrera des coûts fixes substantiels. Lorsque l'accès non discriminatoire au système de paiement sera appliqué, alors les règles du jeu seront équitables pour la portabilité du numéro. Les coûts d'investissement pour réaliser la portabilité du numéro risquent d'être élevés. En fait, les autorités de surveillance estiment qu'ils sont peut-être prohibitifs par rapport aux avantages qui en seront probablement retirés. Une préoccupation pratique liée à la portabilité tient au fait que, dans de nombreux pays, le système actuel de numérotation comporte des caractéristiques qui permettent d'identifier les banques au travers de la structure même du numéro. La perte de cette possibilité d'identifier les banques et les succursales pourrait accroître la difficulté d'identification de la bonne banque dans les questions relatives à des erreurs de transactions.

5. *Il faudrait promouvoir des plateformes d'échange de renseignements financiers et modifier, lorsqu'elle est restrictive, la législation relative à la vie privée, de façon à préserver l'objectif de protection de la vie privée tout en permettant aux consommateurs de bénéficier de notes de crédit.*

La communication par les particuliers et les PME de leur qualité de crédit à d'autres banques ou autres établissements de crédit risque de ne pas être fiable pour des raisons d'asymétrie des informations. L'asymétrie des informations entre banques sur la qualité d'un emprunteur est donc un déterminant majeur de la concurrence dans le secteur bancaire. Dans certains pays, les institutions financières communiquent peu de renseignements sur les emprunteurs via les fichiers bancaires publics ou les centrales privées de risque ou les agences de notation. L'échange de renseignements en matière de crédit représente pour les banques (et autres institutions pour lesquelles la situation financière et la fiabilité de leurs clients sont importantes) une façon de plus en plus courante de partager des informations sur les emprunteurs. Cela permet, en outre, de réduire les pertes causées par les emprunteurs non rentables. L'échange de renseignements en matière de crédit peut atténuer une partie des coûts liés à l'asymétrie des informations, dès lors que les informations transmises sont suffisantes, fiables et à jour. Autrement dit, les renseignements en matière de crédit réduiront le décalage d'information entre la banque actuelle du client et d'autres prestataires potentiels de services financiers. Enfin, l'échange de renseignements peut contribuer à discipliner les emprunteurs et à réduire le surendettement résultant de la signature simultanée de plusieurs contrats d'emprunt auprès de différentes banques.

Le droit relatif au respect de la vie privée peut exercer une influence prépondérante sur les fichiers bancaires publics et les centrales privées de risque ou les agences de notation. Les fichiers bancaires publics vont en effet tenir compte de l'ampleur des échanges de renseignements qui se produisent déjà spontanément. À cet égard, les initiatives publiques et privées peuvent se substituer les unes aux autres. Une centrale de risque ou une agence de notation publie différents types de données qui vont d'informations « noires » (comme la défaillance d'un client) à des informations « blanches » (comme l'encours de prêt), en passant par des informations plus complexes, comme des évaluations du crédit par la méthode des scores. Si les fichiers bancaires publics couvrent obligatoirement tous les prêts au-delà d'un certain seuil, la couverture offerte par les centrales privées de risque et agences de notation n'est pas nécessairement aussi complète, mais les informations fournies sont plus détaillées. Plus le seuil de couverture obligatoire des fichiers bancaires publics est élevé et plus la législation relative à la vie privée est permissive, plus les centrales privées de risque et les agences de notation se développeront de façon rentable. En effet, les renseignements en matière de crédit touchent souvent les frontières de la vie privée et sa protection. La législation relative à la vie privée régit l'accès des utilisateurs potentiels aux fichiers concernés. Les clients peuvent devenir captifs de leur banque, en raison d'une protection plus poussée de la vie privée. D'autres institutions financières ne disposent pas nécessairement des informations requises pour faire une offre de prêt compétitive.

BACKGROUND NOTE*

by the Secretariat

1. Introduction

The efficient functioning of the financial system is important to promote the economic potential of an economy. Consumers as well as small and medium sized enterprises (SMEs) mostly rely on the banking sector for their financial services and external finance. However, competition does not always seem to work properly in the retail-banking sector.[1] Regulation has an important role to play in this area. At times, regulation can promote competition while at other times, it can restrict it.

In this paper, we review selected market frictions that hinder the competitiveness of the retail-banking sector. In order to enhance its focus, this paper does not address many important issues related to competition between retail banks, such as transparency of prices to consumers or prudential regulation to ensure that banks do not offer risky investment portfolios that place consumer savings in danger whether at individual banks or through systemic risk. We delineate retail banking as banking services for consumers and SMEs with a turnover of less than 10 million Euros. We specifically review (i) the role of regulation, entry barriers and mergers in retail banking, and (ii) the market frictions that remain important in retail banking, such as transactional and informational switching costs. This paper seeks to give a balanced view of costs and benefits of market frictions in retail banking. As a preview on our findings and as a guide to the remainder of the paper, we will argue that restrictive regulation continues to be a major source of rents for banks and corresponding costs to consumers and SMEs. Along the way, we also identify issues that merit further investigation and identify potential solutions that may improve the degree of competition in the retail-banking sector. For example, we will argue that putting "competition policy issues" into the hands of an authority not responsible for prudential regulation may help to promote further financial integration and greater competition. Also greater consumer education about financial alternatives and the benefits of seeking better offers may help to promote greater willingness of consumers to search for better alternatives and switch from one institution to another and reduce bank rents from switching costs. Policymakers themselves can also often do more to enable switching through, for example, the promotion of "switching packs" that transfer information and responsibilities from a client's former bank to the client's new bank and through setting laws that promote the availability of credit information.

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1 Indeed, a number of recent reports show that retail-banking sectors are not yet fully integrated. See the *Oxford Review of Economic Policy* 2004 Issue on European Financial Integration or the European Commission's *Interim Report II on Current Accounts and Related Services*, henceforth EC Report. For example, while money and capital markets are fairly well integrated across national borders, retail-banking sectors in the EU are less integrated.

The remainder of this paper is organized as follows. In section II, we review the evidence that market structure affects bank interest rate margins on loans. Section III discusses the role of the frictions in the retail banking market, with a focus on regulatory entry barriers and mergers in retail banking. Section IV then turns to the impact of market structure and market frictions, which are influenced directly by bank behaviour, such as transactional and informational switching costs. Section V provides some summary remarks.

2. Market Structure

There is ample empirical work starting from the Structure-Conduct-Performance paradigm investigating the impact of bank market concentration on bank loan rates (see Gilbert and Zaretsky (2003) for a recent review). Table 1 in Appendix A displays the results of selected studies that study the relationship between bank loan rates and the Herfindahl – Hirschman Index (HHI) of market concentration.[2] Studies employ both US and international data. Though mostly positive, the magnitude of the impact of the concentration index on loan rates varies widely.[3] The findings for deposit markets point in the same direction. Studies employ both the three-bank concentration ratio (CR3) and the HHI as concentration measures. Overall most papers find a negative impact of an increase in concentration on time and savings deposit rates, but as with the loan rate studies, the effects vary across samples and specifications.[4] More recent studies typically find smaller negative effects for all deposit products, possibly reflecting the widening geographical scope of banking competition (Radecki (1998)) and the ensuing difficulties delineating the relevant local market (Heitfield (1999), Biehl (2002)). Because of technical progress and the advent of electronic banking, geographical markets in the US for demand deposits may be currently "smaller than state-wide" but not necessarily "local".[5]

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2. There are some methodological difficulties in interpreting the reduced form coefficients in interest rate – market concentration studies.

3. To benchmark the results we calculate the impact of a change in the HHI of 0.10, which according to widely accepted cut-offs could mark the transition from a competitive market (HHI < 0.10) to a concentrated market (HHI > 0.18). Illustrating the wide range of results we note that recent studies for example indicate that a ΔHHI = 0.1 increases the loan rate by between 21*** to 55 *** bp in the US (Cyrnak and Hannan (1999)) and 59*** bp in Italy (Sapienza (2002)), but only 3 bp in Norway (Kim, Kristiansen and Vale (2005)) and –4 to 5*** bp in Belgium (Degryse and Ongena (2005)). However, it remains difficult to compare results across specifications, banking markets, periods, and HHI measures that are alternatively based on loans, deposits, or branches, and vary widely (across studies) in geographical span (Morgan (2002)). Indeed a serious related problem of interpretation is that local market concentration is often negatively correlated with market size.

4. We take a change in CR3 by 0.3 to be approximately comparable to a change in HHI by 0.1. The effect of the changes in either the CR3 or HHI on US time and savings deposits rates ranges then from –26*** to –1 and from –27*** to +5 bp, respectively. Rates on demand deposits seem less affected by market concentration with estimates varying from –18*** to +10* bp. But there is evidence of more downward price rigidity and upward price flexibility in demand deposit rates than in time deposit rates especially in more concentrated markets (Neumark and Sharpe (1992)).

5. Heitfield and Prager (2004)) suggests both local and statewide measures of concentration and multi-market contact variables should be included in the analysis. Heitfield and Prager (2004) finds that the coefficients on "state" concentration measures became larger in absolute value over time than the coefficients on the "local" measures in particular for demand deposits. In 1999, for example, a 0.1 change in the local HHI affected the NOW deposit rate by only -1* bp while a similar change in the state HHI decreased the rate by 23*** bp. A recent paper by Corvoisier and Gropp (2002) studies European national banking markets, in geographical and economic span often comparable to US states. They find a substantial effect of –70*** bp on demand deposit rates (corresponding an increase in HHI of 0.1), but a surprising increase of +50*** and +140*** bp for time and savings deposits rates. Corvoisier and Gropp argue that local markets are more

3. Regulatory Barriers in Retail Banking

Banking is an industry that in most countries is subject to a tight set of regulations (Vives (1991) and Fischer and Pfeil (2004) provide reviews). Some of the regulations tend to soften competition. Examples include restrictions on the entry of new banks or limitations on the free deployment of competitive tools by banks. Other regulations restrict banking activities in space and scope, putting limitations on the bank's potential to diversify and exploit scale / scope economies. Finally there is prudential regulation that alters the competitive position of banks vis-à-vis other non-bank institutions (Dewatripont and Tirole (1994)).

In the last two decades, several countries, including the European Union countries and the US, have implemented a series of deregulatory changes with the objective to stimulate competition and to enhance financial integration. We first review the impact of regulation in the retail-banking sector on bank interest rate margins (henceforth "bank interest margins", often referred to as intermediation margins), and financial development and growth. This allows us not only to study how bank interest margins are affected by regulation but also to investigate how regulation shapes non-price dimensions such as banks' strategies and financial development. Afterwards we turn to the issue of how banking regulation may interfere with competition policy and changes that can be made to promote greater beneficial competition while maintaining other policy objectives, such as prudential objectives.

3.1 Regulation in the Retail-Banking Sector and Competition

The restrictiveness of banking regulation is related to net interest margins.[6] A one standard deviation increase in entry or activity restrictions, reserve requirements, or banking freedom, result respectively in 50, 100, 51, and 70 basis points (bp) extra for the incumbent banks (where 100 basis points are equivalent to 1% higher interest rate, e.g. if a 3.00% interest rate increases by 85 basis points, the interest rate increases to 3.85%).[7,8,9]

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relevant for demand deposits whereas customers may shop around for time and savings deposits. Shopping around would imply an increase in contestability, breaking the expected link between HHI and this deposit rate. Demand deposit rates are often posted within a national market after being determined at the banks' headquarters where competition (or lack thereof) may be perceived to be nation-wide. On the other hand, for the time and savings deposit markets the coefficient on HHI may actually pick up bank efficiency (even though various bank cost measures are included) or the effect of bank mergers caused by an unobservable increase in contestability.

6. Demirguc-Kunt, Laeven and Levine (2004) examines the impact of banking regulation on bank net interest margins using data from banks covering 72 countries. Their measures of commercial banking regulation are taken from Barth, Caprio and Levine (2001).

7. Permitting statewide branching and interstate banking in the US decreased operating costs and loan losses, reductions that were ultimately passed on to borrowers in lower loan rates (Jayaratne and Strahan (1998)).

8. A number of different variables can represent the extent of regulation. Regulatory variables employed in the empirical analyses include the fraction of entry that is denied, a proxy for the degree to which banks face regulatory restrictions on their activities in for example securities markets and investment banking, and a measure of reserve requirements. Another measure is an indicator of "banking freedom", taken from the Heritage Foundation, which provides an overall index of the openness of the banking industry and the extent to which banks are free to operate their business. More precisely, indicating the level of statistical significance of these results, the numbers are 50***, 100***, 51*, and 70*** basis points. Following common practice *** means statistically significant at the 1% level, ** at the 5% level, and * at the 10% level.

9. However, when including, in addition to the bank-specific and macro-economic controls, also an index of property rights, the regulatory restrictions turn insignificant and do not provide any additional explanatory power. Demirgüç-Kunt, Laeven, and Levine interpret this result as indicating that banking regulation

Box 1 defines and provides evidence on "regulatory indicators for the banking industry", suggesting that the degree of regulatory restrictions varies substantially across OECD members and by type of restriction.

Box 1. Regulatory indicators for the banking industry

The OECD and the World Bank have recently collected and analysed information on banking and securities markets' regulation (World Bank, 2004, *Bank Regulation and Supervision* Database; OECD, 2006, *Economic Policy Reforms: Going for Growth* Database). We display their indicators on banking regulation related to *barriers to competition* in the figure below:

(i) *Barriers to domestic entry* (panel B): this index gathers information about licensing requirements to set up a *de novo* bank as well as information about regulatory structure in granting licenses;

(ii) *Barriers to foreign entry* (panel C): this index shows how restrictive it is for foreign entities to enter the domestic banking system. It includes a) restrictions on foreign ownership, b) screening and approval procedures of foreign entry, and c) other formal barriers;

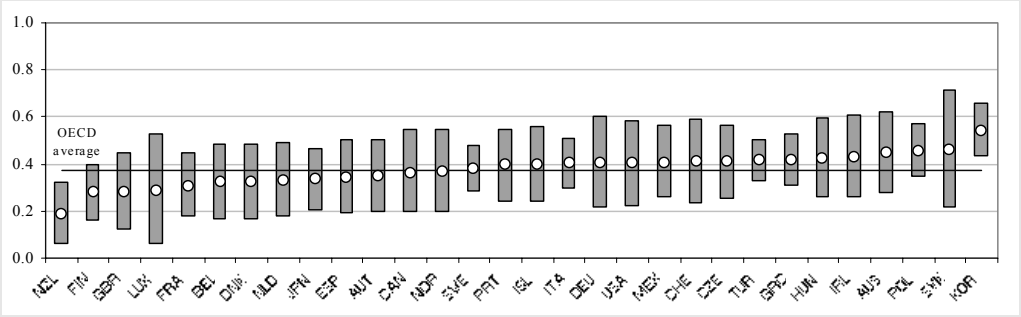
(iii) *Barriers to activity* (panel D): this index shows the level of regulatory restrictiveness for bank participation in securities activity and insurance activity; and

(iv) *Government ownership* (panel E): this index measures the amount of assets held by banks (among the ten largest) where government ownership is at least 20% as a ratio of total assets (of the ten largest banks).

A composite indicator *Overall regulatory barriers to competition* (panel A) is an unweighted average of the four other indicators.

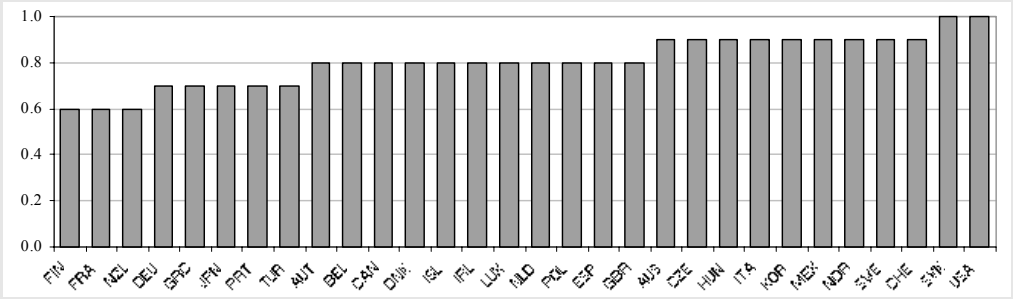
In order to derive indicators, qualitative information on each specific element of regulation is quantified so as to have a scale between zero and one. Higher scores indicate more restrictive regulation; hence higher scores mean higher barriers. The data sources for foreign bank entry and government ownership are Golub (1003) and La Porta, Lopez-de-Silanes and Shleifer (2002), respectively.

Regulation Indices (2003)[1]
A. Overall regulatory barriers to competition[2]

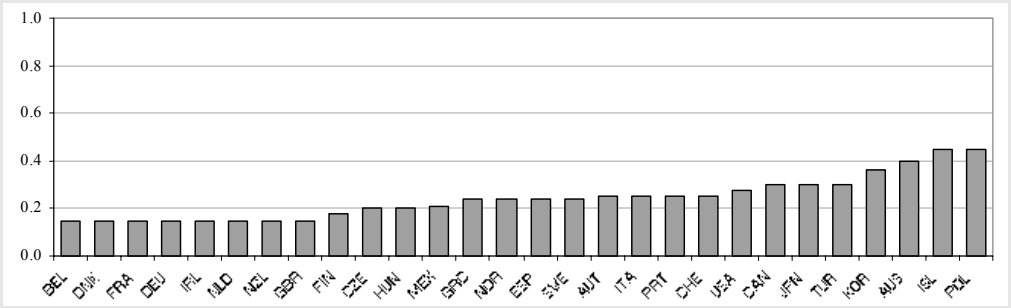


reflects something broader about the competitive environment. Their interpretation fits with findings in Kroszner and Strahan (1999) and more recently Garrett, Wagner and Wheelock (2004), who investigate the political and economic drivers of bank branching deregulation across US states, and with results in Jayaratne and Strahan (1996) showing that loan rates decrease 30** bp on average following deregulation.

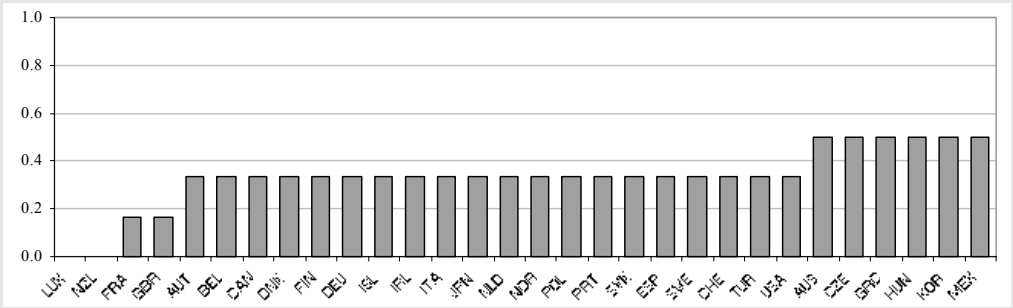
B. Domestic entry



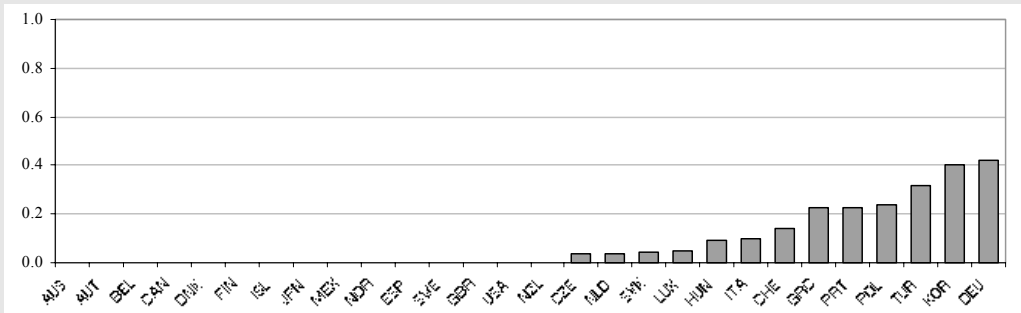
C. Foreign entry[3]



D. Activity



E. Government ownership



1.The scale of the indicator is 0-1 from least to most restrictive. A higher value indicates more competition-restraining regulation.
2.Average of items shown in Panels B to E.
3.Restrictions to foreign entry are taken from Golub, S. (2003), "Measures of restrictions on inward FDI from OECD countries", OECD Economics Department, Working Paper No. 357. This index reflects the stance of regulation prevailing in the period 1998-2000.
Source: OECD and World Bank, Bank regulation and supervision database.

The indicators in Box 1 show large differences in the restrictions on foreign bank entry and government ownership.[10] One question that arises with respect to these indicators is whether, if there are restrictions on foreign entry, or large levels of government ownership, but fewer restrictions on domestic entry, do the foreign entry restrictions or government stakes matter?

Foreign-owned banks may not only compete in different ways than domestically owned institutions, but could also be affected differently by domestic regulation. Foreign bank entry restrictions seem to affect interest rate margins,[11] with foreign entry restrictions being associated with higher interest rate margins, while domestic bank entry restrictions do not seem to be associated with interest rate margins.[12] In developed countries, the fraction of the domestic banking industry held by foreign banks does not affect bank interest margins.

State ownership of banks also affects competition; state-owned banks may compete in different ways than privately owned institutions. Government ownership of banks remains pervasive around the world, in particular in developing countries (La Porta et al. (2002) or Box 1). Cross-country exercises indicate that more state-ownership of the banking sector leads to less competition and slower subsequent financial development.[13] However, firms that actually borrow from state-owned banks pay less than the firms that borrow from the privately-owned banks (Sapienza (2004)).

In Box 2 below, we provide evidence on the impact of foreign bank entry in Eastern Europe

Box 2. Financial Integration and Real Activity: Foreign Bank Entry in Eastern Europe

Foreign bank entry, in emerging markets in particular, may have a wide range of effects on credit availability, competition, stability, and firm and industry performance / financing (see Giannetti and Ongena (2006)).

Credit Availability

In countries with underdeveloped financial systems like the Eastern European economies, financial integration should increase the supply of finance and thus expand the national financial system of these countries. In this respect, financial integration is expected to spur faster growth across the board (Rajan and Zingales (1998), Guiso, Sapienza and Zingales (2004)).

Since all firms borrow from banks, the benefits of foreign bank entry may well affect all firms. Foreign bank presence fostering the development of the banking system widens the availability of credit and relaxes firm-capital constraints also for small and young firms. Foreign bank presence may thus have pervasive positive effects on a country's level of entrepreneurial activity.

Foreign bank entry might have been particularly beneficial for Eastern European economies. After the fall of the communist regimes, Eastern Europe badly needed capital to restructure its real economy. In

10. Some observers have suggested that these indicators may not reflect industry participant views of restrictiveness, as some countries that are anecdotally highly restrictive appear with low measures of restrictiveness, while others with less restrictiveness appear with high measures.

11. Magri, Mori and Rossi (2005), for example, document that some foreign banks successfully entered the Italian banking market following the lowering of the regulatory barriers under the Second Directive enacted in 1992.

12. See Levine (2003) who distinguishes between entry restrictions for foreign versus domestic banks, and thus further refines the analysis by Demirguc-Kunt et al. (2004).

13. See Barth, Caprio and Levine (2004) and La Porta et al. (2002) respectively.

particular, state-owned enterprises had to modernise to survive in competitive markets. Additionally, Eastern European economies badly needed new small firms to provide basic consumer goods and services, and entrepreneurs initially lacked access to start-up capital. But the Eastern European banking sector initially seemed inadequately small to satisfy this hefty demand for funds.

Competition and Stability in the Banking System

Foreign banks may not only enhance the availability of credit by directly lending to domestic firms, but also spur competition and strengthen the financial system thus indirectly benefiting all firms (including the ones that do not directly borrow from foreign banks). Indeed, foreign banks in developing countries, including Eastern European economies, are often more efficient and profitable than domestic banks (Demirguc-Kunt and Huizinga (2000), Green (2003), Naaborg, Scholtens, de Haan, Bol and de Haas (2004), Bonin, Hasan and Wachtel (2005)). Fostering competition, foreign banks may reduce profits and interest margins of all banks operating in the market (Claessens, Demirguc-Kunt and Huizinga (2001) and Unite and Sullivan (2003)).

Foreign bank entry may further stabilise the financial system in developing countries (Crystal, Dages and Goldberg (2002)). First, foreign banks have more lending expertise and sounder lending practices and accumulate fewer bad loans. In addition foreign banks may be more resilient to negative shocks because of their direct access to foreign savings. On the other hand, foreign banks may introduce more volatility in lending because they can more easily find alternative investment opportunities (Morgan and Strahan (2003)) or transfer shocks from their home countries (Soledad Martinez Peria, Powell and Vladkova Hollar (2003)). However, the latter effect is likely to be second order in emerging markets that are generally exposed to significantly larger shocks than the foreign banks' home countries. Consistently, de Haas and Lelyveld (2005) find no evidence of increased instability following foreign bank entry for a set of transition countries. To the extent that foreign bank entry actually reduces concentration, fewer, not more, banking crises should ensue (Beck, Demirguc-Kunt and Levine (2004)).

Hard versus Soft Information

Foreign banks may suffer from considerable organisational handicaps in dealing with small and young local firms. Banks are often already sizeable before venturing abroad, following customers or seeking diversification (see the review by Clarke, Cull, Soledad Martinez Peria and Sanchez (2003)). Once abroad, they may cater to international companies from their home country, which seek their services (Berger, Dai, Ongena and Smith (2003)) and are often considered safer and more profitable borrowers. Additionally, large banks may suffer from managerial diseconomies in lending to both relationship (small) and transactional (large) clients at the same time (Berger, Demsetz and Strahan (1999)).

Even more importantly, foreign banks may fail to collect "soft" information (for example, a character assessment of an entrepreneur, the degree of trust), which is crucial in lending to small firms. In fact, small and young firms typically report little "hard" information, for example they do not have a credit history etc. (Berger and Udell (2002), Petersen (2004)). The use of soft information in lending decisions requires however a decentralised organisation that grants local branch managers substantial decision powers (Liberti (2004)), because soft information cannot be passed as easily as hard information within the bank (Stein (2002)). Foreign banks may hesitate to decentralise because the local bank personnel may be considered lacking expertise or even untrustworthy.

Some of these concerns may be mitigated by the fact that improvements in communication and information processing technology may have altered the possibilities to tap into, collect, and relay information on small businesses. Hence the range of non-transparent firms over which foreign banks are willing to fund may have expanded (Petersen and Rajan (2002)). Nevertheless, foreign bank presence may still not aid small and young firm financing and growth, or may even hamer such young firms if foreign banks substitute for domestic banks, as we discussed in the previous Section.

Connected lending problems

Even though access to credit for small and young firms may tighten when foreign bank presence is large, the net impact on these firms still need not be negative. The ownership structure of domestic banks often leads

to lending practices that are far from sound. Local governments and shareholders of non-financial companies often control domestic banks in developing countries. State or corporate control may give rise to conflicts of interests with pernicious effects on access to credit for young and small borrowers.

La Porta, Lopez-de-Silanes and Zamarripa (2003), for example, finds that Mexican banks make larger loans at a lower interest rate to related companies that are then more likely to default. Similarly, state-owned banks are often driven by political considerations. Sapienza (2004) convincingly shows that in Italy loans from state-owned banks are a vehicle for supplying political patronage. Consistently, Mian (2006) finds that state-owned banks in emerging economies perform uniformly poorly and only survive due to strong government support. This empirical evidence suggests that the lending decisions of domestic banks with state or corporate control may not be driven by consideration of profitability and as a consequence profitable companies without connections may not receive credit. Young and small companies, being less likely to have this sort of bank ties, are likely to suffer the most.

Problems of related lending are pervasive in Eastern Europe. La Porta et al. (2002) estimate that in Eastern European governments still controlled almost 70 percent of all bank assets in the year 2000 while in the other countries of the sample governments controlled on average 40 percent of total bank assets. Anecdotal evidence suggests that state-owned banks are mobilised to support employment in state-owned or even recently privatised enterprises, more than to fund profitable ventures. Corporate control of banks creates similar problems. Laeven (2001) finds that banks in Russia often grant larger loans to companies that own equity in the bank.

Opening the domestic financial sector to foreign competition helps to mitigate these conflicts of interests and to improve allocational efficiency. Foreign state-owned banks are naturally unencumbered by any domestic ownership ties and political motivations in making lending decisions. Profitable firms untainted by any past bank or state ownership ties are likely to be able to access to more bank loans and thus grow more if foreign bank presence increases, while connected companies access to credit is likely to decrease. To the extent that small and young firms are unlikely to have connections, they may benefit from foreign bank entry. Mitigating problems of related lending, foreign bank lending may also increase new firm creation.

To conclude foreign bank entry may foster competition, efficiency, and stability, in which case firm growth and financing should increase across the board. On the other hand, small firm growth and financing may be negatively affected if foreign banks enter through M&As. In that case the net effect will also depend on the dynamic response by other competing banks and the extent to which foreign banks actually import lending expertise and sound lending practices.

Ultimately which firms benefit and by how much seems an empirical question, addressed by Giannetti and Ongena (2006), for example. They employ a large panel containing almost 60,000 firm–year observations on listed and unlisted companies in Eastern European economies to assess the differential impact of foreign bank presence on firm growth and financing. They find that lending by foreign (locally based) banks makes bank credit in the country cheaper (firm interest payments decrease) and more widely available (the use of trade credit decreases), but that these beneficial effects are less pronounced for small firms. Though spurring domestic competition, foreign banks have possibly less interest in obtaining soft information and nurturing long-term relationships with small firms.

3.2 Competition Policy and Banking Regulation

The banking sector is considered special primarily because of externalities related to potential "contagion" effects stemming from (i) the withdrawal-upon-demand characteristic of some bank deposits and (ii) the role banks play in the payment system, and (iii) the fact that banks are important for the funding of consumers and SMEs. Largely because of the possibility that increased competition may make contagion more likely, the desirability of competition in the banking sector has been questioned for a long time. Until the 1980s, the general idea was that in order to preserve financial stability, competition in the

banking sector should not be too intense. That is, too intense competition would lead to excessive risk-taking such that there would be a trade-off between competition and financial stability.

Recent work provides a more balanced view suggesting that there could be either a positive or negative link between competition and stability (see Carletti and Hartmann (2003) or Carletti (2007), for example, for a review). For example, Beck et al. (2004) examine the link with financial stability. They study the impact of bank concentration, bank regulation, and national institutions fostering for example competition or property rights on the likelihood of experiencing a banking crisis. They find that fewer regulatory restrictions – lower barriers to bank entry and fewer restrictions on bank activities – lead to less banking fragility, suggesting that regulatory restrictions are not beneficial in the stability dimension. Black and Strahan (2002) find that the deregulation of restrictions on branching and interstate banking stimulated rates of business incorporation in the US, suggesting that access to finance increases following deregulation.

As a result, the view has been introduced that the banking sector should be subject to a stronger, more independent antitrust regime. This view has gained support from the increased ability of supervisory authorities to control bank stability though capital regulation (Basle I and II) and banks showing considerable capital buffers.[14]

The International Competition Network (ICN) that brings together competition authorities from over 90 jurisdictions has issued a set of recommendations for the competition policy framework for retail banking.[15] They call for the application of the general competition principles to banking. This implies that there should be (i) no special rules for competition among banks and (ii) that competition rules should apply fully. They also call for the application of the antitrust law by competition authorities rather than by the banking regulator.[16]

Regulatory frameworks and banking supervisory practices may interfere with potential competition. Carletti, Hartmann and Ongena (2006), for example, show that the effects of the recent reorientation of the legal and institutional environment towards more competition in banking is heavily influenced by the supervisory regime. In particular, Carletti et al. (2006) argue that supervisory reviews of bank mergers are often guided by other objectives and approaches than competition and these reviews typically focus on the

14. A recent OECD study by De Serres, Kobayakawa, Sløk and Vartia (2006) reports that OECD countries with fiercer banking competition have not been subject to instability in recent decades. They attribute this finding to the authorities' improved ability to foster prudent behavior without adverse impact on competition.

15. ICN report available at: http://www.internationalcompetitionnetwork.org/Bonn/AERS_WG/SG1_Banking/Banking%20-%20An%20Increasing%20Role%20for%20Competition.pdf

16. The ICN report states that:

> Violations of competition rules fall within very general categories and are flexible enough to accommodate any sector specific characteristics. Special competition rules are not only unnecessary, but they may also undermine enforcement. There is a very thin line between sector-specific competition rules and continued regulation, especially if the special rules are to be enforced by the former regulator. There is a danger that sector-specific enforcers may adopt an understanding of competition that is overly congenial to the industry's traditional mode of operation instead of promoting a competitive regime. As explained in the following box, sector-specific laws are more vulnerable to being changed and enforced in the interest of the regulated industry, rather than in the interest of the economy at large. General laws, on the other hand, tend to be more immune and therefore more robust and long-lived. (p. 19)

soundness and stability of the new entity created. Moreover, intervention occasionally promotes specific mergers in order to save weak or failing banks.[17] [18]

In the beginning of 2005, the Italian bank BPI announced it had acquired 2 percent of the Italian bank Banca Antoniana Popolare Veneta (Banca Antonveneta). Also early in 2005, Dutch bank ABN AMRO was reported to be considering bidding for Banca Antonveneta, following the termination of a Banca Antonveneta shareholder agreement in December 2004. In a letter of February 8th, 2005 to the Governor of the Banca d'Italia, Mr McCreevy, EU Commissioner for the Internal Market, stated "It will be important for the Bank of Italy to issue a robust public statement of its commitment to an open and competitive banking sector in which foreign shareholdings are subject to the same approval procedures as domestic shareholdings." (IHT, Feb 9, 2005). On 15 March, ABN AMRO filed preliminary information on an acquisition of Banca Antonveneta. On 30 March, ABN AMRO requested permission to exceed thresholds of 15 and 20 percent and to acquire Banca Antonveneta by means of tender offer. ABN AMRO's competing bidder, BPI, requested authorisation to increase its equity interest in Banca Antonveneta up to 29.9 percent in early April. The BPI request was granted on 7 April. "The authorisations to cross the 15 and 20 percent thresholds were issued to ABN AMRO on 19 and 27 April..." (p. 229, Bank of Italy Abridged Report for Year 2005) The authorisations for ABN AMRO to cross 15 percent and reach 29.9 percent threshold took longer than for BPI's authorisation to reach 29.9 percent. The longer time is potentially explained by the central bank's need for information about a foreign bank for which the Banca d'Italia had limited information. The extra time nonetheless gave BPI an ability to increase its shareholding when ABN AMRO could not. In Banca Antonventa's shareholder meeting of 30 April, the slate of directors proposed by BPI was elected, replacing the prior board that had recommended accepting ABN AMRO's offer. At the date of this shareholder meeting, neither BPI nor ABN AMRO had received Banca d'Italia authorisation to acquire control of Banca Antonveneta. [19] ABN AMRO requested authorisation from the Banca d'Italia to acquire control of Banca Antonveneta on 30 March and received authorisation on 6 May. ABN AMRO launched a tender offer on the total share capital of Antonveneta on 19 May. The offer was closed down unsuccessfully on 22 July. BPI applied for authorisation to acquire control of Banca Antonveneta on 5 May and received authorisation on 11 July. However, after a variety of additional investigations by Consob and the Banca d'Italia, irregularities were identified in BPI's actions. Ultimately, the Banca d'Italia "suspended BPI's authorisation on 30 July and revoked it on 15 October". (p. 231, Bank of Italy Abridged Report for Year 2005). On 18 October, ABN AMRO received a new authorisation by the Banca d'Italia to purchase BPI's shares and successfully completed a mandatory tender offer. On 22 December, the Italian Parliament passed a law that transferred the responsibility for competition reviews of bank mergers from the supervisor to the Italian antitrust authority. The transfer of responsibilities became

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17. A OECD report on the so-called "Failing Firm Defense" documents a few such cases (OECD, 1996, CLP Report 96 (23), p. 69f.).

18. And indeed, Carletti et al. (2006) find that the strengthening of competition policy seems to generate important positive externalities in the financial system that limit supervisory discretion in determining merger outcomes and thereby offset the inefficiencies introduced through the supervisory policies. In particular, they study nineteen countries for the period 1987 to 2004, and find that a more competition-oriented regime for merger control increases banks' stock prices, whereas it decreases those of non-financial firms. In addition, bank merger targets become more profitable and larger and a major determinant of the positive bank returns is the non-transparency that characterizes the institutional setup for supervisory bank merger reviews.

19. Earlier, in a separate procedure, "On 22 April BPI filed prior notification of a plan for the acquisition of control of Banca Antonveneta by means of an exchange tender offer. A preliminary evaluation dated 28 April found that the plan was very ambitious and not easy to execute but had business merits. In the final analysis, on the basis of the information available it was considered compatible with sound and prudent management. However, some important aspects remained to be clarified." (p. 228, Bank of Italy Abridged Report for Year 2005)

effective on 12 January, 2006. Banca d'Italia retains responsibility for supervisory assessment of bank mergers.

On September 12, 2006, the EU Commission put forward a proposal that would tighten the procedures that Member States' supervisory authorities have to follow as regards procedural rules and evaluation criteria for the prudential assessment of M&A activity in the financial sector.[20] Previously, Member States' were required to exhibit sound and correct management, without a focus on what countries actually chose to do, or why these things were chosen. In particular the list of criteria on which the acquiring company would be assessed is: (i) the reputation of the proposed acquirer, (ii) the reputation and experience of any person who will direct the business of the resulting firm, (iii) the financial soundness of the proposed acquirer, (iv) compliance with the relevant EU directives, and (v) risk of money laundering and terrorism financing. The assessment period the competent authorities have would be reduced from three months to 30 days and allow authorities to 'stop the clock' only once, under clear conditions.

3.3 Cross-Border De Novo Entry and Cross-Border Banking Mergers

Bankers and academics have long recognised national and regional borders as important factors in preventing bank entry and cross-border bank mergers and acquisitions.[21]

De novo entry varies significantly across markets. However, de novo bank creation in Europe seems quite modest compared to the US. Particularly for small firms this may be an area of concern as de novo banks, starting small, may be willing to finance and build relationships with small firms. Contestability determines effective competition especially by allowing (foreign) bank entry and reducing activity restrictions on banks. As an illustration, records for the US show that during the period 1985-2003, there were 2,275 de novo community banks established (Mortimer-Schutts (2005)). This suggests that local US-banking markets are contestable, as new banks successfully target specific local markets and activities. Only 34 new branches of EU banks and 11 new banks were established under direct control of the French supervisory authorities during the period 1995-2004. About 105 successful applications were made to the German regulatory authority to conduct banking activities over the period 2001-2004 (Mortimer-Schutts (2005)).[22]

Moreover banks encounter many difficulties in countries other than the US in successfully pursuing a strategy of engaging local firms and retail customers by cross-border entry through opening local branches. DeYoung and Nolle (1996) and Berger, DeYoung, Genay and Udell (2000), for example, document that most foreign bank affiliates are less efficient than domestic banks, the exceptions being the foreign affiliates of US banks in other countries and most foreign bank affiliates in, for example, Eastern Europe

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20. More details at: http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1174&format=HTML&aged=0&language=EN&guiLanguage=en and http://ec.europa.eu/internal_market/finances/docs/cross-sector/mergers/directive-proposal_en.pdf

21. An older literature going back to Goldberg and Saunders (1981) and Kindleberger (1983) asserts that banks often pursue a "follow-the-customer" strategy when deciding upon *cross-border market entry*. However recent evidence casts some doubt on the current prevalence of this "follow-the-customer" strategy. In particular banks entering the US market have not primarily held a follow-the-home-country-customer motive or at least have not persevered in servicing only the home country customers. Indeed, foreign banks in the US also apparently engage many local borrowers (Seth, Nolle and Mohanty (1998), Stanley, Roger and McManis (1993), Buch and Golder (2001)).

22. In Appendix B, we discuss the short and longer term effects of bank mergers on the availability of finance.

and South-America.[23] Why are most foreign bank affiliates less efficient than the local banks? Inefficiencies by foreign bank affiliates are likely due largely to the presence of economic barriers (language, culture, etc.) and do not seem driven by physical distance.[24] These inefficiencies may drive banks to prefer cross-border mergers over cross-border de novo entry.

Cross-border mergers do not occur as frequently as one otherwise might expect. At the time this paper is written, cross-border bank mergers and acquisitions (M&As) are still less frequent than bank consolidation within single nations.[25] In addition, economic returns on cross-border banking mergers are often zero or negative.[26] It is borders,[27] not distance, that make cross-border bank M&As less likely (Buch and DeLong (2004)). A number of explanations may exist for the low rate of cross-border M&A, including: Lingering effects of regulation

- Economic forces
- Bank organisation and corporate governance
- Information asymmetries between domestic and international acquirers

Lingering effects of regulation. A recent paper by Campa and Hernando (2004) suggests that barriers that are outside the control of banks play a role. Their study shows that the combined economic returns of acquirer and target (the combined cumulative abnormal returns of M&As) are typically lower in industries, such as banking, that until recently were under government control or are still or were most heavily regulated. Cumulative abnormal returns of cross-border M&As in these industries are actually negative, evidence in line with Beitel, Schiereck and Wahrenburg (2004). One possible interpretation is that the (lingering) effects of regulation raise the barriers for extending operations from one geographic market to another.[28] Another interpretation is that while regulations may themselves be neutral towards cross-border mergers, discretionary regulatory enforcement deter them nonetheless, either through harsher treatment of

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23. Affiliates in Eastern Europe and South America are often financially sounder than the domestic banks (Crystal et al. (2002)).

24. See Buch (2003).

25. Focarelli and Pozzolo (2001), for example, demonstrate that cross-border bank M&As occur relative to within-border M&As less frequently than cross-border M&As in other industries, *ceteris paribus*, while Berger et al. (1999) show that cross-border bank M&As occur less frequently than domestic bank M&As.

26. Recent work documents that the combined cumulative abnormal returns for stocks of bidder and target bank in cross-border bank M&As in Europe over the last few decades is actually zero or negative! This finding stands in stark contrast with other industries where the combined cumulative abnormal returns of cross-border M&As are typically found to be positive. Hence investors seemingly evaluate cross-border bank M&As as destroying value.[26] These results are quite similar to findings in DeLong (2001). She reports that in the US only the combined cumulative abnormal returns of geographically focused bank M&As are positive, although it is not entirely clear what factors are driving this empirical finding.

27. Regulatory barriers explicitly prohibiting bank M&As have been removed in Europe. However, national and political interests frequently result in the mobilization of the national anti-trust or banking safety apparatus to block cross-border bank M&As. We acknowledge these actions resort somewhere in the gray area between explicit prohibition of cross-border bank M&As (regulatory barriers) and inherent political and cultural differences creating difficulties in making a cross-border bank M&A possible and successful (economic barriers).

28. More generally, however, the evidence developed so far is not clear whether it is the economic borders outside the control of banks or those that can be influenced by banks that generate most problems in making a cross-border bank M&A possible and successful.

cross-border acquisitions or an expectation that, after an acquisition, ongoing enforcement will be unduly strict to the acquired bank.

Economic forces. However, while such residual regulatory and "institutional reasons are undoubtedly important, strong economic forces may impede the unification of banking markets" (Rosengren (2003)). Economic forces may explain why there has also been so little interstate merger activity in the US despite very homogeneous banking markets. Cost savings are often impossible in cross-border mergers. In-market mergers however allow for a reduction in redundant branch networks, underwriting activities, and/or local monitoring of credits. Anticipating such savings may allow an in-market (domestic) acquirer "to bid more" than any other out-of-market (foreign) acquirer "in the auction of the target assets". More generally the promise of cost cutting and indirect labour shedding may allow domestic banks to gain an upper hand in any complex and politicised merger dance also involving foreign suitors. In addition, acquiring an in-market competitor limits the number of entry points for any out-of-market competitors and may increase the in-market acquirer's market power and monopoly profits.

Bank organisation and corporate governance. Bank industry observers sometimes also note that bank organisation and corporate governance may hinder merger activity. The mutual structure of dominant banks in France and Germany in particular (for example, *Crédit Agricole*, *Landesbanken*) is often noted as a major hurdle for these banks to initiate and pursue a successful M&A (Wrighton (2003)). But economic borders may also lead to complex holding structures in cross-border bank M&As (Dermine (2003)), i.e., cross-border consolidation in Europe functions through subsidiaries and not branches as is common in US cross-state banking. Subsidiary configurations may further complicate M&A activity. Hence, it appears that the so-called "single passport" of the European Second Banking Directive is not very much used.

Information asymmetries between domestic and international acquirers. Information asymmetries in assessing target bank portfolios may make it hard to pull off a successful cross-border bank M&A, although the impact of the bank-influenced (informational) economic borders on cross-border bank M&A activity have not been heavily researched. The domestic merger activity seen in Europe creating so-called "national champions" may be due in part to the existence of informational borders. Outside banks seeking to acquire a local bank find it more difficult than incumbent banks to assess the value of the loan portfolio of the possible target banks. As a result of the winner's curse problem, outside banks refrain from stepping in and most M&A activity, driven by for example (revenue and cost) scale and scope considerations, occurs between domestic banks.

However as the domestic banks increase in size, diversify,[29] and possibly partly refocus their lending towards larger firms they become easier-to-value targets. If this is indeed the case we contend that the informational asymmetries facing the outside acquiring banks may actually decrease over time as possible target banks that are shielded within the bordered area prosper, grow and merge among themselves resulting in a further diversification of their loan portfolios. Also, the increased importance of competition policy concerns may ultimately hinder further domestic consolidation. As further local mergers create fewer competitors, transactions may increasingly fall under scrutiny of competition policy authorities while, at the same time, with fewer bidders, the winner's curse problems may further decrease, facilitating cross-border M&As.

4. Competition in Retail Banking: the Role of Switching Costs

Customer mobility and choice is essential to stimulate retail-banking competition. An important observation is that the degree of customer mobility is low and the longevity of customer-bank relationships

[29]. We conjecture the winner's curse in von Thadden (2004), for example, would decrease in case success across multiple projects undertaken by many borrowers would be uncorrelated.

is long (see the Cruickshank (2000) report and the EC Report for recent evidence). The EC Report analyses customer mobility in retail banking across the EU. They report an EU-25 country-level average (weighted by population) "churning rate" for current accounts over the period 2002-2005 of 9.4% for consumers.[30] The churning rate has slightly dropped over the 2002-2005 period from 9.85% to 9.11%. The average age of current accounts in 2005 for the EU-25 was 7.93 years.[31]

Consumers and businesses may be tied to their bankers due to the existence of switching costs. Switching costs are costs that existing customers have to incur when changing suppliers. Conceptually, we can distinguish between the fixed transactional (or technical) costs of switching a bank (Klemperer (1995)) and informational switching costs. We take a broad definition of *transactional switching costs*. Examples are shoe-leather and other search costs customers incur when looking for another bank branch, the opportunity costs of her time of opening the new account, transferring the funds, and closing the old account. Also contractual costs and psychological costs may be important transactional switching costs. Many but not all of these costs are independent of the banks' behaviour, but allow the incumbent bank to lower deposit rates to captured customers. Switching costs are directly influenced by bank behaviour when, for example, banks charge leaving customers for closing accounts (closing charges).

In loan markets it is often conjectured that, in addition to these fixed transactional costs of changing banks, there are *informational switching costs*. Borrowers face informational switching costs when considering a switch, as the current "inside" financier is more informed about a borrower's quality and its recent repayment behaviour. Such switching costs may provide the informed relationship bank with extra potential to extract rents.[32] Of course, the existence of switching costs may fan competition to draw customers, so that some of these rents will be competed away ex-ante.

Switching costs bind consumers and SMEs to banks, locking them into early choices. This lock-in provides banks with considerable ex-post market power (see Farrell and Klemperer (2006) for a recent overview of switching costs). Banks may compete aggressively ex-ante for consumers to benefit from ex-post market power. Nevertheless, markets with switching costs may overall be less competitive as the presence of switching costs tends to soften competition. Also the presence of switching costs can encourage small-scale entry but discourage sellers from raiding one another's existing customers, and so also discourage more aggressive entry.[33]

In their seminal paper Petersen and Rajan (1995) investigate the effects of competition between banks, captured by a bank-concentration index, not only on the loan rate but also on the availability of bank credit to firms. They document that young firms – having uncertain future cash flows – in more concentrated banking markets obtain substantially lower loan rates than firms in more competitive banking markets. The loan rates decreases by more than 150 bp for *de novo* firms, if the HHI increases by 0.10.[34]

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30. The churning rate is defined as (new current accounts + closed current accounts) / (2* number of current accounts beginning of year).

31. Longevity may not be the most useful measure, though it may be easiest to measure and compare across countries. A more appropriate indicator would focus on individuals and individual behaviours.

32. See Berger and Udell (2002), Boot (2000), and Ongena and Smith (2000).

33. But is a lower degree of competition always harmful? Petersen and Rajan (1995) point out that imperfect competition, for example stemming from switching costs, may be beneficial for young, small, or non-transparent firms. The reasoning is that imperfect competition allows for intertemporal smoothing within the bank-firm relationship: banks may be willing to incur initial losses when firms can commit not to leave ex-post. This is precisely what happens with switching costs as firms have difficulties to switch when a bank-firm relationship is established.

34. The level of statistical significance of these results is 150** basis points.

They also document somewhat easier access to bank credit in more concentrated markets, but even for young firms the effects seem modest economically speaking and statistically not always significant. Their theoretical analysis and empirical results, however, show that switching costs are not necessarily all bad for small, young or non-transparent firms.

We next review the most important sources of transactional and informational switching costs that may hamper customer mobility. We also discuss empirical studies that aim to measure the magnitude of switching costs in deposit markets and loan markets. We then discuss two possible tools that may alleviate switching costs – switching arrangements and number portability for checking accounts, and information sharing – and their impact on the degree of competition in the retail-banking sector.

4.1 Transactional Switching Costs and Customer Mobility

4.1.1 Sources of Transactional Switching Costs

Switching costs are important in the retail banking industry. Transactional switching costs include:

- Administrative burden
- Cross-selling of banking products
- Customer preferences and choices
- Closing charges or opening charges.[35]

There are only a few studies on the magnitude and determinants of customer switching cost in bank deposit markets. Shy (2002), for example, estimates depositor-switching costs for four banks in Finland in 1997. He finds that costs are approximately 0, 10, and 11 percent of the value of deposits for the smallest to largest commercial bank and up to 20 percent for a large Finnish bank providing many government services. Kiser (2002) focuses on the length of household deposit relationships with their banks and on the determinants of their switching costs. She uses US Survey data for 1999. Median US household tenure at banks equals 10 years. The geographical stability of the household and the quality of the customer service offered at the bank are key factors in determining whether or not customers stay with the bank. Switching costs seem to hinge in a non-uniform way on income: higher income as well as more educated households and lower income as well as minority households switch less often. Hence, the opportunity cost of time for the first group and the information available to households in the other group may play a role in determining household switching.

Administrative burden is a transactional switching cost that is incurred when switching banks requires administrative paperwork. The EC Report provides conflicting evidence on the importance of the administrative burden. While the 2005 *Eurobarometer Survey* indicates that consumers find it straightforward to change banks, several other discussed surveys indicate that customers identify administrative burden of transferring an account as one of the main reasons for low customer mobility.

Cross-selling of banking products is a second mechanism that may introduce transactional switching costs. Cross-selling is selling additional products or services to existing customers. It increases the reliance of customers on a bank and may allow extracting additional rents from customers as banks only incur limited marginal costs in selling additional products. Cross-selling may also hinder entry from specialised

[35]. The EC report identifies five main factors that may reduce customer or SME mobility in banking; we follow roughly the same classification system as in that report.

single service providers. Customers at the same time may benefit from cross-selling if banks offer lower interest rates.[36] The ICN report, however, also argues that due to this cross-selling, it has become more costly for depositors to switch banks :

> "In fact should depositors decide to move to a new bank they would need to: 1) receive new credit cards (with a different number and expiry date) that would need to be communicated to any service provider, for example the cable TV company, should their bills be paid by credit card; 2) inform the new bank about all utilities whose bills were being paid by debiting the depositor checking account; 3) transfer the deposit of all purchased stocks or bonds to the new bank; 4) maintain the checking account of the old bank just to service the mortgage; 5) communicate to all correspondents the new banking coordinates." (p. 14-15).

The implication then is that, in order for a bank to convince depositors to switch banks, the quality improvement must be much larger than in the absence of such switching costs.

Customer preferences and choice may imply that retail customers prefer certain banks above others. One such a factor may be that customers are willing to pay more for local branches above more distant banks. Recent papers have indeed found that banks can charge higher loan rates to SMEs when their branches are located closer to the borrowers and when alternative providers of finance are further away (see Box 4 for a review of recent findings on the impact of distance on loan pricing).

Box 3. Geography and pricing of loans

Study	Effect on Loan Rate of	
	Distance to Lender	Distance to competition
Petersen and Rajan (2002)	–37 bp / projected mile	
Degryse and Ongena (2005)	–18 bp / mile	+18 bp / mile
Mallett and Sen (2001)		+50 to +75 bp / mile
Agarwal and Hauswald (2006)	–26 bp / mile	+12 bp/mile
Bharath, Dahiya, Saunders and Srinivasan (2006)	–30 to – 45 bp across states	

One may wonder how technological advances may impact customer preferences and choice. The impact of technology on bank branching seems muted.[37] Cabral (2002) points out that the so-called "multi-channel" route in banking has now established itself as the standard in many countries. Bank customers access bank services through ATMs, telephone, internet, and of course through personal contact in the bank branch itself. Hence branch proximity continues to play a non-negligible role in determining bank

36. For example, Degryse and Van Cayseele (2000) find that small Belgian firms that buy several products from a bank enjoy a 40 bp lower loan rate. These firms, however, have to pledge more often collateral. These results have not been replicated for other countries. Petersen and Rajan (1994) for example find that small US firms pay a 8 bp higher loan rate when they also buy other products from banks.

37. Berger and DeYoung (2001) assert that technological developments only partially mitigate the negative effects of distance on efficiency. But then remember that the effects were relatively mild to start with

choice, muting the impact technological developments may have. There is even reason to believe bankers and industry watchers for a while have underestimated the importance for customers of bank branch proximity.[38] In addition, banks have incentives not to cut back on branches too much in order to keep potential entrants out of their incumbent markets.

Closing charges, when applied, can be an important transactional switching cost. A clear distinction should be made between closing charges related to administrative costs (e.g.; when closing an account) versus closing charges that are related to interest rate exposure (e.g. when prepaying a mortgage). Closing charges related to administrative costs differ dramatically across banks and countries, with some banks having no closing charges whereas others (like in Italy) fall in the range of 15 to 60 €. These charges should be abolished, as they may hinder switching and ultimately relax competition. But closing charges that are related to interest rate exposure may reflect underlying costs that financial institutions incur. For example, mortgage prepayments generate reinvestment risks for financial institutions, as prepayments typically happen when interest rates drop, implying that financial institutions then must reinvest at lower rates. To the extent that closing charges related to interest rate exposures reflect the underlying risks that banks and borrowers incur, and customers and banks can contract these closing charges, these options may be valuable to both banks as firms as they allow desirable risk sharing between banks and customers. As a reference, fixed-rate loans without prepayment options might exhibit lower loan rates than with prepayment options present. Other technical switching costs related to prepaying mortgages that do not reflect economic fundamentals should be abolished.

4.2 Informational Switching Costs and Borrower Mobility

Banks learn about their customers over time. A close bank-firm relationship may provide the "inside" bank with an informational advantage over "outside" banks (see Fischer (1990), Sharpe (1990), Rajan (1992), and von Thadden (2004)). As information about credit quality may be lost when switching, the inside bank can exploit his informational advantage by charging higher loan rates. This information problem may be exacerbated by adverse selection, as those clients switching banks are more likely to be lower value or riskier customers than those who remain.

Evidence on the existence, the magnitude, and the determinants of switching costs in credit markets comes from a variety of studies. Analyses of firm value following bank loan, distress, and merger announcements provide indirect evidence on the existence and magnitude of the informational problem and resulting switching costs facing credit market participants. Studies of the duration of bank-firm relationships probe for the determinants of the switching costs.

4.2.1 Existence of Informational Switching Costs

Loan Renewal Announcements

Loan customers, such as companies, who stick with their bank may receive outside benefits from doing so at the time that loan renewals are made. Stock markets may interpret a loan renewal from a bank as an indication that the bank believes that the borrowing company has good prospects of paying off the loan. They believe that a bank will have performed a thorough investigation of a company's prospects prior to issuing a loan renewal. In contrast, if a company changes banks or makes a public issue of debt, one reason for this could be that the potential lender with the best information would not provide as good loan conditions as less informed investors. The outside market's belief that ongoing banking relationships

[38] "The hot news in banking: bricks and mortar. Customers prefer branches so banks are opening 'em like crazy", headlined an article on April 21st, 2003 in *Business Week* (Gogoi (2003)) suggesting that de-branching may have gone too far and that incumbent or *de novo* banks are correcting these recent mistakes.

provide valuable information mean that it can be costly for a company to change its bank or loan origination source. For example, changing banks or issuing public debt could lead to lower stock prices for a company. If borrowers face such an effect, then there is a cost to switching away from the debt issuing bank, and the bank may be able to profit from this.

Motivated by Fama (1985)'s conjectures regarding the uniqueness of bank loans and following work by Mikkelson and Partch (1986), James (1987) studies the average stock price reaction of firms that publicly announce a bank loan agreement or renewal.[39] The results in the seminal paper by James (1987) are key in our current thinking of the role banks play in credit markets. The second row of Table 2, in Appendix A, summarises his findings. James finds that bank loan announcements are associated with *positive* and statistically significant stock price reactions that equal 193 bp in a two-day window, while announcements of privately placed and public issues of debt experience zero or negative stock price reactions.[40] The positive stock-price reaction supports the Fama (1985) argument that a bank loan provides accreditation for a firm's ability to generate a certain level of cash flows in the future.

Table 2 also exhibits key results from a number of other studies of loan announcements. Lummer and McConnell (1989) divides bank loan announcements into first-time loan initiations and follow-up loan renewals. Because loan initiations are loans to new customers while renewals are loans to established customers, the difference in stock price reactions between the two categories should act as a measure of the value of an established relationship. Consistent with this argument, Lummer and McConnell (1989) find that stock price reactions to bank loan announcements are driven by renewals.[41] The results in Lummer and McConnell (1989), however, have been difficult to duplicate.[42] [43]

Bank Distress and Merger Announcements

Another important event study containing evidence on the value of bank relationships and hence the existence of switching costs is an innovative paper by Slovin, Sushka and Polonchek (1993). They examine

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[39]. Our discussion is partly based on Ongena and Smith (2000) and Degryse and Ongena (2007).

[40]. The level of statistical significance of these results is 193*** basis points. This result holds independently of the type of loan, the default risk and size of the borrower.

[41]. The abnormal returns in the event period associated with announcements of initiations are not statistically different from zero, while renewals are positive and statistically significant.

[42]. With the exception of Aintablian and Roberts (2000), they use Canadian bank loan announcements. Their reported statistics imply that mean excess returns on new loans and renewals differ at a 10% level of significance.

[43]. Slovin, Johnson and Glascock (1992), Best and Zhang (1993), and Billett, Flannery and Garfinkel (1995), for example, document positive and significant price reactions to both initiation and renewal announcements, but find little difference in price reactions between the two categories. Best and Zhang (1993) do find that price reactions to renewal announcements are significantly larger than initiations when analyst uncertainty about the loan customer is high. In their study, Billett et al. (1995) argue that the Lummer and McConnell (1989) results may be driven by their system for classifying loans into initiation and renewal categories. Overall, the evidence on the differential wealth effects of loan renewals versus loan initiations is inconclusive.

In addition, the entire literature on loan announcements has increasingly become under scrutiny. First, the literature may be suffused with insidious reporting issues (James and Smith (2000)) as both firms and newspaper editors may push only "positive news" stories; Australian evidence by Fery, Gasborro, Woodliff and Zumwalt (2003) is suggestive in this regard. Second, it is not clear that initiations or renewals in the U.S. still result in excessive returns during the 1990s (Berry, Byers and Fraser (2006), Andre, Mathieu and Zhang (2001)), raising some doubt about the robustness of the initial findings. Finally, there may be substantial differences across countries in loan announcement returns (Boscaljon and Ho (2005)).

the influence of the 1984 impending insolvency of Continental Illinois Bank on the stock price of firms with an ongoing lending relationship with that bank, finding that their stock prices declined at the time of the insolvency announcement and increased at the time a rescue was announced.[44] They argue that the large price changes were estimates of the potential value tied directly to this specific firm-bank relationship.

There are many event studies that have sought to replicate and extend the initial results by Slovin et al. (1993). We summarise the results in the bottom panel of Table 2. All studies focus on other countries than the US and many trace the impact on the borrowers' stock prices of bank events other than distress such as scandals, transfers, and bank mergers that could also be unsettling to the borrower-bank relationship. Most studies find smaller and seemingly more temporary effects than the initial -4.2 percent documented by Slovin et al. (1993).[45]

4.2.2 Magnitude and Effects of Switching Costs in Loan Markets

Kim, Kliger and Vale (2003) provide the first estimates of switching costs faced by the average bank borrower. These estimates represent both transactional and informational switching costs. They employ Norwegian loan market share data for the period 1988-1996. Their findings imply average annualised bank rents from switching costs of roughly 4 percent of the banks' marginal cost of funding. Switching costs drop to almost zero for customers of large banks. Finally, and in a very different setting, Yasuda (2005) finds that pre-existing relationships with firms issuing corporate bonds in the US allow the underwriting banks to charge 1 to 4 percent (of the issue size) extra.

Switching rates may serve as an indirect measure of switching costs. Switching rates are directly affected by borrowers' switching costs (Karceski, Ongena and Smith (2005)).[46] When costs are high, we would predict low switching rates. International differences in the switching rate may then serve as an indicator of international differences in switching costs, all else being equal. Research has recently started to focus on the magnitude and determinants of borrower switching rates. Two broad patterns seem to emerge. First, there is substantial variation in duration of relationships across countries. For example, small US and Belgian firms report that relationships last between 5 to 10 years on average, while small Italian and French firms report 15 years or more. Second, there are also substantial differences between firms within the same country, often related to firm size. As an illustration, consider small and large firms in Germany. Small firms report durations between 5 to 12 years, while large firms report more than 22 years.

4.2.3 Determinants of Switching

What factors influence the likelihood of switching or of staying with a bank (duration)? Recent work has explored the impact of *relationship*, *firm*, *bank*, and *market* specific characteristics on the duration of

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44. Slovin et al. (1993) report an average abnormal two-day return of -420*** bp around the insolvency announcement and an abnormal increase of 200** bp upon the announcement of the Federal Deposit Insurance Corporation rescue.

45. The level of statistical significance of these results is -4.2*** percent. In addition, the three studies that actually check whether returns differ between firms related to the affected banks and all other firms find that the differences are not significant (Ongena, Smith and Michalsen (2003), Brewer, Genay, Hunter and Kaufman (2003), Miyajima and Yafeh (2003)). Of course, the different results across the various studies may stem from heterogeneity in the value of the specific bank relationships that are being considered.

46. Comparisons of estimates of the borrower switching rates (or, alternatively, the length of bank-firm relationships) present in many studies pose a challenge as (1) relationship definitions may differ across studies and (2) censoring issues are often left unrecognized, as in numerous cases the end of the sample period or firm age prevents researchers from observing the entire relationship spell.

bank-firm relationships within a country. Take the duration of relationships. Both Ongena and Smith (2001) and Farinha and Santos (2002) find that the likelihood a firm replaces a relationship increases in duration or alternatively *that the continuation of a relationship is negatively affected* by duration itself. The number of bank relationships the firm maintains also negatively influences the length of a relationship. Hence both duration and the number of (other) bank relationships decrease borrowers' reticence to drop a relationship. An increase in duration may result in banks holding up their customers, making switching more attractive for those customers. Alternatively, relationship continuation and/or multiplicity may impart a good repayment record to competing banks thereby lowering borrowers' switching costs.

Most studies find that young, small, high-growth, intangible, constrained, or highly leveraged firms switch bank faster *ceteris paribus*. But there are some notable exceptions.[47] A few studies also include bank and market characteristics. Larger and to a lesser extent more liquid and efficient banks seem to retain borrowers longer. Berger, Miller, Petersen, Rajan and Stein (2005) shows it is the number of branches that matter for borrower retention, not bank asset size. The latter variable is actually negatively related to duration. Borrowers of target banks in a merger are often dropped. Market characteristics seem mostly to have no effect on the drop rate.

4.3 Reducing switching costs

We discuss two different measures to reduce switching costs and strengthen competition. The first deals with checking accounts and is related to reducing transactional switching costs *by reducing the administrative burden* through switching arrangements or number portability. The second focuses on *information sharing* between financial institutions and aims to reduce informational switching costs.

Reducing the Administrative Burden

As discussed above, the administrative burden is considerable when consumers or SMEs want to switch current accounts. Setting up "switching arrangements" or "switching packs" can reduce the administrative burden and hence reduce the costs of switching. These arrangements typically are the result of the installation of a self-regulatory code between banks that facilitates customers that switch banks. These codes are often introduced after investigations by competition authorities. Switching arrangements are in place in the UK, the Netherlands, Ireland, and Austria (see the EC Report). The banking associations in these countries have established voluntary codes that establish standards of good practice. The switching arrangements also imply that banks perform a considerable part of the administrative burden by preparing "switching packs" ensuring smooth transition from one account to another (see Box 5 on Switching Arrangements). Box 5: Switching Arrangements: Example from the Netherlands

[47]. Interestingly enough, the direction in which particular firm variables affect switching rates changes sign going "north to south" in Europe, not unlike the increase that is observed in the number and duration of relationships. For example, small firms sever relationships more easily than large firms in Norway, Denmark and Belgium, at the same rate in the UK and Germany, but at a slower rate in Portugal and Italy. Hence in Norway small firms may churn bilateral relationships, while in Italy small firms cherish their multiple relationships. On the other hand, in Norway large firms nurture a few steady relationships; while in Italy large firms continue to juggle, and drop, (too) many relationships.

Box 4. Switching Arrangements: Example from the Netherlands

The switching arrangement in the Netherlands is called "overstapservice". The Netherlands Banking Association, to facilitate current account switching, introduced this service in January 2004. A website has been erected to provide information to the public. What does the "overstapservice" do?

This service :

- ensures during 13 months that transfers to the old account are automatically forwarded to the new account
- direct debits are directly taken from the new account; companies directly debiting the account are (i) informed about the client's new account number, and (ii) do not need to obtain permission in order to be able to directly debit the new account
- the old bank provides an overview of all the existing "contracts and standing orders" about regular payments related to the old account
- provide information about all payments that took place through the "overstapservice"
- sends the account switcher a reminder one month before the automatic forwarding period of 13 months comes to an end

Account switchers still have to inform some parties themselves (e.g. their employer).

The "overstapservice" has been used by 115,000 times during the first two years. About 49% of the Dutch are aware of this service, and among those who consider switching, 74% are aware.

Source: www.overstapservice.nl

Although switching arrangements help in reducing switching costs, they do not remove switching costs entirely, as customers must still change account numbers. A structural approach is account number portability. Number portability implies that customers could transfer their number from one bank to another without facing an important administrative burden. Number portability can only happen when customers "own" the account number, and when payment systems and account numbers exhibit a similar structure, are standardised on a national or international scale. While number portability almost completely removes switching costs and therefore should result in fiercer banking competition, it may require more standardisation and substantial fixed costs for the introduction of number portability. Number portability will only imply a level-playing field when non-discriminatory access to the payment system is implemented. Recently, the European Competition Authorities (ECA) has concluded that, with the creation of the Single European Payment Area:

> "the creation of a consistent European system of bank account numbers would create the possibility of the introduction of 'number portability' on a European level, which the Working Group feels would be the ideal scenario. However, the Working Group is well aware that the costs of investment in achieving this would be huge. This, however, could be more than matched by the long-run economic benefits of increased cross-border mobility and the creation of a level playing field in the European payment systems sector. (p. 42)".[48]

48. ECA-report on "Competition Issues in Retail Banking and Payment Systems Markets in the EU", Financial Services Subgroup; available at http://www.tca.ie/reports/eca_report.pdf#search=%22ECA%20competition%20banking%22

These claims must be balanced against the fact that in many countries, the current numbering system provides features that help identify customer banks inherently through the structure of the number. Losing this ability to identify banks and branches could potentially increase the difficulty of identifying the correct bank to question related to transaction errors that might arise from the entry even of one erroneous digit.

Information Sharing

Individuals and SMEs may not be able to credibly communicate their credit quality to outside banks or other providers of external finance in the presence of asymmetric information. Asymmetric information between banks about borrower quality is therefore an important determinant of banking competition. In some countries, however, financial institutions often release limited borrower information through public credit registries, or private credit bureaus or rating agencies (see Jappelli and Pagano (2002) or Miller (2003)). Credit information sharing is an increasingly common way for banks (and other institutions for whom customer financial condition and reliability is important) to share information about borrowers – and a helpful tool for reducing losses on unprofitable borrowers. Credit information sharing may alleviate some of the rents due to information asymmetries as long as the informational release contains sufficient, credible and up-to-date information.[49] That is, credit information will reduce the difference in information between a customer's current bank and other potential financial service suppliers. Also, information sharing can operate as a borrower discipline device, and may reduce the possibilities for borrowers to become over-indebted by tapping loans at several banks simultaneously.[50] [51]

Not all forms of information sharing would be pro-competitive. For example, sharing information about loan rates to particular customers could promote or support co-ordinated action among banks. In contrast, providing information based on frequency of missed payments and overdrafts of particular customers would not equally support cartel activity, because the bank's price to the customer would not be observable.

The existence of public credit registries and of private credit bureaus or rating agencies may be shaped by privacy laws. Public credit registries will take into account how much information sharing already spontaneously occurs. Private and public initiatives can be substitutes in this respect. A private credit bureau or rating agency can issue several kinds of credit reports – ranging from "black" information (such as whether the customer has defaulted) over to "white" information (i.e. outstanding loan amounts), to even more fine-grained credit scores. In Box 6, we provide a discussion of credit information that is available in the US. While public credit registries typically have a complete coverage above a certain loan-amount threshold due to the compulsory nature of reporting, private credit bureaus and rating agencies may be less complete in their coverage but provide more detailed information. Private credit bureaus or rating agencies will then more likely be erected when the minimum reporting threshold at the public credit

49. The ICN report suggests that it is desirable that:

"banks are informed in a timely and complete manner on the debt exposure of potential borrowers (in integrated financial markets also on an international basis), making sure to identify ways and precautions such that information sharing does not lead to restrictions of competition." (p. 27)

50. See Jappelli and Pagano (1993), and Padilla and Pagano (1997, 2000).

51. While information sharing, in general, reduces informational switching costs, three important limitations should be mentioned. The first is that credit registries that provide limited borrower information only may also reduce competition between banks and raise the cost of credit for good borrowers who have suffered bad luck. Inside banks retain an informational advantage over these borrowers (Bouckaert and Degryse (2006a)). Second, banks may voluntarily release borrower information and commit to give away their informational advantage, in order to introduce other transactional switching costs (Bouckaert and Degryse JIE 2004). Third, banks willing to grant cross-border loans or entering banks should also be able to access credit registries. Lack of such access would hamper foreign institutions to provide cross-border loans.

registry is high and when privacy laws allow useful and profitable operation of private rating agencies. Indeed, credit information provision often hits the boundaries of privacy protection. Privacy laws for example have shaped the access to files by potential users[52] Jappelli and Pagano (2005) further mention that there appear to be three levels of protection:

> "low protection countries, such as Argentina, where anyone can access all debtors' data regardless of the purpose of investigation. In medium protection countries as the United States, data can be accessed only for an "admissible purpose", essentially the granting of credit. A higher level of privacy protection may be embodied in the further requirement of the borrower's explicit consent to access his file. This principle is enshrined in the legislation of several European countries and in the Directive 95/46 of the European Parliament … In some countries (such as France, Israel and Thailand) safeguards for consumer privacy are so strong that regulation has impeded the emergence of private credit bureaus." (op cit. P.23).[53]

More stringent privacy protection may therefore imply that customers become captive to their existing banks. Other financial institutions may have insufficient information to make competitive loan offers. Fewer privacy restrictions then would serve consumer interests.

52. Other aspects dealt with by privacy laws are bans on white information, compulsory elimination of individual files after some time, bans on gathering some kinds of information, and the right to check and correct one's own file.

53. Bouckaert and Degryse (2006b) provide a theoretical analysis of the two most commonly used privacy policies, opt in and opt out, in an environment where exercising the option to opt in or opt out is costly. They show that a lower degree of privacy protection (opt out) may be beneficial in that it induces greater competition and maximizes social welfare; privacy protection may therefore have a social welfare cost.

Box 5. Private Business Information Exchange in the US

The dominant formal information exchange in the US is Dun & Bradstreet Corporation (D&B). It has approximately 90 percent of the US market for business credit information and its only major US-competitor is Experian. D&B collects information from vendors who sell on credit to their customers and lenders supply payment history information on their customers/borrowers. D&B then aggregates this information into credit reports, which can be sold to clients who are (in part) the same vendors and lenders who supplied the information initially

The information provided by D&B on U.S. Businesses is extensive. The following list notes the type of information the D&B seeks to provide, though not all of the information is always available)

- Full company name, address, phone number, SIC classification, addresses of branches (if any), year of incorporation
- Name of chief executive, other officers; their ages, education, and experience
- Sales, net worth, current and fixed assets, current and long-term liabilities, profits; Amount of authorised capital, type of capital, and who owns it
- Total employees
- Recent news, such as fires
- Supplier Risk Score ("predicts likelihood of a firm ceasing business without paying all creditors in full, or reorganising, or obtaining relief from creditors under state/federal law over the next 18 months.")
- Incidence of Financial Stress (compares the company with the national average and with companies in its industry segment)
- Company's payment history (i.e., incidence of slow payments); Evidence of open suits, liens, or judgments, along with details
- Quick ratio (current assets minus inventory divided by current liabilities); comparison to others in its industry
- Whether business owns its facilities; description
- Ratio of accounts payable as percentage of sales; comparison to others in its industry
- Return on assets; comparison to others in its industry
- Ratio of total liabilities to net worth; comparison to others in its industry
- Financial Appraisal Ranking (a calculated average of the supplier's quartile ranking based on the available ratios)
- Number of customer accounts, collection terms, market territory, seasonal or no seasonal

Whether candidate for government programs, based on socio-economic factors (e.g., small business, LaborSurplus Area, minority-owned, women-owned).

Source: Kallberg and Udell (2003), Olegaria (2003)

5. Summary Remarks

Providing financial services to retail customers and SMEs is an important part of banking activity. The access of retail customers and SMEs to finance is particularly crucial for economic growth, given that

much growth in employment and GDP comes from the development of SMEs. Competition can play a role in improving the conditions for access to finance, such as lower interest rates for loans.

Based on the prior discussion, several broad results emerge on how to improve the competitive environment of retail banking without harming prudential regulation:

- Regulation continues to be a major source of rents for banks in many countries. Estimates range from say 30 to 100 basis points on an average loan rate. Though branching and entry is mostly permitted now on both sides of the Atlantic, M&As are still sometimes blocked in Europe by regulators under the pretext of the safe and sound management doctrine.

  – Pretexts for preventing mergers that disguise other motives should be limited.

  – Putting competition policy issues into the hands of an authority not responsible for prudential regulation may help to promote further financial integration and greater competition.

- Greater consumer education about financial alternatives may help to promote greater willingness of consumers to switch from one institution to another and reduce bank rents from switching costs

- Switching costs in the retail-banking sector reduce competition between banks for retail and SME customers. Policymakers can often do more to enable switching.

  – laws, privacy laws modified in a way that maintains the goal of protecting privacy while also allowing consumers to receive the benefits of credit ratings.

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APPENDIX A

Table 1. Empirical Work Investigating the Impact of Market Concentration on Loan Rates and Credit Availability

The table lists the main findings of selected empirical work investigating the impact of bank market concentration on bank loan rates and measures of bank credit availability. The measure of concentration in all studies is the Herfindahl – Hirschman Index (HHI), which can be calculated by squaring the market share of each bank competing in the market and then summing the resulting numbers (0 < HHI < 1). Source: Degryse and Ongena (2003) and Degryse and Ongena (2007).

Papers	Data Source & Years # Observations in Regressions Observation Type	Concentration in Bank Markets Geo Span: Avg. Pop. / Area Average HHI	Loan Rate or Credit Measure Impact of Concentration **Impact of ΔHHI = 0.1, in Basis Points**
Hannan (1991)	STB ± 8250 US firms	Bank deposits 4,725 0.14	Loan rate Mostly Positive **-6 to 61*** **
Petersen and Rajan (1995)	NSSBF 1987 ± 1,400 US small firms	Bank deposits ± 2,250,000[a] 0.17[a]	Most recent loan rate (prime rate on RHS) Mostly Negative, especially for Young Firms 0 yrs: **-170**, 10 yrs: **-3,** 20 yrs: **46**[a]
Hannan (1997)	FRB Survey 1993 1,994 / 7,078 US banks	Bank deposits ± 2,500,000[a] 0.14	Small business floating loan rate Positive **31*** ** (unsecured), **12*** ** (secured)
Cavalluzzo, Cavalluzzo and Wolken (2002)	NSSBF 1993 ± 2,600 US small firms	Bank deposits ± 2,500,000[a] 0.14	Most recent interest rate on line of credit No effect, but positive for Hispanics All: **-8**, Hispanic: **124****

Papers	Data Source & Years # Observations in Regressions Observation Type	Concentration in Bank Markets Geo Span: Avg. Pop. / Area Average HHI	Loan Rate or Credit Measure Impact of Concentration **Impact of ΔHHI = 0.1, in Basis Points**
Cyrnak and Hannan (1999)	FRB Survey 1996 511 / 2,059 US banks	Bank deposits ± 2,750,000[a] 0.16	Small business floating loan rate Positive **55*** ** (unsecured), **21*** ** (secured)[1]
Sapienza (2002)	Credit Register 107,501 Italian firms	Bank loans 600,000[a] 0.06	Loan rate – prime rate Positive **59*** **
Degryse and Ongena (2005)	One Bank 15,044 Belgian small firms	Bank branches 8,632 0.17	Loan rate Mostly Positive **-4 to 5*** **
Kim et al. (2005)	Central Bank of Norway 1,241 Norwegian firms	Bank business credit 250,000[a] 0.19	Credit line rate – 3 month money market rate Insignificantly Positive **3**[b]
Fischer and Pfeil (2004)	Survey 1992-1995 [s] 5,500 German banks	Bank branches n/a ± 0.20 (West) / ± 0.30 (East)	Bank interest margins Positive **20***
Claeys and Vander Vennet (2005)	Bankscope 1994-2001 2,279 Banks 36 European Countries	Bank loans 30,000,000[a] 0.10	Bank net interest margin Positive (West) / Often Negative (East) West: **14*** ** to **23*** **; East: **-110*** ** to **190*** **

Papers	Data Source & Years # Observations in Regressions Observation Type	Concentration in Bank Markets Geo Span: Avg. Pop. / Area Average HHI	Loan Rate or Credit Measure Impact of Concentration **Impact of ΔHHI = 0.1, in Basis Points**
Corvoisier and Gropp (2002), Corvoisier and Gropp (2001)	ECB 2001 ±240 EU countries – years	Bank loans 30,000,000[a] 0.13	Country-specific loan rate margin Positive **10** to **20****[c] and **50*****[d]
Petersen and Rajan (1994)	NSSBF 1987 ± 1,400 US small firms	Bank deposits ± 2,250,000[a] 0.17[a]	% Total Debt / Assets Positive **36*****
Petersen and Rajan (1995)	NSSBF 1987 ± 1,400 US small firms	Bank deposits ± 2,250,000[a] 0.17[a]	% Trade credit paid before due date Positive, especially for Young Firms **140***** to **280*****,[p] ≤10 yrs: **175**** to **740**,[r] >10 yrs: **150*** to **0**[r]
Cavalluzzo et al. (2002)	NSSBF 1993 ± 2,600 US small firms	Bank deposits ± 2,500,000[a] 0.14	Various credit availability measures No effect overall but significant positive effects for African Americans and Females
Zarutskie (2004)	SICTF 1987-1998 ± 250,000 US firms – years	Bank deposits ± 2,250,000[a] 0.19	% Outside Debt / Assets Positive **19** to **77*****
Scott and Dunkelberg (2001), Scott (2003)	CBSB 1995 ± 2,000 US small firms	Bank deposits ± 2,500,000[a] 0.19	No credit denial Positive + to +++[e]

Papers	Data Source & Years # Observations in Regressions Observation Type	Concentration in Bank Markets Geo Span: Avg. Pop. / Area Average HHI	Loan Rate or Credit Measure Impact of Concentration **Impact of ΔHHI = 0.1, in Basis Points**
Angelini, Di Salvo and Ferri (1998)	Survey 1995 2,232 Italian small firms	Bank loan Median: < 10,000 0.42	Perceived Access to Credit No effect **0**

[a] Authors' calculations or estimates. [b] For HHI increasing from 0.09 to 0.19. [c] Their models 2 and 5. CBSB: Credit, Banks and Small Business Survey collected by the National Federation of Independent Business. [d] Coefficients in regressions for short-term loans in their models 3, 5, and 6. [e] Based on the COMPETITION variable, not on the HHICTY. NSSBF: National Survey of Small Business Finance. [p] Linear approximation using their Table IV coefficients and assuming that the mean HHI below 0.1 equals 0.05 and above 0.18 equals 0.59. [r] Linear approximation assuming that the mean HHI below 0.1 equals 0.05 and above 0.18 equals 0.59, based on means and medians in their Table V. SBIF: Chilean Supervisory agency of Banks and Financial Institutions. SICTF: Statistics of Income Corporate Tax Files. STB: Federal Reserve's Survey of the Terms of Bank lending to business. yrs: years. 0: Included in the specifications but not significant. *** Significant at 1%, ** at 5%, * at 10%. +++ Positive and significant at 1%, ++ at 5%, + at 10%. ↔↔↔ Negative and significant at 1%, ↔↔ at 5%, ↔ at 10%.

Table 2. Event Studies on the Impact of Loan, Distress, and Merger Announcements on Borrowing Firm Stock Prices

The table lists the main findings of event studies tracing the impact of bank loan, bank distress, or bank merger announcements on the stock prices of borrowing firms. The first column provides the Paper citation. The second column reports the Country affiliation of the affected firms and the Period during which the announcements were made. The Average (Median) *Firm Size* column lists both the size measure and the average (median) size of the firms in millions of US$. The fourth column reports on the first row the type of Announcement and the number of Events and on the second row the number of Affected Borrowers. The final column provides on the first row a Two-Day Mean Abnormal Return, in most cases over either [-1,0] or [0, 1] interval, in percent. If two-day cumulative abnormal returns are not reported over either interval, the shortest reported interval including either one of these two-day periods is used. The second row provides a breakdown of the announcements in key categories reported in the paper (in parentheses we report whether the differences in mean abnormal returns between reported groups of announcements are significantly different from zero) or key results from any cross-sectional exercises reported in the paper as an answer to the question "Which firms suffer the least?" Between brackets we report if abnormal returns differ between affected and unaffected firms (i.e., firms not borrowing from the affected bank at the time of the announcement). *Source*: Ongena and Smith (2000) and Degryse and Ongena (2007).

Paper	Country Period	Avg. (Med.) Size, in mln $	Announcement (Events) Affected Borrowers	**2-Day Mean AR, in %** Cross-Sectional Results (Difference?)
Mikkelson and Partch (1986)	US 1972-82	n/a	Credit Agreements (155)	**0.89*****
James (1987)	US 1974-83	L: 675 (212)	Bank Loan Agreement (80)	**1.93*****
Lummer and McConnell (1989)	US 1976-86	n/a	Bank Credit Agreement (728) Renewals (357) / New (371)	**0.61***** 1.24*** / -0.01 (n/a)
Slovin et al. (1992)	US 1980-86	E: 281 (68) For initiations	Loan Agreement (273) Renewals (124) / Initiations (149) Small Firms (156) / Large Firms (117)	**1.30***** 1.55*** / 1.09*** (n/a) 1.92*** / 0.48 (n/a)
Best and Zhang (1993)	US 1977-89	n/a	Bank Credit Agreement (491) Renewals (304) / New (187) Noisy Renewals[a] (156)/Accurate New[a] (187)	**0.32**** 1.97** / 0.26 (no) 0.60** / -0.05 (*)

Paper	Country Period	Avg. (Med.) Size, in mln $	Announcement (Events) Affected Borrowers	**2-Day Mean AR, in %** Cross-Sectional Results (Difference?)
Billett et al. (1995)	US 1980-89	E: 316 (79)	Loan (626) Renewals (187) / New Banks (51) Banks' Rating: AAA (78) / < BAA (29)	**0.68***** 1.09*** / 0.64* (no) 0.63*** / -0.57 (no)
Berry et al. (2006)	US 1980-00	E: 4,615 (113) BA: 1,111 (176)	Bank Loan Renewal (454) 1980-1990 (179) / 1991-2000 (275)	**0.80***** 1.31*** / 0.48 (n/a)
Aintablian and Roberts (2000)	Canada 1988-95	n/a	Corporate Loan (137) Renewals (35) / New (69)	**1.22***** 1.26*** / 0.62 *** (*)[a]
Andre et al. (2001)	Canada 1982-95	n/a	Bank Credit Agreement (122) Lines of Credit < 1988 (13) / > 1988 (33) Term Loans < 1988 (22) / > 1988 (54)	**2.27***** 4.82 / 0.32 1.14 / 3.30***
Boscaljon and Ho (2005)	Asia 1991-02	n/a	Commercial Bank Loans (128) Renewals (72) / New (56) Before Crisis (57) / After Crisis (71) HK (44) / SK (39) / Taiwan (25)/ Thai (20)	**1.25***** 1.23 *** / 1.27*** (no) 0.13 / 2.14*** 1.63*** / 2.61*** / 0.21 / -0.94
Fery et al. (2003)	Australia 1983-99	n/a	Signed Credit Agreements (196) Published: Single (18) / Multiple (22) Non-Published: Single (56) / Multiple (89)	**0.38*** 1.62** / 0.89 0.02 / 0.25
Slovin et al. (1993)	US 1984	E: 1,085 (692)	Continental Illinois Distress (1) 29 Firms (Direct Lender/Lead Manager)	**-4.16***** Firms with low leverage and other banks
Ongena et al. (2003)	Norway 1988-91	S: 400	Bank Distress (6) 217 Main Bank firms	**-1.7**** Equity-issuing firms w/ undrawn credit (No)

Paper	Country Period	Avg. (Med.) Size, in mln $	Announcement (Events) Affected Borrowers	**2-Day Mean AR, in %** Cross-Sectional Results (Difference?)
Karceski et al. (2005)	Norway 1983-00	S: ±500	Completed bank mergers (22) 342 Acquirers, 78 Targets, 1,515 Rivals	**0.29, -0.76**, 0.06** Firms w/ relationship w/ acquiring banks
Chiou (1999)	Japan 1997-98	A: 3,913 (1110)	Daiwa Bank Scandal (1) 32 Main Bank firms	**-0.98***** Large firms & w/ no Main Bank
Brewer et al. (2003)	Japan 1997-98	A: 1,450	Three Bank Failures (3) 327	**0.17; -1.32***; -0.49**** Firms with alternative financing (No)
Miyajima and Yafeh (2003)	Japan 1995-01	A: 2,293[a]	Actions (11), Downgrading (5), Mergers (3) 9,250 + 4,016 + 2,606	**n/a; -3.1[n/a]; 0** Large, profitable, tech, low debt, bonds (No)
Hwan Shin, Fraser and Kolari (2003)	Japan 19.08.99	S: 790 (716)[a]	3-Way alliance (1) 570	**-0.31***** Main Bank, high debt, profitable
Bae, Kang and Lim (2002)	S-Korea 1997-98	BA: 404	Negative Bank News (113) 486	**-1.26***** Healthy, unconstrained firms
Sohn (2002)	S-Korea 1998	A: 324[a]	Closure / transfer of five banks (1) 118	**-4.85***** Firms with no prior relationship
Djankov, Jindra and Klapper (2005)	Indonesia Thailand S-Korea 1997-99	n/a	Closures (52) Foreign Sales (209) Domestic Mergers (92) Nationalisations (94)	**-3.94***** **-1.05*** **-1.27** **3.14***** Large Firms (No)

A: assets. [a] Authors' calculations. Avg.: average. [b] Their Table 1b does not specify which firm size measure is used (the usage of market equity is possibly implied in the text). BA: book assets. E: market equity. HK: Hong Kong. L: total liabilities. Med.: median. Mln: million. n/a: not available. S: sales. w/: with. Thai: Thailand. *** Significant at 1%, ** significant at 5%, * significant at 10%.

APPENDIX B

An important topic of bank mergers concerns their impact on the availability of finance.

Short Run Effects of Consolidation

According to standard thinking, mergers that result in increased market power should raise prices or diminish service quality, resulting in a decline in customer welfare, while gains to efficiency should reduce prices or raise the quality of services, enhancing customer welfare. The welfare implications are straightforward. Mergers harm customers if increased market power offsets the efficiency gains that are passed on to borrowing firms.

But even within a competitive market, merger-related efficiency gains need not lead to welfare enhancement for all types of customers (Karceski et al. (2005)). For example, in an acquisition where the target bank is considered undervalued because it is poorly run, target bank borrowers may be receiving loans at below-cost rates. Part of the reason for the target bank's poor performance is that it makes negative net present value loans. Efforts by new management to improve efficiency could result in higher loan rates to borrowers that received below-cost loans, or denial of credit altogether.

Even when borrowers are profitable to their banks, consolidating banks may exploit efficiencies that negatively impact certain types of borrowers. Berger and Udell (1996), Peek and Rosengren (1996), and Sapienza (2002) find that as banks grow in size, they tend to focus more on financing larger firms. Stein (2002) provides a theoretical explanation for this "size effect in lending," where large banks lend to large firms and small banks lend to small firms. If bank consolidation leads to greater organisational complexity, Stein's argument implies that merging banks will seek efficiency gains by shifting their emphasis to large-firm lending. Consequently, without alternative sources of financing, small borrowers of merging banks could be harmed as banks become larger and more complex.

Recent evidence for Italy (Bonaccorsi di Patti and Gobbi (2005)) shows that Italian SMEs borrowing from a bank involved as a bidder or as a target, experience a temporary reduction in credit of approximately 1.5% and 2% respectively. Moreover if the relationship between the firm and the merged bank is severed, the temporary drop in credit is 9%. However the study also finds that the negative supply shock is short-lived, being completely absorbed after 3 years.

In addition, borrowers of target banks may be negatively impacted when the merged bank adopts the strategic focus or takes on the characteristics of the acquiring bank. Acquisitions commonly result in staff turnover that favors acquirer employees or management, or the adoption of organizational structures and policies familiar to the acquirer. The dismissal of key employees could upset existing lending relationships. In addition, when a bank merger results in changes in the lending policies of the target bank, borrowers comfortable with the previously prevailing system may become confused or dissatisfied with the new post-merger lending practices. Degryse, Masschelein and Mitchell (2005), for example, analyse Belgian bank mergers and indeed report that (1) target bank borrowers are more likely to discontinue their relationship, and (2) credit availability of single-relationship target bank borrowers who continue at the consolidating bank is negatively affected.

Long Run Effects of Consolidation

It is not clear whether consolidation has long run detrimental effects on the financing of innovative firms. First, Berger, Saunders, Scalise and Udell (1998) show that the initial decrease in small lending

following an M&A is offset by credit supplied by other established banks in the same local market. Similarly Garmaise and Moskowitz (2005) establish that the negative effects of reductions in competition following large bank mergers (large mergers are thought to be independent to the local market that is being studied) dissipate after three years. Similar diffusion of effects is found on the deposit and loan side in the years following Italian bank mergers (Focarelli and Panetta (2003), Bonaccorsi di Patti and Gobbi (2005)).

Second, entry of *de novo* banks may be encouraged by high intermediation margins providing prospective borrowers with additional and actually willing sources of funding. There is evidence for the US on this account. Berger, Bonime, Goldberg and White (2004) show that the formation of *de novo* banks is higher in markets following consolidation, while DeYoung, Goldberg and White (1999) find that *de novo* banks focus their lending on small firms.

Third, innovative firms may increasingly tap into alternative sources of finance, i.e. venture capital for example.

Source: Degryse, Ongena and Penas (2006b) and Degryse, Ongena and Penas (2006a).

NOTE DE RÉFÉRENCE*

par le Secrétariat

1. Introduction

Pour qu'un pays exploite son potentiel économique, il est important que son système financier fonctionne efficacement. Particuliers et petites et moyennes entreprises (PME) comptent essentiellement sur le secteur bancaire pour satisfaire leurs besoins en services financiers et financements externes. Cependant, la concurrence ne semble pas toujours jouer correctement son rôle dans la banque de réseau[1]. La réglementation a un rôle important à jouer dans ce domaine. Parfois, elle peut promouvoir la concurrence alors que d'autres fois, elle peut la limiter.

Ce rapport examine un certain nombre de barrières commerciales entravant la compétitivité de la banque de réseau. Pour mieux centrer le rapport, nous ne traiterons pas ici de nombre de questions importantes ayant trait à la concurrence entre banques de réseau, comme la transparence des tarifs pour les consommateurs ou la réglementation prudentielle destinée à s'assurer que les banques ne proposent pas des placements risqués qui mettent en danger l'épargne des consommateurs aussi bien au niveau de chaque banque que via le risque systémique. Nous délimitons la banque de réseau aux services bancaires proposés aux particuliers et aux PME dont le chiffre d'affaires est inférieur à 10 millions d'euros. Notre étude est plus spécifiquement axée sur (1) le rôle de la réglementation, les barrières à l'entrée et les fusions dans la banque de réseau et (2) les principales barrières commerciales à l'œuvre dans la banque de réseau, comme les coûts transactionnels et informationnels de transfert de compte. Ce rapport s'efforce d'examiner avec objectivité les coûts et avantages liés à ces barrières commerciales. Pour résumer nos conclusions et guider le lecteur dans le reste du rapport, nous soutenons que la principale source de rente pour les banques et donc de coûts pour les particuliers et les PME réside dans l'existence d'une réglementation restrictive. Nous explorons les problèmes méritant un approfondissement et proposons des solutions susceptibles d'améliorer la concurrence dans la banque de réseau. Selon nous, par exemple, placer « la politique de la concurrence » et la réglementation prudentielle sous la responsabilité d'autorités distinctes stimulerait l'intégration financière et la concurrence. Par ailleurs, une amélioration de l'information des consommateurs sur les alternatives financières et les avantages associés à une meilleure offre devraient les inciter à changer de banque, réduisant la rente économique que les établissements de crédit tirent des coûts de transfert. Les gouvernements peuvent également encourager la mobilité, notamment via la promotion de

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1 Plusieurs rapports récents révèlent, en effet, que les segments de la banque de détail ne sont pas encore totalement intégrés (voir l'édition 2004 de l'*Oxford Review of Economic Policy* sur l'Intégration financière européenne ou l'*Interim Report II on Curent Accounts ans Related Services* de la Commission Européenne – Rapport de la CE). Si les marchés monétaires et financiers sont relativement bien intégrés au sein de l'UE, les segments de la banque de réseau le sont moins.

« packs » permettant le transfert des informations et des responsabilités de l'ancienne banque du client à la nouvelle et l'élaboration de lois favorisant l'accès aux informations relatives au crédit.

Le reste de ce rapport est organisé comme suit. La partie II démontre comment la structure du marché affecte les marges financières sur les prêts consentis par les banques. La partie III décrit les barrières présentes sur le marché de la banque de réseau et met l'accent sur les barrières réglementaires à l'entrée et les fusions dans le secteur de la banque de réseau. La partie IV analyse l'incidence directe de la structure du marché et des barrières présentes sur le marché sur le comportement des banques, notamment en termes de coûts transactionnels et informationnels de changement d'établissement. La partie V présente des remarques récapitulatives.

2. Structure du marché

De nombreux travaux empiriques s'appuyant sur le paradigme Structure-Comportement-Performance explorent l'impact de la concentration du secteur bancaire sur les taux de prêt bancaire (voir l'étude récente de Gilbert et Zaretsky, 2003). Le tableau 1 de l'Annexe A présente les résultats d'une sélection d'études portant sur la relation entre les taux de prêt bancaire et l'indice Herfindahl Hirschman (HHI) de concentration du marché[2]. Ces études reposent sur des données américaines comme internationales. Si la relation est majoritairement positive, l'effet de l'indice de concentration sur les taux de prêt varie considérablement[3]. Les résultats des études réalisées sur le marché des dépôts bancaires pointent dans la même direction. Deux types de mesure de concentration sont utilisés dans ces études : le ratio de concentration de trois banques (CR3) et le HHI. Les études montrent dans l'ensemble qu'une augmentation de la concentration a une incidence négative sur les taux servis sur les comptes d'épargne et de dépôt à terme. Cependant, à l'instar des études conduites sur les taux de prêt bancaire, les effets varient en fonction des échantillons et des spécifications[4]. Les plus récentes révèlent généralement une incidence moins négative pour tous les produits de dépôt. Cela reflète sans doute une internationalisation de la concurrence dans le secteur bancaire (Radecki, 1998) et la difficulté qui en résulte de délimiter le marché local concerné (Heitfield, 1999 ; Biehl, 2002). Progrès techniques et émergence de la banque électronique obligent, les

2 L'interprétation des coefficients, sous leur forme réduite, produits par les études sur la relation entre les taux d'intérêt et la concentration du marché pose des problèmes méthodologiques.

3 Pour étalonner les résultats, nous avons calculé l'impact d'une variation de 0.10 de l'indice HHI, qui pourrait marquer le seuil accepté par tous entre un marché concurrentiel (HHI < 0.10) et un marché concentré (HHI > 0.18). Nous constatons par exemple que les études récentes indiquent qu'un ΔHHI = 0.1 se traduit par une hausse des taux de prêt comprise entre 21*** et 55*** pb aux Etats-Unis (Cyrnak et Hannan, 1999), de 59*** pb en Italie (Sapienza, 2002), mais de seulement 3 pb en Norvège (Kim, Kristiansen et Vale, 2005) et de –4 à 5*** pb en Belgique (Degryse et Ongena, 2005). Les résultats obtenus sont donc très variables. Cependant, comparer les résultats d'études dont les spécifications, marchés, périodes et mesures HHI alternativement basées sur les prêts, dépôts ou agences, varient considérablement (d'une étude à l'autre) au plan géographique (Morgan, 2002) est difficile. La corrélation négative souvent observée entre la concentration et la taille d'un marché local pose un sérieux problème d'interprétation des résultats obtenus.

4 Nous estimons qu'une variation de 0.3 du CR3 est approximativement comparable à une variation de 0.1 du HHI. Les variations du CR3 ou du HHI ont une incidence de respectivement -26*** à -1 pb et de -27*** à +5 pb sur les taux servis sur les comptes à terme et comptes d'épargne aux États-Unis. Les taux offerts sur les dépôts à vue semblent moins affectés par la concentration du marché. Les estimations varient en effet de -18*** à +10* pb. Mais il semble également que les taux servis sur les dépôts à vue affichent une plus grande rigidité à la baisse de même qu'une plus grande flexibilité à la hausse que pour les comptes à terme, notamment sur les marchés à forte concentration (Neumark et Sharpe, 1992).

marchés géographiques des dépôts à vue aux États-Unis ont sans doute « une taille inférieure à celle d'un État », mais ils ne sont pas nécessairement « locaux »[5].

3. Barrièers règlementaires dans la banque de réseau

Dans la plupart des pays, le secteur bancaire est soumis à un ensemble de réglementations strictes (voir études de Vives, 1991 ; Fischer et Pfeil, 2004). Certaines d'entre elles tendent à freiner la concurrence. Il s'agit par exemple de limiter l'entrée de nouveaux établissements de crédit sur le marché ou le déploiement d'instruments concurrentiels par les banques. D'autres réglementations restreignent les activités bancaires en limitant les possibilités de diversification et d'expansion géographique, pourtant synonymes d'économies d'échelle. Enfin, la réglementation inclut les règles prudentielles qui modifient le positionnement concurrentiel des banques vis-à-vis d'autres institutions non bancaires (Dewatripont et Tirole, 1994).

Au cours des vingt dernières années, plusieurs nations, dont les pays de l'Union européenne et les États-Unis, ont pris une série de mesures de déréglementation visant à stimuler la concurrence et à améliorer l'intégration financière. Nous analyserons tout d'abord l'incidence de la réglementation dans le secteur de la banque de réseau sur les marges financières des banques (souvent appelées marges d'intermédiation), l'évolution financière et la croissance. Cela nous permet non seulement d'étudier l'impact de la réglementation sur les marges financières des banques, mais également d'explorer les autres dimensions non liées aux tarifs, comme leurs stratégies et l'évolution financière. Nous verrons ensuite de quelle manière la réglementation bancaire est susceptible d'interférer avec la politique concurrentielle et les changements nécessaires pour encourager une concurrence bénéfique tout en préservant d'autres objectifs politiques, comme les objectifs prudentiels.

3.1. Réglementation dans le secteur de la banque de réseau et concurrence

Le degré de restriction de la réglementation bancaire est lié aux marges financières nettes[6]. Une augmentation d'un écart-type en termes de restrictions à l'entrée ou de restrictions des activités, réserves

5 Heitfield et Prager (2004) considèrent que l'analyse devrait inclure à la fois les mesures de concentration au niveau local et à l'échelle de l'État, et des variables de contact multimarchés. Les résultats révèlent que les coefficients relatifs aux mesures de concentration au niveau de l'État sont supérieurs en termes absolus au fil du temps aux coefficients relatifs aux mesures de concentration au niveau local, en particulier pour les dépôts à vue. En 1999, par exemple, une variation de 0.1 du HHI local avait une incidence de seulement 1* pb sur le taux des dépôts à vue rémunérés, tandis qu'une variation comparable du HHI de l'État réduisait le taux de 23*** pb. L'étude récente de Corvoisier et Gropp (2002) portent sur les marchés bancaires nationaux d'Europe, souvent comparables aux États américains en termes économiques et géographiques. L'étude révèle une incidence substantielle de –70*** pb sur les taux des dépôts à vue (correspondant à une augmentation de 0.1 du HHI), mais également des hausses surprenantes de respectivement +50*** pb et +140*** pb des taux offerts sur les comptes à terme et comptes d'épargne. Corvoisier et Gropp soutiennent que le choix des clients désirant ouvrir un compte de dépôt à vue est plus localisé que pour les comptes à terme et comptes d'épargne, pour lesquels les clients sont plus exigeants et font davantage jouer la concurrence. Dans ce dernier cas, le marché devient alors plus « disputable » et la relation escomptée entre l'indice HHI et le taux offert est alors rompue. C'est souvent au niveau de la direction générale des banques que les taux servis sur les dépôts à vue sont fixés avant d'être appliqués au plan national, car c'est à ce niveau que la concurrence (ou le manque de concurrence) est perçue. En revanche, sur les marchés des comptes à terme et d'épargne, le coefficient du HHI est susceptible de refléter l'efficience des banques (même si plusieurs mesures de coûts sont prises en compte) ou l'effet des fusions dans le secteur bancaire causées par une augmentation non observable de la contestabilité du marché.

obligatoires ou de liberté bancaire, se traduit par respectivement 50, 100, 51 et 70 points de base (pb) supplémentaires pour les banques en place (une augmentation de 100 pb équivalant à une hausse de 1 point du taux d'intérêt, donc si un taux d'intérêt de 3,00 % augmente de 85 pb, il passe à 3,85 %)[7,8,9].

L'encadré 1 définit des indicateurs de la réglementation dans le secteur bancaire et témoigne du fait que le degré de restriction de la réglementation et le type de restrictions adoptées varient considérablement d'un pays de l'OCDE à l'autre.

Encadré 1 : Indicateurs de la réglementation dans le secteur bancaire

L'OCDE et la Banque mondiale ont récemment collecté et analysé des informations sur la réglementation des marchés bancaires et des valeurs mobilières (Banque mondiale, Base de données : *Bank regulation and Supervision*, 2004 ; OCDE, Base de données, *Economic Policy Reforms: Going for Growth,* 2006). Nous avons repris ci-après leurs indicateurs de réglementation bancaire concernant les *obstacles à la concurrence* :

(i) *Barrières à l'entrée de banques nationales* (graphique B) : cet indice rassemble les informations relatives aux conditions d'agrément pour créer une banque entièrement nouvelle et à la structure réglementaire inhérente à l'octroi d'un agrément.

(ii) *Barrière à l'entrée de banques étrangères* (graphique C) : l'indice illustre l'importance des restrictions à l'encontre de l'entrée d'entités étrangères sur le marché bancaire national. Il comprend : a) des restrictions en matière de participations étrangères, b) les procédures de filtrage et d'autorisation relatives à l'entrée d'entités étrangères et c) autres barrières réglementaires ;

(iii) *Barrières relatives aux activités* (graphique D) : cet indice montre le niveau de restriction de la réglementation vis-à-vis de la participation des banques aux opérations sur valeurs mobilières et aux opérations d'assurance ;

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6 Demirguc-Kunt, Laeven et Levine (2004) examinent l'incidence de la réglementation bancaire sur les marges financières nettes des banques à partir des données bancaires de 72 pays. Les mesures de la réglementation des banques commerciales utilisées sont celles de Barth, Caprio et Levine, 2001.

7 Aux États-Unis, l'ouverture d'agences bancaires à l'échelle d'un État et l'expansion des banques inter-États diminuent les charges d'exploitation et les pertes sur prêts des banques. Ces réductions de coûts sont répercutées sur les emprunteurs, qui jouissent ainsi de taux d'intérêt inférieurs (Javaratne et Strahan, 1998).

8 Un certain nombre de variables peuvent servir à représenter l'ampleur de la réglementation. Les variables utilisées dans des analyses empiriques incluent : le pourcentage des entrées refusées, les activités de marché et de banque d'investissement, qui sont des indicateurs de substitution du degré de restriction de la réglementation auquel les banques sont confrontées dans leurs activités, et la mesure des réserves obligatoires. Une autre mesure possible est l'indicateur de « liberté bancaire » tiré de la Heritage Foundation, qui propose un indice global de l'ouverture du secteur bancaire et de la liberté dont jouissent les banques dans la gestion de leurs activités. S'agissant des résultats 50***, 100***, 51* et 70*** points de base, *** signifie que les résultats sont statistiquement significatifs au niveau de 1 %, ** au niveau de 5 % et * au niveau de 10 %.

9 Cependant, après inclusion des contrôles spécifiques aux banques et des contrôles macroéconomiques et d'un indice des droits de propriété, les restrictions réglementaires ne sont plus significatives et n'offrent aucune capacité explicative supplémentaire. Demirgüç-Kunt, Laeven et Levine expliquent ce résultat par le fait que la réglementation bancaire reflète quelque chose de plus large que l'environnement concurrentiel. Leur interprétation concorde avec les résultats des recherches réalisées par Kroszner et Strahan (1999) et plus récemment par Garrett, Wagner et Wheelock (2004), sur les facteurs politiques et économiques de la déréglementation bancaire à travers les États aux États-Unis. Les résultats de Jayaratne et Strahan (1996) montrent que les taux de prêt consentis diminuent de 30** pb en moyenne après déréglementation.

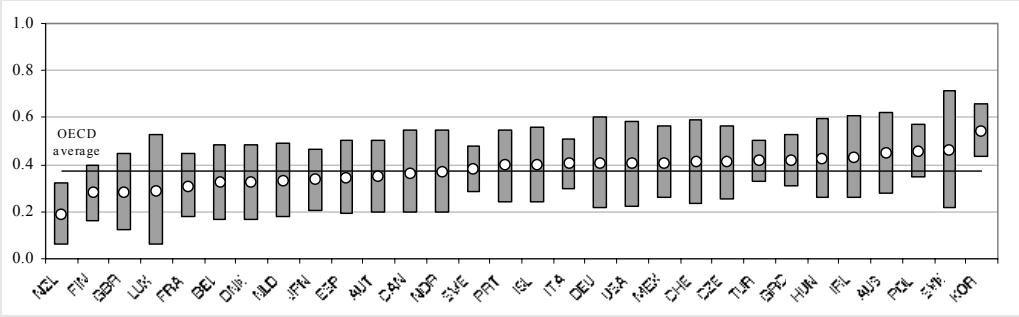
(iv) *Participations publiques* (graphique E) : cet indice mesure les actifs détenus par les banques (les 10 plus grandes) dans lesquelles la participation de l'État représente au moins 20 % du total des actifs.

L'indicateur composite, *Barrières réglementaires globales à la concurrence* (graphique A) est une moyenne non pondérée des quatre autres indicateurs.

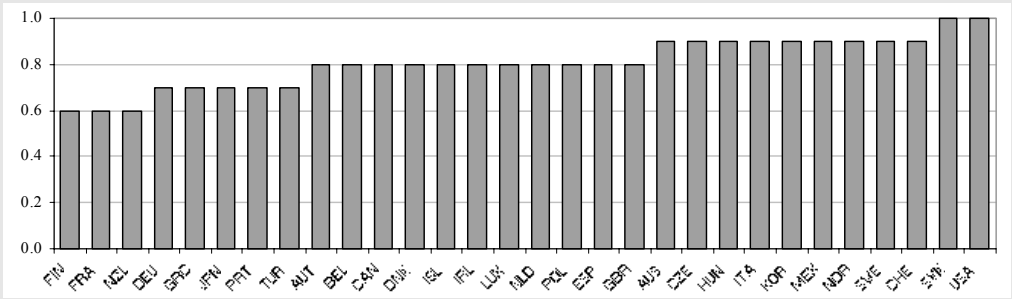
Les indicateurs sont élaborés à partir des informations qualitatives recueillies sur chaque aspect spécifique de la réglementation. Ces informations sont ensuite quantifiées sur une échelle de zéro à un. Les scores les plus élevés indiquent une réglementation plus restrictive et donc des barrières plus élevées. Les données relatives aux barrières à l'entrée de banques étrangères et aux participations publiques sont tirées des études réalisées respectivement par Golub (2003) et La Porta, Lopez-de-Silanes et Shleifer (2002).

Indices de réglementation (2003)[1]

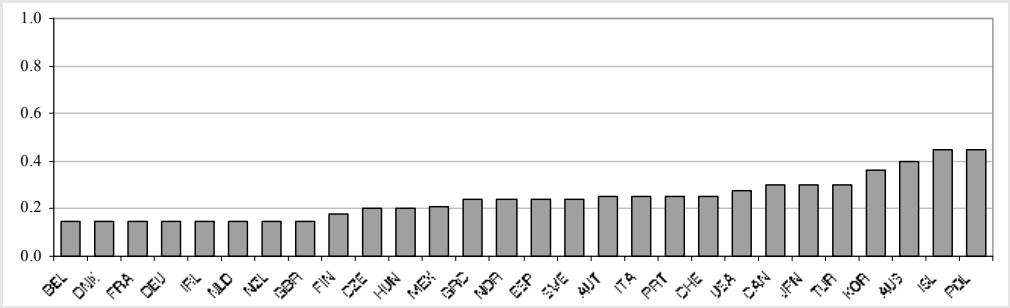
A. Barrières réglementaires globales à la concurrence[2]



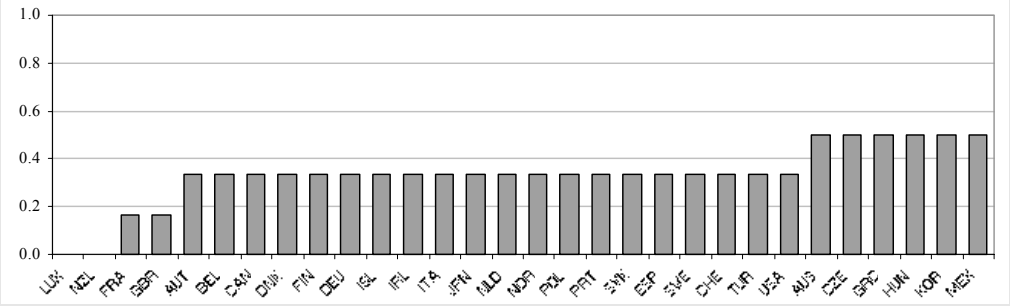
B. Barrières à l'entrée de banques nationales



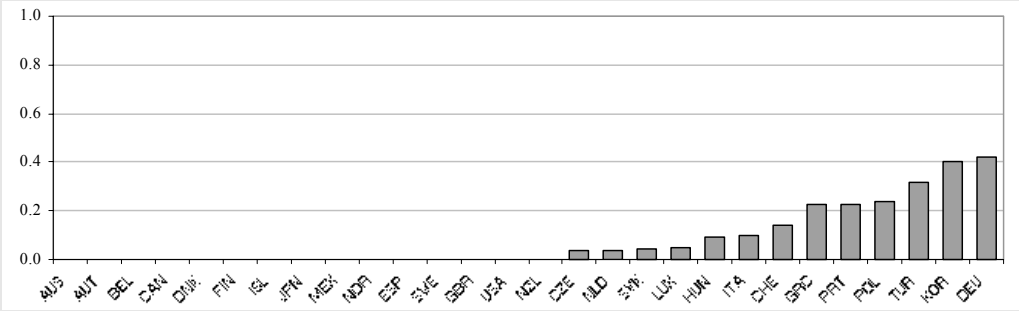
C. Barrières à l'entrée de banques étrangères[3]



D. Barrières relatives aux activités



E. Actionnariat public



1. L'échelle de l'indice est de 0 à 1, c'est-à-dire du moins restrictif au plus restrictif. Plus l'indice est élevé, plus la réglementation restreint la concurrence.
2. Moyenne des items affichés dans les Panels B à E.
3. Les données relatives aux barrières à l'entrée de banques étrangères sont tirées de l'étude de S. Golub (2003), « Mesures de restrictions envers les flux des investissements directs étrangers orientés vers l'intérieur pour les pays de l'OCDE », Document de travail n°357 du Département des affaires économiques de l'OCDE. Cet indice reflète l'état de la réglementation prévalant sur la période 1998-2000.

Source : OCDE et Banque mondiale, Base de données *Bank regulation and supervision*.

Les indicateurs de l'Encadré 1 montrent d'énormes divergences dans les restrictions relatives à l'entrée des banques étrangères et à l'actionnariat public[10]. S'agissant de ces indicateurs, une question vient à l'esprit. S'il existe des restrictions à l'entrée des banques étrangères ou à des participations publiques importantes, mais peu de barrières à l'entrée de banques nationales, les restrictions à l'entrée de banques étrangères et aux participations publiques ont-elles de l'importance ?

Non seulement les banques étrangères ne rivalisent pas nécessairement de la même manière que des institutions nationales, mais elles peuvent être affectées différemment par la réglementation nationale. Les barrières à l'entrée des banques étrangères semblent avoir un impact dopant sur les marges financières[11], tandis que les barrières à l'entrée des banques nationales ne semblent pas avoir d'incidence sur ces marges[12]. Dans les pays développés, la proportion des banques détenues par des banques étrangères n'a pas d'impact sur les marges financières.

Les participations publiques dans les banques affectent également la concurrence ; les banques publiques prennent sans doute part à la concurrence de manière différente des institutions détenues par des intérêts privés. L'actionnariat public des banques perdure à travers le monde, notamment dans les pays en développement (La Porta *et al.*, 2002 ou Encadré 1). Les études conduites sur un grand nombre de pays révèlent que plus les participations publiques dans les banques sont importantes, moins la concurrence s'exerce et plus le développement financier est lent[13]. Cependant, les prêts consentis aux entreprises par les banques publiques sont meilleur marché que ceux des banques privées (Sapienza, 2004).

L'Encadré 2 illustre l'impact de l'entrée des banques étrangères en Europe orientale.

Encadré 2 : Intégration financière et activité réelle : entrée des banques étrangères en Europe orientale

L'entrée des banques étrangères sur les marchés émergents, notamment, peut avoir des effets très variés sur l'offre de crédit, la concurrence, la stabilité et les performances/le financement des entreprises et de l'industrie (voir Giannetti et Ongena, 2006).

L'offre de crédit

Dans les pays dotés d'un système financier sous-développé, comme les économies d'Europe orientale, l'intégration financière devrait accroître leur offre de financement et développer leur système financier national. À cet égard, l'intégration financière devrait accélérer la croissance, tous secteurs confondus (Rajan et Zingales, 1998 ; Guiso, Sapienza et Zingales, 2004).

Comme toutes les entreprises contractent des emprunts bancaires, elles devraient toutes bénéficier de l'entrée des banques étrangères. En encourageant le développement du système bancaire, la présence des banques étrangères accroît l'offre de crédit et réduit les contraintes capitalistiques des entreprises, en particulier des PME et des jeunes pousses. La présence des banques étrangères peut donc avoir une influence

10 Selon des observateurs, ces indicateurs peuvent ne pas refléter l'opinion des acteurs du secteur sur le degré de restriction, dans la mesure où certains pays très restrictifs affichent des mesures indiquant un faible degré de restriction, tandis que d'autres moins restrictifs affichent des mesures élevées.

11 Magri, Mori et Rossi (2005), par exemple, montrent que certaines banques étrangères ont fait une entrée couronnée de succès sur le marché bancaire italien à la suite de la réduction des barrières réglementaires, conformément à la Deuxième Directive adoptée en 1992.

12 Voir l'étude de Levine (2003), qui distingue les restrictions à l'entrée des banques étrangères et nationales et donc affine l'analyse réalisée par Demirguc-Kunt et autres (2004).

13 . Voir les études réalisées respectivement par Barth, Caprio et Levine, 2004 et La Porta et autres, 2002.

considérable sur la création d'entreprise d'un pays.

L'entrée des banques étrangères en Europe orientale a sans doute été particulièrement bénéfique. Après la chute des régimes communistes, l'Europe orientale avait urgemment besoin de capitaux pour restructurer son économie réelle. En outre, les entreprises publiques devaient se moderniser pour survivre dans un marché concurrentiel. Ces économies avaient désespérément besoin de créer de petites entreprises pour approvisionner le marché en produits de consommation et services essentiels. Seulement, dans un premier temps, les entrepreneurs n'avaient pas accès au capital nécessaire au démarrage de leur activité. Or, en Europe orientale, le secteur bancaire semblait au départ d'une taille tro petite pour satisfaire demande considérable de financements.

Concurrence et stabilité du système bancaire

Les banques étrangères ne se contentent pas d'élargir l'offre de crédit en prêtant aux entreprises nationales, elles stimulent la concurrence et renforcent le système financier, un avantage dont bénéficient indirectement toutes les entreprises (y compris celles qui ne contractent pas de prêts auprès des banques étrangères). En effet, les banques étrangères dans les pays en développement, y compris les économies d'Europe orientale, sont souvent plus efficientes et rentables que leurs homologues nationales (Demirguc-Kunt et Huizinga, 2000 ; Green, 2003 ; Naaborg, Scholtens, de Haan, Bol et de Haas, 2004 ; Bonin, Hasan et Wachtel, 2005). En stimulant la concurrence, les banques étrangères peuvent réduire les marges financières et marges bénéficiaires de toutes les banques présentes sur le marché (Claessens, Demirguc-Kunt et Huizinga, 2001 ; Unite et Sullivan, 2003).

L'entrée des banques étrangères contribue également à stabiliser le système financier des pays en développement (Crystal, Dages et Goldberg, 2002). Premièrement, les banques étrangères font preuve d'une plus grande expertise du crédit, de meilleures pratiques en la matière et leurs créances douteuses sont inférieures. Leur accès direct à l'épargne étrangère les rend probablement plus résistantes aux crises. D'un autre côté, leur facilité à trouver d'autres opportunités d'investissement augmente la volatilité sur le marché du crédit (Morgan et Strahan, 2003) d'autant qu'elles sont susceptibles d'exporter des chocs de leur pays d'origine (Soledad Martinez Peria, Powell et Vladkova Hollar, 2003). Notons cependant, que ce dernier effet est probablement marginal sur les marchés émergents généralement plus exposés à des chocs majeurs que les pays d'origine des banques étrangères. D'ailleurs, de Haas et Lelyveld (2005) n'ont constaté dans leur échantillon de pays en transition aucun signe d'instabilité supplémentaire liée à l'entrée de banques étrangères. L'entrée de banques étrangères diminuant la concentration, les crises bancaires devraient être moins et non plus nombreuses (Beck, Demirguc-Kunt et Levine (2004).

Informations objectives / subjectives

L'organisation des banques étrangères n'est pas forcément la plus adaptée aux petites entreprises et jeunes pousses locales, loin sans faut. Les banques étrangères ont souvent une bonne envergure avant de s'aventurer à l'étranger pour suivre leurs clients ou opérer une diversification géographique (voir l'étude réalisée par Clarke, Cull, Soledad Martinez Peria et Sanchez, 2003). Une fois implantées à l'étranger, elles cibleront sans doute les entreprises internationales de leur pays d'origine souhaitant bénéficier de leurs services (Berger, Dai, Ongena et Smith, 2003), souvent perçues comme étant des emprunteurs plus sûrs et plus rentables. Par ailleurs, prêter à la fois aux petits clients relationnels et aux grands comptes transactionnels pourrait entraîner des surcoûts de gestion pour les grandes banques (Berger, Demsetz et Strahan, 1999).

Mais surtout, les banques étrangères risquent ne pas savoir collecter des informations « subjectives » (par exemple, évaluer la personnalité d'un entrepreneur, le degré de confiance), informations pourtant cruciales pour l'octroi de prêts aux petites entreprises. Les petites entreprises et les jeunes pousses communiquent généralement peu d'informations « objectives ». Elles n'ont pas, par exemple, d'historique de crédit, etc. (Berger and Udell, 2002 ; Petersen (2004). L'utilisation d'informations subjectives dans les décisions de prêt requiert une organisation décentralisée qui donne aux responsables d'agences un pouvoir décisionnel conséquent (Liberti, 2004). Il est vrai que ces informations subjectives ne peuvent être transmises aussi aisément que les informations objectives au sein de la banque (Stein, 2002). Les banques étrangères risquent donc d'hésiter à se décentraliser faute de compétences, voire par manque de fiabilité présumé du

personnel local.

Certaines de ces inquiétudes peuvent être atténuées par le fait que les technologies de communication et de traitement de l'information ont sans doute modifié les possibilités de solliciter, de collecter et de communiquer des informations sur les petites entreprises. Par conséquent, les banques étrangères pourraient être prêtes à financer un nombre croissant d'entreprises non transparentes (Petersen et Rajan, 2002). Mais les banques étrangères sont susceptibles de ne pas contribuer au financement et à la croissance des jeunes entreprises, et pourraient même les enfoncer si elles se substituent aux banques nationales, comme on l'a vu précédemment.

Problème des crédits accordés à des sociétés liées

S'il est probable que l'accès au crédit des petites entreprises et jeunes pousses diminue lorsque les banques étrangères sont très présentes, l'incidence sur ces entreprises n'est pas nécessairement négative. La structure actionnariale des banques nationales se traduit souvent par des pratiques de crédit pas très saines. L'État et les actionnaires de sociétés non financières contrôlent fréquemment les banques nationales dans les pays en développement, ce qui peut donner lieu à des conflits d'intérêts, dont les effets sur l'accès au crédit des petites et jeunes entreprises sont pernicieux.

La Porta, Lopez-de-Silanes et Zamarripa (2003), par exemple, considèrent que les banques mexicaines accordent des prêts plus importants à un taux d'intérêt inférieur à des sociétés liées, qui sont plus sujettes aux défaillances. De la même manière, les banques publiques sont souvent influencées par des considérations d'ordre politique. Sapienza (2004) montre de façon convaincante qu'en Italie, les prêts accordés par les banques publiques représentent un moyen d'exercer un certain favoritisme politique. Mian (2006) soutient, en outre, que les banques publiques dans les économies émergentes enregistrent, toutes autant qu'elles sont, de mauvaises performances et qu'elles doivent leur survie au soutien tangible des pouvoirs publics. Les résultats d'études empiriques suggèrent que les décisions de crédit des banques nationales contrôlées par l'Etat ou d'autres entreprises ne sont pas précisément fondées sur la rentabilité. C'est pourquoi, des sociétés rentables non liées à ces banques peuvent ne pas avoir accès au crédit. Ne bénéficiant pas souvent de ce type de lien, les petites entreprises et les jeunes pousses sont probablement les plus touchées.

Les problèmes de crédit accordé à des sociétés liées sont prépondérants en Europe orientale. La Porta *et al.* (2002) estiment que les pouvoirs publics des pays d'Europe orientale contrôlaient encore près de 70 % de l'actif total des banques en l'an 2000, alors que ce pourcentage atteignait en moyenne 40 % dans les autres pays de l'échantillon. Il semble que les banques publiques soient plus soucieuses de soutenir l'emploi dans les entreprises publiques et même dans les entreprises privatisées depuis peu que de financer des projets rentables. Le contrôle des banques par d'autres sociétés crée le même genre de problèmes. Laeven (2001) affirme qu'en Russie, les banques octroient des prêts plus importants aux sociétés qui en sont actionnaires.

L'ouverture du secteur financier à la concurrence étrangère atténue ces conflits d'intérêts et améliore l'efficience des crédits distribués. Les décisions de crédit des banques publiques étrangères sont naturellement affranchies de toutes les relations actionnariales et motivations politiques qui prévalent sur leur marché national. Les entreprises rentables dans lesquelles les banques et l'État ne détiennent pas de participations financières bénéficieront certainement d'une offre de crédits bancaires plus large et leur croissance sera donc supérieure, si la présence des banques étrangères augmente, alors que l'accès au crédit des entreprises apparentées est susceptible de diminuer. Dans la mesure où les petites entreprises et jeunes pousses n'ont généralement pas ce type de relations, l'entrée des banques étrangères leur sera bénéfique. Les problèmes des crédits accordés à des sociétés liées sont compensés par l'augmentation des créations d'entreprises financées par les banques étrangères.

En conclusion, l'entrée des banques étrangères est susceptible de favoriser la concurrence, l'efficience, et la stabilité. L'offre de financement devrait donc s'accroître, dopant la croissance des entreprises. En revanche, la croissance et le financement des petites entreprises pourraient pâtir de l'entrée des banques étrangères via des opérations de fusion et acquisition. Dans ce cas, l'effet net dépendra également de la réaction des autres banques rivales et de l'expertise et des bonnes pratiques en matière de crédit effectivement

importées par les banques étrangères.

Les travaux empiriques de Giannetti et Ongena (2006) cherchent à savoir quelles entreprises bénéficient de l'entrée des banques étrangères et à évaluer ce bénéfice. Leur étude porte sur un large panel de près de 60 000 observations par an sur des entreprises cotées en non cotées implantées dans les pays d'Europe orientale. Elle évalue l'impact différentiel de la présence des banques étrangères sur le financement et la croissance de ces entreprises. Les chercheurs concluent que les prêts consentis par les banques étrangères implantées localement abaissent le coût du crédit dans le pays (les paiements d'intérêts diminuent) et facilitent l'accès au crédit (l'utilisation de crédits fournisseurs décroît), mais que ces effets bénéfiques sont moins marqués pour les petites entreprises. Si les banques étrangères favorisent la concurrence, elles sont moins soucieuses d'obtenir des informations subjectives et de nourrir des relations à long terme avec les petites entreprises.

3.2 Politique de la concurrence et réglementation bancaire

Le secteur bancaire passe pour un secteur sensible principalement en raison de ses « effets de contagion » éventuellement induits par (1) la caractéristique du retrait à vue de certains dépôts bancaires, (2) le rôle joué par les banques dans le système de paiement et (3) l'importance des banques dans le financement des consommateurs et des PME. L'opportunité de la concurrence dans le secteur bancaire est depuis longtemps remise en question par la possibilité, notamment, qu'une intensification de la concurrence augmente le risque de contagion. Jusque dans les années 80, l'idée générale était que la stabilité financière serait préservée tant que la concurrence dans le secteur bancaire ne serait pas trop intense. Dans le cas contraire, elle entraînerait une prise de risque excessive, obligeant à trouver un compromis entre concurrence et stabilité financière.

Les travaux récents sur la question offrent un point de vue plus pondéré. Ces travaux concluent que la relation entre concurrence et stabilité (voir, par exemple, Carletti et Hartmann, 2003 ou Carletti, 2007) est tantôt positive et tantôt négative. Beck *et al.* (2004) explorent cette relation en étudiant l'impact de la concentration bancaire, de la réglementation bancaire et des institutions nationales, qui favorisent par exemple la concurrence ou les droits de propriété, sur la probabilité de connaître une crise bancaire. Ils parviennent à la conclusion qu'une réduction des restrictions réglementaires – c'est-à-dire moins de barrières à l'entrée des banques et moins de restrictions relatives aux activités des banques – se traduit par une moindre fragilité du secteur bancaire. Les restrictions réglementaires ne plaident pas en faveur d'un accroissement de la stabilité. Black et Strahan (2002) soutiennent que la levée des restrictions sur l'ouverture d'agences bancaires et les activités bancaires inter-États a stimulé le taux de création d'entreprises aux États-Unis. Cela tend à montrer que l'accès au financement augmente après la déréglementation du marché.

En conséquence, certains ont émis l'idée que le secteur bancaire devrait être soumis à un régime de la concurrence plus indépendant. Cette idée a fait des émules dès que les autorités de contrôle ont su mieux maîtriser la stabilité du système bancaire par le biais de la réglementation des fonds propres (Bâle I et II) et que les banques ont affiché des réserves considérables[14].

Le Réseau international de la concurrence (RIC), qui réunit les autorités de la concurrence de plus de 90 juridictions, a publié un ensemble de recommandations sur la politique de la concurrence dans le secteur

14. Une étude récente de l'OCDE réalisée par De Serres, Kobayakawa, Sløk et Vartia (2006) révèle que les pays de l'OCDE soumis à une concurrence intense dans le secteur bancaire n'ont pas pâti d'instabilité au cours des dernières décennies. Ils expliquent cela par le fait que les autorités savent mieux encourager la prudence sans que la concurrence en fasse les frais.

de la banque de réseau[15]. Il préconise l'application des principes généraux de la concurrence au secteur bancaire. Cela implique (1) qu'il ne devrait y avoir aucune réglementation spéciale sur la concurrence entre banques et (2) que les règles sur la concurrence devraient pleinement s'appliquer. Le RIC recommande également l'application du droit de la concurrence par les autorités de la concurrence plutôt que par l'autorité de tutelle bancaire[16].

Les cadres réglementaires et les pratiques de surveillance du secteur bancaire peuvent éventuellement interférer avec la concurrence. Carletti, Hartmann et Ongena (2006), par exemple, montrent que le régime de contrôle a une grande influence sur les effets de la réorientation récente de l'environnement juridique et institutionnel vers un secteur bancaire plus concurrentiel. Carletti *et al.* (2006) soutiennent, en particulier, que l'examen des fusions entre banques par l'autorité de contrôle est souvent guidé par une démarche et des objectifs qui n'ont rien à voir avec la concurrence. Cet examen s'attache généralement à déterminer la viabilité et la stabilité de la nouvelle entité créée. À l'occasion, l'intervention favorise certaines fusions dans l'espoir de sauver des banques en difficulté[17] [18].

Début 2005, la banque italienne BPI a annoncé qu'elle avait fait l'acquisition de 2 % de la Banca Antoniana Popolare Veneta italienne (Banca Antonveneta). Toujours début 2005, la banque néerlandaise ABN AMRO passait pour envisager de se porter acquéreur de la Banca Antonveneta, à la suite de la résiliation d'un pacte d'actionnaires de cet établissement en décembre 2004. Dans une lettre datée du 8 février 2005 au gouverneur de la Banque d'Italie, le Commissaire de l'Union européenne au marché intérieur, M. McCreevy, indiquait « Il importera que la Banque d'Italie publie une déclaration ferme confirmant son attachement à un secteur bancaire ouvert et concurrentiel dans lequel les participations étrangères sont soumises aux mêmes procédures d'agrément que les participations nationales » (IHT, Feb 9, 2005). Le 15 mars, ABN AMRO a déposé une note d'information préliminaire sur l'acquisition de la Banca Antonveneta. Le 30 mars, ABN AMRO a demandé la permission de franchir les seuils de

15. Le rapport du RIC est disponible à l'adresse suivante : http://www.internationalcompetitionnetwork.org/Bonn/AERS_WG/SG1_Banking/Banking %20- %20An %20Increasing %20Role %20for %20Competition.pdf

16 Le rapport du RIC stipule que :

> Les règles sur la concurrence sont extrêmement générales et sont suffisamment souples pour s'adapter à toutes les caractéristiques sectorielles. Il n'est pas nécessaire d'établir des règles spécifiques, qui pourraient en outre nuire à leur application. La frontière est très étroite entre des règles sur la concurrence spécifique à un secteur et la réglementation générale, notamment si ces règles sectorielles sont appliquées par l'ancienne autorité de tutelle. Le danger est que les autorités de tutelle sectorielle aient une vision de la concurrence qui présente une trop forte empathie avec le mode de fonctionnement traditionnel d'un secteur au lieu de promouvoir un régime concurrentiel. Comme l'explique l'encadré ci-après, les lois spécifiques à un secteur sont plus susceptibles d'être modifiées et appliquées dans l'intérêt du secteur réglementé, plutôt que dans l'intérêt de l'économie au sens large. Les lois générales sont, dans l'ensemble, moins vulnérables et donc plus pérennes (p. 19).

17 Le rapport de l'OCDE intitulé « Failing Firm Defense » décrit de tels cas (OCDE, 1996, CLP Report 96 (23), p. 69f.).

18 Pour Carletti et autres (2006), le renforcement de la politique de la concurrence semble avoir une incidence positive significative sur le système financier, en limitant le pouvoir d'appréciation de l'autorité de surveillance dans la détermination de l'issue d'une fusion. Cela compense les inefficiences induites par les politiques de surveillance. Leur étude qui porte sur 19 pays sur la période 1987-2004 conclut qu'un régime de contrôle des fusions davantage axé sur la concurrence suscite une augmentation de la valorisation boursière des banques, alors qu'il provoque une diminution de celle des entreprises non financières. De plus, l'envergure et la rentabilité des banques ciblées par une fusion augmentent. Enfin, la non-transparence caractérisant la structure institutionnelle qui contrôle les fusions bancaires est un facteur déterminant dans la valorisation des banques.

participation de 15 et 20 % et de racheter la Banca Antonveneta au moyen d'une OPA. Le soumissionnaire concurrent d'ABN AMRO, la BPI, a demandé l'autorisation de porter sa participation au capital de la Banca Antonveneta à 29.9 % début avril. La demande de la BPI a été satisfaite le 7 avril. « L'autorisation de franchir les seuils de 15 et 20 % a été accordée à ABN AMRO les 19 et 27 avril... » (p. 229, Rapport annuel abrégé de la Banque d'Italie pour l'exercice 2005) Il a fallu plus de temps pour accorder les autorisations de franchissement de seuils à ABN AMRO que pour donner une réponse positive à celle de la BPI. Ce délai supplémentaire peut s'expliquer par la nécessité pour la banque centrale de s'informer sur une banque étrangère sur laquelle elle ne disposait que d'informations limitées. Ce délai a néanmoins permis à la BPI d'accroître sa participation à un moment où ABN AMRO ne pouvait pas en faire autant. Lors de l'assemblée générale des actionnaires de la Banca Antonventa le 30 avril, la liste d'administrateurs proposée par la BPI a été élue, remplaçant le précédent conseil qui avait recommandé d'accepter l'offre d'ABN AMRO. À cette date, ni la BPI, ni ABN AMRO n'avait reçu le feu vert de la Banque d'Italie pour prendre le contrôle de la Banca Antonveneta[19]. ABN AMRO avait demandé l'autorisation de la Banque d'Italie à cet effet le 30 mars et a reçu l'autorisation le 6 mai. ABN AMRO a lancé son OPA sur la totalité du capital d'Antonveneta le 19 mai. L'offre a été retirée sur un échec le 22 juillet. La BPI a demandé l'autorisation de prendre le contrôle de l'Antonveneta le 5 mai et a reçu le feu vert le 11 juillet. Toutefois, à l'issue de diverses investigations supplémentaires de la Consob et de la Banque d'Italie, des irrégularités ont été mises en évidence dans les initiatives de la BPI. En dernier ressort, la Banque d'Italie a suspendu « l'autorisation donnée le 30 juillet à la BPI et l'a révoquée le octobre » (p. 231, Rapport annuel abrégé de la Banque d'Italie pour l'exercice 2005). Le 18 octobre, ABN AMRO a reçu une nouvelle autorisation de la Banque d'Italie en vue de racheter les actions détenues par la BPI et a remporté une OPA obligatoire. Le 22 décembre, le parlement italien a adopté une loi transférant la responsabilité des examens des fusions bancaires au regard de la concurrence de l'autorité de tutelle des banques à l'autorité de la concurrence. Ce transfert de responsabilités est entré en vigueur le 12 janvier, 2006. La Banque d'Italie conserve la responsabilité de l'évaluation des fusions bancaires sur le plan du contrôle bancaire.

Le 12 septembre 2006, la Commission européenne a présenté une proposition durcissant les procédures devant être suivies par les autorités de contrôle des États membres pour évaluer les fusions et acquisitions dans les secteurs de la banque, de l'assurance et des valeurs mobilières[20]. Précédemment, les États membres devaient faire preuve d'une bonne gestion et aucune attention n'était portée sur les choix opérés par les pays et les raisons de ces choix. La liste des critères sur lesquels les sociétés acquéreuses pourraient être évaluées comprend : (1) la réputation du candidat acquéreur, (2) la réputation et l'expérience de toute personne qui serait amenée à diriger la société issue de l'opération, (3) la solidité financière du candidat acquéreur, (4) le respect des directives européennes concernées, (5) le risque de blanchiment de capitaux et de financement du terrorisme. La directive réduit en outre la période d'évaluation de trois mois à trente jours, et ne permet aux autorités de contrôle de suspendre l'opération qu'une seule fois, et dans des conditions précises.

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19 Auparavant, dans une procédure distincte, « le 22 avril, la BPI a déposé une notification préalable d'un projet d'acquisition du contrôle de la Banca Antonveneta au moyen d'une offre publique d'échange. Selon une évaluation préliminaire en date du 28 avril, ce projet était très ambitieux et difficile à réaliser, même s'il présentait un intérêt commercial. Dans leur analyse finale, sur la base des informations disponibles, les experts ont considéré que le projet était compatible avec une gestion saine et prudente. Toutefois, certains aspects importants restaient à clarifier ». (p. 228, Rapport annuel abrégé de la Banque d'Italie pour l'exercice 2005)

20. Des informations complémentaires sont disponibles à l'adresse : http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/1174&format=HTML&aged=0&language=EN&guiLanguage=en and http://ec.europa.eu/internal_market/finances/docs/cross-sector/mergers/directive-proposal_en.pdf

3.3 Entrée d'établissements nouveaux et fusions transnationales dans le secteur bancaire

Les banquiers et les universitaires admettent depuis longtemps que les frontières nationales et régionales représentent d'importantes barrières à l'entrée ainsi qu'aux fusions et acquisitions transnationales de banques[21].

Les entrées d'établissements nouveaux varient considérablement d'un marché à un autre. En revanche, la création de nouvelles banques en Europe est un phénomène relativement modeste, comparé aux États-Unis. Les petites entreprises notamment, pourraient s'en inquiéter dans la mesure où les nouvelles banques, généralement de faible envergure à leurs débuts, sont plus axées sur le financement des petites entreprises. La contestabilité détermine l'efficacité de la concurrence effective en permettant notamment l'entrée de banques (étrangères) et en réduisant les restrictions sur les activités des banques. D'après l'étude de Mortimer-Schutts (2005), 2 275 nouvelles banques locales ont été créées aux États-Unis au cours de la période 1985-2003. Le fait que ces nouvelles banques réussissent à s'imposer dans des activités et marchés locaux spécifiques prouve que la contestabilité des marchés bancaires locaux aux États-Unis . Seules 34 nouvelles succursales de banques de l'Union européenne et 11 nouvelles banques ont été établies sous le contrôle direct des autorités de contrôle françaises durant la période 1995-2004. Environ 105 demandes d'autorisation d'exercer des activités bancaires ont été satisfaites par l'autorité de tutelle allemande de 2001 à 2004 (Mortimer-Schutts, 2005)[22].

En outre, les banques étrangères désirant poursuivre une stratégie commerciale auprès des entreprises locales et des particuliers via l'ouverture de succursales locales sont confrontées à de nombreuses difficultés, excepté aux États-Unis. DeYoung et Nolle (1996) et Berger, DeYoung, Genay et Udell (2000), pour ne citer qu'eux, montrent que la plupart des filiales de banques étrangères sont moins efficientes que les banques nationales, à l'exception des filiales étrangères de banques américaines et de la majorité des filiales bancaires étrangères implantées en Europe orientale et en Amérique du Sud, notamment[23]. Pourquoi les filiales de banques étrangères sont-elles, pour la plupart, moins efficientes que les banques locales ? Ces inefficiences sont probablement dues, pour l'essentiel, à la présence de barrières économiques (langue, culture, etc.) et non à la distance physique[24], et pourraient inciter les banques à privilégier les fusions transnationales à la création transnationales de nouveaux établissements.

Les fusions transnationales ne sont pas aussi fréquentes qu'on pourrait s'y attendre. Au moment de la rédaction de ce rapport, les fusions et acquisitions transnationales dans le secteur bancaire étaient moins fréquentes que les rapprochements entre banques d'un même pays[25]. La rentabilité économique des fusions

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21. Les publications plus anciennes qui remontent à Goldberg et Saunders (1981) et Kindleberger (1983) affirment que les banques suivent souvent leur client, stratégie qui détermine le choix *des marchés transnationaux* sur lesquels elles entreront. Cependant, des études récentes jettent un doute quant à la prévalence actuelle de ce type de stratégie (« suivre le client »). La motivation des banques ayant mis pied sur le marché américain n'était pas principalement de suivre les clients de leur pays d'origine ou du moins n'ont-elles pas continué à proposer leurs services exclusivement aux clients de leur pays d'origine. Les banques étrangères implantées outre-atlantique accordent également des prêts à nombre d'emprunteurs locaux (Seth, Nolle et Mohanty, 1998 ; Stanley, Roger et McManis, 1993 ; Buch et Golder, 2001).

22 L'Annexe B présente les effets à court et long termes des fusions entre banques sur l'offre de financement.

23 Les filiales d'Europe orientale et d'Amérique du Sud ont souvent une situation financière plus saine que les banques nationales (Crystal et autres, 2002).

24 Voir Buch (2003).

25 Focarelli et Pozzolo (2001), en autres, démontrent que le rapport des fusions-acquisitions transnationales aux opérations nationales correspondantes est moins élevé dans le secteur bancaire que dans d'autres industries, *toutes choses étant égales par ailleurs*, tandis que Berger et autres (1999) montrent que les fusions-

bancaires transnationales est, en outre, nulle ou négative[26]. Ce sont les frontières[27], et non la distance, qui réduisent la probabilité des fusions-acquisitions transnationales dans le secteur bancaire (Buch et DeLong, 2004). Plusieurs facteurs expliquent le faible rythme des fusions-acquisitions transnationales, dont :

- Les effets persistants de la réglementation
- Les forces économiques
- L'organisation des banques et le gouvernement d'entreprise
- L'asymétrie des informations entre acquéreurs nationaux et internationaux

Les effets persistants de la réglementation. Selon une étude récente publiée par Campa et Hernando (2004), des barrières extérieures au contrôle des banques jouent un rôle en la matière. Il apparaît que la performance boursière combinée de l'acquéreur et de la cible (performance boursière combinée des fusions-acquisitions) est généralement inférieure dans les secteurs, comme le secteur bancaire, qui étaient jusque récemment, contrôlés par l'État, qui sont encore ou étaient les plus réglementés. La performance boursière combinée des sociétés parties prenantes à de telles opérations dans ces secteurs est en fait négative, un résultat conforme à l'étude réalisée par Beitel, Schiereck et Wahrenburg (2004). Il est possible que les effets (persistants) de la réglementation fassent obstacle à la croissance géographique transnationale[28]. Bien que les réglementations soient neutres sur les fusions transnationales, il est possible néanmoins que leur application discrétionnaire ait un effet dissuasif, que ce soit en raison d'un traitement plus dure des acquisitions transnationales ou de l'anticipation qu'après acquisition, l'application de la réglementation sera excessivement stricte à l'égard de la banque acquéreuse.

Les forces économiques. Si les facteurs réglementaires et institutionnels résiduels sont sans aucun doute importants, l'unification des marchés bancaires peut également être contrecarrée par de substantielles forces économiques d'après Rosengren (2003). Ces forces pourraient expliquer la rareté des fusions inter-États aux États-Unis, malgré la grande homogénéité des marchés bancaires. Si les réductions de coûts sont souvent impossibles dans les fusions transnationales, elles sont réalisables dans les fusions nationales, via

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acquisitions bancaires transnationales sont moins fréquentes que les opérations bancaires nationales correspondantes.

26 Une étude récente révèle que la performance boursière combinée des acquéreurs potentiels et des cibles d'opérations de fusions-acquisitions transnationales dans le secteur bancaire européen est nulle ou négative depuis plusieurs décennies ! Ce résultat diverge radicalement de ceux d'études réalisées dans d'autres secteurs, pour lesquels la performance boursière combinée des acquéreurs potentiels et des cibles d'opérations fusions-acquisitions transnationales est généralement positive. Il semble donc que les investisseurs considèrent que les fusions-acquisitions bancaires transnationales détruisent de la valeur[26]. Ces résultats sont assez analogues à ceux de DeLong (2001), qui révèlent que la performance boursière combinée des banques réalisant des fusions-acquisitions dans une même zone géographique n'est positive qu'aux États-Unis, mais les facteurs déterminant ces résultats ne sont pas clairs.

27. Les barrières réglementaires proscrivant explicitement les fusions-acquisitions entre banques ont été levées en Europe. Cependant, les intérêts politiques et nationaux se traduisent fréquemment par la mobilisation du dispositif national anti-monopole ou de sécurité bancaire pour bloquer les fusions-acquisitions bancaires transnationales. Entre la proscription explicite des fusions-acquisitions bancaires transnationales (barrières réglementaires) et les différences politiques et culturelles intrinsèques, nous estimons qu'il existe une zone de flou, qui fait obstacle à la réussite des fusions-acquisitions transnationales entre banques (barrières économiques).

28. Plus généralement, les études réalisées jusqu'ici ne permettent pas de savoir précisément si ce sont des frontières économiques échappant au contrôle des banques ou celles qui peuvent être influencées par les banques qui font le plus obstacle à la réussite des opérations de fusions-acquisitions transnationales entre banques.

la suppression des doublons dans les réseaux d'agences, les activités de placement et/ou le suivi local des crédits. Anticipant de telles économies, les candidats acquéreurs nationaux peuvent présenter une offre supérieure à tous leurs rivaux étrangers. Plus généralement, la promesse d'une diminution réductions de coûts et et de suppressions de main-d'œuvre indirecte donnent l'avantage aux banques nationales sur les candidats étrangers lors de toute fusion complexe et, qui plus est, politisée. Par ailleurs, l'acquisition d'un concurrent national limite le nombre de cibles pour les banques étrangères, avec éventuellement un pouvoir de marché et des bénéfices monopolistiques accrus pour l'acquéreur.

L'organisation des banques et le gouvernement d'entreprise. Des observateurs du secteur bancaire constatent parfois également que l'organisation des banques et le gouvernement d'entreprise empêchent les fusions. La structure mutualiste de certaines grandes banques en France et en Allemagne, notamment (comme le *Crédit Agricole* et *Landesbanken*) est souvent perçue comme un obstacle majeur au lancement et à la réussite d'opérations de fusions-acquisitions (Wrighton, 2003). Cependant, les frontières économiques entraînent quelquefois des structures de holding complexes dans les fusions-acquisitions bancaires transnationales (Dermine, 2003). La concentration transnationale en Europe s'opère par le biais de filiales et non par l'ouverture de succursales, comme c'est le cas aux États-Unis avec les banques inter-États. La configuration des filiales peut également compliquer les fusions-acquisitions. Il semble que le « passeport unique » établi par la Deuxième Directive bancaire européenne ne soit pas très employé.

L'asymétrie des informations entre acquéreurs nationaux et internationaux. Lors de l'évaluation du portefeuille de prêt des banques cibles, l'asymétrie des informations collectées peut également nuire à la réussite des fusions-acquisitions transnationales dans le secteur. Cependant, rares sont les études portant sur l'incidence des frontières économiques (informationnelles) influencées par les banques sur les opérations de fusions-acquisitions bancaires transnationales. Les rapprochements bancaires nationaux observés en Europe qui ont donné naissance à des « champions nationaux » pourraient être en partie dus à l'existence de frontières informationnelles. Les banques étrangères en quête d'une proie locale ont plus de mal que les banques nationales à évaluer le portefeuille de prêts des cibles potentielles. La « malédiction » du gagnant opérant, les banques étrangères s'abstiennent d'entrer dans la course, si bien que la plupart des fusions-acquisitions motivées par des considérations de taille (revenus et coûts) et de marché notamment, se déroulent entre banques nationales.

Cependant, à mesure que les banques nationales prennent de l'envergure, se diversifient[29] et recentrent vraisemblablement leurs opérations de crédit sur les plus grandes entreprises, elles deviennent des cibles plus faciles à évaluer. Si c'est effectivement le cas, nous affirmons que l'asymétrie des informations à laquelle sont confrontées les banques étrangères est susceptible de diminuer avec le temps, pour la bonne raison que les cibles potentielles, protégées à l'intérieur des frontières nationales, prospèrent et fusionnent les unes avec les autres, entraînant une diversification accrue de leur portefeuille de prêts. Par ailleurs, l'importance croissante des préoccupations relatives à la politique de la concurrence finira peut-être par empêcher la poursuite du processus de concentration nationale. A mesure que les fusions locales font diminuer le nombre de concurrents décroît, l'étude de ces opérations par les autorités de la concurrence va devenir plus minutieuse. Parallèlement, le nombre de candidats acquéreurs étant réduit, la malédiction du gagnant pourrait diminuer, facilitant ainsi les opérations transnationales.

4. La concurrence dans la banque de réseau : le rôle des frais de transfert de compte

La mobilité et le choix des clients sont essentiels pour stimuler la concurrence dans le secteur de la banque de réseau. Si la mobilité de la clientèle est faible, la longévité de la relation client-banque est élevée

29. Si les succès des multiples projets entrepris par nombre d'emprunteurs n'étaient pas corrélés, alors la malédiction du gagnant dans l'étude de von Thadden (2004), par exemple, s'estomperait, selon nos prévisions.

(voir les rapports récents de Cruickshank (2000) et de la Commission européenne). Le rapport de la Commission, qui analyse la mobilité de la clientèle dans le secteur de la banque de réseau en Europe, indique un taux de rotation moyen (pondéré par la population) de la clientèle de 9.4 % pour les comptes à vue sur la période 2002-2005 dans les 25 pays de l'UE[30]. Le taux de rotation a légèrement régressé de 9.85 % à 9.11 % entre 2002 et 2005. La longévité moyenne d'un compte à vue était en 2005 de 7.93 ans dans les 25 pays de l'UE[31].

Les frais coûts de transfert de compte peuvent lier les particuliers et les entreprises à leur banque. Ces frais sont les coûts encourus par les clients existants pour changer de prestataires. Nous avons, d'un point de vue conceptuel, distingué entre les coûts fixes transactionnels (ou techniques) (Klemperer, 1995) et les coûts informationnels associés au changement d'établissement. Nous définissons les *coûts de transfert transactionnels* au sens large. Ils comprennent, en autres, les coûts de recherche d'une autre banque, les coûts d'opportunité d'ouvrir un nouveau compte, de transférer les fonds et de fermer l'ancien compte, mais également les coûts contractuels et psychologiques. Nombre de ces coûts, mais pas tous, sont indépendants du comportement des banques, mais permettent à la banque initiale de compenser en partie les taux d'intérêt servis sur les dépôts des clients partis. Les coûts de transfert de compte sont directement influencés par le comportement des banques lorsque, celles-ci facturent, par exemple, leurs clients pour la fermeture de leur compte (coûts de fermeture de compte).

Aux coûts fixes transactionnels associés au changement de banque, s'ajoutent souvent des *coûts de transfert informationnels* sur le marché des prêts. Les emprunteurs souhaitant changer de banque seront assujettis à des coûts de transfert informationnels ; leur banquier d'origine est effectivement mieux informé de la qualité de l'emprunteur et de son comportement récent au regard de ses remboursements que ses concurrents. De tels frais de transfert de compte donnent à la banque informée un avantage sur les autres pour dégager une rente économique supplémentaire[32]. L'existence des frais de transfert de compte est, bien évidemment, susceptible d'exacerber la concurrence pour attirer des clients, de sorte qu'une partie de cette rente sera perdue *ex ante* au profit de la concurrence.

Les frais de transfert de compte lient les particuliers et les PME aux banques en les enfermant dans leur choix initial. Ce verrouillage donne aux banques un pouvoir de marché considérable *ex post* (voir Farrell et Klemperer, 2006, pour un panorama des frais de transfert de compte). Les banques se livrent sans doute à une concurrence féroce *ex ante* pour acquérir des clients afin de bénéficier d'un pouvoir de marché *ex post*. Reste que les marchés pratiquant les frais de transfert de compte sont sans doute globalement moins concurrentiels dans la mesure où la présence de ces frais tend à modérer la concurrence. Elle peut encourager les entrées de faible envergure, mais décourager les banques de se voler mutuellement la clientèle, décourageant ainsi les entrées plus offensives[33].

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30 Le taux de rotation est défini par la somme des nouveaux comptes à vue et des comptes à vue fermés divisée par deux fois le nombre de comptes à vue en début d'année.

31 La longévité n'est sans doute pas l'indicateur le plus utile, même s'il peut être le plus facile à mesurer et à comparer entre les pays. Un indicateur plus adapté devrait s'attacher aux individus et aux comportements individuels.

32 Voir Berger et Udell (2002) ; Boot (2000) ; Ongena et Smith (2000).

33 Mais une moindre concurrence est-elle toujours dommageable ? Petersen et Rajan (1995) soulignent qu'une concurrence imparfaite due, par exemple, aux frais de transfert de compte pourrait être bénéfique pour les petites et jeunes entreprises ou les sociétés ne jouant pas le jeu de la transparence. Sa logique est qu'une concurrence imparfaite induit un lissage intertemporel de la relation entre les banques et les entreprises : les banques pourraient accepter de subir des pertes initiales si les entreprises s'engageaient à ne pas quitter leur banque *ex post*. C'est précisément ce qui se passe avec les frais de transfert de compte : les entreprises ont du mal à quitter leur banque une fois la relation établie avec elle.

L'étude pionnière de Petersen et Rajan (1995) examine les effets de la concurrence entre banques sur les taux de prêt, mais également sur l'offre de crédit aux entreprises, à l'aide de l'indice de la concentration bancaire. Le rapport révèle que les jeunes entreprises – aux flux de trésorerie incertains – présentes sur des marchés bancaires plus concentrés, obtiennent des taux d'emprunt sensiblement inférieurs aux entreprises présentes sur des marchés bancaires plus concurrentiels. Les taux d'emprunt diminuent de plus de 150 pb pour les entreprises nouvelles, si l'indice HHI augmente de 0,10[34]. L'étude indique également que l'accès au crédit bancaire est plus facile sur les marchés plus concentrés, mais les effets économiques semblent modérés et pas toujours statistiquement significatifs, même pour les jeunes entreprises. Leur analyse théorique et les résultats empiriques montrent cependant que les frais de transfert de compte ne sont pas nécessairement tous préjudiciables pour les petites et jeunes entreprises ou les sociétés ne jouant pas le jeu de la transparence.

Nous allons maintenant examiner les principales sources de coûts de transfert transactionnels et informationnels susceptibles d'empêcher la mobilité de la clientèle et procéder à un tour d'horizon des études empiriques qui mesurent l'ampleur des frais de transfert de compte sur les marchés des dépôts et des crédits. Nous présenterons ensuite deux outils possibles pour réduire les frais de transfert de compte – les mécanismes de transfert de compte et la portabilité des numéros de compte chèque, et l'échange de renseignements – et leur incidence sur l'intensité de la concurrence dans le secteur de la banque de réseau.

4.1 Coûts de transfert transactionnels et mobilité de la clientèle

4.1.1 Sources de coûts de transfert transactionnels

Les coûts de transfert sont significatifs dans le secteur de la banque de réseau. Ils intègrent :

- La charge administrative,
- La vente croisée de produits bancaires,
- Les préférences et choix des clients,
- Les frais de fermeture ou d'ouverture de compte[35].

Les études sur l'ampleur et les déterminants des coûts de transfert supportés par les clients sur le marché des dépôts bancaires sont peu nombreuses. Shy (2002), par exemple, a évalué les frais de transfert supportés par les titulaires de comptes de dépôt inscrits sur les livres de quatre banques en Finlande en 1997. Il les estime à environ 0, 10 et 11 % de la valeur des dépôts de la plus petite à la plus grande banque commerciale et à 20 % pour la plus grande banque finlandaise proposant de nombreux services gouvernementaux. Kiser (2002) s'est intéressée à la durée de la relation entre les ménages et leur banque pour les comptes de dépôt et aux déterminants des frais de transfert de compte. Elle a utilisé, à cette fin, des données extraites d'une enquête américaine de 1999. La longévité moyenne de cette relation est de 10 ans. La stabilité géographique des ménages et la qualité du service client offert par la banque en sont les facteurs déterminants. Les frais de transfert de compte semblent dépendre du revenu des ménages, mais de façon non uniforme : les ménages à hauts revenus de même que ceux dont le niveau d'étude est le plus élevé et les foyers à bas revenus ainsi que les ménages appartenant à des minorités changent moins souvent

34 Le seuil de signification statistique de ces résultats est de 150** pb.

35 Le rapport de la Commission européenne identifie cinq principaux facteurs susceptibles de réduire la mobilité des particuliers et des PME dans le secteur bancaire ; nous suivons *grosso modo* le même système de classification.

de banque. Par conséquent, le coût d'opportunité du temps pour le premier groupe et les informations dont disposent les ménages du second pourraient jouer un rôle dans la décision de changer de banque.

La charge administrative constitue un coût de transfert transactionnel dès lors que les banques concernées par un transfert de compte demandent de remplir des formulaires administratifs. Le rapport de la Commission européenne sur l'importance de la charge administrative donne des résultats contradictoires. Ainsi *l'enquête eurobaromètre* 2005 indique que les clients estiment qu'il est simple de changer de banque, tandis que d'autres enquêtes révèlent que les clients considèrent que la charge administrative liée à un transfert de compte est l'une des principales explications de la faible mobilité de la clientèle.

La vente croisée de produits bancaires est le second mécanisme susceptible d'introduire des frais de transfert de compte. La vente croisée est la vente de produits ou services supplémentaires aux clients existants. Elle accroît la dépendance des clients vis-à-vis de leur banque. Par ailleurs, les ventes croisées n'engendrant que des coûts marginaux limités, elles sont synonymes de croissance bénéficiaire supplémentaire pour les banques. Les ventes croisées peuvent également empêcher l'entrée de prestataires de services spécialisés. Parallèlement, les clients bénéficient des ventes croisées si les taux débiteurs proposés sont inférieurs[36]. Cependant, les ventes croisées augmentent les frais de transfert d'un compte de dépôt d'une banque à une autre, selon le rapport du RIC :

> « Si le titulaire d'un compte de dépôt décide de changer de banque, il devra 1) recevoir une nouvelle carte de crédit, dont le nouveau numéro et la date d'expiration devront être communiqués à tous les prestataires concernés, comme un opérateur de TV par câble, si les factures sont réglées par carte de crédit, 2) informer la nouvelle banque de tous les prélèvements débités sur le compte chèque par les sociétés de services collectifs, 3) transférer la garde des actions ou obligations à la nouvelle banque, 4) maintenir le compte chèque de l'ancienne banque à seul dessin de rembourser un éventuel emprunt immobilier et 5) communiquer les nouvelles coordonnées bancaires à tous les correspondants » (p. 14-15).

Par conséquent, pour qu'une banque parvienne à convaincre les clients potentiels de changer de banque, il faut que la qualité de service soit bien supérieure, d'autant que les frais de transfert pèsent dans la balance.

Les préférences et choix des clients peuvent privilégier telle ou telle banque sur les autres. Par exemple, certains clients consentent à payer plus cher pour disposer d'une agence à proximité. Des études récentes montrent que les banques peuvent facturer des taux débiteurs supérieurs aux PME lorsque leurs agences sont situées plus près de l'emprunteur et que leurs concurrents sont plus éloignés (voir l'Encadré 4 qui résume les résultats des récentes études sur l'incidence de la distance sur les taux d'intérêt des prêts bancaires).

Encadré 3 : Géographie et taux de prêt bancaire		
Études	Effet sur le taux d'intérêt des prêts bancaires	

[36] À titre d'exemple, Degryse et Van Cayseele (2000) montrent que les petites sociétés belges qui achètent plusieurs produits à leur banque bénéficient d'un taux d'intérêt inférieur de 40 pb sur leurs emprunts, moyennant, souvent, un nantissement supérieur. Ces résultats n'ont pas été reproduits dans d'autres pays. Petersen et Rajan (1994), notamment, soutiennent que les entreprises américaines payent un taux d'intérêt supérieur de 8 pb sur leurs emprunts lorsqu'elles achètent d'autres produits à leur banque.

	Distance entre l'emprunteur et le bailleur de fonds	Distance entre l'emprunteur et la concurrence
Petersen et Rajan (2002)	–37 pb / mile estimé	
Degryse et Ongena (2005)	–18 pb / mile	+18 pb / mile
Mallett et Sen (2001)		+50 to +75 pb / mile
Agarwal et Hauswald (2006)	–26 pb / mile	+12 pb / mile
Bharath, Dahiya, Saunders et Srinivasan (2006)	–30 à – 45 pb inter-États	

On peut également se demander si les avancées technologiques ont une incidence sur les préférences et choix des clients. L'impact de la technologie sur l'expansion des réseaux bancaires semble limité[37]. Cabral (2002) souligne que la banque multicircuits est aujourd'hui la norme dans nombre de pays. Les clients accèdent aux services bancaires via les GAB, le téléphone, l'Internet et, bien sûr, par l'intermédiaire de leur agence. La proximité de l'agence continue de jouer un rôle non négligeable dans le choix d'une banque, ce qui tempère l'incidence des avancées technologiques. Il semble d'ailleurs que les banquiers et spécialistes du secteur aient quelque peu sous-estimé l'importance pour le client de la proximité d'une agence[38]. De plus, les banques ont intérêt à ne pas trop réduire le nombre de leurs agences afin d'empêcher l'entrée de concurrents sur leur marché.

Les frais de fermeture de compte, lorsqu'ils sont appliqués, représentent un important coût de transfert transactionnel. Il convient de distinguer entre les frais de fermeture liés aux coûts administratifs (lors de le fermeture d'un compte) et les frais de fermeture associés à l'exposition à un risque de taux d'intérêt (lors du remboursement anticipé d'un prêt immobilier). Les frais de fermeture liés aux coûts administratifs varient considérablement selon les banques et les pays. Certaines banques ne facturent pas de frais de fermeture de compte, tandis que d'autres (comme les banques italiennes) prélèvent entre 15 et 60 €. Ces frais devraient être supprimés : ils peuvent faire obstacle au changement de banque, ce qui nuit à la concurrence. En revanche, les frais de fermeture associés à l'exposition à un risque de taux d'intérêt reflètent les coûts structurels encourus par les institutions financières. Par exemple, le remboursement anticipé d'un prêt immobilier génère des risques de réinvestissement pour l'établissement financier concerné. En effet, ces remboursements interviennent généralement lorsque les taux d'intérêt baissent, obligeant les institutions financières à réinvestir à un taux inférieur. Comme les frais de fermeture associés à l'exposition à des risques de taux d'intérêt reflètent les risques sous-jacents encourus par les banques et les emprunteurs et que les clients et leurs banquiers peuvent les intégrer dans les contrats de prêt ces clauses de remboursement peuvent être intéressantes pour les deux parties car elles permettent un partage des risques souhaitable entre les banques et leurs clients. Les prêts à taux fixe sans clause de remboursement anticipé affichent souvent un taux d'intérêt inférieur aux prêts à taux fixe avec clause de

37. Berger et DeYoung (2001) affirment que les avancées technologiques compensent partiellement les effets négatifs de la distance sur l'efficience. Rappelons cependant que ces effets sont relativement modestes.

38. « The hot news in banking: bricks and mortar. Customers prefer branches so banks are opening 'em like crazy » (Actualité bancaire : les clients préfèrent les agences, c'est pourquoi les banques en ouvrent à tour de bras) titrait un article du 21 avril 2003 publié dans Business Week (Gogoi, 2003), suggérant que la réduction du nombre d'agences bancaires pourrait avoir été trop loin et que les banques historiques et les nouveaux entrants corrigent à présent leurs récentes erreurs.

remboursement anticipé. Les autres coûts de transfert techniques liés au remboursement anticipé de prêts immobiliers, qui ne reflètent pas des paramètres économiques fondamentaux, devraient être supprimés.

4.2 Coûts de transfert informationnels et mobilité de l'emprunteur

Au fil du temps, les banques sont de mieux en mieux informées sur leurs clients. La relation étroite tissée entre une banque et une entreprise cliente offre à cette banque un avantage informationnel sur les autres banques (voir Fischer, 1990 ; Sharpe, 1990 ; Rajan, 1992 ; von Thadden, 2004). Le changement de banque engendre la perte des informations sur la qualité de crédit de l'emprunteur. C'est pourquoi la banque d'origine peut exploiter cet avantage informationnel en facturant des taux de prêt plus élevés. Ce problème de l'information peut être exacerbé par un phénomène d'antisélection : les clients qui changent de banque sont normalement moins intéressants et plus risqués que ceux qui restent dans leur banque.

On trouve des éléments tendant à prouver l'existence, l'ampleur et les déterminants des frais de transfert de compte sur le marché du crédit dans de nombreuses études. L'analyse de la valeur d'entreprise après l'annonce d'un prêt bancaire, de difficultés financières ou d'une fusion fournit des éléments probants indirects sur l'existence et l'ampleur des problèmes informationnels et les frais de transfert de compte supportés par les participants sur le marché du crédit. Des études sur la durée de la relation banque-entreprise explorent les déterminants des coûts de transfert.

4.2.1 L'existence de coûts de transfert informationnels

L'annonce du renouvellement d'un prêt

Les emprunteurs, comme les entreprises, fidèles à leur banque peuvent en tirer un avantage externe lors du renouvellement d'un prêt. Le marché des actions peut interpréter le fait qu'une banque renouvelle un prêt à une entreprise comme une marque de confiance quant aux chances que l'entreprise emprunteuse rembourse son prêt. Le marché estimera que la banque a réalisé une analyse complète des perspectives de l'entreprise avant de renouveler son prêt. *A contrario*, la décision d'une entreprise de changer de banque ou de lancer une émission obligataire peut s'expliquer par le fait que le bailleur de fonds potentiel, en possession des meilleures informations sur l'entreprise concernée, ne lui accorderait pas d'aussi bonnes conditions de prêt que des investisseurs moins bien informés. La conviction du marché qu'une relation bancaire suivie est synonyme d'informations précieuses signifie qu'un changement de banque ou de bailleur de fonds peut être coûteux pour une entreprise. Changer de banque ou lancer une émission obligataire peut notamment faire baisser le cours de l'action de l'entreprise. Si tel est le cas, le fait de changer de banque émettrice a un coût, et la banque pourrait en tirer profit.

Motivé par l'hypothèse de Fama (1985) sur la nature unique des prêts bancaires et les travaux ultérieurs de Mikkelson et Partch (1986), James (1987) a étudié la réaction moyenne du cours de bourse des sociétés ayant publiquement annoncé la conclusion d'un nouveau contrat de prêt ou un renouvellement de prêt[39]. Les résultats de cette étude fondamentale sont à la base de la réflexion actuelle sur le rôle joué par les banques sur le marché du crédit. La seconde ligne du Tableau 2 de l'Annexe A résume ses résultats. James a montré que l'annonce d'un prêt bancaire déclenche une réaction *positive* et statistiquement significative du cours de bourse de 193 points de base dans les deux jours, tandis que l'annonce d'un placement privé d'un emprunt ou d'une émission obligataire sur le marché se solde par une réaction nulle ou négative du cours de bourse[40]. L'envolée du cours de bourse soutient l'argument de Fama (1985) selon

39. Notre analyse est en partie basée sur les études d'Ongena et Smith (2000) et de Degryse et Ongena (2007).

40. Le seuil de signification statistique de ces résultats est de 193*** points de base. Ce résultat est indépendant du type de prêt, du risque de défaut et de la taille de l'emprunteur.

lequel la conclusion d'un prêt bancaire signifie qu'une entreprise est jugée capable de générer des flux de trésorerie d'un certain niveau dans le futur.

Le Tableau 2 présente également les résultats d'un certain nombre d'autres études sur les annonces de prêt. Lummer et McConnell (1989) distinguent les annonces découlant d'un premier prêt des annonces relevant d'un renouvellement de prêt. Comme le premier cas concerne des nouveaux clients, tandis que le second touche des clients existants, la différence de réaction du cours de bourse entre les deux catégories devrait pourvoir servir d'indicateur de la valeur d'une relation établie. Lummer et McConnell (1989) ont montré, conformément à cette démarche, que la réaction du cours de bourse consécutive à l'annonce d'un prêt bancaire est motivée par le renouvellement[41]. Toutefois, ces résultats ont été difficiles à répliquer[42] [43].

Insolvabilité bancaire et annonce de fusion

L'étude innovante de Slovin, Sushka et Polonchek (1993) est également importante en ce sens qu'elle fournit des éléments probants sur la valeur de la relation bancaire et donc sur l'existence de frais de transfert de compte. L'étude examine l'influence de la faillite imminente de Continental Illinois Bank en 1984 sur le cours de bourse des entreprises ayant un prêt en cours avec cette banque et conclut que leur cours de bourse a chuté au moment de l'annonce de sa faillite et augmenté au moment de l'annonce de son sauvetage[44]. Les chercheurs soutiennent que les grands écarts de cours de bourse correspondaient à des estimations de la valeur potentielle directement attachée à la relation particulière entre les entreprises et leur banque.

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41 Les écarts de performance boursière consécutifs à l'annonce d'un premier prêt bancaire ne sont pas statistiquement différents de zéro, tandis que pour les renouvellements de prêt, les écarts sont positifs et statistiquement significatifs.

42. À l'exception de l'étude réalisée par Aintablian et Roberts (2000), les autres études sont basées sur les annonces de prêts bancaires canadiens. Les résultats publiés impliquent que l'écart de performance boursière moyen consécutif aux nouveaux prêts et aux renouvellements de prêt diffère à un seuil de signification statistique de 10 %.

43 . Slovin, Johnson et Glascock (1992), Best et Zhang (1993) et Billett, Flannery et Garfinkel (1995), entre autres, démontrent l'existence d'une réaction positive et significative du cours de bourse consécutive à l'annonce d'un premier prêt ou d'un renouvellement de prêt, mais précisent que l'écart de cours entre les deux catégories de prêt est très faible. Best et Zhang (1993) montrent que la réaction du cours de bourse consécutive à l'annonce du renouvellement d'un prêt est sensiblement plus importante que pour l'annonce consécutive à un premier prêt, lorsque l'incertitude de l'analyste sur l'emprunteur est élevée. Billett et autres 1995) soutiennent que les résultats de l'étude de Lummer et McConnell (1989) pourraient être influencés par leur système de classification des prêts en deux catégories, les premiers prêts et les renouvellements de prêt. La preuve que les effets de richesse diffèrent selon qu'il s'agit d'un renouvellement de prêt ou d'un nouveau prêt n'est pas concluante.

Par ailleurs, les publications sur les annonces de prêt suscitent de plus en plus d'intérêt. D'abord, ces publications peuvent être entachée de problèmes de communication financière insidieuse (James et Smith, 2000) dans la mesure où les entreprises et les éditeurs de journaux peuvent ne mettre en avant que les bonnes nouvelles ; c'est ce que suggèrent les résultats de l'étude australienne réalisée par Fery, Gasborro, Woodliff et Zumwalt (2003). Ensuite, il n'est pas clairement établi que les premiers prêts ou les renouvellements de prêt aux États-Unis se soient traduits durant les années 90 par une performance boursière supérieure (Berry, Byers et Fraser, 2006) ; André, Mathieu et Zhang, 2001), ce qui fait naître des doutes sur la validité des résultats initiaux. Enfin, l'écart de performance boursière consécutive à une annonce de prêt peut varier considérablement d'un pays à un autre (Boscaljon et Ho, 2005).

44. Slovin et autres (1993) font état d'un écart de performance boursière moyen de -420*** pb au cours des deux jours suivant l'annonce de la faillite bancaire et de 200** pb après l'annonce de son sauvetage par la Federal Deposit Insurance Corporation.

Beaucoup d'autres études ont cherché à répliquer et élargir les résultats initiaux de Slovin *et al.* (1993). Ces résultats sont résumés dans la partie inférieure du Tableau 2. Toutes les études ont été réalisées dans des pays autres que les États-Unis et nombre d'entre elles évaluent l'impact sur le cours de bourse de l'emprunteur d'autres événements bancaires que les faillites, comme des scandales, transferts et fusions, susceptibles d'altérer la relation emprunteur-banque. Ces études concluent, pour la plupart, que l'incidence est plus modeste et, semble-t-il, plus temporaire que l'impact de -4.2 % relevé initialement par Slovin *et al.* (1993)[45].

4.2.2 Ampleur et effets des coûts de transfert sur le marché du crédit

Kim, Kliger et Vale (2003) donnent les premières estimations des frais moyens de transfert de compte supportés par les clients emprunteurs d'une banque. Ces estimations comprennent les coûts de transfert transactionnels et informationnels. Leur étude s'appuie sur les données relatives aux parts du marché du crédit norvégien sur la période 1988-96. Les frais annuels moyens de transfert de compte se chiffrent à environ 4 % du coût marginal de financement de la banque. Les frais de transfert de compte tombent à pratiquement zéro pour les clients des grandes banques. Enfin, dans un contexte très différent, l'étude de Yasuda (2005) montre que les relations préexistantes avec les entreprises émettrices d'obligations aux États-Unis autorisent les banques du consortium de prise ferme à facturer un supplément de 1 à 4 % (de l'émission).

Le taux de rotation (taux de changement de banque) peut servir de mesure indirecte des frais de transfert de compte. Ces taux de rotation sont directement affectés par les frais de transfert de compte supportés par les emprunteurs (Karceski, Ongena et Smith (2005)[46] . Lorsque les frais sont élevés, on pourrait s'attendre à trouver un faible taux de rotation. Les écarts internationaux observés des taux de rotation pourraient alors servir d'indicateur des différences internationales de frais de transfert de compte, toutes choses étant égales par ailleurs. Plus récemment, la recherche a commencé à s'intéresser à l'ampleur et aux éléments déterminant le taux de rotation des emprunteurs. Deux grands schémas semblent émerger. Premièrement, la durée des relations varie considérablement d'un pays à un autre. Par exemple, les petites sociétés américaines et belges estiment que leur relation bancaire dure en moyenne de 5 à 10 ans, tandis que les petites entreprises italiennes et françaises font état de 15 ans et plus. Deuxièmement, il y a de grandes disparités entre entreprises d'un même pays, souvent liées à leur taille. An Allemagne, par exemple, les petites entreprises affichent des relations bancaires comprises entre 5 et 12 ans, tandis que les grandes entreprises font état de plus de 22 ans.

4.2.3 Éléments déterminant le changement de banque

Quels facteurs influent sur la probabilité de changer de banque ou de rester avec sa banque (durée) ? Une étude récente explore l'impact des caractéristiques spécifiques de *la relation, de l'entreprise, de la banque et du marché* sur la durée de la relation banque-entreprise dans un pays. Prenons le cas de la durée

45. Le seuil de signification statistique de ces résultats est de -4.2*** %. Les trois études qui ont effectivement vérifié si les écarts de performance boursière variaient entre entreprises liées à des banques affectées et toutes les autres sociétés, n'ont pas affiché de différences significatives (Ongena, Smith et Michalsen, 2003 ; Brewer, Genay, Hunter et Kaufman, 2003 ; Miyajima et Yafeh, 2003). Bien entendu, les différences de résultats entre ces diverses études sont peut-être dues à l'hétérogénéité de la valeur des relations spécifiques nouées avec la banque.

46. La comparaison d'estimations des taux de rotation des emprunteurs (ou la durée des relations banque-entreprise) présente dans nombre d'études pose un problème, dans la mesure où (1) les définitions de la relation peuvent différer d'une étude à une autre et (2) les problèmes de censure ne sont souvent pas pris en compte. Dans de nombreux cas, la fin de la période étudiée ou l'âge de l'entreprise empêche l'observation de la relation dans son intégralité.

des relations. Les études réalisées d'une part par Both Ongena et Smith (2001) et d'autre part par Farinha et Santos (2002) concluent que la probabilité qu'une entreprise change de banque augmente avec la durée de la relation ou *que la continuation d'une relation est négativement affectée* par sa durée. Le nombre de relations bancaires entretenues par une entreprise a également une incidence négative sur la durée de ses relations. Par conséquent, la durée et le nombre d'autres relations bancaires diminuent la réticence des emprunteurs à mettre fin à une relation. Lorsque la durée de la relation augmente, cela peut signifier que la banque retient ses clients. Ces derniers auront donc intérêt à changer de banque. Par ailleurs, la poursuite et/ou la multiplicité des relations bancaires peuvent se traduire par la transmission d'un bon historique de remboursement aux banques concurrentes, ce qui réduira les frais de transfert de compte de l'emprunteur.

Les études concluent, pour la plupart, que les entreprises qui changent le plus rapidement de banque sont petites, jeunes, à forte croissance, incorporelles, à forte capacité d'endettement ou très endettées, *toutes choses égales par ailleurs*. Il existe toutefois quelques exceptions notables[47]. Plusieurs études intègrent aussi des caractéristiques propres aux banques et aux marchés. Les plus grandes banques et, dans une moindre mesure, les plus liquides et efficientes semblent retenir leurs clients emprunteurs plus longtemps. Berger, Miller, Petersen, Rajan et Stein (2005) montrent que la rétention des emprunteurs dépend avant tout du nombre d'agences, et non de la valeur de l'actif de la banque. En fait, cette dernière caractéristique ne plaide pas en faveur de la longévité d'une relation bancaire. Les emprunteurs clients d'une banque ciblée pour une fusion changent plus souvent de banque. Les caractéristiques propres aux marchés ne semblent pas dans l'ensemble avoir un quelconque effet sur le taux de rotation.

4.3 Réduire les frais de transfert de compte

Nous examinerons ici deux mesures visant à réduire les frais de transfert de compte et à renforcer la concurrence. La première concerne les comptes à vue ; il s'agit de réduire les coûts de transfert transactionnels *en diminuant la charge administrative* au moyen de mécanismes de transfert de compte ou de la portabilité du numéro de compte. La seconde est axée sur *l'échange de renseignements* entre les institutions financières et a pour objectif de réduire les coûts de transfert informationnels.

Réduire la charge administrative

Comme nous l'avons déjà vu, la charge administrative engendrée par le transfert d'un compte à vue de particulier ou de PME dans une autre banque est considérable. La mise en place « de mécanismes de transfert » ou de « packs de transfert » permettrait de réduire la charge administrative et donc les frais de transfert de compte. Ces mécanismes, fruits de l'instauration d'un code de la profession bancaire, faciliteraient la mobilité des clients d'une banque à une autre. Ces codes sont souvent institués après enquête des autorités de la concurrence. On trouve des mécanismes de transfert au Royaume-Uni, aux Pays-Bas, en Irlande et en Autriche (voir Rapport de la Commission européenne). Les associations bancaires de ces pays ont établi des codes volontaires qui définissent les normes de bonne pratique. Ces mécanismes impliquent également que la tâche administrative soit en grande partie prise en charge par les banques par la préparation de « packs de transfert » qui assureront une transition sans accroc d'un compte à un autre (voir Encadré 4 sur les mécanismes de transfert).

47. Fait assez intéressant, la façon dont certaines caractéristiques des entreprises affectent le taux de rotation change de signe en allant du nord vers le sud de l'Europe, contrairement à ce qui est observé pour le nombre et la durée des relations. Par exemple, en Norvège, au Danemark ou en Belgique, les petites sociétés mettent plus rapidement fin à leurs relations bancaires que les grandes entreprises. C'est également le cas au Royaume-Uni et en Allemagne, mais au Portugal et en Italie, le taux de rotation diminue. Par conséquent, Les petites entreprises norvégiennes changent rapidement de banque, tandis que leurs homologues italiennes maintiennent de multiples relations bancaires. À l'inverse, les grandes entreprises norvégiennes entretiennent quelques relations stables, tandis que leurs homologues italiennes continuent de jongler, et de mettre un terme, à de (trop) nombreuses relations bancaires.

Encadré 4 : Mécanisme de transfert : l'exemple des Pays-Bas

Aux Pays-Bas, le mécanisme de transfert s'appelle « overstapservice ». L'Association bancaire des Pays-Bas a instauré ce service en janvier 2004 afin de faciliter les transferts de comptes à vue. Un site Internet a été créé pour fournir des informations au public. Quelles fonctions l'« overstapservice » remplit-il ?

- Ce service garantit que les virements destinés à l'ancien compte sont automatiquement transmis au nouveau compte pendant 13 mois ;
- Les prélèvements automatiques sont directement effectués sur le nouveau compte ; les sociétés débitant directement le compte sont (1) informées du nouveau numéro de compte du client et (2) ont nul besoin d'obtenir l'autorisation avant de procéder au prélèvement sur le nouveau compte ;
- L'ancienne banque fournit un état de tous les « contrats existants et ordres de virements permanents » liés aux paiements réguliers réalisés sur l'ancien compte ;
- L'ancienne banque fournit des informations sur tous les paiements réalisés via l' « overstapservice » ;
- Elle envoie au titulaire du compte transféré un rappel un mois avant la fin de la période de transmission automatique de 13 mois ;

Le titulaire d'un compte transféré d'une banque à une autre doit lui-même informer certains de ses interlocuteurs (comme son employeur).

L' « overstapservice » a été employé 115 000 fois au cours des deux premières années. Environ 49 % des Néerlandais connaissent ce service, et parmi ceux qui envisagent de changer de banque, le pourcentage passe à 74 %.

Source : www.overstapservice.nl

Bien que les mécanismes de transfert de compte contribuent à réduire les frais de transfert, ils ne les suppriment pas totalement, car les clients doivent encore changer de numéro de compte. La solution de la portabilité du numéro de compte relève d'une approche structurelle. La portabilité du numéro signifie que les clients peuvent transférer leur compte d'une banque à une autre sans que leur charge administrative soit trop lourde. Cela implique que les clients soient « propriétaires » de leur numéro de compte, que les systèmes de paiement et les numéros de compte présentent une structure analogue et qu'ils soient normalisés à l'échelle nationale ou internationale. Si la portabilité des numéros de compte supprime presque intégralement les frais de transfert, entraînant une intensification de la concurrence dans le secteur bancaire, elle demande une normalisation accrue et son instauration engendrera de substantiels coûts fixes. Lorsque l'accès non discriminatoire au système de paiement sera appliqué, alors les règles du jeu seront équitables pour la portabilité du numéro. L'European Competition Authorities (ECA) a récemment conclu qu'avec l'Espace unique de paiement en euros (Single European Payment Area — SEPA) :

> « la création d'un système harmonisé européen de numérotation des comptes bancaires permettrait d'instaurer la 'portabilité des numéros' au niveau européen, scénario que le Groupe de travail juge idéal. Cependant, ce dernier est conscient que les coûts d'investissement nécessaires sont énormes. Ces coûts pourraient néanmoins être largement compensés par les avantages économiques durables qu'apporterait une plus grande mobilité transnationale des

clients et l'instauration de règles du jeu équitables dans le secteur des systèmes de paiement en Europe (p. 42) »[48].

Ces affirmations doivent être pondérées par le fait que dans nombre de pays, l'architecture du système de numérotation des comptes bancaires permet d'identifier la banque du client. La perte de la possibilité d'identifier la banque ou l'agence dépositaire du compte pourrait compliquer l'identification de la banque et se traduire par des erreurs d'opération, même si l'erreur de saisie du numéro de compte n'est que d'un seul chiffre.

Échange de renseignements

La communication par les particuliers et les PME de leur qualité de crédit à d'autres banques ou autres établissements de crédit risque de ne pas être fiable pour des raisons d'asymétrie des informations. L'asymétrie des informations entre banques sur la qualité d'un emprunteur est donc un déterminant majeur de la concurrence dans le secteur bancaire. Dans certains pays, les institutions financières communiquent peu de renseignements sur les emprunteurs via les fichiers bancaires publics ou les centrales privées de risque ou les agences de notation (voir Jappelli et Pagano, 2002 ou Miller, 2003). L'échange de renseignements en matière de crédit représente pour les banques une façon de plus en plus courante (et autres institutions pour lesquelles la situation financière et la fiabilité de leurs clients sont importantes) de partager des informations sur les emprunteurs. Cela permet, en outre, de réduire les pertes causées par les emprunteurs non rentables. L'échange de renseignements en matière de crédit peut atténuer une partie des coûts liés à l'asymétrie des informations, dès lors que les informations transmises sont suffisantes, fiables et à jour[49]. Autrement dit, les renseignements en matière de crédit réduiront le décalage d'information entre la banque actuelle du client et d'autres prestataires potentiels de services financiers. Enfin, l'échange de renseignements peut contribuer à discipliner les emprunteurs et à réduire le surendettement résultant de la signature simultanée de plusieurs contrats d'emprunt auprès de différentes banques[50] [51].

Toutes les formes d'échange de renseignements ne concourent pas à créer un marché concurrentiel. Par exemple, l'échange de renseignements sur les taux d'intérêt des prêts accordés à certains clients pourrait encourager les ententes entre banques. *A contrario*, l'échange de renseignements sur la fréquence des retards de paiement et des découverts de certains clients ne favorise pas les ententes, étant donné que le prix facturé au client n'est pas observable.

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48 Rapport de l'ECA intitulé "Competition Issues in Retail Banking and Payment Systems Markets in the EU", rédigé par le Sous-groupe sur les Services financiers, disponible à l'adresse http://www.tca.ie/reports/eca_report.pdf#search= %22ECA %20competition %20banking %22

49 Le rapport du RIC recommande que :

« les banques puissent recevoir des informations complètes et en temps voulu sur l'endettement d'un emprunteur potentiel (sur des marchés de capitaux intégrés et au niveau international) en prenant toutes les mesures et précautions pour que cet échange de renseignements n'entrave pas la concurrence » (p. 27).

50 Voir Jappelli et Pagano (1993) et Padilla et Pagano (1997, 2000).

51 Bien que l'échange de renseignements réduise, en général, les coûts de transfert informationnels, il convient de mentionner trois réserves importantes. Premièrement, les fichiers bancaires publics qui proposent des informations limitées sur les emprunteurs peuvent également réduire la concurrence entre banques et augmenter le coût du crédit pour les bons emprunteurs, qui n'ont pas eu de chance. Les banques dans la place ont un avantage informationnel sur les emprunteurs (Bouckaert et Degryse, 2006a). Deuxièmement, les banques peuvent communiquer spontanément leurs informations sur l'emprunteur et s'engager à renoncer à leur avantage informationnel, engendrant ainsi d'autres coûts de transfert transactionnels (Bouckaert et Degryse JIE 2004). Troisièmement, les banques souhaitant développer une stratégie de prêts à l'étranger ou entrer sur un nouveau marché devraient être en mesure d'accéder aux fichiers bancaires, faute de quoi les institutions étrangères ne pourront pas distribuer leurs crédits transnationaux.

Le droit relatif au respect de la vie privée peut exercer une influence prépondérante sur les fichiers bancaires publics et les centrales privées de risque ou les agences de notation. Les fichiers bancaires publics vont en effet tenir compte de l'ampleur des échanges de renseignements qui se produisent déjà spontanément. À cet égard, les initiatives publiques et privées peuvent se substituent les unes aux autres. Une centrale de risque ou une agence de notation publie différents types de données qui vont d'informations « noires » (comme la défaillance d'un client) à des informations « blanches » (comme l'encours de prêt), en passant par des informations plus complexes, comme des évaluations du crédit par la méthode des scores. L'Encadré 6 présente les informations disponibles sur le crédit aux États-Unis. Si les fichiers bancaires publics couvrent obligatoirement tous les prêts au-delà d'un certain seuil, la couverture offerte par les centrales privées de risque et agences de notation n'est pas nécessairement aussi complète, mais les informations fournies sont plus détaillées. Plus le seuil de couverture obligatoire des fichiers bancaires publics est élevé et plus la législation relative à la vie privée est permissive, plus les centrales privées de risque et les agences de notation se développeront de façon rentable. En effet, les renseignements en matière de crédit touchent souvent les frontières de la vie privée et sa protection. La législation relative à la vie privée régit l'accès des utilisateurs potentiels aux fichiers concernés[52]. Jappelli et Pagano (2005) mentionnent trois niveaux de protection :

> « Dans les pays peu axés sur la protection de la vie privé, comme l'Argentine, tout le monde peut avoir accès aux informations relatives aux débiteurs, indépendamment de l'objet de l'enquête. Dans les pays à niveau moyen de protection, comme les États-Unis, l'accès aux informations est autorisé uniquement pour un « motif recevable », c'est-à-dire essentiellement pour l'octroi d'un crédit. Un niveau supérieur de protection de la vie privée requiert, par exemple, le consentement explicite de l'emprunteur pour pouvoir accéder au dossier le concernant. Ce principe est inscrit dans la législation de plusieurs pays européens et dans la Directive 95/46 du Parlement européen … Dans certains pays (comme la France, l'Israël et la Thaïlande) la préservation de la vie privés des consommateurs est si forte, que la réglementation a empêché l'émergence des centrales privées de risque » (*op. cit.*, p. 23)[53].

Les clients peuvent devenir captifs de leur banque, en raison d'une protection plus poussée de la vie privée, car les autres institutions financières ne disposent pas nécessairement des informations requises pour faire une offre de prêt compétitive. Dans le cas présent, une législation moins restrictive servirait les intérêts des consommateurs.

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52 La législation relative à la protection de la vie privée traite également d'autres aspects, comme les interdictions relatives aux informations blanches, la suppression obligatoire des fichiers personnels après un certain lapse de temps, l'interdiction de ressembler certains types d'informations et le droit pour une personne de vérifier et de corriger les informations la concernant.

53. Bouckaert et Degryse (2006b) ont réalisé une analyse théorique des deux modes de protection de la vie privée, « opt in » et « opt out », dans un environnement où l'exercice de l'option « opt in » ou « opt out » est onéreuse. Ils montrent qu'une moindre protection de la vie privée (opt out) peut être bénéfique si elle accroît la concurrence et le bien-être collectif ; la protection de la vie privée peut donc avoir un coût social.

Encadré 5 : Centrale d'informations sur les entreprises privées aux États-Unis

Dun & Bradstreet Corporation (D&B) est la principale centrale d'informations aux États-Unis. La société détient approximativement 90 % du marché américain de renseignements sur le crédit des entreprises. Experian est son seul rival d'envergure. D&B collecte des renseignements auprès de fournisseurs spécialisés dans la vente à crédit et d'établissements de crédit qui disposent de l'historique de paiement de leurs clients/emprunteurs. D&B agrège ces informations dans des états de crédit et les vend à ses clients, qui sont pour partie les mêmes fournisseurs et prêteurs qui lui transmettent les renseignements.

D&B propose des informations approfondies sur les entreprises américaines. On trouvera ci-après une liste des catégories de renseignements fournis par D&B (toutes les informations ne sont pas toujours disponibles)

- Raison sociale, adresse, numéro de téléphone, classification par branche d'activité, adresses des succursales (le cas échéant), année de création de l'entreprise ;
- Nom, âge, formation et expérience du Directeur général et des autres dirigeants ;
- Chiffre d'affaires, situation nette, actif circulant et actif immobilisé, dettes à court terme et à long terme, bénéfices/pertes, capital autorisé, type de capital et propriétaires/actionnaires ;
- Effectifs
- Nouvelles récentes, comme les licenciements
- Score de risque du créancier (*Supplier Risk Score* – prédit la probabilité qu'une société cesse ses activités sans payer intégralement ses créanciers, se réorganise ou obtienne une protection contre ses créanciers en vertu des lois fédérales ou de l'État au cours des 18 prochains mois ») ;
- Incidence des difficultés financières (compare la société avec la moyenne nationale et les entreprises présentes sur le même segment d'activité) ;
- Historique des paiements de la société (incidence des paiements en retard) ; litiges en cours, jugements et autres ;
- Ratio de liquidité immédiate (actif circulant moins stocks rapporté aux dettes à court terme) ; comparaison avec d'autres entreprises du secteur ;
- Propriété des installations et leur description ;
- Ratio comptes fournisseurs / chiffre d'affaires ; comparaison avec d'autres entreprises du secteur ;
- Rentabilité de l'actif ; comparaison avec d'autres entreprises du secteur
- Ratio dettes totales / situation nette ; comparaison avec d'autres entreprises du secteur
- Classement de l'évaluation financière (*Financial Appraisal Ranking* - le classement est calculé selon la moyenne des classements du quartile des fournisseurs sur la base des ratios disponibles) ;
- Nombre de comptes client, conditions de recouvrement, marchés et saisonnalité ;

La société a-t-elle demandé des aides de l'État liées à des critères socio-économiques (par exemple, aides aux petites entreprises, aides aux secteurs en sureffectifs, aides aux minorités, aides aux femmes).

Source : Kallberg et Udell, 2003 ; Olegaria, 2003

5. Remarques récapitulatives

La prestation de services financiers aux particuliers et PME représente une part importante de l'activité bancaire. L'accès des particuliers et des PME au financement est essentiel à la croissance

économique, d'autant que le développement des PME contribue largement à la croissance de l'emploi et du PIB. La concurrence participe à l'amélioration des conditions d'accès au financement, comme une réduction des taux d'intérêt des crédits.

Comment améliorer l'environnement concurrentiel des banques de réseau sans toucher à la réglementation prudentielle ? Ce rapport offre plusieurs éléments de réponse :

- La réglementation reste une source de rente majeure pour les banques dans nombre de pays. Cette rente contribue pour 30 à 100 pb au taux moyen des prêts. Bien que l'ouverture d'agences bancaires et l'entrée des banques soient autorisées de part et d'autres de l'Atlantique, les autorités de tutelle s'opposent parfois aux fusions-acquisitions en Europe au nom d'une doctrine de gestion saine et sûre.

  - Les prétextes avancés pour empêcher les fusions, qui cachent en réalité d'autres motifs, devraient être limités ;

  - Les questions de politique de la concurrence devraient être traitées par une autorité non responsable de la réglementation prudentielle. Cela devrait encourager l'intégration financière et la concurrence.

- Une meilleure information des consommateurs sur les alternatives financières devrait les inciter à changer de banque. Cela contribuera à réduire la rente économique que les banques tirent des frais de transfert de compte.

- Les frais de transfert de compte réduisent la concurrence dans le secteur de la banque de réseau. Les pouvoirs publics peuvent faire davantage pour encourager les particuliers et PME à changer de banque :

  - Promouvoir des « packs » de transfert qui simplifieront les démarches administratives inhérentes à un changement de banque ;

  - Approfondir l'idée de la portabilité des numéros de compte pour voir si ses avantages potentiels dépassent clairement son coût indubitablement élevé ;

  - Promouvoir des plateformes d'échange de renseignements financiers et modifier, le cas échéant, la législation relative à la protection de la vie privée de façon à préserver l'objectif de protection de la vie privée, tout en permettant aux consommateurs de bénéficier de notes de crédit.

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ANNEXE A

Tableau 1. Travaux empiriques qui examinent l'incidence de la concentration du marché sur les taux de prêt et l'offre de crédit

Le tableau dresse une liste des principaux résultats d'une sélection de travaux empiriques qui explorent l'incidence de la concentration du marché bancaire sur les taux de prêt bancaire et mesurent l'offre de crédit bancaire. La mesure de la concentration utilisée dans toutes les études est l'indice Herfindahl – Hirschman Index (HHI), qui est la somme des carrés des parts de marché de chaque banque (0 < HHI < 1). Source : Degryse et Ongena (2003) ; Degryse et Ongena (2007).

Études	Source des données et année Nombre d'observations dans les régressions Type d'observations	Concentration des marchés bancaires Couverture géographique : population moyenne de la zone HHI moyen	Taux de prêt ou mesure de crédit Incidence de la concentration **Impact de ΔHHI = 0.1 en points de base**
Hannan, 1991	STB ± 8 250 Entreprises américaines	Dépôts bancaires 4 725 0.14	Taux de prêt Principalement positive **-6 à 61*** **
Petersen et Rajan, 1995	NSSBF 1987 ± 1 400 Petites entreprises américaines	Dépôts bancaires ± 2 250 000[a] 0.17[a]	Taux de prêt le plus récent (taux préférentiel sur l'échelle de droite) Principalement négative, notamment pour les petites entreprises 0 an : **-170** ; 10 ans : **-3** ; 20 ans : **46**[a]
Hannan, 1997	FRB Survey 1993 1 994 / 7,078 Banques américaines	Dépôts bancaires ± 2 500 000[a] 0.14	Taux de prêt variable servi aux petites entreprises Positive **31*** ** (non garanti), **12*** ** (garanti)
Cavalluzzo, Cavalluzzo et Wolken, 2002	NSSBF 1993 ± 2 600 Petites entreprises américaines	Dépôts bancaires ± 2 500 000[a] 0.14	Taux d'intérêt le plus récent sur ligne de crédit Nulle, mais incidence positive pour les hispaniques Tous : **-8**, hispaniques : **124** **

Études	Source des données et année Nombre d'observations dans les régressions Type d'observations	Concentration des marchés bancaires Couverture géographique : population moyenne de la zone HHI moyen	Taux de prêt ou mesure de crédit Incidence de la concentration **Impact de ΔHHI = 0.1 en points de base**
Cyrnak et Hannan, 1999	Enquête FRB 1996 511 / 2 059 Banques américaines	Dépôts bancaires ± 2 750 000[a] 0.16	Taux de prêt variable servis aux petites entreprises Positive **55*** ** (non garanti), **21*** ** (garanti)[1]
Sapienza, 2002	Registre des crédits 107 501 Entreprises italiennes	Prêts bancaires 600 000[a] 0.06	Taux de prêt – taux préférentiel Positive **59*** **
Degryse et Ongena, 2005	Une banque 15 044 Petites entreprises belges	Agences bancaires 8 632 0.17	Taux de prêt Principalement positive **-4 à 5*** **
Kim *et al.*, 2005	Banque centrale de Norvège 1 241 Entreprises norvégiennes	Crédit bancaire aux entreprises 250 000[a] 0.19	Taux de ligne de crédit – taux monétaire 3 mois Positive, mais non significative **3**[b]
Fischer et Pfeil, 2004	Enquête 1992-1995 [s] 5 500 Banques allemandes	Agences bancaires n.d. ± 0,20 (de l'Ouest) / ± 0,30 (de l'Est)	Marges financières des banques Positive **20***
Claeys et Vander Vennet, 2005	Bankscope 1994-2001 2 279 banques 36 pays européens	Prêts bancaires 30 000 000[a] 0.10	Marge financière nette des banques Positive (Ouest) / souvent négative (Est) Ouest : **14*** ** à **23*** **; Est: **-110*** ** à **190*** **

Études	Source des données et année Nombre d'observations dans les régressions Type d'observations	Concentration des marchés bancaires Couverture géographique : population moyenne de la zone HHI moyen	Taux de prêt ou mesure de crédit Incidence de la concentration **Impact de ΔHHI = 0.1 en points de base**
Corvoisier et Gropp, 2002 ; Corvoisier et Gropp, 2001	BCE 2001 ±240 Pays de l'UE	Prêts bancaires 30 000 000[a] 0.13	Marge financière particulière à chaque pays Positive **10** à **20****[c] et **50*****[d]
Petersen et Rajan, 1994	NSSBF 1987 ± 1 400 Petites entreprises américaines	Dépôts bancaires ± 2 250 000[a] 0.17[a]	% dette totale / actif Positive **36****
Petersen et Rajan, 1995	NSSBF 1987 ± 1 400 Petites entreprises américaines	Dépôts bancaires ± 2 250 000[a] 0.17[a]	% crédits fournisseur payés avant l'échéance Positive, notamment pour les jeunes entreprises **140**** to **280****,[p] ≤10 ans : **175**** à **740**,[r] >10 ans : **150*** à **0**[r]
Cavalluzzo *et al.*, 2002	NSSBF 1993 ± 2 600 Petites entreprises américaines	Dépôts bancaires ± 2 500 000[a] 0.14	Diverses mesures de l'offre de crédit Globalement pas d'incidence, mais des effets positifs significatifs sur les afro-américains et les femmes
Zarutskie, 2004	SICTF 1987-1998 ± 250 000 Entreprises américaines	Dépôts bancaires ± 2 250 000[a] 0.19	% dette externe / actif Positive **19** à **77****

Études	Source des données et année Nombre d'observations dans les régressions Type d'observations	Concentration des marchés bancaires Couverture géographique : population moyenne de la zone HHI moyen	Taux de prêt ou mesure de crédit Incidence de la concentration **Impact de ΔHHI = 0.1 en points de base**
Scott et Dunkelberg, 2001 ; Scott, 2003	CBSB 1995 ± 2,000 Petites entreprises américaines	Dépôts bancaires ± 2 500 000[a] 0.19	Pas de crédit refusé Positive + à +++[e]
Angelini, Di Salvo et Ferri, 1998	Enquête 1995 2 232 Petites entreprises italiennes	Prêt bancaire Médiane : < 10 000 0.42	Accès apparent au crédit Incidence nulle **0**

[a] Calculs ou estimations des auteurs. [b] Pour un HHI en hausse de 0.09 à 0.19. [c] Leurs modèles 2 et 5. CBSB : Credit, Banks and Small Business Survey (enquête sur le crédit, les banques et les petites entreprises) réalisée par la National Federation of Independent Business. [d] Coefficients des régressions pour les prêts à court terme dans leurs modèles 3, 5 et 6. [e] Basé sur la variable CONCURRENCE, et non sur le HHICTY. NSSBF : National Survey of Small Business Finance (enquête nationale sur le financement des petites entreprises). [p] Approximation linéaire en utilisant les coefficients du Tableau IV et en partant de l'hypothèse que le HHI moyen inférieur à 0.1 est égal à 0.05 et supérieur à 0.18 est égal à 0.59. [r] Approximation linéaire en partant de l'hypothèse que le HHI moyen inférieur à 0.1 est égal à 0,05 et supérieur à 0.18 est égal à 0.59, sur la base des moyennes et médianes de leur Tableau V. SBIF : Agence chilienne de surveillance des banques et des institutions financières. SICTF : Statistics of Income Corporate Tax Files (fichier statistique sur l'impôt des sociétés). STB : Enquête de la Réserve fédérale sur les conditions des prêts bancaires aux entreprises. 0 : Inclus dans les spécifications, mais non significatif. *** Significatif à 1 %, ** à 5 %, * à 10 %. +++ Positive et significative à 1 %, ++ à 5 %, + à 10 %. ↔↔↔ Négative et significative à 1 %, ↔↔ à 5 %, ↔ à 10 %.

Tableau 2. Études évaluant l'incidence de l'annonce d'un événement (prêt, défaillance et fusion) sur la performance boursière de l'emprunteur

Le tableau présente les principaux résultats des études évaluant l'incidence de l'annonce d'un événement (conclusion d'un prêt bancaire, défaillance d'une banque et d'une fusion entre banques) sur la performance boursière de l'emprunteur. La première colonne précise les études, la seconde donne le pays de l'entreprise affectée et la période durant laquelle l'annonce a été faite. La troisième colonne indique la taille et la taille moyenne (médiane) des entreprises affectées en millions de dollars. La quatrième donne, en première ligne, l'annonce et le nombre d'événements et sur la deuxième ligne, le nombre d'emprunteurs affectés. Enfin, la dernière précise en première ligne l'écart moyen de performance boursière sur deux jours, dans la plupart des cas, à l'intérieur de l'intervalle [-1,0] ou de l'intervalle [0, 1], en pourcentage. Si l'écart de performance cumulé sur deux jours n'est pas rapporté dans l'un des intervalles, le plus court intervalle incluant l'un de ces deux jours est alors utilisé. La seconde ligne donne la répartition des annonces en fonction des catégories indiquées dans ce rapport (Il est précisé entre parenthèses si les différences relatives aux écarts moyens de performance boursière entre les groupes d'annonces sont significativement différentes de zéro) ou les principaux réponses des études transversales citées dans ce rapport à la question « Quelles entreprises sont le moins touchées ? » On a indiqué entre crochets si l'écart de performance diffère entre les entreprises affectées et non (entreprises qui n'avait pas emprunté à la banque affectée au moment de). *Source* : Ongena et Smith (2000) ; Degryse et Ongena (2007).

Études	Pays Période	Taille moyenne (médiane.) en M$	Annonce (nombre d'événements) Emprunteurs concernés	**Ecart moyen de performance boursière sur 2 jours, en %** Résultats transversaux (Différence ?)
Mikkelson et Partch, 1986	États-Unis 1972-82	n. d.	Conventions de crédit (155)	**0.89*****
James, 1987	États-Unis 1974-83	P : 675 (212)	Contrats de prêt bancaire (80)	**1.93*****
Lummer et McConnell, 1989	États-Unis 1976-86	n. d.	Contrats de prêt bancaire (728) Renouvellements (357) / Premier prêt (371)	**0.61***** 1.24*** / -0.01 (n. d.)
Slovin *et al.*, 1992	États-Unis 1980-86	CB : 281 (68) Premiers prêts	Contrats de prêt (273) Renouvellements (124) / Nouveaux (149) Petites entreprises (156) / Grandes entreprises (117)	**1.30***** 1.55*** / 1.09*** (n. d.) 1,92*** / 0,48 (n. d.)

Études	Pays Période	Taille moyenne (médiane.) en M$	Annonce (nombre d'événements) Emprunteurs concernés	**Ecart moyen de performance boursière sur 2 jours, en %** Résultats transversaux (Différence ?)
Best et Zhang, 1993	États-Unis 1977-89	n. d.	Conventions de crédit bancaire (491) Renouvellements (304) / Nouvelles (187) Renouvellements avec bruits[a] (156)/Nouvelles fiables [a] (187)	**0.32**** 1.97** / 0.26 (non) 0.60** / -0.05 (*)
Billett *et al.*, 1995	États-Unis 1980-89	CB : 316 (79)	Prêts (626) Renouvellements (187) / Nouvelles banques (51) Notation de la banque: AAA (78) / < BAA (29)	**0.68***** 1.09*** / 0.64* (non) 0.63*** / -0.57 (non)
Berry *et al.*, 2006	États-Unis 1980-00	CB : 4 615 (113) VC : 1 111 (176)	Renouvellement de prêt bancaire (454) 1980-1990 (179) / 1991-2000 (275)	**0.80***** 1.31*** / 0.48 (n. d.)
Aintablian et Roberts, 2000	Canada 1988-95	n. d.	Prêts commerciaux (137) Renouvellements (35) / Nouveaux (69)	**1.22***** 1.26*** / 0.62 *** (*)[a]
Andre *et al*, 2001	Canada 1982-95	n. d.	Conventions de crédit bancaire (122) Lignes de crédit < 1988 (13) / > 1988 (33) Prêt à terme < 1988 (22) / > 1988 (54)	**2.27***** 4.82 / 0.32 1.14 / 3.30***
Boscaljon et Ho, 2005	Asie 1991-02	n. d.	Prêts bancaires commerciaux (128) Renouvellements (72) / Nouveaux (56) Avant la crise (57) / Après la crise (71) HK (44) / SK (39) / Taiwan (25)/ Thaïlande (20)	**1.25***** 1.23 *** / 1.27*** (non) 0.13 / 2.14*** 1.63*** / 2.61*** / 0.21 / -0.94

Études	Pays Période	Taille moyenne (médiane.) en M$	Annonce (nombre d'événements) Emprunteurs concernés	**Ecart moyen de performance boursière sur 2 jours, en %** Résultats transversaux (Différence ?)
Fery *et al.*, 2003	Australie 1983-99	n. d.	Conventions de crédit dûment signées (196) Publiées : unique (18) / multiple (22) Non publiées : unique (56) / multiple (89)	**0.38*** 1.62** / 0.89 0.02 / 0.25
Slovin *et al.*, 1993	États-Unis 1984	CB : 1 085 (692)	Faillite de la Continental Illinois (1) 29 entreprises (bailleur de fonds direct /chef de fil)	**-4.16***** Entreprises avec une faible moyenne et autres banques
Ongena et *al.*, 2003	Norvège 1988-91	CA : 400	Insolvabilité bancaire (6) 217 entreprises dont c'est la banque principale	**-1.7**** Entreprises opérant une augmentation de capital, disposant d'une ligne de crédit non utilisée (non)
Karceski *et al.*, 2005	Norvège 1983-00	CA : ±500	Fusions bancaires finalisées (22) 342 Acquéreuses, 78 cibles, 1 515 Rivales	**0.29, -0.76**, 0.06** Entreprises ayant des relations avec des banques acquéreuses
Chiou, 1999	Japon 1997-98	A : 3 913 (1110)	Scandale sur la Daiwa Bank (1) 32 entreprises dont c'est la banque principale	**-0.98***** Grandes entreprises sans banque principale
Brewer et *al.*, 2003	Japon 1997-98	A : 1 450	Défaillances bancaires (3) 327	**0.17; -1.32***; -0.49**** Entreprises faisant appel à d'autres sources de financement (non)
Miyajima et Yafeh, 2003	Japon 1995-01	A : 2 293[a]	Actions (11), rétrogradations (5), fusions (3) 9 250 + 4,016 + 2 606	**n. d.; -3.1[n. d.]; 0** Grandes entreprises rentables, technologiques, faiblement endettées, obligations (non)

Études	Pays Période	Taille moyenne (médiane.) en M$	Annonce (nombre d'événements) Emprunteurs concernés	**Ecart moyen de performance boursière sur 2 jours, en %** Résultats transversaux (Différence ?)
Hwan Shin, Fraser et Kolari, 2003	Japon 19.08,99	CA : 790 (716)[a]	Alliance à trois (1) 570	**-0.31***** Principale banque, endettement élevé, rentable
Bae, Kang et Lim, 2002	Corée du Sud 1997-98	VC : 404	Mauvaises nouvelles sur la banque (113) 486	**-1.26***** Entreprises saines, ayant une capacité d'endettement
Sohn, 2002	Corée du Sud 1998	A : 324[a]	Fermeture / transfert de cinq banques (1) 118	**-4.85***** Entreprises sans relation antérieure
Djankov, Jindra et Klapper, 2005	Indonésie Thaïlande Corée du Sud 1997-99	n. d.	Fermetures (52) Ventes étrangères (209) Fusions nationales (92) Nationalisations (94)	**-3.94***** **-1.05*** **-1.27** **3.14***** Grandes entreprises (non)

A : actifs. [a] Calculs des auteurs. [b] Leur Tableau 1b ne précise pas quelle est la mesure de la taille des entreprises utilisée (l'usage de la capitalisation boursière est peut-être implicite). VC : valeur comptable. CB : Capitalisation boursière. HK : Hong Kong. P : Passifs. M$: millions de dollars. n. d.: non disponible. CA : Chiffre d'affaires. *** Significatif à 1 %, ** significatif à 5 %, * significatif à 10 %.

ANNEXE B

L'incidence des fusions bancaires sur l'offre de financement est un sujet de préoccupation majeur.

Les effets à court terme de la concentration

Selon un schéma classique, les fusions se soldant par un accroissement du pouvoir de marché entraînent une augmentation des prix ou une diminution de la qualité des services, synonymes de réduction du bien-être des consommateurs, alors que les gains d'efficience devraient engendrer une réduction des prix ou une amélioration de la qualité des services, pour le plus grand bénéfice des consommateurs. Les conséquences en termes de bien-être sont simples à comprendre. Les fusions pénalisent les consommateurs si l'accroissement du pouvoir de marché compense les gains d'efficience qui seront répercutés sur les entreprises emprunteuses.

Cependant, même sur un marché concurrentiel, les gains d'efficience résultant d'une fusion ne se traduisent pas nécessairement par une amélioration du bien-être de toutes les catégories de consommateurs (Karceski *et al.*, 2005). Prenons, par exemple, le cas d'une acquisition, dans laquelle la banque cible passe pour être sous-évaluée en raison de sa mauvaise gestion. Les clients emprunteurs de la banque cible pourraient se voir accorder des prêts à des taux inférieurs aux coûts. La mauvaise performance de la banque cible s'explique partiellement par le fait qu'elle octroie des prêts dont la valeur actualisée nette est négative. Les efforts déployés par la nouvelle direction pour améliorer l'efficience de l'établissement pourraient se solder, pour les emprunteurs bénéficiant de prêts à des taux inférieurs au coût, par une révision à la hausse de leurs taux ou des refus de crédit.

Même lorsque les emprunteurs sont rentables pour leurs banques, une fois fusionnées les banques peuvent exploiter des efficiences ayant une incidence négative sur certains types d'emprunteurs. Berger et Udell (1996), Peek et Rosengren (1996) et Sapienza (2002) constatent que les banques qui prennent de l'envergure privilégient davantage le financement des grandes entreprises. Stein (2002) offre une explication théorique à « l'effet taille dans les prêts », c'est-à-dire les grandes banques prêtent aux grandes entreprises et les petites banques prêtent aux petites entreprises. Si la concentration du secteur bancaire accroît la complexité organisationnelle des banques, l'argument de Stein implique alors que les banques fusionnées chercheront des gains d'efficience en privilégiant les prêts aux grandes entreprises. Par conséquent, sans autre source de financement, les petits emprunteurs des banques fusionnées pourraient être pénalisés par la taille et la complexité croissantes de leurs banques.

Une étude récente (Bonaccorsi di Patti et Gobbi, 2005) montre que les PME italiennes qui empruntent à une banque candidate à une acquisition ou cible potentielle d'une acquisition, enregistrent une réduction temporaire des crédits d'environ 1.5 % et 2 % respectivement. Si l'entreprise rompt avec la banque fusionnée, alors la baisse temporaire des crédits s'élève à 9 %. L'étude révèle toutefois que la réduction de l'offre est de courte durée et qu'elle est complètement résorbée au terme de 3 années.

Les emprunteurs d'une banque cible peuvent, en outre, être pénalisés par l'adoption de la stratégie ou des caractéristiques de la banque acquéreuse. Les acquisitions se soldent souvent par une rotation du personnel en faveur des salariés et dirigeants de l'acquéreur ou par l'adoption des structures et politiques organisationnelles familières à l'acquéreur. La démission de salariés clés est susceptible d'altérer les relations entre prêteur et emprunteur. De plus, si la fusion se traduit pour la banque cible par l'adoption d'une nouvelle politique de prêt, celle-ci risque de déconcerter ou de ne pas satisfaire les emprunteurs de la banque cible, familiers de l'ancien système. L'analyse des fusions entre banques belges réalisée par Degryse, Masschelein et Mitchell (2005) montre en effet que (1) les emprunteurs des banques cibles sont

plus enclins à mettre un terme à leur relation bancaire et (2) l'offre de crédit aux emprunteurs monobanque qui poursuivent leur relation avec la banque issue de la fusion est réduite.

Les effets à long terme de la concentration

Il n'est pas certain que la concentration ait des effets durablement préjudiciables sur le financement des entreprises innovantes. Premièrement, Berger, Saunders, Scalise et Udell (1998) montrent que la réduction initiale des petits prêts accordés après une fusion-acquisition est compensée par l'offre de crédit des autres banques établies de longue date sur ce même marché. De la même façon, Garmaise et Moskowitz (2005) affirment que les effets négatifs de la diminution de la concurrence consécutive à la fusion de grandes banques (les grandes fusions passent pour être indépendantes du marché local étudié) se dissipent au bout de trois ans. Enfin Focarelli et Panetta (2003) et Bonaccorsi di Patti et Gobbi (2005) montrent une dissipation analogue des effets négatifs sur les segments des prêts et des dépôts au cours des années qui suivent les fusions entre banques italiennes.

Deuxièmement, encouragée par le niveau élevé des marges d'intermédiation, l'entrée de *banques entièrement nouvelles* offre aux emprunteurs prospectifs de nouvelles sources de financement (voir les études américaines). Berger, Bonime, Goldberg et White (2004) montrent que la création de *banques entièrement nouvelles* est plus élevée sur les marchés ayant subi une phase de concentration, tandis que DeYoung, Goldberg et White (1999) révèlent que ces *banques entièrement nouvelles* privilégient les prêts aux petites entreprises.

Troisièmement, les entreprises innovantes pourraient avoir de plus en plus recours à d'autres sources de financement, comme le capital-risque.

Source : Degryse, Ongena et Penas, 2006b ; Degryse, Ongena et Penas, 2006a.

CZECH REPUBLIC

1. Market structure of the banking market in Czech Republic (especially in the view of possible restrictions of access to the Czech banking market)

There is a total of 37 active banks (including building and loan associations) on the Czech market, of that, 25 banks offer current accounts to private citizens. In 9 banks, over 50% of equity is held by Czech entities, while in 15 banks, over 50% of equity is foreign-owned. In the Czech Republic, there are 13 banks that are branches of foreign banks (under a single license). This overview shows that there are no restrictions vis-à-vis foreign banks in the Czech Republic.

The three largest banks in the Czech Republic - Česká spořitelna, a.s., Komerční banka, a.s. and Československá obchodní banka, a.s., account for approximately 55% of the total volume of loans and approximately 73% of the total volume of bank deposits. HHI on the loan market is 1,625 points, and on the deposit market 1,719 points.

1.1 Banking supervision provides a framework for prudent banking business and oversees compliance

Banking activities are subject to Act No. 21/1992 Coll., on Banks, as amended. By virtue of the authority vested into the Czech National Bank (CNB) under the said act, CNB issued decrees and by-laws stipulating conditions for entry into the banking sector and prudence rules applicable to the individual areas in which banks conduct their business.

2. Relationship between banking regulator and competition authority

The Office for the Protection of Economic Competition (the "Office") took part in the preparation of ECA report, "Competition Issues in Retail Banking and Payments Systems Markets in the EU", which, *inter* alia, focuses on the clients' options of switching between providers of banking and payment services, which fact represents an important element of consumer protection on the financial market. Competition offices participating in the report undertook to present the report to their finance ministries and central banks. The Czech National Bank ("CNB") noted that it did not view consumer protection as its core activity but the Czech Ministry of Finance showed interest in cooperation with the Office in order to improve the conditions for financial education of citizens, to increase the mobility of bank clients and the transparency of the bank services on offer.

The Office and the Czech Ministry of Finance ("MoF") are therefore currently discussing the form of their potential future cooperation in this regard. Thus far, the Office and MoF have agreed on an exchange of statistical data concerning questions/proposals/complaints most frequently raised by citizens to draw attention to problems in the banking sector. Further, a promise of mutual assistance in market analyses and resolution of issues falling under the province of both institutions was extended.

The Office and the MoF agree that they see potential for increasing consumer protection in improving the financial education of the citizens, facilitating access to information that would enable citizens to compare the products offered by individual banks and thus also compare the prices charged by the

individual banks for such products. The Office expects that if the clients are able to recognise and compare product prices, the prices might gradually be reduced by the banks that have so far been "hiding" the prices in service packages.

The Office and the MoF expect that a greater possibility to compare the individual products would subsequently result in an increase in client mobility, and eventually greater competition between the undertakings on the market for the provision of banking services.

Under the influence of an administrative proceeding involving the largest banks on the Czech market, and MoF's dealings with these and other banks, discussions were held with many banks. An Expert Group for the Bank Sector was even established, with representatives of the Czech Bank Association ("CBA"), consumer protection organisations, Czech Parliament and MoF represented. CNB was invited to join but declined to participate, claiming that its supervision focuses solely on compliance with prudence rules on the part of the banks, not on consumer protection. The Office was also invited to join but declined on the grounds of impartiality it needs to maintain in light of the pending investigations of several banks; instead of participating directly, the Office provided consultations. Even CBA later refused further cooperation within the Expert Group – termination of the activities of the Expert Group (the main arguments being concerns that there might be a conflict with competition law, and the complex decision-making mechanism used in CBA). In august 2005, the MoF initiated a direct dialogue with the banks, and distributed a consultation document with eighty questions to the banks in order to find out how willing the bank sector was to adopt measures to remedy the problems identified. Some of the banks sent the document to the Office for comments. The Office did not find anything anticompetitive in MoF's questions. After this query, discussions between the MoF and representatives of banks active on the Czech market followed; the discussions were based, *inter alia*, on the banks' responses to the consultation documents. Of key importance was the discussion concerning areas that the MoF proposed to regulate (by legislative or non-legislative means). Discussions with representatives of the Czech Association for Consumer Advocacy were taking place concurrently. All the discussions resulted in a document presented to the government: "Improving Conditions in the Banking Sector". The document defines the principal areas that, according to MoF's assessment, would advisably require measures to strengthen the position of bank clients in the Czech Republic. Unfortunately, no legislative changes took place.

Nevertheless, under pressure from the Office (the completed administrative proceeding) and the MoF, several changes have occurred in the behavior of banks:

- most institutions abandoned the practice of charging fees for cancellation of accounts,
- some banks (e.g., ČSOB) prepared and published a simplified pricelist, other banks are working on modified and more comprehensible pricelists,
- a serious discussion was initiated regarding the position of consumers in the financial sector – not only between the banks and their association (CBA), but also in other sectors of the financial market – some examples: several round-table meetings of representatives of the financial market concerning financial education or the creation of a joint code of conduct towards clients, increased activity of certain associations – e.g., the Association of Financial Brokers began to pay more attention to consumer issues at the level of its ethics committee (on which MoF is also represented), initiation of activities of Expert Group for the Financial Sector (working group ESFS: working group for financial education, working group for legislation in the area of consumer protection and for resolution of disputes between clients and financial institutions, working group for the creation of a joint code of conduct for financial institutions and their clients)

- CBA issued Code of Conduct between Banks and Clients which addresses some of MoF's requirements.

Certain price comparisons of products of individual banks, to be conducted by independent companies, are contemplated for the future, together with market mapping and other activities.

As regards comparison sites, those will unfortunately not be created in the Czech Republic in the near future as banks are not willing to provide the necessary (and not small) capital. The banks prefer the methods described above for product information and comparison of products of other banks.

MoF, CNB, CBA and other institutions engaged in consumer protection aim to create the office of a financial ombudsman in the future; such person would solve disputes between banks and their clients in an extrajudicial manner.

3. Switching costs

The Office for the Protection of Economic Competition has addressed the issue of switching cost during the administrative proceeding with the three largest banks operating in the Czech Republic. These were Komerční banka (whose parent company is Société Generale), Československá obchodní banka (whose parent company is KBC) and Česká spořitelna (whose parent company is Erste bank).

The subject matter of the proceeding was the increase of charges for services related to current accounts provided by banks in the Czech Republic, and introduction of a charge for canceling a current account charged by all parties to the proceeding. These charges were seen as a result of potential existence of a purported agreement between the banks, or of an abuse of collective dominant position of the banks in question.

The Office received a number of complaints from citizens concerning the amount of charges for banking services, as well as complaints from the Czech Association for Consumer Advocacy. All of them were related to the charge for canceling a current account which in fact prevented consumers from switching between banks. The citizens' complaints were focused not only on the inordinate increase of charges but also on the insufficient competition between the largest banks.

In the proceeding initiated on 12 May 2005, the Office proved that there have been numerous contacts between the parties to the proceeding (the Office found emails exchanged between the banks' high-ranking staff during inquiries conducted at the registered seats of the parties). However, it was not proved that such contacts served to coordinate the banks' actions, and in November 2005, the Office terminated the proceeding.

As mentioned above, the Ministry of Finance of the Czech Republic in conjunction with the Office also started an inquiry in the banking sector, and as a result of the two actions, almost every retail bank (especially those that were party to the proceeding) abolished the charge for cancellation of a current account.

In any case, as regards the switching cost, the MoF sees as the biggest problem the collection system used in the Czech Republic, which system significantly differs from that used in other European countries. Payment collections in the Czech Republic are rather complex. The abolition of charges for account cancellation – i.e., direct payments - is not the only issue; there are also related costs of cancellation of collections and such.

3.1 Fees charged by building and loan associations

The Office is currently conducting an administrative proceeding against six building and loan association after it had terminated by virtue of its decision dated December 2, 2005 this administrative proceeding concerning the potential violation of the law by concluding and performing under an agreement or by acting in concert with respect to setting of fees for services provided to clients under building savings programs. The proceeding concerned potential abuse of collective dominant position by charging a fee for favorable interest rates and application of differential conditions to clients in the setting of fees for maintenance of building saving accounts. The Office failed to prove that the parties acted in a way that would qualify as any such distortion of competition. A matter of potential prohibited agreement on exchange of information whose performance would result in distortion of competition was referred back to the first instance for further investigation by virtue of a decision of the Chairman of the Office.

Although the case is still pending, the administrative proceeding contributed to an amendment to Act No. 65/2004 Coll., on Building Saving and State Support to Building Saving, as amended (the "Building Saving Act"), whereby as of October 1, 2005, a building saving agreement must contain, for a period of up until the expiry of the saving period, which period must not exceed 6 years from execution date, a specification of the amount of consideration or a formula for the calculation of such consideration for the maintenance of the building savings account, established and maintained for the purpose of the party's deposits, and for necessary services related to the maintenance of such account, and the method of calculation of such consideration must not be at the sole discretion of the building and loan association (see Section 5 (11) of the Building Savings Act).

4. Mergers and acquisitions

There are no special requirements for domestic acquirers versus international acquirers. Many banks in the Czech Republic are owned by international companies (banks).

Further, there is no different regulatory process for the review of bank mergers as compared to mergers in other sectors.

5. Forms of entry restrictions regarding the provision of depository and lending services

There are no restrictions at all with regard to lending services. Any company can lend money without any special conditions or rules.

To provide depository services, the entity must fulfill conditions set forth by law. There are no specific restrictions from the Office's point of view.

DENMARK

1. Background on market structure

Today there are 175 banks in Denmark. The majority are domestic owned banks. The second largest bank Nordea is formally a foreign owned bank which implies that the share of foreign owned capital in banks in Denmark is large – probably around 30 per cent.

In 2004 the number of bank branches was 2025 which is a reduction of more than 200 branches since 1994 where the number of branches was 2245.

Most banks supply a wide range of services. However small banks do usually not have large business customers and do not have in house production of all retail products. Part of their supply (e.g. mortgage loans and insurance) is based on an agreement with another supplier (e.g. a mortgage bank or/and an insurance company). Only the large banks have all retail services as an in-house ”production”.

Despite the fact that there are 175 banks on the Danish market only a few large banks dominate the main part of the market. The five largest banks have a total market share of around 80 per cent, cf. the table below.

Market shares, CR 5 (2004)

	Concentration based on loans	**Concentration based on total assets**
Danske Bank	47 %	55 %
Nordea	18 %	19 %
Jyske Bank	5 %	5 %
FIH	5 %	
Sydbank	4 %	3 %
Nykredit Bank		3 %
CR 5	**80 %**	**84 %**

Mortgage loans are also included in retail banking. In Denmark the main part of mortgage loans are based on mortgage bonds. Mortgage bonds are supplied by mortgage credit institutions (mortgage banks). The majority of these institutions are part of a financial group including banking.

Since the mid-19th century, the mortgage banks have taken up a predominant position in the financing of real property in Denmark. The Danish mortgage market is based on effective and low-cost arrangement of credits. Through the long-standing tradition as financial market players specialised in the granting of

long-term loans against mortgages on real property, the mortgage banks have achieved a central position in the Danish economy.

The concentration ratio is even higher on the market for mortgage loans than the retail banking market. In 2004 CR5 on the market for mortgage loans were 99 pct., cf. the table below.

Concentration (CR5) on the market for mortgage loans and the banking market

	Total assets	
	2001	**2004**
Banks	86 %	84 %
Mortgage finance institutions	96 %	99 %
Total	86 %	87 %

The profitability of retail banking has been increasing almost every year since the latest bank-crisis in the beginning of 1990'ties, and has now reached a historical high level.

Credit losses and provision has lowered compared to lending, due to the prosperity of the last 10 years and decreasing interest rate on deposits and lending. In addition there has been a substantial increase in income from service charges. These changes have all contributed to higher profitability of retail banking.

The return on equity can be used as a measure of the profitability. The return on equity is an expression of the banks ability to generate return on invested equity. In the table below, the return on equity is shown for the period 1999-2003 and compared with an average of private non-agricultural sectors.

Return on equity, Denmark, 1999-2003

Percent	1999	2000	2001	2002	2003	Avr.
Banks, pre tax	15,8	17,6	17,3	16,7	20,7	17,6
Private non-agricultural sectors, pre tax	14,3	17,4	12,2	8,0	17,4	13,9
Banks, post tax	12,8	14,2	12,8	12,0	15,4	13,4
Private non-agricultural sectors, post tax	13,6	13,5	8,4	10,7	14,2	12,1

However, compared to other banks in EU the return on equity of Danish banks is average.

2. Questions by topic area

In the following the DCA focus on answering the questions in the submission guide.

2.1 Switching costs

When it comes to direct switching costs, Danish banks operate only to a very limited degree with fees connected to opening and termination of a customer relationship, at least with regard to the most common

products such as house loans, car loans and other ordinary loans, overdraft facilities, deposits etc. This was one of the conclusions in a report by the Ministry of Economic and Business Affairs from 2005. The report also concluded that direct switching costs are not a decisive barrier to customers that want to switch banks. However, there are substantial fees connected to movement of capital pensions and securities deposits.

Non-billable costs, such as searching costs etc, seem to be a bigger problem in Denmark. A lot of customers feel that financial matters are very difficult and that it is time-consuming to switch banks. First you must get one or several new offers from other banks and perhaps arrange meetings with banking consultants. With new offers in hand you have to compare and measure against your current agreements.

This can be a burdensome process since most banks in Denmark use some form of loyalty program or product package. A common feature of loyalty programmes is that customers get some sort of discount if all products are acquired within the same financial group. One problem with loyalty programmes is that the price of each individual product is less transparent to the customer. Thus, it is difficult to compare prices and conditions with other alternatives. Another problem is that customers are reluctant to switch banks because it often implies a switch of the entire range of products. Thereby, there is a risk that inconvenience of switching is considered to high by the customers.

If the customer decides to make an agreement with a new bank there is some inconvenience in acquiring a new account number and in the movements of deposits and loans. This may be an important factor for some customers. For small and medium-sized enterprises (SME) there is extra inconvenience in switching banks since the account number must be changed in invoicing systems and business connections must be informed of the change.

The Danish banks have made internal agreements on switching procedures, which should make a switch fairly easy. Customers switching banks don't need to contact the old bank. This contact is done by the new bank which also takes care of transferring deposits to the new accounts.

Financial issues seem to be low interest area for many customers. Consequently, there is a risk that even small inconveniences during the switching procedure will have an impact on customer mobility. Thus, it is important to make the switch as easy as possible and moreover there seems to be a need for a well developed transparency that can make it easier for customers to compare financial products.

As mentioned, Danish banks have already taken some steps to make the switching procedure easier. However, there could be a reason to develop these procedures further.

When it comes to transparency The Danish Bank Association and the Danish Consumer Council have jointly developed a website making it possible to compare prices (fees and interest) between banks (www.pengepriser.dk). There is also a private business (Mybanker) providing such comparison facilities on the internet. However, the impact on customer mobility is yet to be seen.

The Danish Competition Authority acknowledges that information on the risk of single customers would be valuable for other banks and could make it easier for them to make a competitive offer. However, credit risk valuation is back bone activity for all banks and one of the most important ways to differentiate from other banks. Therefore, it would be difficult to make general credit evaluation platforms and publicly available credit information of each banking customer.

So far there have been no cases within The Danish Competition Authority where switching costs are seen as a possible infringement of the competition law.

2.2 Market competition/conflicts of interest

In spring 2006 the Danish Competition Authority published a report on competition in financial markets. The report was made in corporation with The Ministry of Economic and Business Affairs and The Danish Financial Supervisory Authority.

The investigation found that banks have a dominant role when it comes to distribution of investment funds certificates. Consequently, investment funds and banks often appear as one unity and the competition situation within the banking sector is therefore crucial for the sale of investment funds. This can be a problem for competition.

But this situation does not only apply for the sale of investment funds. It also applies for other financial services such as insurances, securities and real estate mortgage loans.

The role of the banking consultant seems to have increased during the last decade. Through consolidation banks have turned into financial supermarkets where all kinds of financial products are offered. The banking consultant is often the customer's sole access to these products, and some kind of regulation, that handles the two roles of a banking consultant as both advisor and salesman, is needed.

The Financial Supervisory Authority has issued rules on good business practice for financial undertakings.[1] Below, some of the more important rules are listed.

According to section 4 a financial undertaking (including banks) shall enter into or confirm all the important contracts with its customers on paper or on some other durable medium. If individual advice is provided in connection with the agreement, the important aspects of said advice shall be included in the agreement or appear in appendices to the agreement either on paper or on some other durable medium.

According to section 5 in the executive order a financial undertaking shall provide advice, if the customer so requests. Furthermore, the undertaking shall provide advice at its own initiative, where circumstances indicate that there is reason to do so. Alternatively, the financial undertaking may refer the customer to seek advice elsewhere.

Advice shall take into consideration the interests of the customer and provide the customer with a good basis for making decisions. Advice shall be relevant, correct, and complete. The financial undertaking shall provide information on the risks relevant to the customer.

According to section 8 a financial undertaking shall provide sufficient information on its own products and services, including differences in prices and conditions from alternative products that may meet the customer's demands. A financial undertaking shall, on the basis of its general knowledge of the market, inform the customer about relevant types of product on the market. Information shall not, however, contain information about competing products or specific prices.

In section 9 there are rules on conflicts of interest. In the event that a financial undertaking or its employee/advisor when providing advice has a special interest in the result of the advice beyond normal income, the undertaking shall before giving advice inform the customer of the nature and scope of such special interest.

If the financial undertaking receives commission or other remuneration as a result of providing products or services, the customer shall be made aware of this fact. The same shall apply if the attending

[1] Executive Order no. 1046 of 27 October 2004 on Good Business Practice for Financial Undertakings

employee/advisor receives commission or other remuneration and there is a direct link between the specific sale of services or products and the remuneration of the attending employee/advisor.

So far there The Danish Financial Supervisory Authority has made no decisions regarding section 9 in the executive order on good business practice. So the range of the rules is yet to be seen.

In Denmark banks are allowed to apply changes in conditions of an ongoing relationship without acceptance of the customer. But in accordance with the executive order on good business practice it can only be done under specific circumstances.

According to section 4 terms regarding changes in the continuing general customer relationships of interest, charges, fees, or other costs shall include a statement of the conditions that may give rise to a change and may not allow the financial undertaking arbitrary access to make changes.

Changes in continuing customer relationships may not, without notice, be unfavourable towards the customer regarding interest, charges, fees, or other costs unless the change is due to external conditions over which the financial undertaking has no influence

Consequently the customer must be notified when prices, fees etc. get unfavourable unless the bank has no influence on the change. With this notice the customer will have the possibility of consulting another bank.

From 2007 Danish banks is to send a yearly overview to every customer of the fees paid by the customer to the bank in the previous year. With this overview the customer can ask other banks if they can make a cheaper offer on fees etc. Thereby, the customer has some sort of ex post negotiation possibility.

2.3 Access

Banks are cooperating on the Danish clearing and settlement system. The coordination is founded in The Bank Association and relevant agreements are approved by the Danish Competition Authority.

The agreements can be accessed by all banks, also banks not being a member on The Bank Association. The corporation consists of several agreements as well as the technical infrastructure. The technical infrastructure is mainly operated by PBS, which is owned by Danish banks and the Danish Central Bank. Part of the access is regulated by the Financial Supervisory Authority.

Since it is Danish banks that have the main decision on access fees and conditions of the infrastructure (via The Bank Association and PBS) there is a potential for discrimination of foreign banks and banks not being a member of The Bank Association.

The Danish Competition Authority has only investigated a part of the inter bank infrastructure market related to retail payments (national debit card payments, internet payments etc.). These investigations concluded that PBS more carefully should direct relevant costs to relevant services.

Other than that, the Danish Competition Authority has not handled cases regarding discrimination of banks wanting to get access to the infrastructure.

2.4 Merger and acquisition regulations

From a competition point of view it is obvious, that any regulatory requirements for transfer of control in favour of domestic banks are unacceptable.

However, the overall opinion is that Danish financial legislation regulating the transfer of control does not in practice hamper competition from foreign banks and their possibility of acquiring a Danish bank. In 2001 the Swedish bank "Svenska Handelsbanken" acquired the banking activities of the Danish bank "Midtbank" and there seemed to be no particular barriers in Danish financial regulation in this connection.

However, there can be potential barriers in other regulation. In the 2006 report on competition in financial markets it was pointed out that competition from foreign banks could be improved by harmonisation of VAT regulation and EU rules on investor guarantee schemes. Cross border differences in regulation can be a barrier for foreign entrants.

2.5 Entry restrictions

In general, Danish financial legislation is a direct implementation of EU regulation. Thus, the rules should not appear as unreasonable barriers for new entrants.

In Denmark there are restrictions on which undertakings that can offer banking activities. The rules are laid down in section 7 of the Financial Services Act.

Undertakings that carry out activities comprising receiving from the public deposits or other funds to be repaid as well as activities comprising granting loans at their own expense but not on the basis of issuing mortgage-credit bonds, shall be licensed as banks.

Banks, the State, Danmarks Nationalbank (Denmark's central bank), foreign credit institutions which fulfil the conditions in section 1(3) and section 30 or 31 of the Financial Services Act, issuers of electronic money, and savings undertakings shall have exclusive right to receive from the public deposits or other funds to be repaid. Mortgage-credit institutions, DSF (Danmarks Skibskreditfond), and KommuneKredit may, however, receive other funds to be repaid. Undertakings which do not receive deposits from the public may receive other funds to be repaid provided this activity or lending activities are not a significant part of the normal activities of the undertaking.

There are also rules regulating which other licensed activities a bank can undertake. The rules are laid down in section 24-26 of the act.

Banks, mortgage-credit institutions and insurance companies may carry out activities ancillary to the activities licensed. The Danish FSA may decide that the ancillary activities are to be carried on by another company. Banks, mortgage-credit institutions and insurance companies may, through subsidiary undertakings, carry out other financial activities.

Banks, mortgage-credit institutions and insurance companies may, temporarily, carry out other activities to secure or phase out exposures already entered into, or with regard to restructuring enterprises. The financial undertaking must inform the Danish FSA regarding this matter.

Banks, mortgage-credit institutions, investment companies and insurance companies may carry out other activities in cooperation with others if

- the financial undertaking does not have direct or indirect controlling influence on the undertaking,

- the financial undertaking does not carry out the activities in cooperation with other financial undertakings which are part of a group with said financial undertaking, or with regard to insurance companies, in management cooperation with said insurance company, and

- the activities are carried on in another company than the financial undertaking.

According to the Financial Business Act the application for a banking license should be handled within 6 months by the Financial Supervisory Authority. The rules are laid down in section 14 of the act.

In the event that the Danish FSA refuses an application for a license, the applicant shall be notified no later than 6 months following receipt of the application or, if the application is incomplete, no later than 6 months after the applicant has submitted the information necessary to make a decision. At all events, a decision shall be made no later than 12 months after receipt of the application. If the Danish FSA has not issued a statement on an application no later than 6 months after receipt of the application, the company may bring the matter before a court.

Other than general financial regulation banks are sometimes met with restrictions in local district plans. Some local authorities have the opinion that empty business premises in particular areas are not to be overtaken by banks and that banking activities only can be carried out in certain restricted buildings. Banks wanting to open a local branch must therefore wait to another bank close a branch.

A barrier for acquisition of other banks can be that some banks have restrictions on voting rights stated in the articles of association. Consequently, it is difficult to gain control of another bank. Even though your own a majority of the capital you may still possess a minority of votes at the annual general meeting. However, this issue is not due to any regulation but is a result of the banks individual wish to protect itself from takeovers.

2.6 Impact of integrating traditional banking services with other financial services.

The Danish Competition Authority believes that the consolidation of banking activities with other financial activities has a huge impact on competition. Banks have a dominant role as supplier of financial services and there can be problems with bundling of products.

See also the answers to question 1 and 2.

2.7 Relationship between banking regulator and competition authority.

In Denmark the Financial Supervisory Authority has no jurisdiction when it comes to competition issues. Potential violations will be handled by the Competition Authority according to the Competition Act.

Nevertheless, there is cooperation between the two authorities. They are both placed under The Ministry of Economic and Business Affairs. The Competition Authority is heard when new legislation is issued by the Financial Supervisory Authority. The Financial Supervisory Authority also provides the Competition Authority with necessary data, i.e. for analysis. This is done with respect to rules of confidentiality.

In Denmark the general view is that competition issues within the financial sector are best handled by the Competition Authority. The attitude towards a competitive financial market can under certain circumstances be in conflict with the aim of financial stability. Thus, there is a good reason for division of roles between the sector regulator and competition authorities.

2.8 Competition law and banking

The Danish Competition Act applies to the banking sector as well as other sectors, and the Competition Authority is the sole regulator of anti-competitive practices.

In 2000 the largest Danish bank “Danske Bank” merged with another large bank and a mortgage credit institution. The result of the merger is now the largest financial group in Denmark and the only one that can be defined as a financial conglomerate. The merger was assessed according to the Danish Competition Act and approved by The Competition Council on the condition of several commitments from Danske Bank.

In the merger several product markets were defined. The retail banking market would cover the need of household customers and small and medium-sized enterprises for loans, deposits, transaction of payments and advising. Since it was two nationwide banks that joined forces the market was geographically defined as Denmark.

FRANCE

1. Malgré l'existence de règles spécifiques, les activités bancaires sont, en France, soumises aux réglementations de droit commun sur la concurrence

1.1 L'activité bancaire est soumise à un régime d'autorisation préalable

En France comme dans la plupart des Etats, le système bancaire fait l'objet d'une réglementation spécifique compte tenu des enjeux particuliers liés à la préservation de la stabilité du système financier dans son ensemble.

La loi française dispose qu'une autorisation préalable doit être obtenue auprès du Comité des établissements de crédit et des entreprises d'investissement (CECEI) pour effectuer des opérations de collecte de fonds auprès du public ou des opérations de crédit, conformément aux principes énoncés dans les directives européennes en la matière.

L'agrément des établissements de crédit obéit à certaines règles destinées à garantir la solidité et la qualité des apporteurs de capitaux avec un double objectif : permettre à ces établissements de faire face aux cycles économiques descendants et de gérer la volatilité du marché, et s'assurer de la capacité du management à mettre en œuvre des stratégies sur le long terme, y compris, si besoin est, à travers des périodes d'instabilité.

Ceci conduit à prendre en compte la structure de l'actionnariat lors de la délivrance d'un agrément. De plus, tout changement significatif apporté à cette structure doit faire l'objet d'une demande d'autorisation examinée par les autorités compétentes. Les mêmes obligations et procédures sont applicables aux acquéreurs nationaux et aux acquéreurs étrangers. Plus spécifiquement, le cadre juridique français requiert une autorisation préalable délivrée par le CECEI pour toute transaction dans laquelle une personne ou un groupe de personnes agissant ensemble franchit les seuils de 10%, 20% or 33.33% de détention des droits de vote, ou acquiert ou perd le pouvoir effectif de contrôle sur la gestion d'un établissement de crédit (à l'exception des transactions intragroupes). Par exception, quand une telle transaction est réalisée hors de France entre des personnes relevant d'un droit étranger, ces dernières ne sont tenues qu'à une déclaration immédiate au CECEI, qui dispose alors d'un délai de trois mois pour faire savoir au déclarant que cette opération est de nature à entraîner un réexamen de la situation de l'établissement de crédit. Un tel réexamen doit être, le cas échéant, mené selon des procédures et des critères objectifs similaires à ceux applicables à une demande d'agrément initial. Ces règles sont en conformité avec les standards européens en la matière.

Juridiquement, le CECEI est tenu de prendre une décision sur une demande d'agrément dans un délai d'un an. Dans la pratique ce délai est généralement inférieur à six mois. Ce délai est applicable selon un principe d'égalité entre les établissements français et les établissements étrangers. En outre, dans le régime dit de passeport européen, tout établissement de crédit agréé dans un autre État membre de l'Union européenne peut exercer librement en France, soit en directement en libre prestation de services soit par une succursale, dès que les autorités françaises ont reçu régulièrement une notification de l'intention d'exercer en France.

Dans le cadre de ces grands principes, plusieurs actions ont toutefois été mises en œuvre par les autorités françaises en vue de favoriser le jeu de la concurrence dans le secteur bancaire, notamment :

- La progressive "normalisation" de certaines institutions différentes des banques traditionnelles, comme La Banque Postale, qui fut créée en janvier 2006 en tant que filiale du groupe public français La Poste, et qui est agréée comme établissement de crédit par le CECEI. La création de la Banque Postale a fait apparaître un acteur supplémentaire fortement implanté au niveau territorial. Contrairement aux anciens services financiers de la Poste, la Banque Postale intervient en effet dans la plupart des compartiments de la banque de détail, notamment celui des prêts immobiliers ; seuls les prêts à la consommation ne sont pas compris dans son offre de service.

- La création de régimes spécifiques pour des institutions différentes des banques traditionnelles (par exemple, les agréments limités à certaines activités) permettant aux établissements concernés d'offrir une gamme restreinte de services à une clientèle déterminée et à exercer dans des conditions réglementaires moins contraignantes. Ces régimes permettent à de plus petites institutions d'entrer en compétition sur le marché bancaire, sur des segments de clientèle spécifiques, à côté des banques de plein exercice.

Encadré- réponse à la question 3 : access to payment systems

Concernant l'accès aux systèmes de paiement, compte tenu de l'importance économique que revêtent ces derniers (près de 4755 milliards d'euros ont été traités en 2005 dans le SIT, système de paiement de masse français) et de la nécessité de maintenir un haut niveau de confiance des utilisateurs dans leur fonctionnement, l'accès est naturellement réservé aux établissements de crédit.

1.2 L'application du droit de la concurrence dans le secteur bancaire

Conformément aux dispositions de l'article L 410-1 du Code commerce, le droit de la concurrence vise en France toutes les activités économiques et aucun secteur n'échappe *a priori* à son application. Le contrôle du respect des règles de la concurrence est, au niveau français, réalisé conjointement par le Ministère chargé de l'économie et par le Conseil de la concurrence, ce dernier disposant de compétences d'attribution définies au titre VI du livre IV du Code de commerce. Au sein du ministère des finances, la D.G.C.C.R.F. s'est vue confier des missions en matière de contrôle des concentrations, d'enquête sur l'existence de pratiques anticoncurrentielles et, plus généralement, de régulation des marchés sous leurs divers aspects en vue d'assurer leur fonctionnement loyal, efficace et sécurisé.

Ainsi que le Conseil de la concurrence l'a par exemple noté dans son avis n° 04-A-17 du 14 octobre 2004 dans le secteur des télécommunications, l'existence d'un cadre réglementaire spécifique assurant la régulation d'un secteur particulier "*ne place pas celui ci en dehors du champ d'application des dispositions du livre IV du Code de Commerce*". Ceci vaut également pour le secteur de la banque de détail.

Le rôle transversal de régulation concurrentielle des marchés de la DGCCRF s'étend dès lors aux activités bancaires. Il est mis en œuvre à la fois dans le cadre du contrôle des concentrations et en matière de contrôle des pratiques anticoncurrentielles.

L'action des autorités de concurrence, DGCCRF et Conseil de la concurrence s'exerce en relation avec les autorités sectorielles compétentes. Ainsi, l'article L. 511-4 du Code monétaire et financier dispose que le CECEI est sollicité pour avis par le Conseil de la concurrence lorsque ce dernier est saisi, en application de l'article L. 430-5 du Code de commerce, de concentrations ou de projets de concentration concernant, directement ou indirectement, un établissement de crédit ou une entreprise d'investissement. Le Conseil de la concurrence communique, à cet effet, au CECEI toute saisine relative à de telles opérations. Le CECEI transmet son avis au Conseil de la concurrence dans le délai d'un mois suivant la

réception de cette communication. L'avis du CECEI est rendu public dans les conditions fixées par l'article L. 430-10 du Code de commerce.

1.2.1 En matière de concentrations

Le décret n°2001-1178 du 12 décembre 2001 relatif à la Direction générale de la concurrence, de la consommation et de la répression des fraudes et l'Instruction générale du 13 décembre 2001, relative aux missions et à l'organisation des services de la Direction générale de la concurrence, de la consommation et de la répression des fraudes ont donné à cette dernière compétence pleine et entière en matière de contrôle des concentrations, dans le cadre du Titre III du Livre IV du Code de commerce.

L'environnement concurrentiel du secteur de la banque de détail en France a été affecté par un mouvement de concentration qui se poursuit depuis de nombreuses années et par la création récente de la Banque Postale (cf. *supra*, point 1.1).

On rappellera ainsi les opérations de rachat menées respectivement par le Crédit Agricole sur le Crédit Lyonnais et par la société HSBC sur le Crédit Commercial (CCF).

Le projet de création de NATIXIS actuellement en cours de mise en œuvre correspond au regroupement des activités de banque de financement, d'investissement et de services du Groupe des Banques Populaires et du Groupe des Caisses d'Epargnes. Les Banques Populaires et les Caisses d'Epargne resteront toutefois indépendantes sur un certain nombre de secteurs de la banque commerciale (dépôts à vue, épargne, affacturage, crédit immobilier, crédit-bail, crédit documentaire, etc…) . L'activité de l'entreprise commune sera, dans le secteur de la banque de détail, limitée à la banque privée à destination de la clientèle fortunée et à la conservation de titres.

1.2.2 En matière de contrôle des pratiques anti-concurrentielles

Les services de la DGCCRF ont été amenés à enquêter sur les pratiques mises en œuvre dans le secteur bancaire à l'occasion d'une saisine d'office du Conseil de la concurrence français du 30 novembre 1993 relative au secteur du crédit immobilier. Les résultats de cette enquête ont conduit le Conseil à sanctionner, dans sa décision n° 00-D-28 du 19 septembre 2000, neuf établissements de crédit de premier plan pour la mise en œuvre d'une entente anticoncurrentielle dans le secteur des prêts immobiliers aux particuliers. Le Conseil de la concurrence a prononcé des amendes pour un montant total de 1144,5 millions de francs français (environ 174,5 million d'euros).

Le secteur des banques et assurances a par ailleurs été intégré par la Direction générale de la concurrence, de la consommation et de la répression des fraudes comme un axe prioritaire d'enquêtes tant sur les aspects « concurrence » que sur les aspects « consommation » dans le cadre des orientations nationales pour 2005 et 2006. En 2005, deux enquêtes ont été lancées. La première portait sur la diversité de l'offre dans le secteur des services bancaires aux particuliers dans un contexte où les consommateurs dénoncent régulièrement la tendance à la hausse des tarifs. La seconde concernait la vérification des dispositions protégeant les consommateurs dans la gestion d'un compte de dépôt et le suivi des engagements pris par les banques en novembre 2004 en faveur de leur clientèle (cf. infra).

Les investigations menées dans le cadre de ces enquêtes ont conduit à la visite de 5 à 9 établissements en moyenne par département et au relevé du tarif d'une vingtaine de prestations. Le taux d'infraction relevé est relativement faible et concerne principalement l'affichage des prix et leur visibilité. Aucune pratique anticoncurrentielle en tant que telle n' été détectée dans le cadre de ces enquêtes qui n'ont pas donné lieu à saisine du Conseil de la concurrence.

En 2006, l'enquête sur la vérification des dispositions et le suivi des engagements a été reconduite.

2. Compte tenu de l'asymétrie des relations entre les banques et les clients, des actions spécifiques ont également été engagées pour améliorer la fluidité de fonctionnement du marché

2.1 L'existence de coûts de sortie (« switching costs »)

En mars 2005, le Ministre délégué à l'industrie a demandé à Monsieur Philippe NASSE, Vice-président du Conseil de la concurrence, de conduire une mission d'identification des secteurs de l'industrie des services qui présentent les obstacles au changement d'opérateurs les plus importants, d'évaluation de l'impact de ces coûts de sortie et de proposer le cas échéant des mesures concrètes.

M. NASSE a publié son rapport en septembre 2005. Ce dernier propose un cadre général d'analyse des coûts de sortie qu'il applique dans un deuxième temps à deux secteurs d'activité particuliers, dont le secteur de la banque de détail.

Dans ce secteur, le rapport met en évidence l'existence de coûts de sortie significatifs par l'analyse de trois indicateurs :part de marché « en stock » détenue par un opérateur supérieure à sa part « en flux », existence de prix plus élevés pour les clients déjà acquis que pour les nouveaux clients et faiblesse du taux de changement d'opérateur. S'il reconnaît **le** fondement économique et le caractère légitime de certains de ces coûts de sortie (notamment lorsqu'il s'agit de coûts contractuels ou de coûts technologiques), il souligne également le risque qu'ils soient excessifs (en particulier sur le marché mature qu'est la banque de détail en France) et rendent ainsi les consommateurs captifs des banques.

Il convient toutefois de noter que rapport publié par la Commission Européenne sur la banque de détail en juillet 2006[1] situe la France dans la moyenne européenne pour ce qui concerne le niveau des coûts de sortie dans ce secteur, aussi bien en termes de longévité de comptes courants détenus par les ménages (11 ans contre 10.4 ans pour UE-15) qu'en termes de taux de *churn*[2] (6.84% contre 7.55% pour UE-15).

Une régulation imposant le niveau idoine de ces coûts étant non seulement contraire au principe de liberté de fixation des prix mais également extrêmement difficile à mettre en place, le rapport NASSE propose d'agir directement sur la demande en privilégiant l'accroissement de la transparence et l'amélioration de l'information disponible pour le consommateur afin que ce dernier puisse effectuer ses choix en toute connaissance de cause.

Il formule dans ce cadre certaines propositions concrètes en vue de les réduire :

- rendre obligatoire l'établissement d'une facture des sommes prélevées par une banque à son client en distinguant la prestation facturée, la quantité de cette prestation, son prix unitaire, la valeur prélevée et le récapitulatif de ces valeurs ;

- mettre en place un outil statistique permettant de suivre certains indicateurs, notamment le taux de « churn » , les parts de marché en stock et en flux par réseau ou l'écart moyen entre les prix proposés aux captifs et aux entrants ;

- établir des profils types de consommateurs de manière à pouvoir suivre l'évolution du prix des prestations qui leur sont fournies au travers des différents réseaux bancaires.

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1 European Commission, *Interim report II Current accounts and related services, Sector inquiry under article 17 regulation 1/2003 on retail banking*, 17 July 2006.

2 Il s'agit d'un taux mesurant le nombre de comptes ouverts ou fermés sur une année.

La première proposition est actuellement en cours d'examen au Comité Consultatif du Secteur Financier[3] (CCSF).

2.2 Les actions entreprises au niveau français

Dans ce contexte, et dans le cadre du C.C.S.F. où sont représentées les associations de consommateurs, les autorités françaises ont souhaité faire évoluer les pratiques dans le secteur bancaire en s'appuyant alternativement sur des textes législatifs et réglementaires et sur des engagements des professionnels. Dans cet esprit, elles ont particulièrement veillé au développement de la transparence des services bancaires au bénéfice des clients, ainsi qu'à l'abaissement des coûts liés au changement de banque. 15 mesures concrètes (lois, règlements ou engagements volontaires des banques), ont été conclues en novembre 2004 pour faciliter les relations banques-clients. Les efforts entrepris ont permis d'enregistrer des progrès dans trois domaines principaux.

- **En matière de contractualisation, le code monétaire et financier prévoit que** les banques ont l'obligation de proposer à leurs nouveaux clients une convention de compte dont les principales stipulations ont été définies réglementairement (modalités d'ouverture, de procuration, de transfert et de clôture, services et produits bancaires proposés et prix, sort réservé au compte en cas de décès du titulaire, modalités de fonctionnement de la convention, accès au médiateur). Elles se sont engagées à proposer une convention à leurs clients anciens non conventionnés, sur la base d'une information générale et à l'occasion d'un événement important de leur relation. La Commission des clauses abusives (C.C.A.) a assuré une lecture attentive de ces conventions et a repéré une vingtaine de clauses qui méritaient une nouvelle écriture. Son avis a été publié le 25 septembre 2005. Le Comité de la Médiation bancaire a approuvé cet avis le 9 février 2006 et a décidé de le transmettre à chaque médiateur.

- **Concernant le renforcement de la transparence tarifaire, un arrêté du Ministre chargé de l'économie prévoit que l**es banques sont tenues d'afficher leurs prix et de faciliter l'accès à leurs clients, mais aussi des personnes qui souhaitent les comparer ; elles doivent utiliser, pour ce faire, des affiches visibles, des dépliants tarifaires en libre service. Par ailleurs, les banques se sont engagées à mettre des présentations sur les sites INTERNET avec un accès dès la page d'accueil, et à rendre les relevés de comptes plus clairs : un code visuel signale, depuis le 1er février 2006, les frais sur les relevés de compte ; des discussions sont en outre menées, dans le cadre du Comité français d'organisation et de normalisation bancaires (C.F.O.N.B.) pour rendre plus clairs, sur les relevés, les libellés des paiements par carte.

- **Afin de faciliter la mobilité,** une nomenclature harmonisée pour les opérations courantes a été agréée entre les établissements bancaires et les associations de consommateurs et leur servira de référentiel commun. Les banques se sont en outre engagées à supprimer les frais de clôture de tous les comptes à vue et comptes sur livret et assimilés (Codevi, Livret d'épargne populaire, livret A, livret bleu). Elles doivent également fournir rapidement et à un prix raisonnable, à tout client qui souhaite ouvrir un compte chez un concurrent, une liste des opérations automatiques et récurrentes exécutées sur le compte courant. Un *guide de la mobilité* a également été mis en place par la Fédération bancaire française depuis le premier trimestre 2005 ; il récapitule les précautions à prendre, les démarches à effectuer et contient les modèles de lettre type à adresser aux correspondants à prévenir en cas de changement de domiciliation bancaire.

[3] Ce comité créé par le code monétaire et financier est chargé d'étudier les questions liées aux relations entre les établissements de crédit, les entreprises d'investissement et les entreprises d'assurance d'une part, et leurs clientèles d'autre part. Il propose des mesures appropriées dans ce domaine sous forme d'avis ou de recommandations d'ordre général.

HUNGARY

1. Introduction

Before the transformation into a two-tier banking system in 1987, retail banking was the monopoly of a state-run company in Hungary. Although new entries and the development of financial services resulted in a fundamental transformation of the market, some aspects still reflect the inherited market power of the former monopoly. For instance, the market for sight deposits is still highly concentrated, the Herfindhal-Hirschman index (HHI) stood above 2500 in June 2006. The payment card business is even more concentrated. This is illustrated by the fact that the concentration (HHI) of commission income related to the payment card business exceeded 4100 in 2005. Consequently, the impact of technological development should be assessed against this background.

Although a concentrated market structure does not necessarily result in non-competitive pricing practices, some empirical evidence shows insufficient competition in various retail market segments (at least in recent years). Analysing the pricing behaviour of banks in different sub-markets in a study prepared for the GVH, Várhegyi (2003)[1] finds that the elasticity of household lending rates (to money market rates) is very low, which enables banks to earn oligopolistic rents. Moreover, the elasticity of household deposit rates was found to be low and negatively related to the market shares of banks. Similar results have been obtained by Móré and Nagy (2004)[2] in consumer lending markets. Using a "conjectural variation" model, they found that the consumer credit market is characterised by a low degree of competition, i.e. between Cournot equilibrium and perfect collusion. They also provided evidence that a low level of competition, coupled with a relatively low price elasticity of demand, had allowed banks to earn high oligopolistic rents in the period under investigation.

There are numerous factors explaining the behaviour of the banks on the market. The most important factors include switching costs, financial literacy, access and the regulatory environment.

2. Switching costs

The GVH regards the possibility of switching as an essential component for realising the benefits of competition in financial markets. The ability to switch between financial service providers represents an important contribution to a healthy market structure and thereby to the proper functioning of financial markets.

Customer mobility is one of the most important constraints of market power as it ensures that products and services offered with better conditions by new entrants or incumbents could actually reach customers. Lacking this mobility, financial service providers could exercise their market power to the detriment of consumers. Higher consumer mobility results in more elastic demand, which should promote more intensive competition.

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1 Várhegyi, Éva (2003), "Bank Competition in Hungary", *Közgazdasági Szemle*, pp. 1027–1048, December 2003 (in Hungarian)

2 Móré, Csaba and Nagy, Márton (2004), "Competition in the Hungarian Banking Market", MNB Working Paper 2004/09

The GVH has been involved in two customer surveys in this topic, to identify customer preferences and attitudes regarding switching. The first survey with the general goal of exploring consumer habits in financial markets was carried out in 2000-2001, and contained several questions on switching. A more recent customer survey focusing on certain issues of switching is being finalised in September 2006, with the preliminary results already available.

2.1 Main results of the 2001 survey[3]

According to the 2001 survey of the GVH, only 16% of the representative sample has ever switched banks. A major factor prompting switching was the opening of a new branch by another bank at a favourable geographic location offering better conditions. Other important factors were loss of customer trust and the cease of operations by the previous bank.[4]

On the other hand a well-established, long-term relationship with an existing business partner meant in itself a very important factor in discouraging customers in switching. The fact that the lack of a branch office in the given town also played a significant role could indicate the insufficient development of retail banking network at that time. This idea is also underpinned by the expansion of retail banking outlets of credit institutions since then, some of them already offering a competitive alternative for the incumbent.

2.2 Findings of the 2006 survey[5]

A more recent customer survey, based on a questionnaire designed by a working group of the National Bank Of Hungary (Magyar Nemzeti Bank, MNB) and the Hungarian Financial Supervisory Authority (Pénzügyi Szervezetek Állami Felügyelete, PSZÁF) was carried out in 2006, in order to identify the most important obstacles of switching between financial service providers.

38%of the respondents opened a new current account in the last five years: however only 13% of the total sample can be considered as real switchers. The study defined current account switchers as customers who have had a current account previously, and opened a new account either with the abolition or the maintenance of their former account.

Not only is the share of actual switchers moderate in the population, but also the inclination to switching is very low. 85% of the population did not even ever consider switching current accounts, and only 1% considered switching very seriously

The most important reasons mentioned spontaneously by the respondents for their reluctance to switching were the following: being content with the current product they use (39%), the lack of need for an additional current account (23%) and halting one current account sufficient (12%).[6]

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3 The 2001 survey is based on the responses of 1.000 Hungarian residents over the age of 18. The sample of the survey reflects the Hungarian population by age, gender, education, region, and size of locality. The interviews were conducted face-to-face in people's home.

4 Loss of consumer trust can be originated in some bankruptcy cases mostly in the early stages of development in the financial sector.

5 The 2006 survey is based on the responses of 800 Hungarian residents over the age of 18. The sample of the survey reflects the Hungarian population by age, gender, region, and size of locality. The interviews were conducted face-to-face in people's home.

6 These responses are based on the assumption that opening a new current account while maintaining the old one is also considered as switching.

The results might point to the conclusion that respondents are not aware of the benefits from having a better product in the field of current accounts. Most of them are satisfied with their current financial service provider, however, they are not able to compare the costs and benefits arising from switching.

One reason for the overall disinterest in switching is the relatively low usage of financial products. Although 81% of the respondents hold a payment card, 33% of them never used it for conducting payment transactions and a further 16% used it only once a year or even less frequently. The ratios of people using telephone banking, mobile banking and internet banking services are all below 10%. In money transfers, recurring tasks are more popular than individual ones: 34% of the respondents use standing orders, while 25% use direct debit.

The cost of the current account service is seen as high or very high by 33% of the population, but only 17% believes that costs charged by their bank higher than those charged by other banks. Transparency seems quite limited in the market as 28% of the respondents could not compare their costs with other financial service providers. 13% of the respondents stated that it is because costs of these services are not comparable at all – the same ratio, 13% found them perfectly comparable, while 46% sees them as partly comparable.

Respondents were also interviewed about their perception of the switching process. On the basis of the total respondents, 40% voted for an easy process, while 32% viewed switching as complicated, or at least relatively complicated (with a very high proportion, 28% being unable to answer this question). The most commonly named reasons for considering switching complicated were non-billable costs: the administrative burden when closing an account is seen most frequently as an obstacle in switching, followed by the disclosure of the new account number at several financial partners and the memorising of new access codes.

The questionnaire has also included some questions on other dimensions of switching financial service providers: the possibility to switch could not only be an important aspect of competition in the case of current accounts, but also for other financial services such as credits, where re-financing often could be reasonable. However, 37% of the respondents having some kind of consumption credit have not even heard of the possibility of re-financing, and only less than 10% has considered switching between banks. Ensuring the possibility of switching between credit products is an indispensable feature of properly functioning credit markets: the GVH has been receiving numerous complaints about too high early repayment charges which supposedly hinder competition, thus investigations have been opened in this field.

2.3 Switching from a competition aspect

The results of the above mentioned surveys show that the overall maturity of financial markets plays an important role in switching. With the limited use of financial services switching may seem a lot easier, since most of the administrative and non-billable costs are not present. In addition to this, customers might be less sensitive to cost differences if having to pay only for a very basic service.

However, the lack of motivation is also exacerbated by the fact, that market transparency is quite limited due to very complex financial products. Customers are often not in a position to correctly evaluate offers from different financial service providers. Certain tying and bundling practices might constitute additional obstacles for customers in making the right choice between the numerous financial service providers. To increase customer awareness and promote market transparency, several actions shall be taken in the field of switching as well.

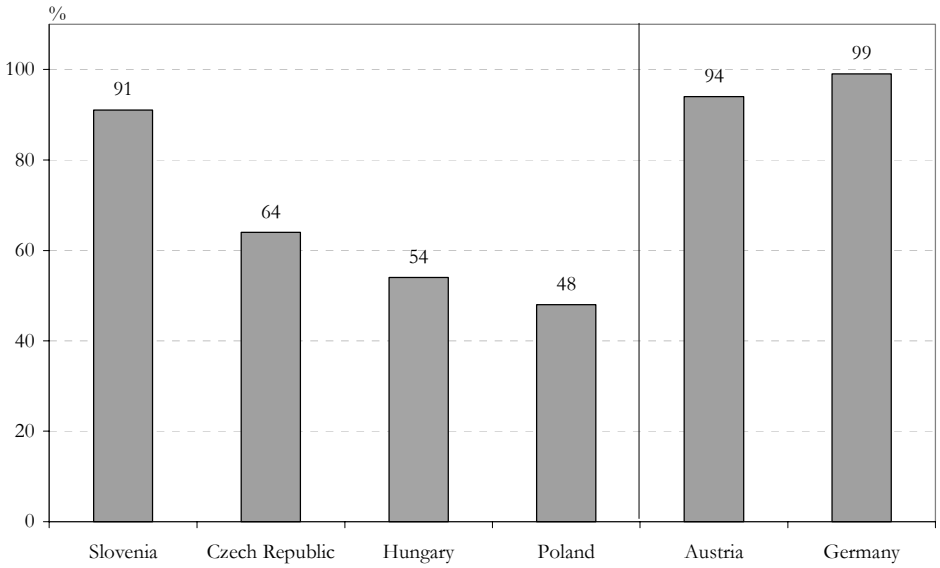
Following the recent survey, the GVH is planning to open a sector investigation in the field of switching where experts from the MNB and the PSZÁF are also expected to provide contributions. Based on a survey to be sent to banks this year, some bank products (current account and some credit facilities) are to be examined from the aspect of transparency and the possibility of switching. On the basis of this work, some regulatory recommendations are to be formed to increase market transparency.

3. Financial literacy

Technological development is considered to have a positive effect on competition in Hungary. Rapid expansion of new distribution channels and easier access to retail banking products (e.g. credit scoring systems) brought about significant advantages to customers and were generally beneficial to competition in banking markets. However, despite the rapid technological development in retail banking during the past decade, the behaviour of bank customers appears to adjust relatively slowly. According to survey results, 82% of customers (with bank relationship) carry out their banking transactions in bank branches whereas "remote banking" channels (telephone, mobile banking, Internet) are used by less than 10% of customers.[7]

Low financial literacy also contributes to the sub-optimal functioning of financial markets. An important manifestation of this is the relatively moderate share of customers with existing bank relationships in the population, compared to more developed EU-countries. According to international customer surveys (GfK), the proportion of customers with bank accounts in the population is still rather low in the new EU Member States benchmarked against financially more developed EU countries (with the exception of Slovenia). For instance, this proportion is only 54% in Hungary compared with 94% in Austria. This "development gap" is even higher in the case of more sophisticated banking products and distribution channels (such as online banking).[8]

Proportion of adults with a bank account in selected CEE-countries and in Austria and Germany



Another example of limited financial literacy can be observed in consumer lending markets. Since retail lending started to pick up at the end of the 90s, customers are still at an early stage of their learning

7 Source: GfK, CEE Newsletter 02/2006, July 2006.

8 For a more detailed elaboration on this see the section on switching costs.

curve. At the first stage of development in the consumer lending market, customers showed low interest rate sensitivity. Demand for consumption credit remained strong despite extremely high nominal interest rates (and total credit costs, APRC).[9] The real value of newly granted consumption credit and the real total credit cost (APRC) correlated positively between 1998 and 2003 (MNB, 2004).[10] Possible underlying motives for the lack of price sensitivity included the establishment of an improvement in the supply-side conditions of consumer lending, hence the easing of liquidity constraints. This suggests that, given the relatively low amount of instalments, in the period under investigation, most clients seemed to have paid little attention to high interest and additional costs.

Measures to counter the problems created by low financial literacy can be divided into short-term and long-term ones. Short-term measures aim at increasing market transparency: banks are obliged to publish the APRC in order to make conditions more comparable for customers (since 2004). Moreover, the Hungarian Financial Supervisory Authority started to regularly collect and publish information related to the conditions of retail banking products. Looking at longer-term initiatives, the PSZÁF and the MNB have launched a joint project in 2006 aiming to reduce the 'information gap' of retail customers. The main goal of this project is to integrate the teaching of financial basics into school education.

In sum, the potential negative effects of technological development on retail banking competition seem to play a less significant role in a newly developing banking market, such as in Hungary. Concerns regarding the potential anti-competitive effects of changes in the technology of production in retail banking are less pronounced compared with other sources of market power.

4 Access

4.1 Access to credit information on retail customers

In retail lending the lack of a commonly accessible database on proper debtors may put some market players at a competitive disadvantage. Not only does the lack of this database result in higher risk premia, but it also creates information asymmetry between incumbents with a larger database and smaller players/new entrants. For both reasons, financial regulators have repeatedly called for the introduction of so-called 'positive list information systems', which has not yet materialised because of data protection concerns.

However, as mentioned earlier, empirical investigations in relation to the Hungarian banking market suggest (Móré-Nagy, 2004) that high margins in consumer lending are not only the result of higher risk premia but also the result of banks' oligopolistic pricing behaviour. Thus, it may be argued that the lack of a positive list debtor information system on households contributes to an environment where banks "overcharge" customers for default risk.

4.2 Access to key transaction systems

In general, as the overseer of major payment and settlement systems, it is an important goal for the central bank to avoid that the potential limitation of access to systems or differential treatment of customers not be a tool for restricting competition.

Accordingly, payment and settlement systems should have objective and transparent membership criteria which ensure free and non-discriminatory access to these systems. This principle is fulfilled in a

[9] See MNB (2004). Magyar Nemzeti Bank (2004), Report on Inflation, February 2004

[10] See MNB (2004).

special way in the case of the two most important systems (VIBER and GIRO).[11] According to the Act on Credit Institutions, mandatory membership is required for credit institutions providing payment services in at least one of these systems. This means, that membership criteria do not include special financial conditions. For instance, in the case of VIBER, which is operated by the central bank there is no entrance fee and transaction fees are uniform. One membership criterion that may cause some competitive or cost disadvantage for smaller institutions is the membership in the SWIFT system.

Although few signs of competitive disadvantages can be detected in the case of payment and transaction systems, the same cannot be said on the pricing practices of payment transactions by banks. Experience shows that the positive effect of an efficiency and competition enhancing pricing policy by the regulator does not always reach the final consumer.[12]

Signs of market power can also be observed in case of cross-border, small-value euro transfers. Most Hungarian banks joined in some form the pan-European settlement system (STEP2), which has been operating since April 2003 and which processes transfers below the value limit of 50,000 euros. This system allows a faster and cheaper processing of transactions compared to using traditional correspondent banking relations. However, the majority of customers are not informed about this opportunity, as banks do not indicate the transactions rates in their list of conditions, and thus the principle of fee transparency is harmed.

5. Merger and acquisition regulations

The rules governing any kind of merger and acquisition activity in Hungary are laid down in the Competition Act (Act 57 of 1996 on the prohibition on Unfair and Restrictive Market Practices) and in the Credit Institutions Act (Act 112 of 1996 on Credit institutions and Financial Enterprises).

The Competition Act does not contain provisions that would put foreign competitors to a competitive disadvantage. Chapter VI of the Competition Act contains merger rules, establishing the authorisation of the GVH for transactions exceeding certain turnover thresholds: these rules do not discriminate in favour of domestic acquirers.

The Credit Institutions Act establishes the authorisation powers of the Hungarian Financial Supervisory Authority. The PSZÁF's powers for the merger control of financial institutions shall not or substitute the authorisation of the Hungarian Competition Authority in any way or form.

According to the Credit Institutions Act, the rules governing the foundation of credit institutions shall be applied to mergers as well. According to these rules, if there is a foreign-registered financial institution, insurance company or investment company among the founders (acquirers) who wishes to acquire a qualifying participation, a statement of the competent supervisory authority of the country of origin shall also be attached to the application for authorisation stating that the enterprise conducts its activities in compliance with prudential regulations.

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11 VIBER is a real-time gross settlement system, mainly designed to process large-value transactions. BKR (Interbank Clearing System) is a „hibrid" system, mainly used for processing lower value customer transactions.

12 In particular, a continued reduction in VIBER fees charged to banks by the MNB in recent years was usually not passed through to customers. Thus, banks often leave their fees unchanged following changes by the central bank, keeping the price level of this service artificially high. See: Report on Financial Stability, Magyar Nemzeti Bank, April 2006.

6. Relationship between banking regulator and competition authority

Banking activity is generally overseen by two authorities in Hungary: the Hungarian Financial Supervisory Authority (PSZÁF), and the National Bank of Hungary (MNB). The PSZÁF performs mostly authorisation and supervisory functions. In the field of banking, most of its duties are determined by the Act on Credit Institutions. The authorisation of the PSZÁF is required for providing most of the financial services and to the most important organisational and structural activities (e.g. foundation, takeover, commencement of operation) of credit institutions. In clearing operations and money processing activities the authorisation rights lie with the MNB The MNB has consultative rights in authorising financial transaction services, in issuing electronic money and cash-substitute payment instruments and performing related services as well as money transmission services. The MNB is also responsible for macro prudential market supervision, as it maintains and promotes the stability of the financial system and contributes to the development and smooth conduct of policies related to the prudential supervision of the financial system.

Cooperation between the banking regulators and the competition authority plays a very important role in competition law enforcement. This cooperation materialises in several forms like data providing, information exchange and even common projects.

In cases concerning the financial sector one of the most important data sources for the GVH are the financial regulators since one of their tasks is to collect market information . Besides the data, experts from the financial regulators also share their views on certain aspects of cases on request.

The GVH also has a consumer protection unit, and there are numerous complaints that are received parallelly both by the GVH and the PSZÁF. There is an increased cooperation in these cases, and the division of labour and the information exchange has improved quite considerably in recent times.

There is also a formal cooperation agreement in force between the GVH and the PSZÁF establishing high-level meetings and information exchange between the authorities. In order to further strengthen this cooperation, this agreement is to be revised this year.

Furthermore, the GVH is about to launch a sector investigation in the field of financial services about switching. During the preliminary work, a working group was set up to identify the most important issues the sector investigation is targeting. Numerous experts from the MNB and the PSZÁF participated in this working group, formulating a questionnaire for consumers and helping in finding the possible obstacles in switching financial services providers.

This joint working group was an excellent opportunity for experts from the different authorities to exchange their views and it has also contributed to deepen cooperation in other fields to a considerable extent.

The GVH regards this cooperation as very useful and absolutely essential for its everyday work. The coordination of activities by the different authorities overseeing the financial sector could largely contribute to its better functioning.

7. Competition law and banking

In Hungary, competition law applies to banking as well. There have been some mergers in the sector, but due to their limited size they did not raise serious anti-competitive concerns so far.

The GVH is also active in examining the possible anti-competitive conduct of financial service providers. Most recently, in 2004-2005 the GVH has conducted a sector investigation on the market of home mortgage loans.

On the market of home mortgage loans, the level of interest rates offered by banks, steadily growing profits and interest rate margins significantly exceeding EU-average pointed toward the fact that effective competition in the field of „price competition" may be limited.

The home loans market was rapidly growing during the investigation period The market expansion has been realized at a rather high concentration level (70% of the market is controlled by 5 market players, and 52% is in the hands of a single market player) albeit the HHI for banking groups has decreased in the investigation period. As a result of government subsidies, the market kept growing with the appearance of more and more players; and as a consequence of this, competition at the home loan segment has become more intensive. Compared to other aspects of competition, in price competition this phenomenon could hardly be noticed during the investigation period, for which regulation and government subsidies are the main explanation. However, the market is yet to reach the level of effective competition, because the price-cap established on government subsidised loans acted as a benchmark price for credit institutions.

The GVH has made several recommendations as a result of the sector inquiry aimed to supervisory authorities and the Hungarian Bankers' Association. The suggestions pointed toward the need for increase in market transparency: information for the consumers have to be made accessible in a clear, understandable way ensuring that customers will have the ability for a meaningful comparison of the various offers by the banks. A possible way to achieve this would be via self-regulation through the Hungarian Bankers' Association. The GVH also regarded it necessary to take a step forward to the appropriate fulfilment of customer protecting civil organisations' opportunities at the fields of right and interest assertion. A further finding was the necessity to examine general terms and conditions applied by credit institutions from the aspect of whether unilateral benefits in favour of the credit institution applied in sample contracts are harmonised to special customer protection regulations appearing in civil law (unfair contract conditions).

IRELAND

Note: In September 2005, the Irish Competition Authority completed a study of "*Competition in the (non-investment) banking sector in Ireland*" which focused on personal current accounts, working capital lending to SMEs, and the payments clearing system. The answers to the questions below stem mainly from this work. The Competition Authority's report (hereafter the "Report") is available on its website at www.tca.ie

Questions and Answers by Topic Area

1. Switching costs

What factors account for the seeming reluctance of retail banking customers to switch providers? What can be done to reduce switching costs for consumers or SMEs between providers of banking services? Switching costs include direct costs of switching (such as payments for closing an account) as well as non-billable costs (such as the time cost to a bank customer of switching the designated account for automatic payments). Given that the existence of switching costs raises the market power of each bank (only new entrants are penalised) it is highly unlikely that banks would engage autonomously in switching cost reduction activities. Pro-competitive rules and regulations and in particular mandatory information requirements may contribute to make switching easier, so as to ensure that all the benefits originating from greater competition actually reach consumers. The absence of general credit evaluation platforms and databases that list debts of customers and SMEs may make banks much less willing to take on new customers and SMEs, thus creating a situation in which the bank that currently has a customer has far superior information about the riskiness of the customer than other banks. Have financial regulators been concerned about switching costs and, if so, for what reasons? Are there possible antitrust violations that keep switching costs high? Is there anything antitrust authorities could do?

1.1 Answer

The Irish Competition Authority has not found any violations of the competition legislation that involve switching costs in banking. Our work in this area has been to advocate for change, in the form of regulation and industry initiatives and through the medium of the Report and subsequent liaising with stakeholders and the media, and this has been effective in reducing switching costs and probably also consumer inertia. Following on from these changes, many banks have introduced "free banking" for their customers with credit balances.

Apart from any monetary and time costs relating to switching bank, consumers are particularly wary of switching their "designated account for automatic payments", or "personal current account" as it carries the risk that an important payment will not be made thus jeopardising their financial situation. To overcome this concern, and the prospect of account switching being complicated and cumbersome, a "switching code" among banks detailing mandatory information requirements and timescales can be an effective tool.

In response to the Irish Competition Authority's decision to study personal current accounts, the Irish Bankers' Federation voluntarily devised a switching code for personal current accounts, which commenced in January 2005. The code sets out a procedure for switching funds and automatic payments to a newly

opened bank account, within 7 working days. In its first year, the switching code had a "switching rate" of 1.5% of the total number of current accounts. The Irish Bankers' Federation has since devised a switching code for business current accounts. The establishment of switching codes for current accounts were recommendations in the Irish Competition Authority's Report. Ireland's Financial Regulator has also looked at the issue of switching but the Competition Authority recommended that the codes not be enforced by the Financial Regulator, unless and until such time as a voluntary code was found to be ineffective and the Regulator has accepted this and is monitoring the codes.

With regard to current accounts and the information they hold about the consumer, some consumers are wary of losing this "credit history" if they switch bank. Ireland has only two credit rating organisations: the Irish Credit Bureau is owned by the banks and other institutions that are members, Experion is a private company with a small presence. Only persons who have taken out a loan have a credit rating. Thus persons who have no credit rating, or a poor credit rating, may rely on their personal current account history as a means of proving their credit worthiness. In its Report, the Irish Competition Authority recommended that all banks be obliged by the Financial Regulator to provide free access to consumers to their own account records for at least the previous 12 months, either electronically or in hard copy. The Financial Regulator implemented this recommendation in August 2006. As well as removing a barrier to switching, this recommendation reduces the consumer's dependency on their current account as a "gateway" product to other financial services. The Competition Authority further recommended that all banks be obliged by the Financial Regulator to provide free access to SMEs to their own account records (loans or deposits) for at least the previous 36 months, either electronically or in hard copy. This has not yet been implemented.

Another switching cost in Ireland was the imposition of a tax on cards associated with bank accounts - €15 per debit card per annum. The manner in which the tax was collected led to consumers paying two charges in the year that they switched their bank account. In response to concerns raised by the Competition Authority, Ireland's Minister for Finance announced a change in the way the tax is collected so as to avoid this double taxation.

The Irish Competition Authority has made other recommendations for improvements to the switching process by having a standard mandate form for automatic payments, greater price transparency for consumers shopping around, and more straightforward guidance on identification needed for the anti-money laundering requirements.

2. Market competition/conflicts of interest

In recent years technical progress has affected quite substantially the way banks operate. There have been significant changes in the technology of production (IT technology is now a key feature of every bank in the world) while rules of behaviour have not always changed accordingly (for example, in many jurisdictions banks have the right to apply immediately any change in the conditions offered to customers without waiting for their consent). It is quite clear, on the contrary, that because of the strong increase of the speed with which information is delivered, such rules reduce the negotiation power of bank customers much more than required (increasing the market power of banks). Furthermore, the widening range of services offered by banks especially in financial consulting has strongly reduced transaction costs for savers (therefore increasing competition), but at the same time has increased the market power of each bank that is able to offer to their customers, often without commission, their branded investment funds (which contain the bonds and the shares of the companies to with which the bank lends money). Is there any discussion in your jurisdiction about these issues? What solutions have been found?

2.1 Answer:

This issue has not arisen in Ireland and the Irish Competition Authority has not taken a position on it.

3. Access

Do some institutions have more privileged access to common platforms than others, and, if so, what can be done to ensure that such privileges have a minimal effect on cost for the more and less privileged institutions? Payment and transaction systems are often organised around a scheme-setting body, which in many cases is also responsible for setting and enforcing access rules with regard to clearing and processing. The access conditions to these bodies (how to receive a licence, adherence to technical standards, paying a fee) are sometimes restrictive of competition. How does access to key transaction systems work in your country? Can new entrant banks easily obtain access without a cost disadvantage compared to other banks?

3.1 Answer:

In Ireland, payment schemes are operated on a bilateral basis. This results in each participating institution having to agree terms with every other participating institution. The Irish Payment Services Organisation (IPSO) is the umbrella body responsible for giving overall strategic direction to the Irish payments industry. IPSO is composed of four separate clearing committees:

- The Irish Real-Time Interbank Settlement Company (IRIS) clears large-value, low-volume electronic transactions
- Laser Card Services Ltd. clears debit card transactions
- The Irish Paper Clearing Committee (IPCC) clears all paper transactions
- The Irish Retail Electronic Clearing Committee (IRECC) clears low-value, large-volume electronic transactions

The current requirements for gaining access to IPCC and IRECC as a full or "ordinary" member are that:

- The applicant must be a credit institution.
- The applicant must have a settlement account with the Central Bank.
- The applicant must demonstrate that it has, and will continue to have, the ability to honour its settlement commitments.
- The applicant must demonstrate that it has, and will continue to have, an appropriate level of experience and resources to participate as an ordinary member.
- The applicant must demonstrate that it can and will be able to comply with all payment system rules for clearing. This includes providing a Technical and Operating Plan for clearing operations.

- The applicant must pay an administrative fee to cover costs associated with processing its application for membership.1

- The applicant must pay impact costs to the clearing company. Impact costs are the up-front costs borne by existing clearing company members related to accommodating the entry of new ordinary members into the payment system, such as costs for adjusting computer systems and other equipment, staff training, and project management. Impact costs do not include any additional, on-going operating costs necessitated by the entry of a new ordinary clearing company member.

The Central Bank and Financial Services Authority of Ireland (CBFSAI) has oversight of the clearing systems, although it does not engage in detailed or intensive regulation. The Central Bank is the final arbitrator on the impact costs that existing clearing companies may charge.

Bank of Scotland (Ireland) applied for ordinary membership of IPSO, IPCC and IRECC in March 2004. It had started discussions relating to entry, however, in 2003. There had been no previous applications for membership to these clearing committees since they were first established. As indicated above, the IPCC and IRECC membership rules require new members to pay impact costs. Thus, the existing ordinary members of these clearing committees recently had to estimate the impact costs for their bank resulting from Bank of Scotland (Ireland)'s entry as an ordinary member. In the absence of historic entry, there was no actual experience to guide the development of these impact cost estimates.

Each existing ordinary member estimated its impact costs and provided these estimates to the Central Bank. The Central Bank, acting as the payment system regulator, then considered these estimates to determine what amount was reasonable. In particular, it applied criteria to the data provided by the banks to determine what impact costs it would allow. Only certain types of costs were allowed. This was to prevent, for example, existing members from charging costs for system upgrades that were not needed to support a new member. In addition, the Central Bank applied the following formulas to the existing ordinary members' individual impact cost estimates when completing its calculations:

- The percentage difference in chargeable impact costs between two ordinary members may not be any larger than the percentage difference in their respective clearing volumes;

- The chargeable impact costs for any ordinary member may not exceed that member's actual impact costs; and

- The chargeable impact costs for any ordinary member may not exceed those of an ordinary member with a higher clearing volume.

After performing these calculations, the Central Bank informed each existing ordinary member of the amount of impact costs it had determined to be reasonable out of the total impact cost estimate submitted by that member. The total amount was relayed to either IPCC or IRECC, as appropriate, who then forwarded the total figure to Bank of Scotland (Ireland).

When considering the impact costs relating to Bank of Scotland (Ireland), the Central Bank did not allow all of the impact costs estimated by the existing members. The total impact costs approved, subject to audit once the costs have actually been borne, are €259,000 for membership of IPCC and €86,000 for membership of IRECC.

1 Bank of Scotland (Ireland) was charged administrative fees of €5,000 to join IPSO and €7,500 to join each of IPCC and IRECC.

The Central Bank required that impact costs be paid directly to the relevant clearing company and not to the existing member bearing the impact costs. The clearing company may then use the funds to defray its operating costs. If used in this manner, these funds would offset future member funding requirements.

Unnecessary obstacles to joining the Irish Payments Clearing System existed in previous versions of the membership requirements and admission procedures. In response to the Competition Authority's decision to study the payments clearing system and the imminent receipt of an application for ordinary membership for the first time in 20 years, both IPCC and IRECC made changes to their membership requirements and to their admission procedures. The following requirements were dropped:

- The requirement on new members to pay "entry costs." Entry costs are payments to cover a share of the fixed, non-recurring costs already borne by the existing members in setting up the clearing companies. These are payments that reimburse existing members for historic expenses.

- The requirement on new members to join only after a one-year preparation period and only in December.

- The requirement on new members to meet a minimum 1% threshold of annual clearing volumes.

- The requirement on applicants for membership to supply five-year forward clearing plans or projections.

The ending of these requirements were very welcome, particularly the requirement that new members should have to pay "entry costs" in addition to impact costs. The Irish Competition Authority recommended in its Report further changes to the payments clearing system to improve transparency and provide more certainty for prospective members. A modern corporate governance structure has been put in place for the Payments Clearing System and more information on its operation and clarity on who can join (e.g. credit unions or the postal service) is now provided publicly. The Irish Competition Authority also recommended that a cost-benefit analysis be undertaken regarding moving towards a centralised hub for electronic payments (rather than the current web of bilateral agreements) and alternative paper clearing technologies (known as "cheque truncation").

4. Merger and acquisition regulations

What regulatory requirements for transfer of control are appropriate and may such requirements have distortionary effects biased in favour of domestic acquirers and against international acquirers? Regulatory requirements may slow down the ability of an international company to acquire a domestic bank compared to domestic acquirers. Regulatory requirements may also slow the ability of an international acquirer to take effective control of a bank (even after legal control is acquired) and even to change its name, if the acquirer wishes to develop an international brand.

4.1 Answer:

Transfer of control of a bank in Ireland is subject to two potential regulatory processes: a competition test and a prudential test. The tests are applied independently of one another, and by different agencies, so that for any banking merger to pass, it must pass both tests. Each agency has a parallel veto over banking mergers and acquisitions.

The first test is the Irish Competition Authority's (or EU's)2 merger controls to prevent a substantial lessening of competition. Under these controls, an international (non-EU) bank acquiring an Irish bank will not have to notify the acquisition if it does not already have sales in Ireland (the EU). The acquisition of and Irish bank by another Irish bank would likely have to be notified to the Irish Competition Authority (or the European Commission) – as it would presumably meet the turnover thresholds which trigger a notification - for an examination which may last up to five months.

The second (simultaneous) set of regulatory requirements is the prudential test "in the interests of the orderly and proper regulation of banking".3 The consent of the Minister for Finance to certain transactions is required where a bank or person "controls, or would control as a consequence of the proposed transaction… not less than 20 per cent of the total assets in the State of all [banks]".4 The Minister for Finance has 3 months to make a decision under this test. This test does not appear to have any distortionary effects in favour of domestic acquirers.

5. Entry restrictions

What forms of entry restrictions exist to the provision of depository and lending services? Entry restrictions may mean that institutions apart from traditional "bank" institutions (e.g., credit unions or the postal service) may have very limited forms of operation. Non-traditional locations may also be difficult to establish, such as in hypermarkets or shopping malls, where general rules (such as those over locations of cash machines or delivery of cash) may limit the ability to operate. Minimum capital requirements may be larger than necessary. Paperwork and red tape may make the opening of new banks particularly difficult. How long does it take to obtain all the permissions to open a new bank in your country?

5.1 Answer:

The Irish Competition Authority has identified two areas where there are restrictions on entry to the Irish banking system. The first was the unnecessary obstacles to the payments clearing system identified above. The second is the existence of price regulation which creates a lot of red tape and uncertainty for new entrants.

Bank charges are regulated in Ireland, both in terms of notifying customers and the level of charges allowed.5 This process can take up to six months officially, and even longer if one includes informal contact with the regulator. Price regulation in current account markets is not international practice – the Irish Competition Authority is aware of only one other country, Kenya, which practises this type of regulation. In addition, the regulations only cover one element of the price of banking services (bank charges) and do not cover interest rates.

The effect of price regulation has been to suppress competition by forcing a common set of prices on all banks and, more importantly, by reducing incentives for new entry. In other words, where normal market forces result in prices that can act as a signal to new banks to enter, price regulation obscures this information and raises the cost of entering.

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2 The appropriate authority to whom the merger/acquisition must be notified depends on the turnover of the entities involved.

3 Section 77 of Central Bank Act, 1989.

4 Section 77 of Central Bank Act, 1989.

5 Under the terms of section 149 of the Consumer Credit Act, 1995. The Director of Consumer Affairs was originally responsible for carrying out fee and charge regulation, while more recently the Financial Regulator has taken on this role.

Price regulation also discourages banks from developing new products and updating existing services. This is especially the case if the regulatory system is not sufficiently responsive to new products, and there is evidence that the current Irish system is not. This is a consequence of the nature of the legislation, and not of the way in which it has been implemented by the Director of Consumer Affairs and latterly the Financial Regulator.

In addition price regulation is expensive, both in terms of the direct costs to the Financial Regulator of regulation and enforcement, and the indirect costs of compliance which are borne by banks but likely passed on to customers. On top of these costs, the current Irish regulations are not fully effective because they cover only one element of the price of banking services (bank charges) and do not cover interest rate margins, which are at least as important. A bank could, in effect, by-pass the regulation by increasing the margin it makes on the interest rate side.

On this basis, the Irish Competition Authority, concluded in its report that the regulation of bank charges should focus solely on ensuring that changes to bank charges are notified to consumers in a timely fashion and that the notified charges correspond correctly to the charges actually applied.

The Irish Competition Authority looked at the system of cash machines and the regulation of credit unions and found no unnecessary obstacles to entry.

6. Impact of integrating traditional banking services with other financial services

Can the integration of financial services (in addition to depository and lending services) in one institution create market power for the provision of certain of these services? The widening range of services offered by banks (card services, paying bills for depositors, consumer loans, mortgages, life insurance, financial consulting; management of investment funds; asset management, etc.) has increased competition in the affected relevant markets, but at the same time has made switching more difficult, probably reducing the effect of liberalisation on the market power of banks.

6.1 Answer:

The Competition Authority has not taken a position on how the range of services offered by a financial institution may impact on market power except in regard to the role of the current account as a "gateway" product for consumers seeking to access financial services. As mentioned in answer to question 1 above, the information held by a bank on its existing current account customers is a valuable resource for assessing a client's credit worthiness and potential profitability. In its Report, the Irish Competition Authority recommended that all banks be obliged by the Financial Regulator to provide free access to consumers and SMEs to their own account records for at least the previous 12 months/36 months, respectively, either electronically or in hard copy. This recommendation allows the consumer to bring this valuable information with them to other financial institutions who may be interested in offering them financial services, thus reducing the consumer's dependency on their current account as a "gateway" product to other financial services allowing them to move freely from bank to bank.

In August 2006, Ireland's Financial Regulator brought in a Consumer Protection Code for all regulated financial institutions which imposes restrictions on an institutions ability to bundle financial products and to cross-sell through cold-calling.

7. Relationship between banking regulator and competition authority

What is the appropriate relationship between the regulators or other overseers with an impact on banking and the competition authority? What mechanisms can be introduced for improving relationships between banking regulators and competition authorities? On the one hand, it is argued that a sector be

subject to its own particular set of competition rules on the grounds that the sector is unusually important or in some other sense 'special'. On the other hand, violations of competition rules fall within very general categories and are flexible enough to accommodate any sector specificities. It might be argued in that context that special competition rules are not only unnecessary, but they may also undermine enforcement.

7.1 Answer:

The Financial Regulator in Ireland does not apply any "special" set of competition rules to the banking sector. Its focus is purely on prudential regulation and consumer protection. The legislation setting up the Financial Regulator empowered and obliged the Financial Regulator to inform the Competition Authority of any potential breaches of the Competition Act 2002 that it came across in the exercise of its functions. The Financial Regulator also "monitors" competition in financial services markets.

The Irish Competition Authority has explored with the Financial Regulator potential methods for improving links between the two bodies. The Competition Act 2002 provides that the Irish Competition Authority can enter into "co-operation agreements" with other government agencies (subject to Ministerial approval) which allow the two agencies to exchange otherwise confidential information, to forebear in the investigation of a matter that fall under both agencies remit, and to consult one another. In the case of the Financial Regulator, such an agreement was not thought useful, for legal reasons. In the event, informal links between the Irish Competition Authority and the Financial Regulator have forged a good working relationship. Consulting and briefing one another on Reports, codes, etc; informal workshops on common issues of interest; and regular contact in response to complaints received by each agency have resulted in a harmonious working relationship, informed output, and consistency in decisions.

8. Competition law and banking

Does competition law apply to banking? If so, can you describe any recent actions (since1998) related to competition law enforcement in the area of banking. If not, please describe whether any institution has a role that permits the censure of anti-competitive practices? In the case of banking mergers, how are product markets defined? What are the respective roles of competition law enforcers and various financial overseers or regulators in the case of mergers?

8.1 Answer:

Competition law in Ireland applies to banking and is enforced by the Irish Competition Authority. The Irish Competition Authority has not taken any legal action against firms in this sector but under a previous regime whereby the Authority made decisions on agreements voluntarily notified to the Authority, one agreement between banks was refused approval. The agreement related to over-the-counter bill payments (e.g. utility bills). The five retail banks in Ireland wished to collectively withdraw from providing this service to their customers and "migrate" this function to the postal service. The Competition Authority found that the notified arrangement would have the effect of preventing, restricting or distorting competition in the market for bill payments within the State and therefore contravene Section 4(1) of the Competition Act, 1991.6

The collective element of the withdrawal from the over-the-counter bill payments market was fundamental to the Competition Authority's objections to the agreement. The Authority's view was that a bank would not withdraw unilaterally for fear of losing customers to its competitors. Indeed the parties

6 Competition Authority Decision number 595, of 3 April 2002, relating to a proceeding under Section 4 of the Competition Act, 1991.

directly referred to this possibility themselves, that a withdrawal might prove unpopular with a bank's customers. However, a collective withdrawal, which, by ensuring that a customer who leaves their bank will not be able to obtain the same service with a competitor, removes much of the threat of losing customers. As such, the collective nature of the agreement would save the participants from the normal competitive consequences of their actions.

The Irish Competition Authority has not yet examined any banking mergers. The roles of the Competition Authority and the Minister for Finance in reviewing mergers is outlined in answer to topic 4 above.

ITALY

1. Introduction

In the last decades the shift towards a market oriented approach to banking regulation led to the progressive elimination of price and quantity constraints, to the privatisation of all State owned banks (only in 1992 there was only one major private bank in Italy) and to a thorough restructuring through mergers and acquisitions. More recently a 2005 reform transferred to the Competition Authority the responsibility of the application of competition law to banks, formerly assigned to the Central Bank (Bank of Italy). As banks profitability improved as a consequence of the new regulatory framework and the opportunities offered by technical progress, consumers do not seem to have benefited as much, especially when considering the high prices of services and existing constraints on customers' mobility.

2. The Italian retail banking sector: market structure and performance

The Italian banking system has been subject to deep structural transformation in the last two decades. Consolidation and privatisation have permitted economies of scale in the production and distribution of services and increased risk diversification.

At the beginning of the 1990s banks controlled by the Treasury, by municipalities or by other public bodies held almost 70 percent of total assets. The system was split into a multitude of banks, all small by international standards, most active in a restricted geographical area. Only one bank, Banca Nazionale del Lavoro, was present country wide.

Privatisation reduced the assets of banks controlled by foundations to 9 percent of the total. In the last ten years mergers and acquisitions have involved 439 Italian banks[1]. As a result, the total number of banks decreased from 1,064 to 784.

The consolidation process led to an increase in concentration, although the Italian market still remains among the least concentrated in the euro area, with the first three banking groups holding less than 50 per cent of total market assets[2].

New entrants, especially financial institutions, benefited from the liberalization process. Thanks to market liberalization Banco Posta, a subsidiary of Poste Italiane, the legal post monopolist, entered the market of retail banking services, offering current accounts to its customers and debit card services. Bancoposta, with more than 5 million cards, became the issuer with the largest number of debit cards in Italy.

In line with other European countries, the presence of foreign banks in Italy is concentrated primarily in investment banking and remains limited in retail banking. There has been no entry of foreign banks in Italy except through mergers. At the beginning of 2006 Banca Antoniana Popolare Veneta S.p.A., a

1 Bank of Italy, Annual Report 2006.

2 European Commission Interim Report II, Current Accounts and related Services, 17 July 2006. Similar estimates on the Italian C3 concentration ratio appear in the IMF 2006 Country Report.

medium Italian regional bank, was acquired by the Dutch Banking Group ABN AMRO. A few months later the French banking group BPN Paribas was authorised to acquire control of Banca Nazionale del Lavoro S.p.A. (the fourth largest Italian bank). Including these 2006 transactions, foreign owned banks' share of assets of banks established in Italy rose from 8 to 14 per cent.

The consolidation process seems to have had beneficial effects on the sector efficiency and profitability. The Italian banking system's cost/income ratio and return on equity amounted respectively to 57.9 and 10.6 per cent in 2004, compared with averages of 63.7 and 10.5 per cent for euro area banks[3].

According to the International Monetary Fund competition in Italy has intensified in loan and deposit markets but particularly with respect to retail services competition has not benefited consumers much[4].

Banks greater efficiency and the increase in competition are not yet sufficiently reflected in the prices or quality of some banking services. According to different sources, in fact, banking services in Italy continue to be high priced[5]. The average price of basic banking services (adjusted for local consumption patterns) appears to be among the highest in Europe, with an average annual cost of 113 euros, compared to 98 in Germany, 89 in France, 81 in Spain and 65 in the UK[6]. A survey on the quality of financial services in Europe seems to suggest dissatisfaction with the quality of services in Italy[7].

3. Recent developments in banking regulation

Important changes in banking regulation were introduced at the end of 2005 with the approval of Law 262/2005 (Law on the protection of saving and on financial market). The law was intended to strengthen the safeguards of savers and increase market transparency, with provisions that affect the regulation of market participants, relations between intermediaries and their customers and the arrangements for supervisory authorities.

The reform is based on the principle of the functional separation of responsibilities. In accordance with this approach the Competition Authority is now fully in charge of antitrust enforcement in banking[8]. The new provisions recognize, as suggested in the ICN Report on regulation and competition in banking[9], that antitrust law in this sector should be enforced by the general antitrust authority and not by the specialized sector regulator, brings Italy into line with best international practice and harmonizes the institutional arrangements with those in place in the other leading industrial countries.

In particular, the Antitrust Authority now has full powers to apply the national and Community rules on agreements and abuse of dominant position in the banking sector.

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3 Bank of Italy Annual Report, 2006.

4 According to IMF the persistently high operating profits, coupled with high revenues and/or high costs are frequently associated with non competitive behavior. Relative to banks in other large industrial countries, Italian banks could fit this profile.

5 IMF, Country Report n. 06/59, February 2006.

6 These data are reported in the Capgemini et al. World Retail Banking Report.

7 Eurobarometer, Public Opinion in Europe: Financial Services, 2004.

8 This responsibilities had originally been given to the Bank of Italy.

9 International Competition Network (2005), *An increasing Role for Competition in the Regulation of Banks*, available at http://www.internationalcompetitionetwork.org/annualconferences-bonn.html

As for concentrations involving banks, the new law introduces a mechanism of joint authorisation by the Bank of Italy and the Antitrust Authority, each for the matters falling within the scope of their powers, to be granted in a single act within sixty days of notification or completion of the necessary documentation.

The Law 262/2005, responding to the need of improving market transparency and investor protection, contains provisions on a number of different subjects. It modified the rules on security issuers (governance mechanisms and disclosure) and on intermediaries (contract transparency, code of conduct, conflicts of interest, dispute settlement); it toughens sanctions and it introduces specific rules to protect investors.

The law also enhances transparency of the decision making and regulatory processes of authorities and strengthens coordination among them. Article 24 of the law provides an obligation to give the reasons for all the decisions adopted by supervisory authorities. The obligation to give reasons is important not only because it allows the persons involved to defend themselves in court but above all because all the participants in the market can thus acquire a better understanding of the criteria used by the regulatory authority in reaching its decisions, not least in view of the publicity given to disputes, and adopt consistent courses of conduct in their own decision-making. A further step in the simplification and transparency as regards the authorisation of acquisitions of controlling interests in the banks has been recently made with the abolition of the obligation to notify the plans to the Bank of Italy before they have been submitted to the board of directors[10].

Finally, the law on savings promotes greater market transparency by eliminating the unjustified privileges of some participants with respect to others (specifically Article 8 on conflicts of interest in the disbursement of credit) and thus fosters a uniform regulation of highly substitutable financial products characterised until now by fragmented rules (Articles 9 and 11).

4. Obstacles to competition

Although the liberalisation process increased competition in the market for retail banking services, there are still obstacles, both on the demand and on the supply side, that can undermine the competitive process. Obstacles on the demand side seem to be the high switching costs that characterize banking services and that, reducing customers' mobility, increase banks' market power, while on the supply side difficulties in access to payment systems or to information on potential borrowers can raise barriers to market entry[11].

4.1 Customer choice and mobility

As a result of liberalisation Italian banks nowadays compete in a number of financial markets and they are offering customers many more services than they did before. Besides current accounts, associated payment services and loans, services offered range from mortgages, to credit cards, to insurance services, to asset management and to capital market products[12]. A side effect of this widened service offer is that changing bank has become more costly and complex.

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10 Italian Official Gazette n.215, September 15, 2006.

11 ECA, Competition Issues in Retail Banking and Payments Systems Markets in the EU, May 2006.

12 In Italy, for example, at the moment banks are the most important distribution channel of life insurance products. In 2005 they accounted for 74 percent of the value of new business and 39 billion euros of premium income, compared with 72 percent and 47 billion euros in 2004.

The implicit costs of switching have been summarised in the ICN Report on the banking sector[13] and they include receiving new cards (with a different number and expiry date) that need to be communicated to any service provider[14]; informing the new bank about all the utilities whose bills were being paid by debiting the depositor; transferring the deposit of purchased stocks or bonds to the new bank; maintaining the checking account of the old bank just to service the mortgage; communicate to all correspondents the new banking coordinates. There are also direct costs required by banks when a customer closes an account and those, in Italy, have been quite high. The average cost for closing a current account could amount to 34 euros, without considering further expenses for transferring (which is possible in a limited number of cases) managed securities.

Further obstacles to customers' mobility are created by the substantial lack of transparency that seems to characterise the market for retail banking services in Italy. For customers change is an option if they can compare the different conditions offered and if the advantages of changing bank outweigh the costs. The sector inquiry into banking and financial services that the Italian Competition Authority is carrying out has highlighted the difficulties that customers face in comparing prices and contractual conditions. The provision contained in the Banking Law, and removed only very recently, allowing banks to change conditions unilaterally and to inform the customers by posting a notice on the Official Gazette has further worsened the situation. Even some changes in the pricing schemes when banks tend to adopt a "flat rate" pricing scheme (charging a fixed annual fee for the account) there is a great lack of transparency on the services included in the scheme and on the price of services that are not included. The difficulty in comparing information from banks about bank account features and charges seem to be confirmed from the Eurobarometer Survey on Financial Services in Europe: more than 60% of Italian consumers declared that it was very or fairly difficult to compare information[15].

4.2 Payment systems

Payment schemes (agreements fixing standard on technical, operational and commercial aspects of inter-bank relations) and infrastructures (transmission, clearing and settlement of payments) make it possible the execution of payments among banks. Access to payment systems is therefore indispensable to operate in retail banking.

In Italy there is a central payment system. The payment circuit is divided in two parts, both of which are managed by the Bank of Italy. The real time gross settlement system (BI-REL), that, following the start of the monetary union became the Italian component of the TARGET system, handling mainly large value payments and BI-COMP, the clearing system for domestic retail payments[16].

Access to BI-REL is granted to banks, investment firms, organisations providing clearing and settlement services and public sector bodies. There are two forms of participation. Direct participants hold a settlement account in BI-REL, have full access to the system functions and can enter transactions on behalf of indirect participants. Indirect participants use the settlement services provided by direct participants, do not hold a settlement account and have access to a limited set of system functions.

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13 International Competition Network (2005), *An increasing Role for Competition in the Regulation of Banks*.

14 It is common practice, for example, to pay bills for services such as pay TV or mobile telephone using a credit card.

15 European Commissio, Eurobarometer, Public Opinion in Europe: Financial Services (2004).

16 Retail payments are mainly consumer payments of low value and urgency.

The BI-COMP system is composed of two sub-systems: the retail payment system, handling low value paperless payments (Bancomat operations, truncated cheques, electronic collection orders, direct debits, and retail credit transfers); and the local clearing subsystem handling paper based operations.

Access to BI-COMP is reserved to banks, regulated financial intermediaries, organisations providing clearing and settlement services, the Ministry of Treasury and public sector bodies. The system is open to national and foreign participants. Admission to the system is granted by the Bank of Italy after examining the requests. The time between the presentation of the demand and the admission cannot be less than ten working days. There is a participation annual fee of 2.000 euros and a transaction fee of 0,02 euro.

The technical infrastructure for the exchange of accounting information relating to payments carried out by banks amongst themselves and between themselves and the Bank of Italy is the Rete Nazionale Interbancaria (RNI). RNI is managed by SIA, a company participated by the Italian Banking Association and by major banks and financial institutions, specialised in managing IT services for the banking and financial sector.

4.3 Credit Database

In Italy, as in many European countries, there is a central public register, Centrale dei rischi, managed by the Bank of Italy. The system was originally created, in 1962, mainly with the purpose of minimising risks of defaults that might hinder the stability of the financial system. Banks and financial institutions are legally required to participate in the central system by providing, on a monthly basis, information on customers whose exposure exceeds certain limits[17]. On the basis of this information the Bank of Italy provides a monthly report on the position of relatively big borrowers. The system has been updated in time, extending participation to financial intermediaries.

There are also three private credit reference agencies CRIF, Experian and CTC. These companies collect data from banks and financial intermediaries on individual borrowers and sell them to financial institutions. CTC only collects data on customers that have defaulted on payments.

5. Antitrust interventions in retail banking

5.1 Sector inquiry into banking and financial services[18]

In January 2006 the Competition Authority opened a sector inquiry into the charges for banking services[19]. The enquiry is still in process and only very preliminary results are available.

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17 The limit is now fixed in 75,000 euro.

18 Italian Competition Authority, IC 32; decision n. 15088, 18/01/2006, Bulletin n. 1/2006.

19 In November 2004 the Italian Antitrust Authority had opened a fact finding enquiry into customers' mobility obstacles for asset management services (Italian Competition Authority, decision no. 13771, 16/11/04, IC25, Bulletin no. 47/04). The enquiry, prompted by complaints of consumer's associations and consumers, aimed at analyzing the costs and difficulties encountered by customers when changing bank, with reference to asset management and credit cards services. In December of the same year the Bank of Italy, in collaboration with the Antitrust Authority, opened a parallel enquiry to verify the charges and procedures involved in closing current accounts (Bank of Italy, decision n° B416, 6 December 2004). When, with law n. 262 of December 28th 2005 the Competition Authority became entirely responsible for competition policy in the banking sector the two parallel enquiries were unified. The Authority then decided to extend the analysis not only to closing charges but to the prices of banking services.

A preliminary part of the investigation, carried out by the Bank of Italy, focused on charges applied when closing accounts[20]. In 2005 the Bank of Italy's branches carried out on-site inspections at 300 branches belonging to 88 banks. The terms and conditions applied to more than 2,500 current accounts closed in the year prior to the inspection were examined.

The results of the preliminary analysis on this sample indicated that the average charge for closing a checking account was €34. The survey showed a very wide variation in pricing schemes for keeping and handling accounts. In 46 per cent of the cases examined transactions were made free of charge against payment of an annual fee, which, after tax and deduction of expenses for compliance with transparency rules, amounted to about €76, inclusive of the cost of a debit card. The rest of the accounts were charged a fixed yearly tariff that averaged €66 and included a limited number of free transactions; these amounted on average to 70. The accounts were also subject to an additional yearly management charge depending on the number of transactions made.

Assuming an average of 125 transactions, on the basis of the terms and conditions applying to each account the additional charges averaged about €100 a year. In addition, both types of current account were subject to extra charges for specific services, such as credit transfers, cash advances from other banks' ATMs and direct debts. Assuming average use of these services, the extra cost came to around €38 a year. Contracts for the safekeeping and administration of securities were examined to assess the amounts charged to customers to transfer positions. In only 190 out of some 1,500 securities accounts closed (approximately 13 per cent) were the positions transferred to another bank. The average amount charged for transferring customers' securities was €101, rising to €136 when inter-group transfers are excluded.

The Competition Authority has further developed the analysis now focusing not only on charges but also on other restrictions that in general result in obstacles to customers' mobility. The analysis on a sample of 73 banks has so far, showed the following problems: 1) it is difficult for bank customers to realise that there have been contractual changes and to understand their true extent and impact on the overall cost of their current account; 2) it is difficult to compare costs of current accounts: contractual conditions are extremely heterogeneous, and the type of services and number of operations included in the annual cost differ widely; 3) it is impossible for the customer to count on a contract where conditions are set for a minimum duration: the large number of unilateral variations communicated by the banks creates a state of uncertainty as to the permanence of the chosen contractual conditions and this discourages research and switching to better alternative offers, which may also not be long-lasting. The analysis shows that most banks used publication in the Official Gazette as the normal way of communicating to customers changes in contractual conditions; 4) costs involved in transferring a checking account are closely dependent on a number of other services offered to the account holder by the same bank (direct debiting of utility bills, credit cards, overdrafts and mortgages, securities accounts, etc.), all of which, although governed by separate contracts, generally cease to be offered if the checking account is closed. These preliminary results of the sector enquiry give evidence of the high transaction costs that customers' have to face when changing bank.

Since it is unlikely that banks would engage autonomously in switching costs reducing activities it might be necessary, as suggested in the ICN Report, to introduce pro-competitive rules and regulation. In particular, mandatory information requirements may contribute to make switching easier, so as to ensure that all the benefits originating from greater competition actually reach consumers

[20] These preliminary results are reported in the 2006 Bank of Italy Annual Report.

5.2 Opinion on the right to unilaterally modify contractual conditions in banking services

In May 2006 the Competition Authority, utilising its advocacy power[21], suggested that Article 118 of Legislative Decree no. 385 of 1 September 1993 (Banking Law), and its implementing regulation[22] be changed. On the basis of these provisions, changes in interest rates, charges and other transaction and service conditions could have been notified to the customers by publishing the change on the Official Gazette. From the date of publication, the customer had 15 days to exercise his right of withdrawal. These regulations were motivated by the need to ensure a prompt response to changes in monetary policy or when stability was in danger. In practice almost all banks, with a few exceptions, used the terms permitted by the regulation in all circumstances, also when the change did not originate from policy or from stability considerations. In a number of cases, the unilateral changes were used to introduce new charges and sometimes modifications of favourable conditions (such as discounts) for specific groups of customers or to change the contractual scheme (excluding some services from the annual fee). The result was that the number of account holders who have actually withdrawn from their contracts in the last two years under Article 118 provisions has been entirely marginal.

The indications contained in the Authority opinion were partially followed in the Act n. 248/2006 "Urgent provisions regarding economic and social development, the control and rationalisation of public expenditure, interventions in the fields of public revenues and repression of tax evasion". The Act amended the 1993 Banking Law. Under the new provisions, clients must be notified directly (and not by publication on the Official Gazette) 30 days in advance of any intended change of the contractual conditions. The clients can withdraw from the contract within 60 days from such notification, without bearing any cost.

The changes introduced with Act n. 284/2006 have met with some resistance by the banking industry. In August, soon after the approval of the Act, ABI (the Italian Banking Association) issued a letter to its members giving an interpretation of the new rules that would limit the scope of their application. In September the Italian Competition Authority asked ABI to suspend immediately the diffusion of the letter that, indicating that charges could still be applied for the closure of accounts, could restrict competition by reducing customers' mobility[23].

5.3 Inter-bank agreements on collection and payment services

In March 2006 the Authority opened an investigation concerning two sets of inter-bank agreements: 1) the Co.Ge.Ban[24] agreements on interchange fees for the withdrawal of cash using Bancomat cards; 2) the inter-bank agreements set by ABI, the Italian Banking Association, for interchange fees concerning direct debit(RID Rapporti Interbancari Diretti, or Direct Interbank Transfers), and non pre-authorised direct debit RiBa (Ricevuta Bancaria Elettronica, or Electronic Bank Receipt).

The proceeding is assessing whether the centralised determination of these fees amounts to a price arrangement, at inter-bank level, for services which are commonly used by customers and represent an

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21 Advocacy Report (AS338), May 26, 2006 "Discipline on the right to modify unilaterally contractual conditions in banking contracts".

22 The March 2003 Inter-Ministerial Banking and Investments Committee (CICR) Regulation of Transparency in Contractual Conditions for Banking and Financial Transactions and Services.

23 Italian Competition Authority, decision no. 15908, 14/09/06, I675, Bulletin no. 35-36/06

24 Co.Ge.Ban is the branch of the Italian Banking Association created in 1995 in order to develop and manage the debit card network and licensor of the PagoBancomat trademark. ABI is the owner of the trademark Bancomat used on cards for ATM services. The trademark becomes Pagobancomat when used for payment cards.

important cost and revenue component of the banking system. Their fixing in a coordinated manner might limit autonomous decision-making by the banks in their pricing policies toward customers, leading to a potential reduction in competition in the sector, which in turn may lead to higher prices for consumers.

The case is still pending. A decision is expected by March 2007.

JAPAN

1. Introduction

In recent years, the retail banking business has been gradually deregulated, and the financial regulator, the Financial Services Agency (hereinafter referred to as the "FSA") and the competition authority, the Fair Trade Commission (hereinafter referred to as the "JFTC") are taking necessary measures in Japan. The Competition Law, the Antimonopoly Act (hereinafter referred to as the "AMA"), is applied to the retail banking industry as well as to other industries.

2. Deregulation in the retail banking industry

In April 1993, with the aim of promoting effective and proper competition, expanding and improving the services of financial institutions, and ensuring internationality, the subsidiaries of financial institutions were allowed to mutually enter into the securities and fiduciary business. Also, local financial institutions were allowed to enter the fiduciary business.

In April 2001, retail banks and other similar financial institutions were allowed to sell insurance products over the counter, only if the policyholders' protection was not compromised. As a result, deregulation concerning the sales of insurance products over the counter has been gradually promoted. It is foreseen that retail banks and other financial institutions will be allowed to sell all kinds of insurance products over the counter starting in December 2007.

In December 2004, retail banks and other similar financial institutions were given permission to conduct the securities brokerage business in order to expand the sales channels of securities.

In April 2006, in order to provide customers with access to financial services, to improve such access, and to enable financial institutions to efficiently utilise various sales channels, non-banking companies were allowed to enter into the banking agency business.

3. Actions of financial regulator and competition authority after deregulation

3.1 FSA

In general, when laws or regulations are revised by, for example, deregulation, the FSA, as the financial regulator, revises the guidelines for supervision if necessary.

For instance, the comprehensive guidelines for supervision of major banks and other such institutions stipulate the provisions under the following titles relating to deregulation as mentioned above in "2. Deregulation in the retail banking industry":

3.1.1 Securities business through subsidiaries: V-3-3-4, "Relationship between banks and their securities subsidiaries, etc."

This provision stipulates the matters to be noted concerning interactions between banks and securities companies in which banks have invested - for example, whether banks have conducted those transactions

that are prohibited under the provision of Article 45 of the Securities and Exchange Law with their affiliated securities companies (such as whether a securities company conducts the selling or buying of securities with its parent company under conditions that are different from ordinary conditions for transactions and could compromise the fairness of transactions) - and the matters to be noted concerning internal management operations.

3.1.2 Over-the-counter sale of insurance products: III-3-3-2-2-(2)-iv), "Insurance soliciting"

This provision stipulates that the FSA will verify whether an appropriate insurance solicitation system is maintained by the banks' preparation manuals, implementing training and conducting internal audits aimed at the compliance with laws, regulations, etc. on insurance soliciting, the accurate explanations of insurance products and contracts, the treatment of customer information, and so on.

3.1.3 Securities brokerage business: III-3-3-2-2-(2)-iii), "Over-the-counter sale of public bonds and investment trusts, and securities brokerage business"

This provision stipulates that the FSA will verify whether business operations are carried out in accordance with those provisions aimed at the protection of investors that are stipulated in the Securities and Exchange Law.

3.1.4 Banking agency business by non-banking companies: VIII-4, "Banking agencies"

This provision stipulates: the acts that banking agencies are prohibited from conducting; inappropriate trades (for example, acts carried out by unfairly resorting to the dominant bargaining position of a banking agency); compliance with laws, regulations, etc.; provision of information, a consulting function, etc. for the protection of customers; customer protection rules; conditions in the case that a banking agency conducts the banking agency business for two or more banks; and a contracting sub-banking agency's measures to enable a contracted sub-banking agency to run its business in a sound and proper manner.

3.2 JFTC

3.2.1 "Unfair Trade Practices after the Deregulation of Business Categories and the Expansion of Business Scope for Financial Institutions"

In December 2004, the JFTC published the "Unfair Trade Practices after the Deregulation of Business Categories and the Expansion of Business Scope for Financial Institutions" (hereafter referred to as the "JFTC's Guideline") in order to clarify those acts that would infringe the AMA after these financial system reforms and to prevent the occurrence of these offences.

The JFTC's Guideline lays out financial institutions' unfair exercises of their influence through financing other companies when they enter into other business fields, and these unfair exercises are stipulated as the following three types: forced transactions, etc., restrictions on transactions with competitors, and deceptive customer inducement. Also, considering the fact that the scope of business that financial institutions can conduct by themselves is expanding, the JFTC's Guideline clarifies those acts that may violate the AMA in the securities brokerage business, in the insurance soliciting business and in the sales business of investment trusts and so on.

3.2.2 "Survey Reports on Trade Practices between Financial Institutions and Companies"

The JFTC published the "Survey Report on Trade Practices between Financial Institutions and Companies" in July 2001 and the JFTC's Guideline in December 2004, and clarified its position under the AMA toward financial institutions' abuse of dominant bargaining position over their loan customers.

However, because of concern that this abuse still existed even in recent years, the JFTC conducted a follow-up survey to the last survey, and published its results in June 2006.

6. The main points of the results are as follows:

- About 30% of the borrower companies found it difficult to decline various requests made by financial institutions in connection with their loans.

- The ratio of the borrower companies that accepted various requests from financial institutions against their actual willingness decreased in general as compared with the last survey. But the ratio increased in some cases.

- About 60% of the borrower companies that accepted requests against their actual willingness did accept such requests for fear that "it may become difficult for them to borrow funds from financial institutions in the future."

- Twenty percent or more of financial institutions were not aware of the last survey or of the JFTC's Guideline. Also, 40% or more of financial institutions didn't take any measures even though they were aware of the last survey or of the JFTC's Guideline.

The JFTC explained the purpose of the above survey report to the trade associations of financial institutions, and asked them to report on the measures they took in response to the survey report and its results.

4. Cases to which the AMA has been applied

4.1 Violation of the AMA: Case of Sumitomo Mitsui Banking Corporation

One of the most recent violations of the AMA in the banking sector is a case in which Sumitomo Mitsui Banking Corporation (hereinafter referred to as the "SMBC") abused its dominant bargaining position over its borrower companies.

Among companies, in particular small and medium-sized companies, which obtained a loan from the SMBC, there were several that found it difficult to procure funds by obtaining loans from financial institutions other than the SMBC or by other means at that time. Since business operations would have been adversely affected if they could not obtain a loan from the SMBC, borrower companies were forced to accept not only loan terms but also various requests from the SMBC in hopes of the continuance of their loan transactions. Thus, these borrower companies' bargaining position was inferior to that of the SMBC.

The SMBC demanded that companies with which it had a financial relationship and which were in an inferior bargaining position to the SMBC purchase a derivative financial commodity (an interest swap). The SMBC did so by proposing that the said companies purchase the commodity during the process of moving forward with financial procedures and by directly expressing and/or suggesting that the companies' purchase of the commodity was a condition for receiving a loan and that their requests for a loan would be handled in an unfavourable manner if the companies did not purchase the commodity. These acts left the borrower companies with no choice but to purchase the commodity. On December 2, 2005, the JFTC issued a recommendation for the elimination of such misconduct for violation of Section 19 of the Antimonopoly Act (corresponding to Paragraph 14 (1) of the Designation of Unfair Trade Practices, "Abuse of Dominant Bargaining Position"). (Decision was issued on December 26, 2005.)

(Administrative actions carried out by the FSA with regard to the SMBC)

Considering the JFTC's decision above, the FSA asked the SMBC to report on whether there were similar problems in other sales of the said financial commodities and, if this was the case, to analyse why these problems had taken place. As a result, the following problems were identified:

- Mainly in the period from FY 2001 to FY 2004, there were more than a few cases in which the SMBC abused its dominant bargaining position or in which there were concerns of such abuse.

- It was found that the SMBC had a fundamental and serious problem: the bank always placed priority not on compliance but on profit by, for example, imposing unfeasible revenue targets on its sales branches.

Since it was found that the SMBC had a fundamental and serious problem in light of maintaining appropriate transactions, the FSA imposed administrative actions on the SMBC under Section 26 of the Banking Law, including a business suspension order, for the purposes of reforming executive and employee consciousness as well as establishing compliance, governance and internal control systems (in April 2006).

4.2 Merger case (Business combination between Mitsubishi Tokyo Financial Group and UFJ Holdings)

Recent large-scale merger cases in the banking industry include the case of a business combination between Mitsubishi Tokyo Financial Group and UFJ Holdings. The JFTC received a request from the concerned companies for prior consultation regarding this case. After having conducted an examination, the JFTC responded that the proposed combination would not infringe any provision of the AMA. (This answer was publicised in May 2005.)

Regarding the market definition, in the examination of this case, the JFTC found that the products and services sold by the group companies of the two banks could be classified into 30 categories. This classification was made based on the criteria of whether products or services offered users similar functions or utilities. Also, the JFTC recognised that the goods and services were generally sold in each national market, but the deposit and loan markets consisted of their national and prefectural markets. In conclusion, forty-seven markets were defined in total.

(Approval of Financial Services Agency)

Under the provisions of the Banking Law, the FSA examines and then approves the merger of banks or bank holding companies. Its examination criteria for the merger are as follows:

Banks

- The merger is suitable in light of the harmony of supply and demand for funds and the convenience of users in the region where the banks which are the parties to the said merger conduct their business.

- There is no concern that the merger will disturb the financial order, such as by hindering the suitable competitive relationship between the financial institutions.

- It is reliable that the bank which has applied for the approval or the bank which will be established by the merger will accurately, fairly and efficiently conduct that business after the said merger.

Bank holding companies

- The expected incomes and expenditures of the company which has applied for the approval or the company which will be established by the merger and its subsidiaries will be suitable.

- The capital adequacy of the applicant company and its subsidiaries is appropriate in light of its owned assets.

- The applicant has appropriate knowledge and experience in properly and fairly managing banks which are or will be its subsidiaries, and has enough social trust in light of its human resources.

MEXICO

1. Introduction

This note summarises Mexico's recent experience in retail banking with a special focus on consumer lending. The document is divided as follows: Section II describes the evolution of Mexican banking system. Then, Section III describes recent reforms to the regulatory framework of banks. Section IV analyses the market for consumer lending. Next, Section V identifies competition issues associated with access to infrastructure, switching costs and customer mobility. This section also presents relevant antitrust cases. Finally, Section VI makes some concluding remarks.

2. Recent evolution of the Mexican banking system[1]

After its nationalisation in 1982, the Mexican banking system mainly served as intermediary between the federal government and savers, as government loans accounted for the great majority of its credit portfolio.[2] During this period, the securities market grew significantly and became the main source of financing for the private sector.[3]

In 1990, banks were privatised again through a series of public auctions. Of the existing 18 banks, 13 were allocated to financial corporations and 5 to individuals. The government sold the banks for a total of US$12 billion, equivalent to 3.5 times their book value.

Between 1988 and 1994, banks recovered its role in financing the private sector's growth. As percentage of the annual GDP, this financing grew from 14.9% in 1989 to 42.88% in 1994. The growth in private lending was facilitated by good macroeconomic conditions, reduced public deficit, and the liberalisation of financial markets that increased private funds available for lending. However, the government did not implement appropriate prudential oversight. As a consequence, banks were lending without adequate risk management and developed a very poor quality credit portfolio.

Although macroeconomic performance was good during the early 1990s, in 1994 several political events[4] and financial difficulties[5] generated considerable capital outflows. This situation forced a look at the feasibility of the fixed exchange rate regime prevailing at the moment. In December 1994, the government adjusted the exchange rate and a period of financial uncertainty, high interest rates and inflation began. As a result, the banking system went into its worst crisis in history: the boost in interest rates and the decline in borrowers purchasing power increased nonperforming loans from 5.0% of total

1 This section is mostly based on Avalos and Hernández (2006)

2 For example, in 1985, government loans accounted for 72% of total bank lending..

3 The share of the securities market in total financial intermediation grew from 2.4% in 1982 to 36.2% in 1986.

4 The Zapatista uprising and the assassinations of Luis Donaldo Colosio and J. Francisco Ruiz M.

5 Appreciation of the peso, deficit in the balance of payments, excessive foreign financing, domestic companies highly leveraged in foreign currency, weakness of the banking system, etc.

credit portfolio in 1992 to 12.3% in 1995; available funds for financing decreased; financial intermediation dropped; and the economy entered into a severe depression.

These circumstances threatened the solvency of the banking system and the government intervened to capitalise banks and protect deposits. It used three mechanisms for this intervention: purchasing nonperforming loans; acquiring some banks and improving their financial performance; and supporting borrowers to pay their loans. The total cost of this intervention for the government was equivalent to 15% of the annual GDP.

After the 1995 crisis, the government imposed strict risk limits to banks: they were obligated to guarantee the greater of 60% of their nonperforming loans and 4% of their total loans. These limits, together with the government intervention, improved the quality of the bank credit portfolio: nonperforming loans decreased from 12.3% in 1995 of the total credit portfolio to less that 6% in 2000.

Furthermore, in the context of NAFTA, direct foreign investment in banks was totally liberalized in 1998, which facilitated the recapitalisation of banks after the 1995 crisis. The largest banks were acquired and capitalised by foreign banks: Bancomer was acquired by BBVA and Serfin by Santander in 2000, Banamex by Citibank in 2001, and Bital by HSBC in 2002. As a result, in 2003 foreign banks owned 82% of total bank assets. Additionally, there were several mergers of smaller banks, mainly justified on grounds of economies of scale and scope.

On the other hand, 6 new banks entered the market; most of them specialised in niche markets, not properly covered by traditional banks. Among the new banks, Banco Azteca (2002) stands out because it belongs to a large chain of home appliances and focused on lending to a low income population. It entered the market leveraging on an existing network of 818 branches.

3. Regulatory framework

Since 2001, the government promoted a series of legislative reforms to assure the stability of the financial system, promote financing to the private sector and enhance competition between financial institutions. As illustrated by the recent regulatory modifications, it seems that financial authorities and regulators in Mexico do not any longer consider competition as a threat to the stability of the financial system, although there still are ample opportunities to enhance competition principles in the regulatory framework.

The legal framework for lending is mainly set out by the General Law of Commercial Institutions and the General Law of Credit Titles and Operations. These laws regulate loans, guarantees and collaterals, as well as rights and obligations of the parties involved. On the other hand, the Law of Credit Institutions (LCI) regulates the activities, organisation, and operations of banks. This legal framework is complemented by secondary regulation issued by the financial authorities and regulators: National Commission of Banking and Securities (CNBV), Mexico's central bank (Banxico) and the Secretary of Finance and Public Credit (SHCP).

3.1 Prudential regulation

During last few years, the regulatory framework of credit institutions have been revised and updated to strengthen prudential regulation and improve risk management practices. Financial regulators have issued rules for Risk Diversification; Capitalisation of Banks, Credit Portfolio Provisioning and Rating; Integral Risk Management; Credit Underwriting; Internal Control and Filing; and Corporate Governance of Banks. Additionally, they have developed guidelines to improve bank financial performance. Below we briefly describe the core changes to the prudential regulatory framework:

- The LCI was amended to require banks to have additional loss loan reserves when they grant credits without a previous consultation to a Bureau of Credit regarding the credit history of the borrower. (2001)

- Regulations were modified and issued to assure that banks would have an adequate integral risk management system, and establish minimum capital requirements that depend on the credit risk . (2004)

- Several legislative reforms were approved to require banks to implement credit underwriting methodologies and introduce credit risk mitigation techniques. These allowed the CNBV to more accurately classify loans and provision for adequate loan loss reserves, and require additional provisions for foreclosed assets. These reforms also address credit diversification, underwriting, and bank officers' accountability. (2004 and 2005)

- The CNBV updated regulations to strengthen the independence of External Auditors, and clarify regulatory accounting and financial reporting. Additionally, all bank regulations were integrated into the General Rules for Credit Institutions, which standardised regulations, introduced legal certainty, and facilitated the consultation, verification and supervision of regulations. (2005).

- Legislative reforms were passed to require financial institutions to implement adequate internal control systems, as well as risk management systems, including a risk manager in charge of controlling institutional risk. (2005)

These developments are aligned with the Basel Core Principles for Effective Banking Supervision, strengthened prudential oversight and increased the quality of the credit portfolio of banks.

3.2 Regulation associated with competition and efficiency

In parallel to consolidating financial stability, regulators have been giving increasing importance to efficiency and competition issues. During the last few years, the regulatory framework has been modified to reduce barriers to entry, facilitate consumer financing and increase price transparency.

- The Law of Financial Users Protection was issued. This law created the National Commission for the Protection of Financial Users, which is responsible for advising, protecting and promoting the rights of financial users. (1999)

- A reform was passed to allow borrowers to offer durable goods, real state, working capital and equipment as collaterals to secure loans.[6] This reform facilitated the development of automobile loans and SME lending. (2000)

- A new Bankruptcy Law was enacted to increase the protection of lenders. (2000)

- Several legislations were passed to promote the growth of financial services in the low income segment. (2001)

- The Law of Credit Information Institutions was issued to regulate Credit Bureaus. This law obligates Credit Bureaus to provide access to credit information to all users, and prohibits any individual user to control a Bureau. The development of Credit Bureaus has played a key role in the developing of efficient financing, as they have facilitated credit risk assessment. (2002)

6 General Law of Credit Titles and Operations, Commerce Code and Law of Credit Institutions.

- Reforms were introduced to expedite judicial procedures to collect debts. (2003)

- The federal government initiated an aggressive program to promote the use of credit cards by creating the Trust of Electronic Payment Instruments (FIMPE), with contributions by the federal government and the banks. Under this program, card holders accumulate points when purchasing with credit cards, which then can be used to participate in lotteries that award prices like money and automobiles. (2003)

- The Law of Financial Services Transparency and Ordering (LFSTO) was enacted. This law regulates several aspects of the payment card market (debit and credit cards): it states information be provided to card holders on fees, commissions and interest rates; prohibits refusals to deal and discriminatory pricing between card issuers; and empowers Banxico to regulate commissions and interchange fees. (2004)

- Based on the LFSTO and LCI, Banxico has issued regulations to increase transparency in the terms and conditions and total annual costs of payment cards. It also modified the honour all cards rule prevailing in the payment card market. Merchants are now allowed to choose to accept credit cards only, debit cards only or both.[7] (2005)

- Banxico has not used its power to directly regulate payment card commissions and interchange fees. However, this power has facilitated cooperation from banks to implement transparency measures and reduce interchange fees.

- The Law of Credit Institutions (LCI) was reformed to empower Banxico to impose additional regulation (e.g. tariff regulation) in bank services when there are not effective competition conditions in the market. The assessment of competition conditions must be based on an opinion from the Federal Competition Commission (CFC). (2004)

- The LCI was reformed to allow bank to purchase credit portfolios of Sofoles (Non-deposit-taking specialised credit institutions) and other credit institutions. This reform also allows Sofoles to issue credit cards and access payment card switches. Other reforms allowed commercial stores to offer loans using financing obtained through the securities market. These changes have reduced barriers to entry and promoted financing to consumers and SMEs. (2005)

- Several regulations were issued to provide tax and procedural incentives to those commercial enterprises that offer loans.[8] Additionally, these regulations deregulated Sofoles that do not belong to banks. (2006)

- Banxico issued regulation that obligates banks to receive checks and electronic transfers from any bank to pay credit obligations. It also issued regulations that obligate banks to publish the Total Annual Costs of the consumer credits they grant. (2006)[9]

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7 Regarding other rules in the payment card system it is worth mentioning the following: the *duality rule*, which prevent banks from issuing cards from competing associations, does not apply in Mexico; and an agreement between the banks and CFC in 1994 allowed banks to disregard the *no discount rule*, making the *no surcharge rule* more flexible as merchants can offer discounts for cash purchases.

8 Miscelánea de Sociedades Financieras de Objeto Múltiple

9 Banks are obligated to publish their minimum and maximum Total Annual Cost (TAC), which includes both the financial margin and commissions charged to credit holders. The TAC is an attempt to simply bank charges and develop a benchmark for comparing charges between banks. There are several

These measures have increased the transparency of the banking system and strengthened credit infrastructure. However, as described below, the market for consumer credit continues to be underdeveloped and further measures are required to achieve an efficient and competitive banking system.

4. Market Structure and Behaviour

After the 1995 crisis, banks focused on lending to large enterprises and government. However, the availability of resources to finance consumers increased, as large enterprises found alternative financing in the securities market, and the Pension Fund System, started in 1997, increased funds available to finance the government. Additionally, macroeconomic performance improved; banks began a process to innovate their portfolio of products and services and lending technologies, and several Sofoles entered the market. These circumstances, together with an environment of underleveraged households, increased consumer lending; between 1998 and 2006, consumer loans increased from 0.6% to 3.2% of the annual GDP, and their share of the bank credit portfolio grew from 3.0% to 25%.

Consumer lending is highly concentrated; the 2 largest banks (Banamex and Bancomer) account for 55% and the 6 largest banks account for 88% of the market. In terms of branches, the 2 largest banks account for 39%, while the 6 largest account for 91%. Since a large number of bank transactions are still done at branches, for a new bank to effectively compete it would need to undertake significant investments to develop its own network of branches. On the other hand, some banks that are entering the market belong to corporations that own and operate chains of home appliances or grocery stores with large networks of branches. This is the case, for example, of Banco Azteca, which is associated with a chain of 1,072 home appliance stores. Recently, Wal-Mart, a discount retailer with a network of 702 stores, and Coppel, a retailer of home appliances with a network of 510 stores, applied for an authorisation to open their own banks.

In March 2006, credit cards accounted for 57% of total consumer credit, credit for durable goods (mainly automobiles) 27% and other credits 16%. Each of these segments is addressed below.

4.1 Credit cards

The credit card portfolio is the most concentrated. In 2005, the 2 largest banks accounted for 68% of this portfolio and the 4 largest banks for 88%. This concentration has decreased over the last few years, as new credit card issuers enter the market (e.g. GE Capital Bank and the banking division of American Express). Between 2001 and 2006, the market share of the 2 largest banks dropped 10 points (from 78% to 68%) and the 4 largest banks' dropped 4 points (from 92% to 88%).

Although market concentration is decreasing, price competition is still limited. It seems that new entrants are not putting enough pressure on incumbents to reduce prices. The average cost of funding for banks decreased from 17.5% in 2000 to 7.5% in 2006, but their average financial margins increase from 27% to 28.5% during this period. Additionally, the Total Annual Cost (TAC) is still high and there is wide price dispersion between banks. For example, in September 2006 the average of the minimum TACs was 28.6% and their coefficient of variation (standard deviation/average) was 67.7%.[10] As another example, the average minimum TAC charged by the three largest banks (Banamex, Bancomer and Santander) was

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difficulties to analyze competition in banking by strictly focusing on the level of interest rates or fees. In this market, competition heavily relies on product differentiation, and the customer observes multidimensional services, but not a benchmark to compare the services each bank offers. Additionally, it is common to find that customers are confused with financial information and fees they pay.

10 This calculation was based on information available for 7 banks, which count for 90% of the market.

almost twice that of smaller banks (Scotiabank and Inbursa). This dispersion suggests that price competition is still limited and that some kind of market segmentation is occurring.

On the other hand, bank credit cards may be facing competition from credit awarded by department stores. The largest department stores (Liverpool, Coppel, el Palacio de Hierro, Suburbia, C&A y Sears) issue their own credit cards, which can only be used within the store chain that issues them. These cards are deregulated since banks are not involved. This type of credit plays an important role in customer financing in Mexico. First, the sales of department stores rely heavily on the credit they award. For example, Coppel, Liverpool and Sears sell 88%, 53% and 64% of their sales through their credit system, respectively. Second, this type of financing constitutes a real alternative to the banking system; in December 2005, the credit portfolios of Coppel and Liverpool were equivalent to 13.2% and 9.2% of the bank credit card portfolio, respectively. The case of Coppel is noticeable because it has 9.9 million credit accounts and serves the low income segment, which has limited access to bank financing.[11]

Some of the store chains are associated with banks: Electra with Azteca Bank and Samborns with Inbursa. Others have developed a closed card system (cards that can only be used at the issuing store chain), where they brand the cards but an external bank operates them. This is the case with Wal-Mart, Suburbia, Soriana and Hermanos Vazquez, whose card systems are operated by Bancomer. Some supermarket chains use an open card system (cards can be used anywhere), where they jointly brand the card with a bank. This is the case of Comercial Mexicana and Gigante, whose cards are issued and operated by Banamex.

Banks and stores do not necessarily offer lending to the same customers. In most cases the credit offered by stores constitutes an alternative financing source for low income customers that have no access to bank services. This may be one reason why the entrance of Bank Azteca and the rapid increase in its market share did not introduce much pressure on the pricing of other banks. It may have increased its market share by bringing the credit accounts of Elektra to the banking system.

4.2 Durable good credit

Approximately 27% of bank consumer credit portfolio is related to loans granted to purchase durable goods. These loans are typically guaranteed with the goods purchased. The great majority of this credit is granted to purchase automobiles, with home appliance financing being another important segment. For example, in 2005 the credit awarded by Azteca Bank to purchase home appliances at Elektra stores represented 6% of the durable good lending by banks and Sofoles.

Although banks are important players in this market, durable good lending is dominated by Sofoles (Non-deposit-taking specialised credit institutions), which obtain financing mainly through promotional funds (36%), bank loans (25%) and debt securitisation (20%). In March 2006, the 4 largest players concentrated 61% of the credit portfolio: The Sofoles owned by Ford and General Motors have a market share of 17% and 18%, respectively, while Banamex and HSBC have a share of 13% each.

Sofoles have introduced an important competitive pressure to banks in this markets. Additionally, carmakers offer automobile loans directly to consumers: In 2005, they accounted for approximately 22% of total automobile loans. Actually, banks have been constantly trying to increase their market share by offering competitive interest rates. For example, Bancomer, which is one the two largest players in other lending markets, has a market share of only 7% and is trying to grow by offering a lower CAT than the rest of the banks.

[11] Coppel does not necessarily issue a credit card to award its credit.

Market concentration has decreased significantly overtime and pricing is competitive in this market segment. In August 2006, the average of the minimum CATs charged by banks was 10.3%, with a coefficient of variation of 11.6%.[12] Both the average and the dispersion of the CATs are much smaller in the case of durable goods than in the case of credit cards (credit cards have an average of 28.6% and a coefficient of variation of 67.7%). Furthermore, key players in durable goods lending are competing aggressively for market share. Between 2003 and 2006 the market shares of Ford Credit, and General Motors decreased by 6 points each. On the other hand Banamex, HSBC, Bancomer and Santander increased theirs by 5, 2, 3 and 5 points, respectively. Competition in this segment is not only taking place along the price dimension, but also through product innovation and diversifying service portfolio. For example, some banks are now offering credit to purchase used cars and allow customers to purchase insurance from independent insurers.

4.3 Other consumer loans

Other consumer loans represent about 16% of total consumer credit portfolio of banks. This is the segment with the highest observed and potential growth. This type of loan is not associated with the purchase of any specific good or services. Borrowers get the money and use it for whatever they decide. Most of these loans are associated with payrolls and have a relatively low risk, because banks have reliable information on the capability of the workers to pay and have the payroll as a guarantee. In this category we also find personal credits, which are similar to payroll lending, but workers does not receive their wage in an account of the lending bank. Finally, some banks are developing other types of credit. For example, Banamex is offering a revolving line of credit, which can be used and paid at any time.

The largest player in this market is Bancomer, which has kept a market share around 45% for a long time. The next three largest players are Azteca Bank, HSBC and Inbursa with market shares of 11%, 9% and 7%, respectively. Here again the case of Azteca Bank stands out because, in less than two years after entering the business, it became the second largest player with a market share of 11%. This growth was possible by the acquisition of Elektra' credit portfolio. Additionally, between 2003 and 2006, the market share of Inbursa and HSBC decreased by 19 and 4 points, respectively. Finally, during the same period, Banamex and Scotiabank increased their market from 2% and 1% to 7% and 6%, respectively.

Personal credits have evolved over time. At the beginning, banks were only offering loans equivalent to two months' worth of salary guaranteed by the payroll. Currently, banks offer loans up to eight months' worth of salary. It seems that banks are innovating their products and lending technologies, segmenting the markets according to income and risk levels, and designing them according to customer preferences.

In August 2006, the average of the minimum CATs charged by banks for credits associated with payrolls was 26.4% with a coefficient of variation of 14.7%. This CAT is similar to the one observed in credit cards (28.6%), but the coefficient of variation is much smaller (in the case of credit cards it was 67.7%). These high charges may be explained by the limited freedom workers have to choose the bank where they receive wage payments electronically, because in most cases the employer chooses it. Thus, if workers see no alternative for their payroll account, they become captive customer for loans guaranteed with payrolls. However, in this case it does not seem to be a market segmentation based on the level of income of workers, so the price dispersion is small.

5. Competition issues

Although there has been important improvement in the regulatory framework to foster competition in retail banking, this market is still underdeveloped. Although customer lending is growing, it lacks depth, as

[12] This calculation was based on information available for 5 banks, which counted for 79% of the market.

the great majority of the population lacks access to financial services. For example, according to the CIDE-UIA National Survey of Households' Standard of Living (ENNVIH-*Encuesta Nacional Sobre Niveles de Vida de los Hogares*), which measured card ownership in 2002, only 4.8% of individuals,or 9.8% of Mexican households, owned a credit card.[13] Among cardholding individuals, 56% used them to buy goods and services, but 33.5% percent paid their balance in full at the end of each month. Regarding debit cards, the ENNVIH reports that in 2002, 38.9% of individuals had savings in a bank account, which would frequently entitle them to a debit card. Nonetheless, the increased use of debit cards seems be more closely associated with increases in electronic payroll services rather than the number of deposit accounts.

Below we describe some remaining barriers to competition that may be limiting a more rapid and efficient development of consumer lending.

5.1 Access to infrastructure and switching costs

The infrastructure to provide banking services is highly concentrated, which provides incentives for large banks to exploit their networks and impose access barriers to smaller banks and their customers. These incentives promote a competition focused on infrastructure rather than on prices and quality of services, which deteriorates market efficiency. Large banks make it difficult for smaller banks to access their exclusive clientele by increasing costs and difficulty of electronic fund transfers, payroll or direct debits. Banks also tend to set relatively high interchange fees and make it difficult to transfer money to clients of other banks. They also make it costly to make payment obligations via electronic fund transfer from a different bank. Additionally, foreign fees[14] seem to be high both for withdrawals and balance inquiries. These practices induce clients to perform transactions at their own banks and encourage outsiders of large banks to open an account with them.

This situation indicates that further policy and regulatory measures are required to achieve an efficient and competitive banking system. These measures must be aimed at promoting non-discriminatory access to infrastructure for the interchange and processing of payments, and at promoting a competitive environment focused on prices and quality of service, while assuring efficient infrastructure investments. The list below presents some proposals to achieve this goal.

- Enhance the role of service providers not associated with banks. As illustrated in the case of automobile loans, these providers can introduce an important pressure on banks to reduce prices and increase quality of service.

- Increase the role of electronic transfers and payments, for example, by reducing interchange fees. This would reduce the role of physical infrastructure, like branches, in determining the competitiveness of bank services and provide incentives to reduce prices, as well as to innovate and improve quality of service.

- Maintain pressure on banks to further reduce interchange fees for payment cards. Although, banks have reduced interchange fees during last few months, they continue to be high in comparison with international standards.

- Provide workers with the freedom to choose the bank where they receive wage payments electronically. This freedom would reduce switching costs and increase the demand elasticity of associated banking services.

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13 This data also refers to credit cards issued by banks and department stores.

14 Foreign fees are the charges made by their own banks when a client uses an ATM that belongs to some other bank. In Mexico, foreign fees include a multilateral interbank fee, which is the same for all banks.

Competition seems to be higher in credit markets where the local credit infrastructure can be bypassed.

5.2 Customer mobility

Barriers to competition also result from card features and programs that limit consumer mobility. The lack of comparable information about banking services, and the possible bundling of financial services, increases switching and searching costs for consumers and makes entry more difficult.

The elasticity of demand with respect to the key attributes of services provided by banks plays a key role in determining the degree of competition. As mentioned before, the dynamics of prices (commission, fees and interest rates) in the Mexican banking system indicates the entrance of new players has not necessarily increased price competition. Although financial regulators have undertaken important measures to reduce barriers to entry from the supply side, it seems that a low elasticity of demand to changes in these attributes allow large banks to charge high prices to their customers.

The CFC does not have access to detailed information regarding customer mobility in retail banking services. However, it recently undertook a detailed analysis of customer mobility in the Pension Fund System (PFS). This analysis could be illustrative for retail banking, because the largest banks in customer lending are also the largest Pension Fund Administrators (PFA). Additionally, banks offer pension fund services leveraging on their infrastructure, brand name and service packaging in the banking business.

The PFS has been characterised by the high fees of incumbent PFAs. The sectoral regulator has undertaken a series of measures to reduce barriers to entry from the supply perspective. Also, it has issued regulations to improve the quality of the information received by customers and deregulated to some extent the transferring of accounts between PFAs. However, the entrance of new PFAs and relatively higher customer mobility, have not brought out a competitive environment; large incumbents have kept their market share and continue to have much higher fees than new entrants.

To understand this phenomenon, the CFC analysed the data base of account transfers between PFAs in 1995. The key findings are presented below.

- Large incumbents have much higher fees than small new entrants. Actually, there is a high positive correlation between market share and the level of fees charged.

- In 1995, 2.4 million workers (of a total of 36 billion accounts registered) transferred their account from one PFA to another.

- Publicity and promotion expenses were the main determinant of the direction of these transfers (as compared to fees or historical returns).

- Expenses in publicity and promotion have a much higher productivity for large incumbents than for new entrants (the number of accounts received per dollar spent is much higher for incumbents).

These findings indicate that workers have a very low elasticity of demand with respect to the key attributes of the services offered by PFAs. Therefore, large incumbents have low incentives to improve these attributes. Additionally, because of the extraordinary rents they return, there are incentives to increase expenses in publicity and promotion, especially because there seems to be large economies of scale in these activities.

This low price elasticity of demand can be attributable to the following factors, among others; workers often find financial information complex and confusing, fees charged by different operators are not strictly comparable, workers do not see a relation between their decision on pension funds and their immediate welfare, and high switching costs.

The CFC will soon issue an opinion on regulatory and policy measures that must be implemented to increase demand elasticity in this market. Higher demand elasticity will lead the way toward competitive fees and risk-adjusted returns.

5.3 Antitrust cases

5.3.1 BBVA / Bancomer

This transaction created Grupo Financiero BBVA-Bancomer, which resulted from the association between Grupo Financiero BBV-Probursa and the second biggest financial Group in Mexico, Grupo Financiero Bancomer. The analysis of this case required a detailed study, not only because of the dimension of one of the parties involved, but because the transaction would totally integrate both financial groups in all their services, such as banking, insurance and retirement funds.

The services evaluated were: immediate demandable deposits, term deposits, bank bonuses, inter-banking loans, savings accounts, commercial credits, loans to financial intermediaries, mortgages credit to consumption, governmental credit, fiduciary services and money exchange.

The Herfindhal and Dominance Indexes in each market complied with the thresholds set by the CFC. The results reflected also the presence of important competitors such as Banamex and Santander-Serfin.

Additionally, complementary services markets in which the parties participated were also considered, such as valuable goods transportation, assets payment and compensation, data processing, operations processing for credit cards and automatic cashiers (ATMs) and credit information. In such markets vertical integration of financial companies is common. None of the cases in the notified merger would have had an adverse effect in the relevant markets.

5.3.2 Investigation of competition conditions in commercial bank credit cards[15]

In 1993, the Commission opened an investigation into competition conditions in the market for bank credit cards. It observed that bank charges to merchants were the same, and that interest charges to cardholders exhibited greater similarities amongst the largest banks. In addition, the CFC noted that profit margins for credit cards were high, not only when compared with other countries' but also relative to similar banking businesses in Mexico.

In 1994, the Commission signed an agreement with the three largest banks: Bancomer, Banamex and Serfin (today Santander-Serfin). The banks and the CFC recognised that operating conditions for credit cards were changing significantly, particularly in the design and implementation of payment or clearing systems among banks and other participants in the credit card market. As part of the need to strengthen competition and prevent anticompetitive practices in the market, the agreement set out three main conditions for banks to fulfil:[16] (1) eliminate any exchange of information with other banks or credit card payment systems that would facilitate price fixing for fees or interest charges, among others, (2) modify

15 File IO-02-93.

16 These conditions are still in place.

merchant contracts allowing them to offer discounts for cash payments while maintaining the no-surcharge rule, (3) comply with all competition laws, rulings and applicable norms.

5.3.3 Credit cards: foreclosure of new entrants through exclusivities[17]

In 1996 American Express (Amex) opened a complaint before the CFC alleging that Visa was obstructing its access to the banking distribution channel for the issuing of credit cards. Amex had been attempting to get banks to issue American Express branded cards, and it claimed that Visa had been attempting to reach an exclusivity arrangement requiring its members to not sell cards of any network competitor under threat of losing their membership.[18]

The CFC imposed cautionary measures and warned Visa about establishing exclusivity conditions until the investigation process ended. Visa informed the CFC that it had not imposed and did not plan to impose exclusivity conditions in the future. Based on Visa's response and Amex's agreement, the Plenum determined to end the investigation prematurely.

5.3.4 A challenge to banks' co-investment into the creation of a new switch[19]

As mentioned before, in Mexico two firms provide all banks with complementary credit card services: e-Global and Prosa; e-Global was founded in 1998 as a co-investment between Bancomer, Banamex and Bital (today HSBC).

In December 1998, another bank filed a complaint before the CFC against Bancomer, Banamex and Bital for illegally merging in e-Global. It claimed that the accused had established agreements to act jointly in supplying the following banking services: (a) centralising cheque processing, (b) operating and managing an ATM network, (c) operating and managing a POS network, acquiring business and debit and credit card issuing business, (d) processing intelligent cards, and (e) participating in the mortgage business.

The CFC determined that the relevant market was comprised of complementary or auxiliary banking services for electronic payment systems, where electronic payment systems included: ATM and POS switches; clearing and liquidating transactions undertaken at ATMs and POS; saving, safe-keeping and recovering electronic and manual payments in card transactions from client banks; phone authorisations of manual transactions operated by affiliated businesses on behalf of their clients; maintenance, supplies and services for POS and ATMs; and responses to client requests to clarify transactions at ATMs and POS.

Nevertheless, the Commission determined that there was insufficient evidence to uphold the accusation of an illegal merger, since the stated purpose in creating e-Global was not to diminish, harm or impede competition and free market access in the market for complementary banking services.

5.3.5 Investigation involving allegations of relative monopolistic practices in ATM services[20]

In November 2000, the CFC opened an ex-officio investigation of CCS México, SA de CV (CCS), Promoción y Operación, SA de CV (Prosa), Servicios Electrónicos Globales, SA de CV (e-Global) and the

17 File DE-06-96.

18 This type of exclusivity arrangement (exclusive dealing), its competitive underpinnings as well as potential anticompetitive effects, is reviewed in detail in Balto (1999).

19 File DE-58-98.

20 File IO-07-2002.

Mexican Bank Association (ABM). CCS buys, sells, monitors and maintains ATMs, while Prosa and e-Global are the two switches that interconnect the payment card system.

The investigation's objective was to determine whether these economic agents had undertaken relative monopolistic practices in the market for services provided by commutation systems, complementary or auxiliary processing and compensating electronic banking services undertaken through ATMs in the national territory. The practice consisted in establishing an agreement, through the ABM, that would only allow interconnection to the network for ATMs belonging to a bank and carrying the bank's institutional logo.

The CFC initially determined that this agreement could potentially harm or eliminate ATMs that were administered by non-banking institutions in the relevant market. The investigation, however, did not find sufficient elements that could prove that the ABM had in fact issued instructions or forced Prosa and e-Global to comply with said agreement.

5.3.6 Allegations of price fixing in merchant fees[21]

In 2003, the Commission investigated possible absolute monopolistic practices (collusive behaviour) in credit card acquirer services for supermarket and department stores. The investigation revolved around the two largest participants in this market, Banamex and Bancomer, which hold more than 75% of the acquirer services in this line of business.

In its consultations with banks and merchants, the CFC found that both banks charged identical fees, which raised the possibility of price fixing. Nevertheless, the need for more in-depth knowledge and understanding of the market led to the closing of this investigation. The Plenum instructed instead an extensive study of the payments system.

5.3.7 Investigation of tying sales in financing contracts [22]

In February 1997, the CFC started an ex officio investigation on financing contracts to purchase automobiles and real state. The investigation was aimed at determining whether there were anticompetitive practices in tying insurance sales with automobile and real estate loans.

The CFC found this actually was a common practice. Nevertheless, it considered there were efficiency gains associated with this type of tying sales. Additionally, these tying sales were obligated by an Official Norm. Finally, it was concluded that none of the parties had substantial market power in the relevant market, which is prerequisite for unilateral monopolistic conducts.

5.3.8 Bureaus of Credit[23]

In 1999, the CFC initiated an ex officio investigation to determine whether some banks were refusing to deal with the largest Credit Bureau (CB). It found that in less than a year three banks, shareholders of a third CB, had cancelled their contracts with the largest CB. However, none of these banks had refused to provide information to any of existing CBs. So, it concluded there was no evidence of unilateral anticompetitive practices.

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21 File IO-04-2003.

22 File IO-06-97.

23 File IO-12-99.

6. Concluding remarks

Although customer lending grew significantly during the last few years, it did so from a very low base. The great majority of Mexican households still have limited access to banking services and these services continue to be expensive.

Financial regulators and authorities have implemented several measures to enhance transparency, efficiency and competition in the provision of banking services. These measures have facilitated the growth of customer lending. However, further actions are necessary to foster a competitive banking system.

High market concentration provides incentives for large banks to compete by focusing on infrastructure rather than on prices and service quality, increasing switching costs of customers and imposing other barriers to competition for smaller banks. Modifications to the regulatory framework are necessary to reduce barriers to competition and overcome these practices. These changes must be aimed at guaranteeing non-discriminatory access to banking infrastructure, facilitating the entrance of service providers not associated with banks, promoting electronic transfers and payments, and eliminating restrictions to customer mobility. Additionally, it is necessary to continue with the efforts to enlarge price transparency and customer financial knowledge.

NETHERLANDS

1. Introduction

In 2005, the ECA (European Competition Authorities) Directors-General meeting adopted the proposal for the formation of the ECA Financial Services Subgroup, which was convened with the purpose of identifying common competition problems, focusing on three areas:

- consumer mobility,
- access to payment systems, and
- SEPA (Single European Payment Area)

The objective was to publish a report and possible recommendations on competition issues, to be addressed to the European Commission. In order to be able to publish a report that would reflect the views of all ECA members, the Working Group sent out a questionnaire to all 28 ECA members, and organised a subsequent Workshop in the Hague, at which the Draft Report and Recommendations were discussed. The final Report and Recommendations were then presented to - and adopted by - the Directors-General meeting in Nice on 18-19 May 2006. The Netherlands Competition Authority was involved in the production of the report and published the report on it's website (www.nmanet.nl).

This article gives a short summary of the ECA-report and in addition it contains some more background-information on switching in the Dutch retail banking-markets. It also describes some measures that were taken in the Netherlands in order to stimulate switching.

2. Summary of the ECA-report and recommendations

2.1 Switching

According to the ECA-report National Competition Authorities (NCAs) agree that a lack of transparency, typically demonstrated through the inability of customers to compare services effectively, has contributed to low levels of customer mobility. Additionally, banks make it difficult, costly and often a lengthy process for customers when they do switch. In order to stimulate customer mobility in their national markets, the Working Group recommended NCAs, as far as possible within their respective roles in their own countries, to further consider the case for promoting:

1. Lower switching costs in retail banking markets;
2. The introduction of a consistent set of transparency rules that make it possible for consumers and SMEs to compare retail banking products, and
3. The implementation of retail banking switching facilities (e.g. objective and up-to-date comparison sites, comparison statistics, switching services).

In addition, the EU should focus on studying and promoting possible measures for improving customer mobility within the Single European Payments Area, such as:

1. Introducing a Europe-wide 'switching service' or 'switching code' to facilitate the ability of customers (especially SMEs) to switch bank accounts, including across borders;

2. Developing a consistent set of European retail banking comparison facilities (e.g. comparison sites, comparison statistics), based on best practices in Member States;

3. Working towards the removal of legal barriers (e.g. financial or private law) which may prevent customers from opening a bank account in another Member State;

4. Aiming for European bank account numbers, leading to the possibility of European account number portability.

2.2 Access to payments

In the report NCAs state that technical standards and operational matters of payment systems are often set and managed through self-regulation. This may be managed through a scheme-setting body, which in many cases is also responsible for setting and enforcing access rules with regard to clearing and processing. The access conditions of these bodies can be categorised as follows:

- Setting the rules for licenses to provide payment services (banking licence or licence from other regulated financial institution);

- Adherence to (technical) conditions; and

- Payment of access fees (in some cases).

NCAs are of the opinion that in some Member States, access to payment markets may be restricted by unnecessarily high barriers, which may be reinforced through prohibitive access conditions and the bundling of payment services.

In order to create more open national payment markets in those cases where technical and operational matters of payment systems are set and managed through one or more central self-regulating bodies, the Working Group recommends NCAs to consider the promotion of:

a) transparent, open payment standards and objective membership criteria to payment schemes (i.e. non-discriminatory access rules);

b) if workable, a clear legal (and practical) separation between management and ownership of access rules for payment schemes;

c) unbundling in the supply of payment services (e.g. branding and processing) where other, less potentially anti-competitive, solutions are available; and

d) the introduction of stakeholder-involvement (within the normal provisions of competition law) to ensure the consultation of stakeholders (customers) on access rules.

This could be done as part of an investigation into possible breaches by national payments systems of art. 81 and 82 of the Treaty (or national competition law), or through advocacy, depending on both the legal mandate and the resources of each individual NCA.

3. Switching costs in the Netherlands

3.1 The nature of switching costs

There are various types of switching costs, such as search costs, contractual costs, transaction costs (including the hassle involved in organising the switch) and psychological barriers ('unknown, unloved').[1] A specific form of switching cost is the linking of products through package discounts. The influence of switching costs is not only visible in the number of consumers and companies which actually change from one bank to another. The threat of switching – potential switching – is also influenced by this, as it provides the same incentives to compete as actual switching by customers.

Historically, in the Netherlands customers did not switch banks very often, partly because switching costs are high. These switching costs mainly result from the fact that this incurs administrative costs and from the linking of other products and services to the current account. Due to the absence of account number portability,[2] switching in the payments market involves considerable administrative bother for customers and companies. Companies may be confronted with even higher switching costs due to the more intensive contact with their company banker and more frequent use of their current account than private individuals if they switch bankers/current accounts.[3] (for example the cost of informing all their business partners, working temporarily with two account files, adjusting computerised systems and direct debit authorisations, and changing letterheads).

3.1.1 Transparency as a switching-barrier

In principle, the rates of the various banks are easy to obtain. However, banks often link numerous products to a current account or offer them as a package, which results in a range of different products and rates. The actual rates to be paid are not fixed in the case of companies. They are the result of bilateral negotiations between the bank and the company. The diversity of services linked to the current account and the method of pricing the services, which often differs from one bank to the next could make it difficult for private individuals and business customers to make a choice between the offerings of the various providers.

Transaction-related rates are not or are hardly ever charged for transactions by private individuals. Direct pricing in the case of consumers is limited to an annual contribution for the possession of a debit card or credit card. Indirect rates are mainly charged in the form of assigning value dates and a loss of interest income on positive current-account balances. Although companies are partly confronted with transaction-related rates (for instance, for the transmission of data in the case of debit card and credit card

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1 P.D. Klemperer, 'Competition when Consumers have Switching Costs', Review of Economic Studies, 62 (4), 1995, pp. 515 – 539; OFT, Switching Costs (Economic Discussion Paper 5), April 2003; Market Forces, Deregulation and Legislative Quality Project (MDW) Working Group on Switching Costs, op. cit.; Competition Commission, op. cit.

2 The Ministries of Economic Affairs and Finance have also started a process within the framework of the Working Group of the Market Forces, Deregulation and Legislative Quality Project in order to achieve account number portability (that is the possibility of transferring one's account number to a new supplier). The Switching Costs Working Group of the Market Forces, Deregulation and Legislative Quality Project, Kosten noch moeite. Drempels voor de switchende consument, June 2003, p. 89.

3 Consumentenbond, Weggaan of blijven, February 2002, paragraph 3.1; Nyfer, Geld moet rollen, September 2000, paragraph 2.1.

payments and cash deposits and the withdrawal of change), they are also confronted with indirect rates in the form of a loss of interest income and the assignment of value dates.[4]

Savings market

The savings market may be characterised as a very transparent market. Various national daily newspapers regularly publish lists of the most favourable savings products, including the accompanying interest rates. In addition, comparative articles appear with some regularity in consumer (financial) guides and there are various comparative sites on the Internet. The current interest rates of the providers of savings products can also easily be obtained from their Internet sites. In addition, the published savings tariffs are not window rates, but fixed rates which are not negotiable.

Credit market

The conditions and tariffs for consumer credit can be compared well with each other. In addition, the products of the various providers can be substituted fairly easily. For this reason, the market for consumer credit to private individuals may also be characterised as a transparent market. The provision of credit to companies involves more customisation than the provision of credit to private individuals. The rates are therefore usually the result of negotiations (about packages) with the bank. The basic conditions and rates for (standardised) credits, however, can be compared well to each other and the products of the various suppliers can be substituted fairly easily. The market for business credit may therefore be characterised as a moderately transparent market. This does not apply, however, to mortgage loans. This market is not very transparent. Mortgage lenders have various negotiable (window) tariffs, whereby a distinction is made between types of mortgages, lives to maturity and amounts. Some mortgage lenders even charge different tariffs for the same mortgage product, depending on the financial position of the customer: a low rate for new customers and a slightly higher renewal rate for existing customers whose fixed-interest term expires. Since the customer does not know what the mortgage lender's policy will be at the moment that his fixed interest term expires, this information asymmetry reinforces the lack of transparency on the mortgage market.

Sources: Consumentenbond, Weggaan of blijven?, 2002; Switching Costs Working Group of the Market Forces, Deregulation and Legislative Quality Project, Kosten noch moeite. Drempels voor de switchende consument, June 2003. See also CPB Discussion Paper 21, Price-Setting and Price Dispersion in the Dutch Mortgage Market, 2003; L.A. Toolsema, On Competition and Banking, Ph.D. thesis, University of Groningen, February 2003, chapter 7.

3.1.2 The linking of services as a switching-barrier

The linking of other services to the current account creates an additional barrier to switching providers. In the case of SME companies, the linking of credit facilities to the current account obstructs switching.[5] The intensive contact between the company and its banker means that the banker is able to make a better assessment of the profitability of the business activities, the risk profile, the payment behaviour and the creditworthiness of the company than other providers. The company's banker will therefore generally offer more favourable credit conditions.[6]

Switching costs therefore create two opposing incentives for providers.[7] The first incentive affects competition in relation to customers who already have a relationship with a particular provider (‘*ex post*

4 Wellink Working Group, Tariefstructuren en infrastructuur in het Nederlandse massale betalingsverkeer, March 2002, chapter 3.

5 Consumentenbond, Consument en geld, February/March 2001, pp. 32-34.

6 The consumer credit market is also characterised by a close relationship between banks and their customers. L. A. Toolsema, On Competition and Banking, 2003, chapter 3.

7 OFT, op. cit.

competition). This exercises upward pressure on the price which tied customers can be charged.[8] The idea behind this is that existing buyers will accept a slightly higher price since they would be confronted with switching costs if they were to switch suppliers. Existing buyers may therefore be charged higher prices than are strictly necessary to cover costs. The second incentive works in the opposite direction and has an effect on *ex ante* competition (in other words, competition for the patronage of buyers who opt for a provider for the first time). This incentive for buyers is derived from the first incentive and is based on the fact that tied buyers are valuable to providers.[9] A consequence of this is a downward pressure on prices to tie as many new customers as possible, who do not yet have a relationship with a provider. The pricing pattern observed most in markets with switching costs is referred to in the economics literature as 'bargain then rip-off pricing'.[10] According to this pricing pattern, providers will first charge low prices to build up a customer base and will then increase prices once these buyers have been locked in. Where providers can discriminate between old and new buyers, the prices for new customers may be lower than in a market without switching costs and higher for existing customers.[11]

In addition, relationship banking works in favour of risk-averse selection. This means that a 'mismatch' arises between the risk profile, on which the conditions applicable to the product are based, and the actual risk profile of the customer. Banks other than the house banker, after all, know that the house banker and the company benefit from a long-lasting relationship and that the house banker has more insight into the internal financial position of the company than it has. Viewed from this perspective, it may be assumed that competing banks will interpret switching house bankers negatively. It is fairly likely that a company that wishes to switch has a worse than average risk profile. The higher risk premium of the competing bank therefore appears to be more justified, while they actually also raise a barrier to switching to a different bank for companies with less risk.[12]

3.2 Product linkages as a barrier to switching for SMEs

Early 2004 the NMa held a brief survey among SMEs and banks about reasons for choosing a bank in relation to the existence of product linkages[13]. It shows that 91% of the companies in the SME sector do not often shop around for banking services. Where they do shop around, price is not the main reason. Service and personal contacts are most frequently given as the reason to opt for a particular bank.

According to the SMEs, payment products and credit products (f.e. trade finance and bank guarantees) are mainly linked to current accounts. SMEs further state that they have no difficulty with these links and that they regard them as 'a usual part of business'. It appears that asset-based finance[14] (where the

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8 These companies are also referred to as being 'locked in'.

9 After all, we have seen that there is scope to demand a relatively high price from existing buyers.

10 P.D. Klemperer, op. cit.

11 In so far as it is not possible to discriminate between old and new buyers, providers have to decide whether to charge low prices to attract new customers or high prices to generate additional revenues from the existing customer group. In this situation, it is plausible that the market share of a provider determines the price. Providers with a high market share will be inclined to opt for earnings from the existing customers by setting relatively high prices. Providers with a small market share will be inclined to focus on acquiring new customers by setting a relatively low price. If the market is relatively concentrated, switching costs in this case may have the effect of driving prices upwards.

12 Of course, this does not apply to credits which are fully secured.

13 See Monitor Financial Sector 2004.

14 Granting credit is linked to particular collateral, such as factoring and leasing.

behaviour of the debtor is not as important as the value of the collateral) [15] and non-banking services score the lowest where these are linked to a current account. A business current account is also not obligatory, according to a large majority of respondents, for pensions and insurance, intermediation in relation to mergers and acquisitions and the purchase and sale of foreign currencies.

Companies in the SME sector do seem to feel very dependent on their house banks. In those cases where companies do feel dependant on their house banks, this relates mainly to credit products. This would mean that with regard to these products banks are best able to demand that other products be purchased too. According to these banks[16] however, no single banking product can be obtained in the market only as part of a package/arrangement.

At the same time it emerges from the surveys that whenever products are linked, this mainly occurs in relation to payment services and the granting of credit. Three types of arguments are given by banks as to why products are linked to current accounts:

- risk management/security (company credit cards, safe deposit boxes and credit products);
- product is not seen as a core activity (change, foreign exchange): "We are not a foreign exchange office";
- the nature of the service (cash management and treasury services, payment services, credit products).

After payment services, credits are the product category for which the maintenance of a current account is most often required. This can be explained from the theory of relationship banking. By entering into a broad and long-lasting relationship, the information asymmetry between the lender and the borrower is reduced, as is the risk of the credit. This means that a bank is sooner inclined to issue credit. On the other hand, relationship banking and the linking of products associated with it results in a reduction in *ex post* competition by creating additional switching costs.

The choice for relationship banking therefore implies a dilemma for the entrepreneur because, while it may increase the likelihood of being granted credit on the one hand, on the other hand it possibly drives up the cost of borrowing. The picture which emerges from the surveys is that companies in the SME sector are generally not shoppers who are mainly out to obtain the most competitive price. Other considerations appear to be more important. This means that they generally opt for a banking relationship above the cost efficiency of this relationship. It therefore appears that the product linkages examined may result in barriers to switching which possibly have a negative effect on competition.

3.3 Actual Switching behaviour of SMEs in the PIN-market

In response to the advice of the Working Group on Tariff Structures and Infrastructure in Relation to Payment Services (the so-called "Wellink Commission"), in 2002 the Dutch Central Bank recommended 'that all contracts for PIN transactions (PIN is the national debit card product in the Netherlands) should be assigned to the banks in the future'.[17] The aim of this recommendation was to promote competition in the

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15 In the case of factoring, the security takes the form of the debtors of the debtor.

16 This relates to the following financial institutions: ABN AMRO Bank, Rabobank, ING Bank, Postbank, Fortis Bank, SNS Bank, F. van Lanschot Bankiers and Friesland Bank.

17 De Nederlandsche Bank, Aanbevelingen van de Nederlandsche Bank inzake tariefstructuren en infrastructuur in het Nederlandse betalingsverkeer, 28 March 2002.

area of electronic payment services. The banks which are shareholders of Interpay then decided that not Interpay, but the individual banks, should enter into and administer contracts with retailers.[18] In March 2004, the transfer of PIN contracts from Interpay to the banks began. In the past years, the NMa carried out research into the effects of this transfer[19]. The central question was what effect this change in the structure of payment services had had on the prices which retailers pay for PIN transactions.

In 2004 78% of the PIN-contracts passed over from Interpay to individual banks and retailers had the chance to negotiate to obtain the best conditions. It appears as if Interpay informed it's customers accurately, since 83% of the retailers knew about the institutional changes in the market and some 65% of the retailers knew that the changes made contractual conditions negotiable. However, only some 4% of all retailers (mainly the bigger ones) contacted their banks to get a better deal.

Large retailers negotiated with banks about the conditions more often than small undertakings. Of the 40 large undertakings (with more than 800,000 PIN transactions per year), 76% entered into negotiations on the contractual conditions. In half of all cases, negotiations were only held with their house banker. The majority of retailers questioned (75%) opted to remain with their house banker, whether or not after negotiations. Only 3% of retailers switched to a different bank, while 10% indicated that they had not entered into a new contract. In the remaining 12% of cases, the situation is unknown.

It therefore emerges that only a few retailers entered into a new PIN contract with a bank other than their house banker after the transfer. Various possible reasons can be given for this. In 9% of cases, in which the retailer negotiated a new PIN contract with the bank, the purchase of other services was required as a condition for a PIN contract. In particular, retailers who negotiated with numerous banks, namely 68% of cases, were confronted far more often with the condition that they purchase other services. Opening a current account and depositing cash, in particular, were referred to as additional conditions for entering into a PIN contract. The fact that the overall relationship is considered important and that retailers did not wish to switch for a single product would also have played a role. In addition, the differences in tariffs between the bankers were considered by the retailers to be small. Nevertheless, it emerged from the survey that negotiating did result in savings. The average difference between the first and the final offer in the negotiations on payment tariffs was 7.4%.

In future, some retailers will possibly switch providers. Approximately 13% of retailers are considering switching within two years, of whom 24% are considering doing so within six months. The hope of obtaining a lower tariff is given as the most important reason. In 2006 the NMa did further research after the development of the switching behaviour of SMEs in the PIN-market. The outcome of this research will be published by the end of this year.

3.4 Measures to increase switching in the Netherlands

3.4.1 Interbank-Switch Support Service (ISSS)

In January 2004 banks in the Netherlands started to offer a switching service (Interbank-Switch Support Service, ISSS) to consumers. Under this system, the former bank ensures that all income, such as salary and benefits, is automatically credited to the new account for 13 months. The customer must take the initiative to inform his employer or the organisation(s) from which he receives a benefit of the amendments. With regard to debits, the new bank informs companies which submit instructions for

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18 'Keuzemogelijkheid voor het afsluiten van overeenkomst PIN en/of Chipknip', Interpay, 22 December 2003.

19 The first outcomes of the research were published in the Financial Sector Monitor 2005.

automatic debt collection of the change in the account number. On 1 October 2004, a special application form was made available for the commercial market.

The Dutch Banking Association states in its Annual Yearbook of 2004 that some 45 000 (chiefly private) customers took advantage of this service in 2004 (some 0.6% of the total number of households in the Netherlands)[20]. In 2005 the numbers increased to a total of 65.000 consumers and 5.000 small and medium sized enterprises. This year the Ministry of Finance will publish the outcome of an evaluation that is currently taking place. It will be concluded if the switching-service forms a good alternative for bank account number portability. Research as to the experience and appreciation of the ISSS (August 2005) demonstrates that the brand awareness of the ISSS among the Dutch increased from 17% in 2004 to 49 % in 2005. The size of the group that has a demand for the ISSS appears to be small: only 5 % of the customers state that they have the intention to switch to another bank.

3.4.2 Complex Financial Products

Since 1 July 2002, all providers of complex financial products have been obliged to provide a Financial Information Leaflet. The Financial Information Leaflet is a document that is provided free of charge before customers buy a financial product. The Financial Information Leaflet describes all the characteristics of the product and therefore gives customers a simple overview of all the various advantages and disadvantages.

Unit trusts and share-leasing products are examples of products for which customers will be given a Financial Information Leaflet[21].

[20] The absolute value of this rate is not very high, but it is much higher than the Dutch Banking Association expected in advance.

[21] Source: Financial Services Authority, www.afm.nl.

NORWAY

1. Relationship between banking regulator and competition authority / Competition law and banking

The Norwegian Competition Authority (NCA) has a well established co-operation with the Financial Supervisory Authority of Norway and the Central Bank of Norway concerning supervision and regulation of the banking, finance and insurance sector. The NCA and the Financial Supervisory Authority entered into a co-operation agreement in 1996 which, among other things, regulate exchange of information and half yearly contact meetings. The NCA and the Central Bank of Norway have a formal contact meeting every year. In addition meetings are held in connection with publication of sector reports.

All markets within the banking, finance and insurance sector are covered by the regulations of the Norwegian Competition Act.

2. Market structure

As of January 2005, there were 127 savings banks and 21 commercial banks in Norway, a total of 148 banks. The savings banks have consolidated into two large groups, SpareBank 1 and Terra Group, consisting of some 20 and 80 savings banks respectively. In Norway, 12 of the commercial banks are foreign-owned. These banks control about 30 percent of total assets.

In 1996 there were 18 commercial banks and 133 savings banks. The number of branches in Norway declined from 1,537 in 1995 to 1,234 in 2005. Since 1996, 13 new banks have entered the Norwegian retail banking market. These are both foreign banks and domestic newcomers. Six of them have disappeared through mergers and acquisitions.

The number of local branches is falling. Tele-banking, and in particular internet banking facilitates this development. Several niche operators have taken advantage of the new marketing channels and have concentrated their interaction with customers to the internet, thereby eliminating the need for a physical branch network. This development increases the likelihood of new entry, especially in segments of the market. Entry may however be restrained by low costumer mobility and lack of access to the necessary service inputs such as those of the payment infrastructure. We discuss these important issues further below in sections 4-7.

The four largest banks or banking groups in Norway are *DnB NOR* controlling 38 percent of total assets, *Nordea Norge* with 14 percent, *Sparebank 1* with 13 percent and *Terra-Group* with 6 percent share of total assets. Together they control around 71 percent of the market measured in total assets. This means that Norway have a less concentrated banking sector than the other Nordic countries. However, compared with other national retail banking markets in Europe, the concentration appears high. In the following section we discuss the recent changes in market structure related to the Norwegian banking market.

3. Mergers and acquisitions

3.1 DnB and Gjensidige NOR merger (2003)

In 2003 the largest commercial Norwegian bank, DnB, merged with the largest Norwegian savings bank, Gjensidige NOR. The NCA concluded that the relevant geographical markets for several retail banking products, e.g. lending to SMEs and to households, were local or regional. Accessibility to the bank, local presence and a well established branch network are important features for these customers.

To the concern of the NCA, the merged bank (DnBNOR) would obtain substantial market shares in several of the markets that were affected by the merger. This in turn lead to the assumption that the concentration would lead to reduced competition in several markets, such as the markets for mortgages to household consumers and smaller enterprises, payment systems and group pension schemes. The parties argued that the merger would lead to a large improvement in efficiency. The NCA found it documented that the merger would lead to significant efficiency gains, through substantial cost savings.

The merger was cleared by the NCA, provided certain conditions were met. The conditions implied sale of specific branches and outlets in certain regions to competing banks, sale of estate agency businesses, a finance operation, a fund insurance institution and disposal of shares in Storebrand ASA, an insurance company.

3.2 Other mergers/acquisitions and entry

During the past decade, several new banks have entered the Norwegian banking market. Both domestic banks and especially activities of foreign banks in Norway have increased considerably. Danske Bank's acquisition of Fokus Bank, Nordea's acquisition of Kreditkassen, Íslandsbanki's acquisition of BNbank and Handelsbanken's acquisition of several minor Norwegian commercial banks[1] are all important examples of foreign entry into the Norwegian banking market. In addition a number of other foreign banks have established branches or acquired smaller subsidiaries in Norway.

The new entrants have adopted different strategies and smaller banks have targeted different market niches. Nordea and Danske Bank entered the Norwegian banking market through major acquisitions of large Norwegian commercial banks; Kreditkassen and Fokus Bank respectively. Handelsbanken entered the market through acquisitions of minor and regional retail banks. The number of niche banks – banks specialising in one or a few products – have increased during the past decade. An example is Skandiabanken with the internet as their main communication channel. Other niche banks, such as Bankia Bank, through Gebyrfri.no, and BNbank have used similar strategies.

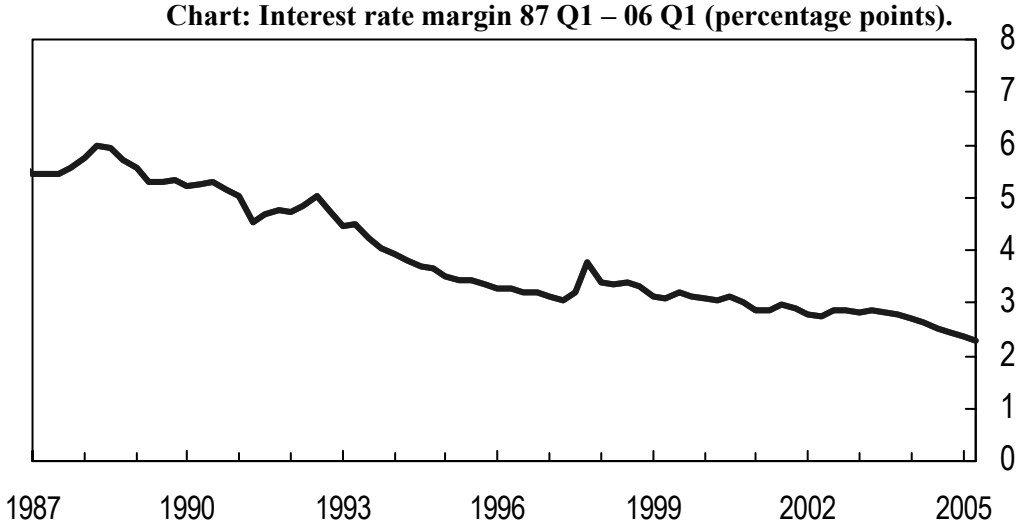
With the exemption of Skandiabanken there are no other examples in Norway that a foreign bank has built up its retail banking operation solely through own establishment and organic growth.

At the end of 2005, there were 140 banks registered and located in Norway, six of which were foreign-owned. In addition, there were nine branches of foreign banks. According to the Central Bank of Norway the foreign-owned banks and branches had a market share of close to 33 %, in terms of total assets at the end of the first quarter of 2006. These banks have acquired substantial market shares in both retail and corporate markets. The growth rate varies considerably, however, from one bank to another. At the end of 2005, year-on-year growth in lending by foreign-owned subsidiaries and branches was much higher than for Norwegian-owned banks.

[1] Handelsbanken acquired Oslo Handelsbank in 1990, Stavanger Bank in 1991, Oslobanken in 1993 and Bergensbanken in 1999.

The Banks' interest rate margin has declined since the late 1990s, partly due to competition from foreign banks and a generally lower interest rate level in Norway. In addition Norwegian banks have changed their pricing policy, from interest margins to a more extensive use transaction fees. Net interest income has therefore become somewhat less important over the past ten years, but still accounts for roughly two-thirds of banks total operating income. Rapid lending growth has compensated for the narrowing of the interest rate margin, so that banks have been able to maintain net interest income measured in NOK.

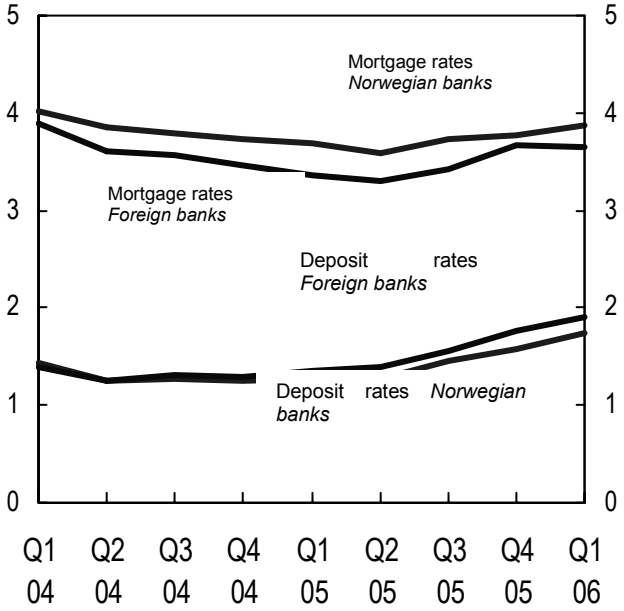
Chart: Interest rate margin 87 Q1 – 06 Q1 (percentage points).



Source: Central Bank of Norway

Foreign-owned banks have contributed both to pushing down the average level of lending rates and pushing up the level of deposit rates. At the end of the first quarter of 2006, foreign-owned banks' average mortgage rate was 0.23 percentage points lower than that of Norwegian banks, while the deposit rate was 0.17 percentage points higher.

Chart: Average mortgage and deposit rates. Norwegian and foreign banks in Norway. (Percent p.a. Quarterly figures)



Source: Central Bank of Norway

New technological developments have improved the efficiency of production of standardised loan and savings products, making it simpler for small banks to compete with large banks. Banking competition has also increased because it has become cheaper for customers to change banks. The fee for registering existing loans was reduced from NOK 1935 to NOK 215 with effect from 1 January 2006.

In the period 2002-2005 as a whole, the key rate was reduced by a total of 4.25 percentage points. During the same period, mortgage rates and interest rates on loans to the enterprise sector fell by 4.25 and 4.50 percentage points respectively, while the deposit rate (all deposits) fell by 3.67 percentage points. One reason why deposit rates have fallen more than the key rate is that they reach a floor when the general interest rate level is low, as in the years 2004 and 2005.

A smaller fall in deposit rates than in lending rates has contributed to a reduction in banks' overall interest margin. Despite the lower interest rate margins, banks have so far succeeded in maintaining a high return on equity. This is partly attributable to lower operating expenses and very low loan losses.

Competition in the Norwegian banking sector has also lead to a downward pressure on fees, including fees for payment transactions. Some banks offer services free of charge to all customers, while others limit free services to loyal customers. Loyal customers must, however, pay a fixed fee to participate in customer loyalty programs. This may make it more difficult for customers to compare prices for various services.

4. Consumer mobility

Consumer mobility may be less than perfect for a number of reasons. Barriers to mobility may include switching costs (e.g. fees for discontinuing a banking relationship), product bundling and searching costs.

In Norway, direct costs are low when bank customers want to switch from one bank to another. However, this does not imply that customers often switch to a new bank. The switching rate is quite low. The NCA calculated a mobility index for lending to SMEs in 2003. The mobility index shows the change

in market shares from the previous year. The index showed a change between 1 and 2.6 percent in the years 2000-2002.

A survey by Juul[2] examined the mobility of household customers in the Nordic countries. The five largest banks in each country were asked how many household customers became new customers in 2004 and how many left. The numbers for Norway showed a gain of 5.4 percent and a loss of 2.8 percent. The interpretation of this could be that the five largest banks have acquired customers from the rest of the banks, or that some customers have several parallel banking relationships. The survey by Juul concludes that 63 percent of the consumers have been loyal to their bank for more than 10 years. Only 5 percent have switched bank during the last year.

The results above are complemented by other surveys regarding the length of banking relationship. A survey conducted in relation to the DnBNOR case in 2003 showed that 85 percent of Norwegian SMEs had the same principal bank for three years or more. Two thirds of the SMEs had the same principal bank for six years or more.

In 2003, the NCA made a report on the banking sector. Of the 27 banks participating in the study, 14 banks answered the questions about customer mobility for the period 1999 to 2001. This showed that the number of new customers constituted 7 to 8 percent of the total number of customer relations. In 2000 and 2001, a number of niche banks such as Skandiabanken were established. If this is added to the above numbers, the mobility in 2002 was above 8 percent. In the same Norwegian study, additional figures from 2001 showed that the ratio between the numbers of new customers over total customers was 11.5 percent.

Compared to other countries a mobility ratio of 11.5 percent seems high, and it could be concluded that the increase in the number of niche banks in Norway has increased the mobility among bank customers. However, the increase in new customer relations does not necessarily mean that customers have terminated earlier bank relationships. The trend in Norway is that the customers tend to shop around more than before, establishing several parallel customer relationships.

From a competition policy point of view this is a positive trend. Customers switching their banking relationship entirely is not the only desirable goal. Multiple banking relationships can also be a sign of efficient competition, in a market where both full-service and niche banks compete on individual products.

However, the overall picture indicates that the mobility in the banking sector is still quite low. This implies that there still are considerable barriers to switching banks. In the next section we discuss switching and searching costs in more detail.

5. Switching and searching costs

When it comes to *switching costs,* banks operate only to a very limited degree with fees connected to opening and termination of a customer relationship, at least with regard to the most common products such as house loans, car loans and other ordinary loans, overdraft facilities, deposits etc.

One problematic switching cost, however, has been the notary public fee concerning mortgage loans. When customers want to transfer the mortgage to another lender, they have to pay a notary public fee in order to have the mortgage paper notarised.

In July 2004, the notary public fee in Norway was 2,112 NOK. The fee constituted a rather substantial switching cost for the borrowers. On several occasions, the NCA pointed out that this switching cost

[2] Juul: 'Mobiliteten I den nordiske finansielle sektor', TemaNord 2006:507

harmed competition in the house mortgage market and that the high level of the fee was not cost based. Since house mortgages are the central banking product in the personal retail banking market in Norway, the impact is wider than just the isolated market for house loans.

The fee was reduced significantly with effect from 1 January 2006, with some limitations. Customers who change the amount of the house mortgage at the same time as they change banks, will still have to pay the old fee.

The inconvenience associated with acquiring new account numbers and movement of deposits and loans may be an important factor for some customers. The Norwegian banks have agreements on a procedure for customer switching, which should make a switch fairly easy.

Customers switching bank do not need to contact their 'old' bank. This contact is done by the new bank which also takes care of transferring the deposits to the new accounts.

Searching costs are high in the banking sector compared to other sectors. Financial matters are generally perceived as difficult and time-consuming for many consumers. Searching costs are also closely linked with the bundling issue. If customers via bundling are forced to switch all financial products at the same time, searching costs will be higher.

Lately, the banks have turned into financial supermarkets. This means that *bundling* of products is widespread. In the Juul report a survey showed that 79 percent of the respondent banks use some sort of loyalty program or customer package. The problem with bundling and loyalty programs is that these also enhance complexity, making it even more difficult for customers to compare products, prices and services. This is another reason to enhance transparency.

Complexity and lack of comparative information on prices and product characteristics seems to be an important factor that reduces consumer mobility. The NCA has, on several occasions, recommended the establishment of an information website for financial products. Steps have now been taken to establish such a website, based on a detailed project proposal from the Norwegian Consumer Council and the Financial Supervisory Authority of Norway.

In addition to the above mentioned measures, the NCA has also recommended the introduction of switching codes, as implemented in Ireland and the Netherlands.

There seems to be a trend towards customers holding parallel banking accounts. This will open up the market for niche banks (with a principal focus on only one or a few products). In Norway, the evidence indicates improved customer mobility over the past years. It is the opinion of the NCA, that the introduction of several niche banks, like Skandiabanken (internet bank) and Bankia Bank (payment cards), has improved the customers' awareness of the benefits of shopping for banking services.

6. Access to common platforms

Interbank settlement and payment systems in Norway are to a large extent based on common platforms managed by companies controlled by the incumbent banks.

The interbank settlement systems in Norway are based on two interdependable systems: NBO and NICS. NBO is the Central Bank of Norway's settlement system. NICS, Norwegian Interbank Clearing System, is the banks' joint national system for clearing payment transactions. The NICS system is developed and run by Bankenes Betalingssentral AS (BBS), the Norwegian banks' payment and clearing house.

BBS is a joint venture company, owned by the Norwegian banks, which runs interbank settlement systems and payment transaction systems (both paper and electronic) for the owners.

BBS also runs the national payment card system (direct debit cards), BankAxept, which handle 87 percent of all payment card transactions. Banks participating in the BankAxept scheme must comply with the scheme's general rules, but operate independently of each other, both as issuing and/or acquiring banks in the market. Through a multilateral agreement and the communication software BALTUS, BankAxept also gives the banks access to all ATMs. Holding a banking licence (Norwegian or foreign) and paying an entrance fee are the only criteria for participating in the BBS systems and BankAxept.

The NCA has reviewed several aspect of the co-operation between the banks. Most of the multilateral agreement governing the co-operation have been subject to an individual exceptions evaluation after the Competition Act of 1993. In 2001 and 2002 the NCA banned some aspects of the agreement related to electronic factoring and collection of POS transactions. In 2004, The NCA wrote a report on international payment systems in Norway together with the Financial Supervisory Authority of Norway and the Central Bank of Norway. In 2005, The NCA wrote a report on retail banking, together with the other Nordic Competition Authorities, where access to common platforms was one of the central aspects of the market that was investigated.

7. Access to payment systems in Norway

In Norway, access to interbank settlement systems and payment systems is regulated through a collection of contracts and rules for domestic payment transfers, published by Finansnæringens Servicekontor og Sparebankforeningens Servicekontor as Publication no. 6, September 2003. The rules are publicly available and, according to the banking associations, applied in a non-discriminatory manner.

Membership in the banking association is not a prerequisite to gain access to interbank settlement systems, but the only bank participating without membership is Swedbank (Föreningssparbanken). It is however a prerequisite that the bank has a banking licence (Norwegian or foreign).

The fee for joining NICS varies, depending on the bank's capital liability. Access fees vary from approximately EUR 44,000 to EUR 625,000. The fees are paid to the system administrator, who decides on use of funds for the system or its maintenance or, depending on the organisation form, re-allocates it as compensation to its owners or members.

The admittance fee for joining the BankAxept scheme is outlined in an agreement on calculation of fees for access to the banks common payment transaction system. The size of the fee is based on size of the applicant bank if the applicant bank is Norwegian. If the applicant bank is foreign, however, it will have to pay the maximum fee automatically.

Another issue is access for non-banks. In Norway, the payment card system is predominantly run by banks and it is demanded that participants hold a banking license to access the systems. Access to payment systems for non-banks may be an important means to increase potential competition.

The NCA do not yet have any decisional practice on whether the access cost constitutes a barrier to entry, though the authority has received signals or complaints from some market participants that find the level of cost problematic. In a report on financial markets from 2003, the NCA found that access fees to some degree constitute an entry barrier.[3]

[3] Publication by the Norwegian Competition Authority, no. 1/2003, "Competition in Financial Markets". (Published in Norwegian only)

Norwegian banks have to a large extent outsourced transaction processing to BBS. BBS is a dominant actor in the Norwegian payment card market. As described in the following, the NCA has on two occasions found behaviour by BBS contrary to competition law.

In 2001 the NCA banned an exclusive agreement between BBS, the dominating clearing and settlement house, and the banks connected to electronic invoicing.

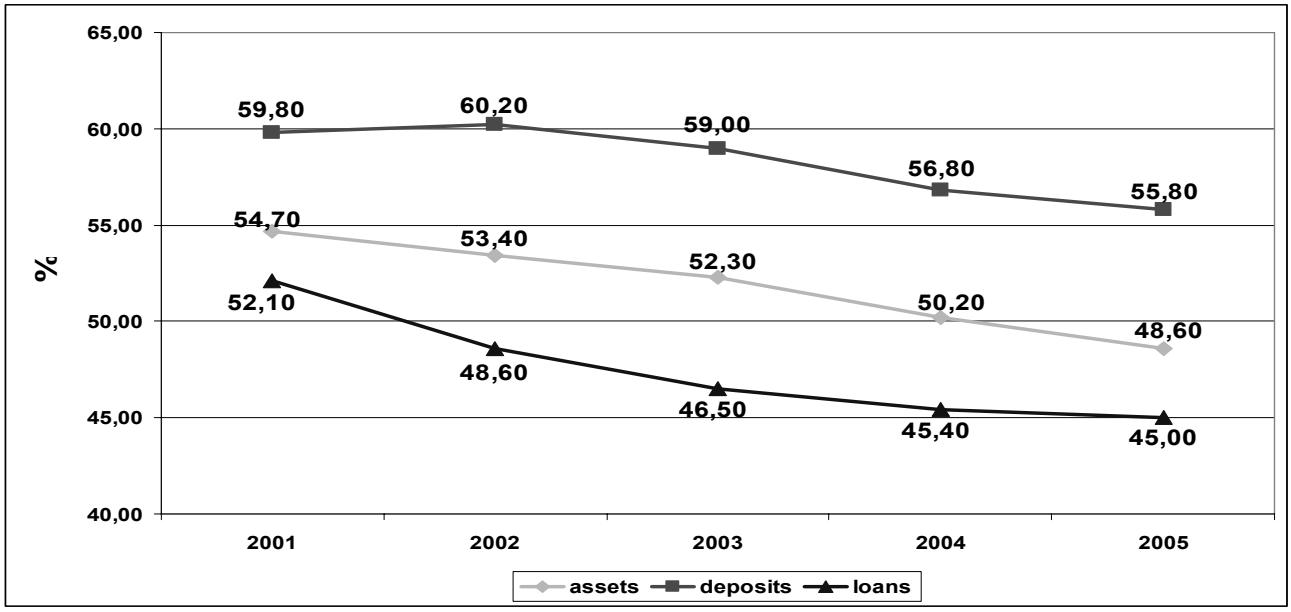
In 2003 the NCA banned an agreement between BBS and the banks connected to processing EFTPOS-transactions. Previous to 2003, collection of transaction data from banks in Norway was monopolised due to an exclusivity clause in the agreement between the banks and BBS. The company POS System entered the market after the exclusivity agreement was banned by the NCA.

POLAND

1. Structure of the Polish retail banking market

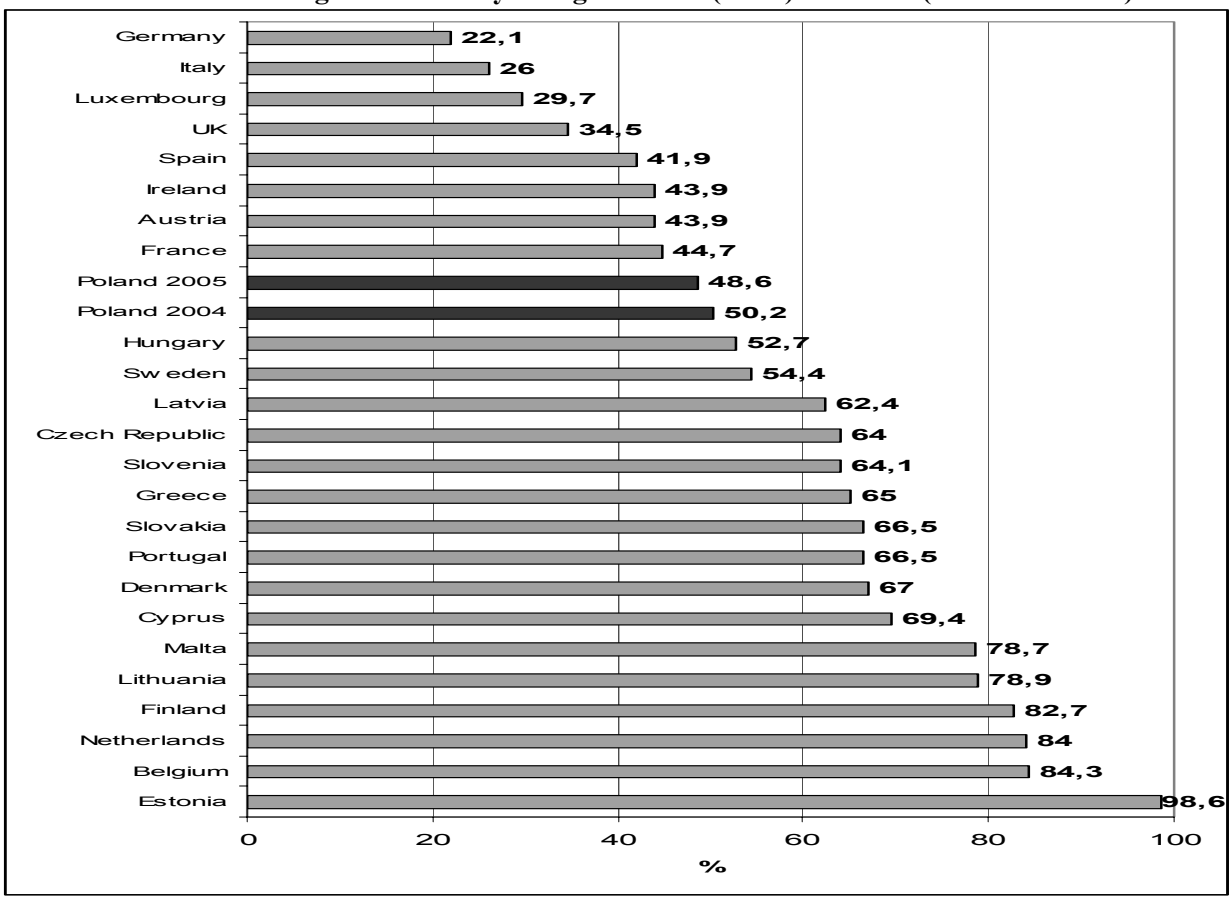
In spite of the on-going consolidation processes, during last five years concentration levels in Polish banking sector (measured both with the discrete concentration ratios - CR of 5, 10 and 15 banks and with the Herfindahl – Hirschman Index) decreased, due to a rapid growth of small banks. These indices are relatively low as compared to the majority of EU countries. In terms of their levels Poland held seventeenth position at the end of 2004.

Market share of 5 largest banks (CR 5) in Poland

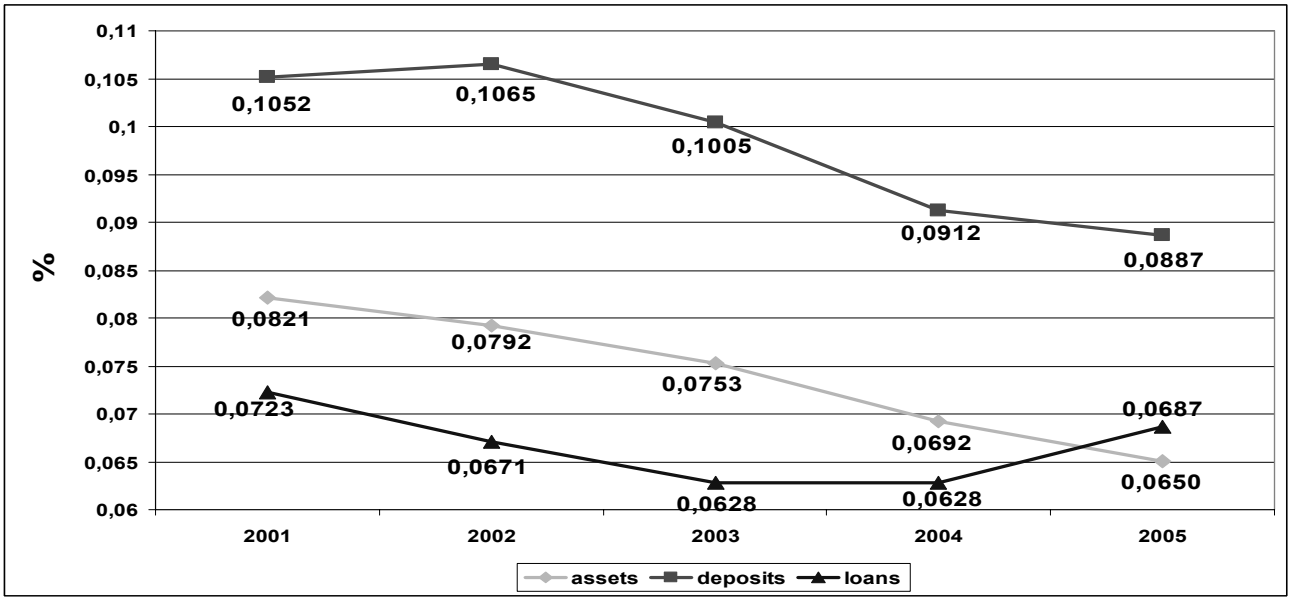


Source: National Bank of Poland.

Share of banking assets held by 5 largest banks (CR 5) in EU-25 (December 2004)

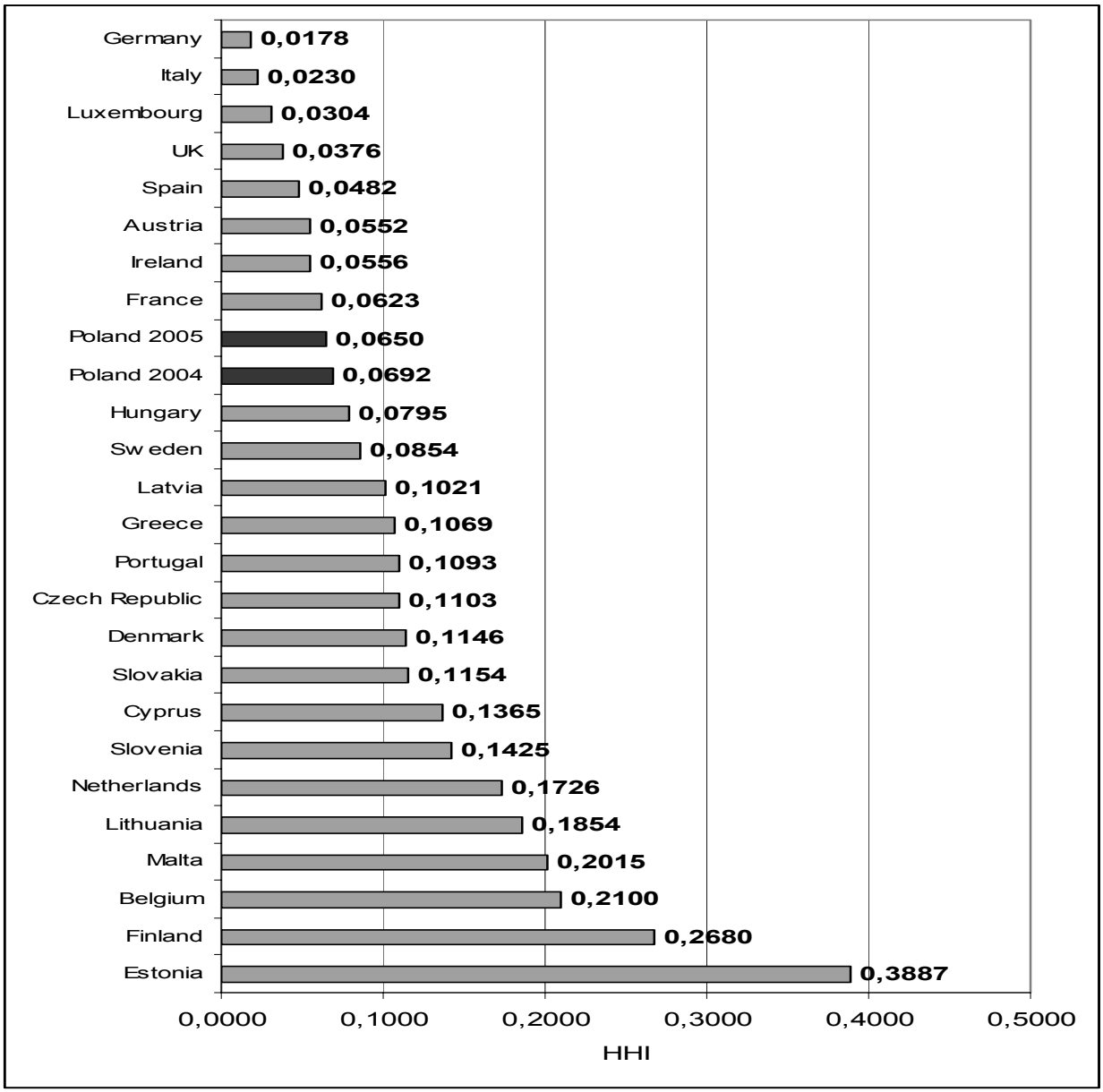


Herfindahl-Hirschman Index (HHI) in Polish banking sector



Source: National Bank of Poland.

Herfindahl-Hirschman Index (HHI) in EU-25 (December 2004)



Source: National Bank of Poland, European Central Bank.

2. M&A regulations and developments

Acquisition of a bank in Poland is subject to control by both competition and supervisory authorities. The merger must be notified to the competition authority if the combined turnover of the parties exceeds 50 mln euros1. Permission of the supervisory body is required for purchasing 10, 20, 25, 33, 50, 66 and 75% of a bank's shares.

[1] A proposal of the amendment to the Polish competition law, which will soon be considered by the Parliament, aims at changing this threshold to a two-tier system, where a concentration would have to be

Banking supervision in Poland is performed by the Commission for Banking Supervision and its executive body, General Inspectorate of Banking Supervision. These two institutions are politically independent. The main objective of the supervision is to ensure safety of deposits held by banks and stability of the banking sector. These requirements are the same both for domestic and foreign investors.

Mergers and acquisitions taking place in the past 16 years were a natural consequence of privatisation and foreign investments and were chiefly influenced by international consolidation of foreign shareholders of Polish banks. At the end of December 2005 43 commercial banks (out of 61) were controlled by foreign investors, including 8 out of 10 largest The largest state-owned Polish bank was partially privatised in November 2004, however the Polish State Treasury retains controlling ownership.

Ten largest Polish banks

	Bank	Controlled by:
1	PKO BP	State Treasure
2	Pekao S.A.	UniCredit[2]
3	BPH	HypoVereinsbank
4	ING Bank Śląski	ING
5	Citibank handlowy	Citibank
6	BRE	Commerzbank
7	Bank Zachodni WBK	Allied Irish Banks
8	Kredyt Bank	KBC
9	Bank Millennium	Banco Comercial Portugues
10	BGŻ	State Treasury

Source: Office of Competition and Consumer Protection.

notified to the competition authority when parties to the transaction achieve combined worldwide turnover of 1 bln euros or their combined turnover in Poland exceeds 50 mln euros.

2 In 2005 UniCredit took over HypoVereinsbank, and as a consequence a merger between Pekao SA and BPH is in progress. It will entail, however, selling part of BPH, so the new entity will be smaller than Pekao SA and BPH combined.

3. Payment systems

Inter-bank retail payments in Poland are effected by means of ELIXIR, a net settlement system owned and operated by the National Clearing House, which is a joint-stock company owned by 12 commercial banks, National Bank of Poland and the Association of Polish Banks. Large value payments and retail payments processed by the National Clearing House are settled in SORBNET, an RTGS system operated by the National Bank of Poland. All banks in Poland have direct or indirect (in case of cooperative banks) access to the above-mentioned systems, which is granted after fulfilling certain reasonable prudential conditions. The fact that only the banks can gain direct access to the transaction systems may constitute an entry barrier for non-bank entities, such as credit unions, which have to use banks as intermediaries. The former, however, are in the process of obtaining a banking licence, which should put them on equal footing with the banks in the area of retail payments.

4. Entry restrictions

Pursuant to art. 5 of the banking law act depository services and granting of loans are banking activities and are reserved only for banks. Credit unions under art. 3 of the act on credit unions can take deposits and grant loans only from members of a union. Credit unions are increasingly popular in Poland, since their offer is highly competitive (higher interest rates for deposits and lower for credits, less formal requirements). Polish Post, although it cannot undertake activities in the area of depository and lending services, is a major shareholder of Bank Pocztowy, which is a joint stock company and operates as a traditional bank. Some of its services (also depository and lending ones) are available in Post Office outlets.

To open a new bank in Poland, undertaking has to fulfil certain obligations, most important of them concerning their legal form and minimum capital. Banks in Poland can operate as a joint stock company, cooperative bank or a national bank. Minimum capital requirements for banks in Poland are:

5 000 000 EURO – for banks established as a joint stock company and national bank;

1 000 000 EURO – for cooperative banks.

Moreover, persons setting up a bank, as well as its top directors must guarantee prudent and stable management of the bank and provide a 3-year business plan indicating that activities of the new entity will not jeopardize safety of the funds collected.

After Poland's accession to the European Union, credit institutions which have a banking license in EU member country may carry out activities in Poland in a simplified manner. The credit institution is only obliged to inform the host country supervisory body of their intention to commence activities. These activities can be performed through a "branch" in the host country. Operating through a branch provides a number of benefits including not having to comply with loan concentration limits or capital adequacy requirements of the Polish banking act. It is expected that these regulations will result in a number of new entrants to Polish banking sector in addition to some existing subsidiaries of EU domiciled banks operating in Poland converting to branches.

It's hard to assess the above-mentioned requirements from entry restrictions' point of view. On the one hand, number of banks in Poland systematically decreases (see table below). It is, however, the result of consolidation process, taking place in Polish banking sector in past few years (mainly as a result of consolidation of foreign shareholders - parent banks of Polish subsidiaries). On the other hand, there were successful entries into the Polish banking sector (Lucas Bank, Eurobank, Polbank EFG), which entailed starting banking activities "from scratch", not by means of acquiring an already established institution. There is also a growing challenge from "alternative banking institutions", such as credit unions. The above

seems to indicate, that successful entry into the Polish banking market is a real possibility, which acts to the benefit of consumers.

Number of banks in Poland

Type of bank	1999	2000	2001	2002	2003	2004	2005
1. Commercial banks:	77	73	69	59	58	57	61
1.1. With majority of public-sector equity[3]	7	7	7	7	7	5	4
1.2. With majority of private-sector equity	70	66	62	52	52	49	50
1.2.1. Polish-owned	31	20	16	7	6	8	7
1.2.2. Foreign-owned	39	46	46	45	46	41	43
2. Branches of credit institutions	0	0	0	0	0	3	7
3. Cooperative banks	781	680	642	605	600	596	588
4. Total number of banks in Poland	858	753	711	664	658	653	649

Source: National Bank of Poland.

5. Integration of financial services

Integration of financial services takes place in Poland, just as it does in other countries. Largest Polish banks are universal banks, providing various types of financing, treasury products (including derivative products) and deposit facilities to both retail and corporate consumers. Additionally, many banks have established separate brokerage operations. Many banks offer bank account together with accident insurance. In the past few years new financial consulting undertakings (serving mainly as "information brokers" providing a one-stop-shop advice on the offer of various financial institutions) commenced activities (e.g. Open Finance, Xelion, Expander). Two of them are subsidiaries of banks. Furthermore almost all banks offered financial consulting in their outlets. These services are mainly addressed to more demanding customers. Nevertheless it's difficult to consider such an integration of financial services as an anti-competitive change. Widening range of services offered by new distribution channels gives consumers the possibility to choose easier and faster a more adequate mix of services.

[3] Banks where the State Treasury, state institutions, or the NBP held equity interest entitling them to 50%+1 votes at shareholders' general meeting.

6. Switching costs

Presence of switching costs is a characteristic feature of the banking sector, Poland being no exception to this rule. They enable banks to keep prices higher than otherwise, by making it costly (in terms of money, time or convenience) to change the provider of services. It is difficult to assess to what degree switching costs influence competition in the Polish market. In the survey conducted for the National Bank of Poland convenient localisation, habit and reputation of the bank emerged as the most important factors influencing customers' choice of banking services provider, surprisingly less significance being attached to prices of services. This may indicate that a major factor contributing to lower switching costs would be increased availability of banking services. The latter seems to have improved with a significant increase in the number of banks' branches (especially in large cities) and rising popularity of internet banking .Although the total number of retail outlets has been declining, it was mainly due to gradual closing down of so called "agencies", where only the most basic services can be provided. Given the above, switching costs, as perceived by users of banking services, should be lower than in the past.

Another factor diminishing switching costs is the presence of the credit evaluation bureau, which makes available to banks data on customers' credit record. Its positive influence operates both on the supply and demand side: on the one hand banks are less reluctant than otherwise to offer loans to customers with whom they had no previous relationship, on the other it spares customers the costs associated with obtaining numerous documents stating their liabilities to various institutions. Efficient platform for exchange of credit information also facilitates entry, as new banks can start offering loans with significantly less risk, further contributing to diminishing switching costs.

On the other hand, however, there are some indications that switching costs might be a problem in the Polish banking sector. Such a conclusion could be drawn from the developments in the banking fees, which have been steadily growing in recent years, accounting for an increasing share of banks' total revenues. Coupled with record profits in the banking system as a whole it might indicate that customers, especially those of lower value services (e.g. current account and small money transfers) find it more convenient to stick with their current bank, despite being faced with higher costs. One of the chief factors responsible for such a situation may be low transparency and comparability of banking fees. Many banks apply different fee structures, making them difficult for a non-specialist to compare. Given that banking fees are relatively low in relation to personal budget, customers may find it rational to put up with their higher level, than to invest time in comparing offers of other banks. Some of the banks additionally discourage their clients from leaving by demanding fees for closing current account (usually if it is closed within a specified period after being set up).

Other, less tangible costs may also make switching harder, especially for SMEs. In particular a change of the bank entails a change of the account number, which has to be communicated to various entities (authorities, customers) which may in itself be costly. One of the possible remedies would be to introduce a number portability, as practiced in the telecommunications sector, but feasibility of such a solution in Poland has not yet been considered.

7. Competition law and banking supervision

Competition law fully applies to banking sector in Poland, both with respect to restrictive practices and concentrations. It is enforced by the President of the Office of Competition and Consumer Protection., who is the Polish competition authority. For the purpose of competition oriented assessment of banks' activities, they are therefore treated like undertakings from non-banking industries, having to comply with the same set of rules.

Banking supervision controls concentrations in the banking sector from a different viewpoint, which is stability of the sector and safety of deposits held by banks. This two-tier system ensures that specificity of the banking sector is taken into account, but cannot influence competitive assessment of a merger or of a potentially restrictive banks' market behaviour.

Even though there are no formal mechanisms regulating cooperation between competition authority and banking supervision, relations between them are correct. Separation of competition and prudential assessment does not raise serious problems - during last 15 years no situation occurred, where competition and banking authorities issued conflicting decisions.

SWEDEN

This note focuses on questions (1) ("Switching Costs") and (3) (Access). The first section gives a short background to Swedish retail banking markets.

1. Retail banking markets in Sweden

The Swedish retail banking markets are still dominated by large domestic banks with rather loyal domestic clients. During recent years some of these banks have expanded in neighbouring countries, including the Baltics. This integration process is likely to continue.

Parallel to this development, a number of new actors and fringe players appear to be growing in most markets. These banks may aim for the entire portfolio of retail bank customers, or for some product segment, such as mutual fund management. Nevertheless, although competition may have increased, the impact on the industry is yet to be seen, since concentration remains stable at quite high levels.

The sum of the four largest banks' market shares (measured in total assets) amounts to 82 percent in 2004. This is a relatively high figure compared to other European countries, and the development suggests that any significant decrease is highly unlikely.

Profitability measures, profit statements by banks and Central Bank opinions indicate that Swedish banks are profitable. From a stability perspective, this situation is satisfactory - the risk of default of the system is marginal. The market is dominated by banks that are financially sound. From a competition perspective, however, the margins in the industry suggest that banks can give consumers substantially better offers and still be profitable. In other words, more competition between banks can benefit consumers in terms of better products at lower costs.

The number of branches is falling. Tele-banking, and in particular Internet banking, is associated with this development. Some niche operators have taken advantage of the new marketing channel and concentrated their interaction with their customers to the Internet, thereby eliminating the need for a physical branch network. Although this may increase the likelihood of new entry to the Nordic banking market, other factors may restrain it. For instance, retail banking belongs to a family of services that for households represent a substantial element of trust. Thus, consumers may wish to remain with the well-known providers of retail banking services despite better (but perhaps perceived as uncertain) deals being available. Such consumer immobility may constitute a restraint to competition. In addition, banks often offer consumers various forms of discount packages, frequently bundling different products together at favourable prices, thus providing strong incentives for loyalty to a single bank.

2. The Swedish payment infrastructures

The infrastructural set-up is basically national, in spite of increasing expansion in neighbouring countries. Most transactions are processed through a giro-based system (as opposed to cheque-based). Processing generally involves one institution acting as a clearing house, where net positions between banks are derived which later are settled, usually between accounts in the Central Bank (Riksbanken).

In the case of giro transfers, the bank giro service (Bankgirot) plays an important role at the authorisation and clearing stages. In the case of direct transfers between accounts in different banks, these are usually handled by the data clearing system (Dataclearing). Both giro transfers and direct account transfers are settled in RIX. In the case of payment by card, the situation is partly different. When a customer uses a automated teller machine (ATM), the payment is authorised and cleared using one of the four communication systems available before the settlement order is sent to RIX (via Bankgirot). The authorisation of card payments is mainly carried out by CEKAB (a company owned by several major banks) or by Babs (a system owned by one major bank). Clearing takes place abroad, via the Visa or MasterCard infrastructures, before the transaction is settled in Sweden.

Conditions of access to the systems vary slightly as to the degree of discretion enjoyed by incumbent banks in deciding on the entry of new members to the system. A general feature, however, is that access is awarded by banks already in the systems, and that these banks have decision-making power over fees and other entry rules.

3. Potential and perceived competition problems regarding payments

The importance of efficient access by banks to common platforms can hardly be underestimated. Banks wishing to meet most consumer demands in terms of financial services must be able to link basic payments services such as cards, giro transfers and direct account transfers to the customer's transaction account. This in turn assumes that the bank has access to the infrastructure underlying the payment systems on non-discriminatory terms. As the transaction account represents a gateway to other banking services, such as savings products, deposits and credits, this issue crucially determines how competition develops in markets in the banking sphere.

The major giro-provider in Sweden is jointly owned and managed by the four largest banks. This raises a number of concerns from a competition perspective.

3.1 Concern # 1: Raising rivals' costs through discriminating terms of access

Given that the incumbent large banks have strong influence over access conditions in the major giro-system, they are also in a position to raise rivals' costs of entry through the design of terms of access to payment systems. A general observation by the Swedish Competition Authority is that access conditions for large and small banks to connect to essential payment infrastructures sometimes discriminate small banks versus large banks.

The Competition Authority has studied prices paid by large and small banks respectively for access to the infrastructure in some payment systems. Some of the systems apply roughly the same principles when setting fees irrespective of the customer's identity. They offer volume discounts on total invoice amounts, which means that small actors are given discounts below five per cent while the large banks enjoy discounts that are often in the region of 10-30 per cent.

This represents a cost disadvantage to small actors, but may partly be motivated by significant scale economies in production. Also, the participation of the market's large actors with their substantial transaction volumes is essential to cost efficiency in the system – without them, smaller actors would probably have to operate on considerably less favourable terms. In certain cases, these volume discounts have been examined by the Competition Authority as well as the Market Court, and found to be compatible with the competition rules. Some smaller actors commented to the Authority that they were not altogether against the idea of discounts, but questioned whether these were entirely cost-motivated.

In the case of cash withdrawals, banks usually agree bilaterally on what fees they should pay for accessing each other's ATMs. Thus the terms under which the various actors operate vary. A general

conclusion is that small banks pay higher fees to large banks for access to the latter's ATMs, compared with the amounts that large banks pay one another for accessing each other's ATMs. This represents a cost disadvantage to small banks, particularly as the large banks own almost all of the ATMs in Sweden.

The smaller banks have a cost disadvantage in terms of the fees charged for giro transfers, direct account transfers and cash withdrawals, but not, as far as the Competition Authority can see, in the case of card issuing. In assessing this, the Swedish Competition Authority has estimated the costs to small and large banks respectively of an average consumer's use of cash withdrawals, direct account transfers and giro transfers. Our calculations show that the cost disadvantage to the small banks is an estimated SEK 100 – 250 per year/customer (approx. 11 - 28 euros). The single largest cost disadvantage concerns the banks' access to ATMs. The cost disadvantage to the smaller banks in terms of cash withdrawals, direct account transfers and giro transfers is offset by the fact that they are in a more favourable position than the major banks as regards card issuing.

In addition to these fee schedules which discriminate against smaller banks, and which to some extent has been scrutinised by the Swedish Competition Authority, various forms of technical requirements may have similar exclusionary effects. To the extent that such access conditions put more excessive demands on participants than can be motivated from stability and other social objectives, they can be regarded as anticompetitive.

In sum, access conditions for banks to connect to essential payment infrastructures often discriminate small banks versus large banks. Such discrimination is an important barriers to entry in retail banking markets, and therefore, a potentially serious competition problem.

3.2 Concern # 2: Conflict of interests

In network industries, rival companies sometimes cooperate in what are termed 'infrastructure clubs'. This is common practice in Swedish payment systems. Perhaps the foremost example is Bankgirot, where board members not only represent the owners but are also the system's biggest customers. While this kind of cooperation sometimes improves efficiency, there are also risks involved. Competitors may, for instance, gain a greater insight into one another's operations than is strictly necessary for the management of their joint activities, which may restrict competition since it provides an inappropriate knowledge of rivals costs, structure and business plans.

Also, participants may design the terms of access in such a way that they place new market actors at a disadvantage or cause product development to focus on the needs of the large participants rather than those of the smaller banks.

It is therefore desirable that the commercial management of the systems be run separately and free from any potential conflicts of interest.

4. Remedies

The two concerns identified above can, in the view by the Swedish Competition Authority, be addressed by regulatory measures on national and/or international levels. One set of rules would focus on rules of access to general payment systems, whereas a second set of rules would highlight the unbundling/separation of management-owner and client roles of payment systems.

4.1 # 1: Rules of access: Transparent and non-discriminatory rules of access to payment systems.

Payment systems are an integral part of the economy and the financial sector in particular. Both interbank payment systems and payment cards systems are vital elements of infrastructure for entrants

wanting access into the markets for retail banking. Banks must therefore obtain efficient and comparable access terms for the provision of payment system services from infrastructure holders. Although large-scale operations may motivate marginally better pricing terms, the differences must not limit the smaller banks' ability to successfully compete with the incumbent large banks. Discriminatory rules may restrict entry for institutions such as non-banks, smaller banks and foreign banks into the market. The regulatory environment must therefore be designed so as to safe-guard transparent, non-discriminatory, objective and proportionate terms of access to payment systems. Regulatory reform may therefore be necessary in order to achieve these objectives. Competition authorities and sector regulators, mandated with a sharp legal mandate, may have good reasons to prioritise this specific area with the aim to impose deterring sanctions where anticompetitive access conditions to essential payment infrastructures are identified.

4.2 # 2: Unbundling/Separation: Unbundling of management-owner and client roles of payment systems

The largest customers of the services of payment infrastructures are often also owners. The conditions on which small and new banks are given access to payment services are therefore partly influenced by their competitors in the market. Therefore, for large banks as co-owners of payment infrastructures, conflicts of interest may arise between the two roles of being a customer and an owner *at the same time*. To eliminate the risk of discrimination, it may be necessary to unbundle these roles and create a clearer division of the respective responsibilities. The management of the production of essential inputs for banks to offer payment services to customers must be run with the benefit of all users in mind, not just the largest. To achieve these objectives, reforming the rules for governance may be necessary. Such regulatory reform needs to be specific on the requirements on separation of the management-owner and client roles.

5. Consumer mobility

A low frequency among consumers to switch banks can be harmful for competition. Potential entrants to the market would acknowledge that gaining large groups of customers rapidly, a prerequisite to achieve a viable scale of operations, is a challenging, time-consuming and highly risky affair. Hence, potential new players in the market may abstain from entering, easing the competitive pressure on the incumbent banks and resulting in higher-than-necessary costs for customers.

Effective competition depends to a great extent on low switching costs and on the customers' interest in comparing and shopping around in order to choose the best alternative of products and services. In this environment the suppliers have to offer attractive services in order to gain new and keep old customers. With this in mind it is worrying that customer mobility in many countries seems to be relatively low. Possible explanations are high switching costs arising from customers difficulties in assessing and comparing products, absence of workable process for switching, the lack of bank account mobility and perceived difficulties in switching. This raises the issue of how greater competition can be achieved through measures aimed at facilitating customer mobility.

6. Two principles for more mobility

6.1 Principle # 1: It should be easy for consumers to compare alternatives

There is a general need for better transparency among consumers in Swedish Retail Banking markets. Websites where consumers can get accessible and clear information have proved useful for this purpose and can be developed further. Governmental agencies and independent consumer organisations have an important role in facilitating the accessibility of information for the consumer using different means. The information must be designed with the aim to enable the consumer to make informed and rational choices.

6.2 Principle # 2: It should be easy to make the switch in practice

Switching bank is a time-consuming operation if the customer has to inform a whole series of third parties and to re-establish direct debit orders. With such a procedure there is a great risk that consumers will perceive the process of switching bank as too burdensome. The following reforms may improve mobility among consumers by making the switch easier in practice.

6.3 Services associated with the bank account

In Sweden the switching of bank necessitates, at least in the respect of payment services, more administrative work on the part of a consumer than on the part of a business customer. When a business customer switches banks, the bank giro services that are linked to the old account are automatically transferred to the account in the new bank. Such a solution is not available to consumers; consequently a consumer has to inform the new bank about the various services that are linked to the old account and has to fill in various forms. Automatic transfer would increase the incentive for consumers to switch.

6.4 Bank account number portability

In the field of telecommunications, the principle of portability of telephone numbers has been introduced into EC legislation: the customer can change telephone operator, while keeping the same number. This measure is regarded as an essential element to enhance competition. The obligation to change the telephone number when changing the telephone service provider was a considerable barrier. This raises the question of whether there is a case for also introducing such an initiative in the field of banking.

SWITZERLAND

1. Introduction

The financial sector (banks and insurance companies) in Switzerland is highly developed and plays a key role in the Swiss economy. In 2004, the sector's gross added value amounted to nearly CHF 68 bn or 14% of Gross Domestic Product (GDP). Banks contributed CHF 43 bn to the gross added value, which corresponds to 8.8% of GDP. Over 200'000 employees work in the financial sector. This corresponds to 5.3% of the total workforce in Switzerland. Compared to other industries, the labour productivity in the banking sector is doubtless one of the highest in Switzerland.[1] At the same time, competition in the banking sector is affected by state- and self-regulation. Compared to other countries the regulation of the banking sector in Switzerland is however rather liberal.[2]

This report discusses some essential regulation and antitrust issues of the banking industry in Switzerland: Section 2 contains a brief introduction to the structure of the Swiss banking sector as well as to historical and recent developments. The general regulatory framework of the financial industry and the scope of application of antitrust legislation are the subject of section 3. Section 4 reviews the investigations of the Competition Authorities into the retail banking business and discusses some important issues which may potentially restrict competition in the industry. The joint ventures in the Swiss financial market infrastructure and their possible anti-competitive effects are the subject of section 5.

2. The Banking Sector in Switzerland

2.1 Retail Banking in Switzerland

The banking industry in Switzerland is characterised by the concept of universal banking: most banks offer all banking services (credit/lending business, asset management and investment advice, payment transactions, deposit business, securities business, underwriting business, financial analysis etc.). Universal banking includes the advantage to spread the risk over a greater number of banking businesses and customers from all sectors of the economy. Nevertheless, different bank groups specialising in certain business areas have developed in the last century. The Swiss National Bank therefore divides its statistics into different banking groups (big banks, cantonal banks, regional banks and savings banks, the Raiffeisen Group, commercial banks, private bankers etc.).

There is no common definition of retail banking, neither for the products and services that are distributed by financial institutions, nor for the targeted customers. Retail banking contains nowadays products and services such as:

- current and savings accounts (in different currencies);
- loans to individuals (mortgages, consumer loans, investment loans, etc.);
- payment services (payment cards, ATM networks, travel checks, e-banking etc.);

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1 For statistical information on the banking sector see e.g. Swiss National Bank, Banks in Switzerland – Statistic 2005, Zurich 2006 (http://www.snb.ch/e/publikationen/publi.html).

2 Barth et al. (2002), Bank Regulation and Supervision: What Works Best?

- leasing (cars, investment goods);
- insurance products (life insurance, construction and building insurance);
- investment products (equities, bonds, funds, structured products);
- asset management.

While in the last three decades Swiss banks used the term "business to individual customers" to separate retail banking from private banking, the border between those two types of business got more and more blurred in the recent past. Globalisation forced banks to reduce costs and to standardise processes and products not only within the classic retail banking but also in the private banking business. In private banking customers today are split up in "mass affluents" and "high net worth individuals", leading to an enlargement of the product range of retail banking to more sophisticated services like e.g. asset management. Some institutions even offer products and services to SME's in this business channel.

2.2 Development of the Swiss Retail Banking

In the late eighties retail banking was a very profitable business. Each canton had at least one state owned financial institution (so called "cantonal banks") and regional banks were spread over the whole country. However, due to the recession in the early nineties, the decline of demand in the building sector as well as the mismanagement of several banks in the mortgage loan business, the retail banking sector experienced a tough wrap that affected many financial institutes in Switzerland. Especially banks that borrowed money to SME's, securing loans with real estates, suffered from heavy losses. In 1991, as a result of a careless credit policy and severe deficiencies in the organisation, the Swiss Federal Banking Commission (SFBC)[3] had to close down – for the first time in a long while – one of the major regional banks in Switzerland, the Spar- und Leihkasse Thun.

Within a few years the number of regional banks halved and those of the state-owned cantonal banks got reduced from 29 to 24 institutes. Even the five big banks that existed at the end of the eighties (Union Bank of Switzerland, Swiss Bank Corporation, Credit Suisse, Swiss Volksbank and Bank Leu) were affected by this concentration process in the retail sector. At the end of the nineties only two out of the five big banks mentioned before (UBS AG, Credit Suisse) had survived these developments. The Bank Leu and the Swiss Volksbank had been acquired by Credit Suisse Group in 1990 and 1993, while Union Bank of Switzerland and Swiss Bank Corporation merged to UBS AG in 1998. The only banking group which managed the crisis reasonably, due to a cautious credit policy, was the Union of Raiffeisen banks.

As a direct consequence to these occurrences, the retail banks were forced to assess their credit policy as well as their internal structure and organisation. It was at that time when retail banks began to implement risk and pricing strategies (risk adjusted pricing). Some banks, especially state owned banks, outsourced their non-performing loans into special purpose vehicles. Furthermore, the regional banks established the RBA-Holding, a joint venture that not only operates a common IT-platform but is also important as a central supplier of various services like lending, internal audit, human resources management, finance & controlling, compliance, product development etc.

These market changes led to a more restrictive, schematised and unified credit policy vis-à-vis individual customers and SME's, which resulted in problems in the SME-sector and a public debate about

[3] The SFBC is responsible for the supervision of banks through statutory auditors. It grants new banks authorization to begin conducting business. In the event of a violation of law or other abuses, the SFBC can order appropriate corrective measures. If the case is serious enough, it can withdraw the banking license.

the question whether banks should lend to SME's at any risk. After the merger of Union Bank of Switzerland and Swiss Bank Corporation, there were also concerns that the remaining two big banks would cut back their retail banking business and focus on asset management and the investment banking business.

After the terror events of 9/11, the international banking business became however less important for the big banks for a short while as the asset management business lost substantial volumes. The banks had to look for new sources of income and rediscovered the retail business, creating new business models and opening new distribution channels.[4]

The financial sector and namely retail banking finds itself in a phase of consolidation for some years now. There were only a few merger transactions on a regional level but none on the national level in the last five years. Most activities had been developed within the group of the regional banks and the Union of the Raiffeisen banks. While the latter endured the crisis of the nineties without severe problems, the group of the regional banks still suffered from the aftermaths. It turned out that the interests of the regional banks within the common holding were too heterogeneous as the largest regional bank, the Valiant Group, began to absorb other regional banks in nearby regions and to broaden its product range by entering into cooperation agreements with other banking institutes. Thus, the Valiant Group rapidly grew within the RBA-Holding, becoming a major player. At the same time, a group of other regional banks created a joint venture under the name of Clientis with the purpose to plan and conduct their retail business. A third group of regional banks left the common house of RBA and entered into cooperation agreements with other banks. Contrary to expectations in the nineties, the Union of the Raiffeisen banks was able to grow by extending its physical presence. As a financial institute especially oriented towards rural people, the group was historically present primarily in the countryside. Since a few years, the Union is represented in bigger cities as well.

It must be expected that the concentration process will take up again in the future since cost pressure still is the determining factor in retail banking. Vertical integration will continue to decrease costs on the one hand, while costs for IT-services will on the other hand assumably grow. Regarding the gap between small and large retail banks the question of refinancing loans is and will be essential. While big banks and cantonal banks are able to lend money on capital markets, access for smaller banks is limited. They are therefore forced to either cooperate with other banks or to limit their business strategy and product range.

3. Banking and Regulation

Switzerland’s neighbours are all members of the EU, one of the world’s most important single markets. As an open economy, trade between Switzerland and its neighbours as well as other countries is intensive. Besides, as an export-oriented economy, Switzerland hosts a number of important multinational enterprises in different economic sectors and especially in the service-oriented sectors like the banking sector. The difficulty of an efficient regulation in the banking sector in this context lies in avoiding market entry barriers through overregulation while assuring sufficient supervision standards of banking services that are also compatible with Switzerland’s neighbour countries.

3.1 General Regulation of the Banking Sector

Regulators in Switzerland are not confronted with internal market problems as the banking regulation is not cantonal. However, since the Swiss banking industry is largely internationally oriented, it is of utmost importance that the regulation standards in Switzerland are compatible with the international standards. Furthermore, effective regulation contributes crucially to enhance the competitiveness of the Swiss financial industry.

[4] B. Catellani, Retail Banking: Eine Branche im Umbruch, in: I-VW-HSG Trendmonitor 5-2003.

Different financial market acts build the basis for regulation of the financial sector in Switzerland. The main acts applying to the retail banking sector are: the Banking Act, the Stock Exchange and Securities Trading Act, the Investment Fund Act (in future called the Collective Investment Act), the Money Laundering Act and the Central Bank Act. All of these acts are completed by ordinances and guidelines. These specific banking acts follow mainly a prudential and systemic supervision approach. However, there is a range of other acts following a more consumer oriented approach such as the Federal Act against Unfair Competition, the Federal Act on Consumer Credit or the Ordinance on the Notification of Prices that may have an impact on the retail banking sector.[5]

In addition to the formal acts mentioned before, the Swiss banking industry has a longstanding tradition of self-regulation. In collaboration with the SFBC, Swiss banks draw up binding codes of conduct, which define what constitutes good industry practice or ethically correct management. One example of a code of conduct is the Agreement on Due Diligence (CDB).[6] Such agreements – even if they are sometimes approved by the SFBC – must be qualified as private regulation and do not take precedence over the Cartel Act.[7] They can therefore in principle result in unlawful restraints of competition.

The regulation of the Swiss Stock Exchange is mainly based on such self-regulation. In order to avoid any competitive restraints in the self-regulation rules of the Swiss Stock Exchange, the legislator introduced a provision in the Ordinance on Stock Exchanges and Securities Trading according to which the SFBC may consult the Competition Commission (ComCo) before approving stock exchange regulations. The ComCo is entitled to give an opinion on whether the regulation is neutral with regard to competition. This provision allows the ComCo to react to possible restraints of competition in advance. Unfortunately this provision applies only to the stock exchange sector and there are no similar provisions in the Banking Act.

In order to implement a culture and discipline of pre-estimating legal and practical implications of legislation in the financial sector, the Federal Finance Administration, the SFBC and the Federal Office of Private Insurance jointly published "Guidelines for Financial Market Regulation".[8] The guidelines aim at rendering the regulatory process more transparent, progressively including those actors primarily concerned and taking the economic implications of the regulation into account systematically and as early as possible in the legislation process. They are designed to serve as a manual for developing regulation in a commensurate and cost-efficient manner. It remains to be seen whether the regulatory bodies are prepared to live up to the spirit of the guidelines.

Further, Switzerland knows the institution of a banking ombudsman. He deals with specific complaints which are raised against banks in Switzerland. While not having the role of a state court, the banking ombudsman provides information and acts as a neutral intermediary in disputes. The parties are not officially bound by his decisions, respect however, as practice shows, in many cases the negotiated solution.

It would go far beyond the scope of this report to address all the possible competitive concerns (e.g. risk of raising or stabilising entry barriers by means of access conditions; fee structures of payments systems; credit bureaus organised by incumbents; customer immobility through non-transparent pricing of

5 All of the mentioned acts, ordinances and guidelines can be found on the website of the Swiss Federal Administration (http://www.admin.ch/ch/d/sr/).

6 http://www.swissbanking.org/en/1116_e.pdf

7 The Competition Authority had for example to deal with such a configuration in the case of the SWX concentration rule (to be published in RPW/DPC 2006/3).

8 http://www.efd.admin.ch/dokumentation/grundlagenpapiere/00818/index.html?lang=en

certain products; state intervention etc.) that might arise from the regulatory framework in Switzerland. However, investigations of the ComCo regularly show that the regulatory framework can constitute an important element explaining the competitiveness of the financial sector.

3.2 Regulation of the Swiss Banking Sector and Foreign Entry

As mentioned before, regulation of the banking sector in Switzerland is rather liberal compared to other countries. This is particularly true for cross-border provision of banking services. In most segments of the banking sector, foreign banks intending to provide cross-border banking services are currently only subject to regulation of their home country and no additional Swiss regulation applies.[9] The SFBC confirmed its liberal attitude towards cross-border banking also for e-banking services:

"Banks and securities dealers based outside Switzerland are allowed to offer their products and services to Swiss clients via the Internet providing they have no physical presence in Switzerland (branch offices, agencies) and do not employ anyone locally (as representatives). However, they may designate a paying agent in Switzerland without prior approval. Advertising by foreign-based banks on the Internet or in the Swiss media is deemed permissible by the SFBC even when such advertising is deliberately targeted at Swiss clients and there is access to this advertising in Switzerland."[10]

Furthermore, the establishment of branch offices and agencies is currently easy in Switzerland and not subject to specifically high regulatory barriers.[11] According to McGuire/Schuele (2000)[12], Switzerland belongs to the most liberal countries in this respect. This conclusion is further supported by the fact that the market share of foreign banks in Switzerland has constantly increased in the last decade and amounted to roughly 16% in 2005.[13] Thus, when interpreting the presented analysis, it must be kept in mind that entry for foreign players into the Swiss banking sector is currently easy and frequent.

3.3 Competition Law in the Banking Sector

3.3.1 The Role of the ComCo in the Legislative Process

The ComCo has different powers to influence the legislative process. On the one hand the ComCo may address recommendations to the authorities. The purpose of such recommendations is to promote effective competition, especially with regard to the drafting and enforcement of laws relating to economic affairs. On the other hand, it reviews Confederation legislation drafts which are likely to influence competition and determines whether the effect of such legislation is to introduce distortions or excessive restraints of competition. In this role the ComCo has been very active in the past few years to help implementing an efficient regulation in the financial sector and to defend the principle of "same business, same risks, same rules". One of the major projects in the financial sector in the years to come is the creation of integrated financial market supervision. The ComCo has followed this project very closely being represented in different working groups.

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9 Notable exceptions exist for consumer loans and investment funds.

10 Source: http://www.ebk.admin.ch/e/faq/faq4.html

11 The Federal Ordinance on Foreign Banks specifies that foreign banks wishing to establish a branch office or agency must obtain a license from the SFBC. This license system is rather a vehicle to sanction abuse and does in practice not build a significant entry barrier.

12 McGuire, Greg and Michael Schuele (2000): Restrictiveness of international trade in banking services.

13 Source: Association of Foreign Banks in Switzerland, http://www.foreignbanks.ch

3.3.2 Competition Law

The Swiss Federal Act on Cartels and Other Restraints of Competition (Cartel Act; ACart)[14] applies to private or public enterprises that are party to cartels or to other agreements affecting competition, have market power or take part in concentrations of enterprises. The Swiss competition law does not contain lists of sectorial exclusions, so that in principle it applies to all economic sectors including the banking sector.[15]

However, according to Art. 3 para. 1 of the ACart, provisions of law that do not allow competition in a market for certain goods or services take precedence over the provisions of the Cartel Act, including in particular:

- provisions which establish an official market or price system;
- provisions which entrust certain enterprises with the performance of public interest tasks, granting them special rights.

This general formulation implies that in each case the competition authorities are obliged to check whether provisions which establish an official market or price system do exist and whether those provisions leave room for competition. The law proceeds on the assumption that an official market organisation is only given when it is the actual intention of the legislator to exclude competition in a specific area. As long as there is room left for competition, competition law applies.

Although the ComCo regularly deals with cases in the retail banking sector, it has up to now never found a provision in the banking acts which would not allow competition in the retail banking sector and exclude the competence of the Competition Authority. In general, it can therefore be assumed that antitrust rules apply to the whole retail banking sector.

3.3.3 Merger Regulation in the Banking Sector

The ComCo is in principle the competent authority to assess the effects of a concentration of enterprises. However, a special rule addresses the possibility that a bank merger might involve a bank being bankrupt (Art. 10 para. 3 ACart). In such cases, if the SFBC deems it necessary to protect the interests of creditors, it has the power to take the place of the ComCo and decide with due regard to the protection of creditors. The ComCo shall however be invited to submit an opinion. This provision aims at securing the stability of the banking system. In practice, the ComCo will always inform the SFBC of the notification of a concentration involving a bank and give the SFBC the opportunity to indicate whether it wishes to take the place of the ComCo. However, this is so far a theoretical exception which has not yet occurred.

There is a further specificity in the merger regulation regarding the calculation of the notification thresholds for banks and other financial intermediaries. According to Art. 9 para. 3 ACart in connection with Art. 8 of the Ordinance on the control of mergers of enterprises[16], the turnover will be replaced in the case of banks by the total amount of gross annual premiums. These provisions have been revised within the scope of the revision of the Cartel Act in 2004. They were basically adjusted to the regime of the EU. The

14 http://www.admin.ch/ch/f/rs/2/251.fr.pdf

15 The only explicit sectorial exclusion concerns the effects on competition that result exclusively from laws governing intellectual property and is in general of no relevance for the banking sector.

16 http://www.weko.admin.ch/imperia/md/images/weko/45.pdf

former calculation was based on the total assets of the balance sheet. Furthermore, the scope of the new provision was extended to all financial intermediaries.

As pointed out above, the Swiss retail banking sector has been subject to a concentration process in the late nineties and at the beginning of the new millennium. The most important case was the UBS merger in 1998, which was cleared after the parties agreed to several obligations (see as well section 4.2.2). Since then the ComCo has analysed only a few merger cases in the retail banking sector which were however all cleared without the need for further investigations.

4. Competition Issues in the Retail Banking Sector

4.1 The Investigations of the Former Cartel Commission

Several times the retail banking sector has been the subject of investigation by the competition authorities. Under the old regime of the Cartel Act from 1962 and 1985 the former antitrust authority, the Cartel Commission, had conducted market inquiries at regular intervals. These inquiries screened the retail banking sector from different angles. For this purpose the Cartel Commission had invited associations and groups of the banking sector as well as individual institutions, the Swiss National Bank and different authorities like e.g. the SFBC or the Federal Department of Finance, for hearings.

However, the Cartel Commission was at the time not entitled to take any formal decisions against undertakings that were involved in cartel agreements. It could only recommend structural measures or rules of conduct to undertakings involved in an investigation. The Commission had to assign the case to the Federal Department of Economy, in case the parties involved did not follow the recommendations. Only the Department had at the time the power to decide formally against an undertaking. In addition, a merger control procedure was only introduced in 1995 and direct sanctions for infringements of the cartel law with the latest revision in 2004.[17]

4.1.1 Investigation 1966-1968

As early as 1966, the Cartel Commission launched the first investigation into the retail banking sector. The investigation was designated to improve the knowledge of the Commission about market structure and competition in the Swiss banking sector. Subject of the inquiry were banking associations of national and local importance and existing agreements between members of these associations. Several agreements were identified. Some were of pure technical nature, while others directly affected the prices or conditions between banks and customers. On a national level, not less than eleven agreements existed between the members of the Swiss Bankers Association (SBA; today: Swissbanking) which had been qualified as cartel agreements on interests, fees and costs. Moreover, the SBA also produced a circular, which contained rules of conduct among competitors, namely to prevent effects of disloyal competition as well as noisy and intrusive marketing. The rules were designed on the principle "live and let live" and prohibited to take advantage of the fact that a bank is not member of a local or regional banker's association.

At the end of the investigation, the Cartel Commission came to the conclusion that the identified agreements, regardless of their legal qualification, did not harm competition. In its report the Cartel Commission expressed the view that the behaviour of market players was subject to competition among the

[17] Note that the Swiss legislation on cartels did not know any per se rule against cartels. In Switzerland, cartels were principally allowed as far as their effect did not significantly affect competition. Only in the revision of cartel law in 1995, a presumption was introduced into Swiss cartel law according to which horizontal and vertical hard core cartels are in general assumed to eliminate effective competition and, since 2004, are subject to direct sanctions that are of comparable magnitude as those in other European countries.

cartel members, not only through pricing, but also through consulting services, creation of new products or differentiated risk management. Furthermore, it also located strong competition between different banking groups (big banks, cantonal banks and regional banks including the Raiffeisen Group), between in- and outsiders of the cartel and competition coming from foreign banks and other financial intermediaries, like insurance companies, pension funds or the Swiss Post.

All in all, the Cartel Commission concluded in a general remark that the agreements between the banks strengthened the structure and hindered the trend to concentration in the retail banking market. Only the mentioned circular and two clauses, one of a national and one of a local agreement, both containing an arbitration clause, had finally been criticised by the Cartel Commission.

4.1.2 Investigation 1977-1978

After several shutdowns and large mergers, the Cartel Commission again decided to review the banking sector. This time it focused on the concentration within the sector and especially on horizontal, vertical and conglomerate aspects of mergers and acquisitions. Once more the review based mainly on interviews, supplemented by a bulky questionnaire. The period before the investigation was characterised by an enormous growth of the big banks. This could be traced back to the fact that the five existing big banks disposed of competitive advantages over smaller banks due to several institutional aspects such as a national-wide presence, greater financial power, an universal banking strategy and economies of scale and scope.

Regarding the issue of horizontal concentration, the Cartel Commission came to the conclusion that the existing banking structure still allowed market players with different business models to operate, maintaining competition in the retail banking sector. Still, the Cartel Commission recommended that the big banks should not further reduce their number through mergers and acquisitions, enlarge their business by excessively opening new branches or by using mix-calculations for unduly lowering prices in the retail banking. With regard to the aspects of vertical concentration, the Swiss banking sector was in general not viewed as problematic in the light of competition law. The integration of e.g. investment, leasing or factoring companies was seen as an optimal extension of the classical banking business, reflecting the needs of the customers. The Cartel Commission however drew attention to possible anti-competitive effects of product bundling.

4.1.3 Investigation 1986-1989

The third and last investigation of the old Cartel Commission focused again on agreements between banks, in particular on the agreements between members of the SBA. These agreements were mainly based on the statutory aim to enhance the unification of business practices. First clarifications showed that the Commission's recommendations from the inquiry in the seventies had not been followed by the big banks. On the contrary, the five institutes had more and more enlarged their retail business by opening new branches in local markets. An explanation for this development is that, due to the existing price agreements, competition did not play on the prices but on quality elements such as the accessibility of bank branches.

In its report, the Cartel Commission concluded that the agreements of the SBA would slow down the adaptation of the market structure for small and medium sized banks since the banking industry did not experience many bank mergers in the past. The agreements also seemed to promote disproportionately larger benefits to bigger banks as they profited much more in terms of economies of scale and scope. The Commission did not agree with the bank’s opinion that the agreements would positively enhance the competitiveness of banks in the financial market. Moreover, the Commission clearly stated that the

agreements could not lead to cost efficiencies because the banks were not able to produce evidence for their alleged losses.

Finally, the Commission recommended to dismiss various agreements. Some of those also affected the retail banking business. It criticised in particular a non-competition clause which forced third party banks as well to maintain locally established agreements. Some of the criticised agreements were of a price cartel nature as they restricted interests on saving bank books and fees for payment services, securities deposits, broker services, exchanges into foreign currencies and even tax charges. Other agreements were related to conditions on production, distribution and the use of the former "eurocheque-card", conditions of encashment, standardised general terms and conditions. The SBA followed most of the recommendations of the Commission. Four of them were however not accepted by the association. The Cartel Commission filed the case before the Federal Department of Economy.

4.2 Selected Competition Issues in the Retail Banking Sector

Since the last sectorial investigation of the former Cartel Commission in the eighties, no integral analysis of the retail banking sector was conducted by the Competition Authorities. However, in connection with the official proceedings of the ComCo several partial issues in the retail banking industry were studied in more detail. In what follows, three important issues are briefly discussed.

4.2.1 Switching Costs

As the Interim Report II of the European Commission[18] recently showed, customer mobility in retail banking can be restraint by high switching costs. Important factors can be administrative burdens, information asymmetry, low price transparency, cross-selling or bundling of products and closing charges. So far, the ComCo has not received many substantial complaints - neither from bank customers, nor from consumer associations - that switching costs would be excessive in Switzerland. The complaints received mostly concerned the change of banking accounts and mortgage loans.

In general, administrative burdens, in particular the "Know Your Customer" rule (KYC rule)[19], play a major role in Switzerland for bank customers to switch a bank account while other factors are of less importance. The KYC rule obliges banks in Switzerland to identify their customers. The rule aims at "preserving the good name of the Swiss banking community" and at "providing effective assistance in the fight against money laundering and against financing acts of terrorism". For individual customers identification is effected when the customer personally enters into negotiation and presents an official identification document. Did the customer enter into a business relation by correspondence or by Internet, the identification is effected with a certified copy of an official identification document.

Although the KYC rule is important for the reputation of the financial sector, it certainly creates administrative barriers for customers willing to switch their bank account. There is e.g. no automatic procedure that would disengage banks from the identification of a new customer when the latter already had been in a relationship with another bank in Switzerland. The customer has to ask the former bank for a formal statement. The KYC rule also encumbers new competitors entering the market. E.g. foreign banks that have specialised in internet banking do not offer their services to Swiss customers via the internet. The

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18 European Commission, Interim Report II: Current accounts and related services, Brussels 2006. (http://ec.europa.eu/comm/competition)

19 The rule is laid down in the "Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence". The Agreement is part of the self regulation of the Swiss Bankers Association (SBA) (http://www.swissbanking.org/en/1116_e.pdf).

cost of identifying the customer, for example by cooperating with a financial institute in Switzerland, are at the time simply too high.

Other obstacles, not being of financial nature, are the cancellation and re-opening of standing orders and the direct debit procedure as well as the transfer of balances. However, these actions nowadays are also supported by e-banking. In order to change the banking relation, banks in Switzerland even publish checklists. Still, when changing a bank account, customers are often forced to cancel all additional products and services like payment cards (credit and debit cards), e-banking, direct debit procedures etc., as they are linked to the bank account. More complex are changes of loans, especially mortgage loans that are secured by a borrower's note, as these transactions require additional information and support by the customer. Yet, the ComCo does not dispose of any information that customers do not change due to these administrative burdens.

Transparency of fees in retail banking services has been enhanced by different consumer associations and the media. E.g. one internet platform in Switzerland compares regularly fees and interests of mortgage loans, consumer loans, credit cards and car leasing.[20] It also offers the opportunity for consumers to ask certain banks for standardised offers for mortgage loans. Other media, such as magazines and TV programs, publish at regular intervals charts comparing fees for the account management, means of payment and payment transactions.

Despite the transparency of fees and interests, costs of ending a banking relation are not to be neglected. In particular costs for ending a mortgage loan or closing a deposit containing securities can run very high. A few years ago, banks started to charge customers for issuing contractual documents or for booking borrower's notes on their account at the beginning of a relationship. They also used to introduce charges for terminating mortgages loans or deposits. Customers are therefore to a certain extent locked-in and competition is often low.

These short remarks show that the question whether switching costs restraint competition heavily depends on the products and services considered. In general, switching costs have not discouraged new competitors to enter the Swiss market so far. The example of Postfinance[21] demonstrates that market access is possible, at least for business with new customers. Moreover, also the Raiffeisen Group has increased their number of branches and penetrated the local markets in urban areas in the last few years.

4.2.2 Lending to to SME's

Lending to small and medium sized undertakings was an important competition issue in the late nineties as it turned out that these businesses faced severe problems when trying to access reasonably priced commercial credits.

In 1998, the ComCo examined in particular the market for commercial loans to SME's in connection with the UBS merger case[22], because there were concerns that the merger would create a collective market dominance in some areas of Switzerland. The relevant product market was defined as the market for commercial loans up to CHF 2 million. A market analysis showed that below this limit the commercial

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20 http://www.comparis.ch

21 Postfinance is a division of the Swiss Post and offers different financial services like current and saving accounts, payment and trading services, funds, insurances and pension plans. Although the undertaking has not been granted a banking license, it offers in cooperation with UBS AG different lending products for individuals and SME's.

22 Union Bank of Switzerland/Swiss Bank Corporation, RPW/DPC 1998/2, 278.

loan market was mainly a regional market while credit limits above CHF 2 million generally were offered to undertakings on a national or even an international level.

The ComCo imposed in its decision the obligation that UBS AG had to offer commercial loans to SME's for a period of 6 years under the same conditions as before the merger. Concerned about the termination of loan contracts due to increased risks, the ComCo tried in particular to protect the SME's from a possible abuse by the newly created entity. Nevertheless, the ComCo granted UBS AG also exceptions in order to avoid undesired preservation of industrial structure and accumulation of bad credit risks.

The obligation has been reviewed before ending in 2004. It turned out that out of all SME's potentially benefiting from this provision, the ratio between SME's cancelling their loans voluntarily and non-voluntarily was 4:1. Even so, the period after the UBS merger was characterised by a decline of the loan business, namely for SME's. One of the reasons for this development certainly was the implementation of new credit risk and pricing models in the mid nineties. The two remaining big banks, which had a combined market share of more than 50% at the end of the nineties, were without doubt in a better position to estimate their risk exposure and to take appropriate measures in their credit policy.

However, whether a real credit crisis existed at the turn of the millennium is questionable. It was argued on the one hand that the relationships between banks and SME's, the credit limits as well as the utilisation of loans were too heterogeneous to be the result of a credit crisis. On the other hand, the opinion was expressed that the big banks tried to constrain the commercial loans for SME's. A representative inquiry[23] conducted by the State Secretariat for Economic Affairs in 2003 together with three Swiss business associations confirmed however that the SME's were basically satisfied with the assistance of banks during the precedent years. They also considered the implemented rating methods as being adequate. Moreover, the Secretariat found no indication that the market for commercial loans to SME's was working inefficiently.

4.2.3 Integration of Financial Services – Creation of Market Power

Banks in Switzerland, especially regional banks, have a longstanding tradition of independency. They were able to refund their lending business with the savings of their customers and the revenue of the banks mainly came from the interest spread earned by accepting and lending money. Also, each bank runs its own IT-system. In short, banks were not dependent from other institutes, neither financially, nor technically.

After the crisis on the mortgage loan market in the nineties, banks however started to suffer from new problems: Customers began to shift their savings into securities trading, thus reducing the ability to refund the lending business. Banks had to cover the money gaps by lending money on capital markets at higher interests. Moreover, costs and safety requirements for IT-systems grew extraordinarily, forcing banks to cooperate with other institutions or to outsource business parts.

In that context, a discussion about the fragmentation of the added value chain in the banking business emerged. The idea behind such a fragmentation is that a bank should focus on its core competences, i.e. on the business where comparative advantages prevail, while other elements of the added value chain can be outsourced, e.g. the IT-processes or the "production" of credits and loans.

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[23] M. Fasano/Th. Gfeller, Herausforderung im Dialog zwischen KMU und Banken / Le défis du dialogue entre les PME et les banques, Bern 2003. (http://www.seco.admin.ch/imperia/md/content/publikationenundformulare/studienundberichte)

The following two cases refer to these changes in the retail banking business and deal with some competition issues that may arise from outsourcing projects.

UBS AG/Postfinance[24]

The Federal Post Law obliges the Swiss Post to secure a country-wide provision of post and payment services without subsidisation from the government. To strengthen the economic efficiency of the Swiss Post, the Federal Council decided in 2000 to reorganise Postfinance, the financial branch of the Swiss Post, as a so called "Postbank". However, due to negative feedback in the consultation procedure, the Federal Council renounced to create a legal basis for a Postbank. The goal to expand Postfinances's supply of financial services was nevertheless upheld by the Federal Council. However, since the professional granting of credits and loans requires a banking license in Switzerland, legal and technical problems arose for Postfinance. In particular, Postfinance was not allowed to assume credit risks and the credits/loans were not to appear in their accountancy. To tackle these problems Postfinance decided to enter a cooperation with UBS AG.

While Postfinance already offered various financial services in the past, it was planned to diversify the variety of products in the field of mortgages as well as current accounts for private firms and firms under public law. The cooperation between Postfinance and UBS AG envisaged the outsourcing of processes which could not be executed by Postfinance due to the legal restrictions mentioned above. In particular, these were the refinancing process, risk and capital management and recovery management (Credit Asset Transfer). The modalities of the cooperation between Postfinance and UBS AG were put down in a so called "term sheet". Two provisions in this term sheet were however judged as problematic by the ComCo: One of the provisions could be rated as a vertical concentration, while the other one could be interpreted as a horizontal concentration.

In the case of the horizontal concentration the provision in question specified that Postfinance was not allowed to alienate customers from UBS AG. At the same time, it was agreed that the fraction of former UBS AG customers in the Postfinance portfolio should not exceed a certain percentage. The ComCo conjectured that these obligations could be qualified as an accord on the division of markets, potentially leading to the elimination of effective competition. In reaction to the objections of the ComCo the two parties decided to delete the provision in question from the term sheet.

Concerning the vertical concentration, it was noted that the planed cooperation allows UBS AG to exert a certain influence on the process of credit issuing of Postfinace. In particular, any granted loan by Postfinance was planned to be subject to a certification procedure by UBS AG. Further, in cases of default, the handling of the matter was conveyed to UBS AG, implying a transfer of all relevant customer data. The ComCo had to answer the question whether this provision might lead to a vertical concentration. Basically, it was argued that UBS AG must be in a position to evaluate and monitor the credit risk, since it is UBS AG who legally assumes this risk. The respective information however could only be made available by Postfinance. Therefore, the provision in the term sheet was not rated as an excessive restraint of competition.

[24] Kooperationsvorhaben UBS AG/Postfinance – Die Schweizerische Post, in: RPW/DPC 2003/2, 255.

Credit Suisse/Bank Linth[25]

In November 2001 Credit Suisse (CS) and Bank Linth (BL) signed a cooperation agreement, aiming at the development of new forms of distribution in the Swiss retail banking market. CS, the second largest bank in Switzerland, is active worldwide as a universal bank. In contrast, BL is a relatively small regional Swiss bank, offering typical retail banking services.

The spirit of the cooperation agreement can be described as rather far reaching. It was for example planned that CS would take over about 5% of the capital stock of BL, with a medium-term option to increase the share to 30%. The right to propose a member of the administrative board of BL was accorded to CS. The intention to coordinate the assignment of certain customer groups and services to the two banks was put forward. CS offered BL, once relieved of certain third party obligations, to supply the necessary services and securities to guarantee a smooth and continuous banking business.

In general, the project can be summarised as a cooperation in all relevant business fields, subject to the possibilities and legitimacy under existing third party contracts. However, it was stressed by both parties that the cooperation agreement is rather a "declaration of good intent" than a legally binding contract. The first concrete step that was taken by the two parties was the drafting of a IT-cooperation contract. In particular, the migration of BL to the IT-platform of CS was planed. The ComCo was concerned that such an IT-cooperation, possibly reinforced by the intention of a general cooperation as described above, may create a dominant market position for the two banks.

Several markets had to be defined to address this concern. First, the relevant market for retail banking had to be determined. Based on earlier decisions of the ComCo the following relevant sub-markets were identified: traditional bank saving (saving accounts etc.), investment management, mortgages and credits for firms lower than CHF 2 Mio. Concerning the regional relevant market, the area where BL is active was chosen. In this particular case, a further market had to be defined: the buying market in the IT sector, consisting of the market for hardware (including support) and the market for software and information technology services (including systems infrastructure software, tools, project services and outsourcing/processing).

The investigation of the ComCo started with an examination of the position of the two parties in the relevant regional retail banking market. It turned out that especially in the sub-market "credits for firms lower than CHF 2 Mio." the consolidated market share of CS and BL amounted to a considerable 30-40%. Furthermore, there were only two more important players in this market, indicating a high concentration. This fact, in combination with the intended general cooperation between the two banks, appeared to have the potential to create serious distortions of effective competition. In contrast, it was decided that the IT-cooperation contract in itself is unobjectionable. However, in February 2003 the legal representatives of the two banks informed the ComCo that the intended cooperation was not to be executed. Consequently, the investigation was suspended.

An extensive study covering this topic in the Swiss banking sector has been conducted by E. Kiligus.[26] For details on IT-developments in the Swiss banking sector, it is therefore referred to this study. However, one issue which is not conclusively answered by the mentioned study is the question whether IT-platforms possess the characteristics of a natural monopoly. To understand whether the observed migration of IT-platforms represents a "natural tendency", i.e. induced by economical reasons of efficiency, or a potentially collusive concentration in the banking sector is essential. The answer to this question must determine the general approach by the ComCo to such cases.

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25 Credit Suisse/Bank Linth, in: RPW/DPC 2003/3, 514.

26 E. Kilgus, Gutachten zur IT-Entwicklung im Bankensektor, in: RPW/DPC 2004/1, 232.

4.3 Conclusions

The two cases UBS/Postfinance and CS/BL have shown that market entry in the retail banking business is still possible. Further, the fragmentation of the added value chain enriches the financial market with new forms of cooperation and new products and services. New competitors can play an important role in the market, given that they can rely on the customer base of established enterprises and/or on an existing infrastructure. The UBS merger however clearly pointed out that without these cooperations, new competitors would most likely not enter the retail banking business.

Competition concerns especially may arise when big financial institutions become dominant on upstream markets since this creates a dependency for other banks. This dependency in the retail banking business can either be of financial (refunding) or technical (IT-systems) nature. As the two discussed cases illustrated, such cooperations also bear the risk of anti-competitive horizontal agreements.

5. Joint Ventures in the Swiss Financial Market Infrastructure

The Swiss financial market infrastructure[27] is basically provided by three joint ventures owned by the Swiss banks:

- SWX Group: The SWX Group provides securities exchange services and operates in particular the SWX Swiss Exchange and the virt-x Exchange platforms.

- SIS Group: The core business of the SIS Group as a national and an international central securities depository is the settlement and custody of Swiss securities and securities of the rest of the world.

- Telekurs Group: The Telekurs Group is active in the business fields of payment card systems, interbank clearing systems and financial information.

From an economic point of view there are pros and cons of such an organisational structure. First, joint ventures allow the exploitation of economies of scale, i.e. the provision of services that most likely would not be supplied by individual banks alone. Second, network effects and economies of scope can optimally be exploited on a national or even international basis. Third, since the banks are at the same time customer and owner of the joint ventures, they can influence the activities of the joint ventures and prevent possible abuses of dominant positions. Further, these joint ventures are often organised as non-profit organisations which allow a cost-based provision of services. Finally, joint ventures by private companies disburden the state of organising respectively operating the financial market infrastructure.

The organisational structure of joint ventures may however be problematic when interests of the involved parties diverge. Since in Switzerland the three big banks (UBS, Credit Suisse and Cantonal Banks) own the major part of the shares of the joint ventures or are their most important clients (see table below), their influence is substantial. It is therefore questionable whether the joint ventures are sufficiently independent. This is of particular importance in cases where a big bank and a joint venture provide (potentially) the same services. It can be assumed that in such a situation the big banks are anxious to provide profitable services themselves (e.g. “bank-for-bank services”) and that they try to limit the business segments of the joint venture. Consequently, the services offered by the joint venture may significantly be influenced by the interests of the big banks to the disadvantage of smaller banks.

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[27] For a detailed economic analysis of the Swiss financial market infrastructure see Eidgenössische Finanzverwaltung EFV, Die Schweizer Finanzmarktinfrastruktur und die Rolle des Staates, Working Paper No. 3, 2004 (http://www.efv.admin.ch/d/wirtschaft/studien/berichte.htm).

Furthermore, from a competition policy perspective, joint ventures may create various problems such as market foreclosure, entry deterrence, discrimination of third parties etc. The ComCo has led several proceedings against joint ventures in the financial market involving potential anti-competitive behaviour. In particular the SWX Group and the Telekurs Group were subject of investigations. In what follows these cases are briefly summarised.

	UBS	Credit Suisse	Cantonal Banks	other banks
Transaction Volume (based on turnover, 1. quarter 2004) :				
virt-x (SWX Group)	13%	14%	ca. 8%	ca. 10%
Ownership structure:				
SIS Group	33%	22%	19%	26%
Telekurs Group	33%	21%	18%	28%

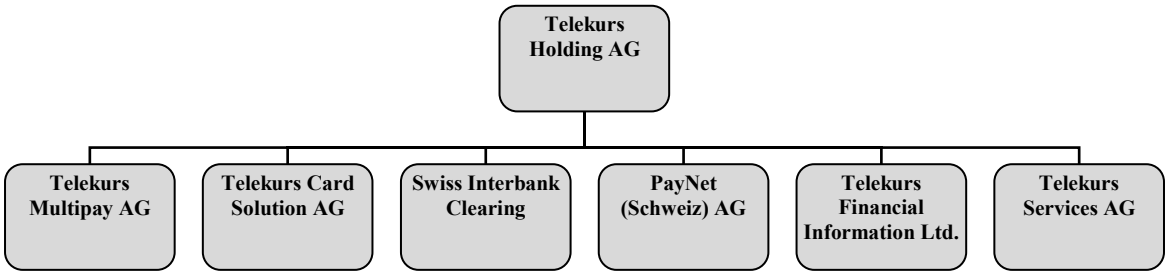
5.1 SWX Group

SWX Swiss Exchange (SWX) operates the main securities exchange platform in Switzerland. In their rules and regulations SWX stipulates a so called "concentration rule". According to the concentration rule, during trading hours, all members of the exchange platform are obliged to execute trades over the SWX platform, as long as certain trade volumes are not exceeded. That is, only in cases where the trade volume exceeds this limit, transactions can be executed outside of the SWX exchange platform, e.g. over the counter. The concentration rule is valid for nostro and customer transactions.

SWX is the most important exchange platform for Swiss small and mid caps and it most probably enjoys a dominant position in this market. Next to SWX, there is only one small national exchange platform, the Berne eXchange (BX), which is more of a niche player for regional securities. The subject of the investigation by the ComCo was whether the concentration rule discriminates small domestic investors, since they cannot evade the rule. The ComCo came to the conclusion that there might be legitimate business reasons, in particular the securing of pre-trade transparency, which could justify the concentration rule. By all means, the abolishment of the concentration rule would require the adoption of alternative transparency rules. For this reason the ComCo decided to await the adoption of the EU Markets in Financial Instruments Directive (MiFID) which prospectively suppresses the concentration rule in all European countries and observe its effects. At the same time the ComCo is discussing the matter with the SFBC.

5.2 Telekurs Group

As noted above, the Telekurs Group is active in different business fields: payment card systems, interbank clearing systems and financial information. The following picture gives an overview of the structural organisation of the Telekurs Group:



5.2.1. Payment Card Systems

Until recently Telekurs Multipay was a quasi-monopolist for the acquiring of debit and credit cards of MasterCard. Even today its combined market share in the Swiss acquiring market for MasterCard and Visa credit cards amounts to 70-80% and for the Maestro debit card 90-100%. Although a certain amount of competition has developed in recent years in these payment card markets, Telekurs Multipay still holds a very strong position. This position is further reinforced by Telekurs Card Solutions, a terminal producer, holding a market share of 65-75% in terminal market.

The current structure, Telekurs Multipay and Telekurs Card Solutions as former near-monopolistic players in the payment card sector being basically controlled by three big banks, has led to several antitrust concerns in the last years. In particular it can be assumed that the owners of the Telekurs Group, sharing the profits of the joint venture, tried to protect the business fields of Telekurs Multipay and Telekurs Card Solutions by deterring market entries.

In the acquiring business an important device to reach this goal were the domestic interchange fees and the so called no-discrimination rule for merchants.[28] In another case Telekurs Multipay was accused of predatory pricing behaviour and unlawful product bundling by other credit card acquirers in the Swiss market, triggering a preliminary investigation by the ComCo. An abuse of a dominant position could however not be proofed, leading to the closure of the preliminary investigation.[29]

Claiming discriminatory access to technological standards in the terminal market the ComCo has also received complaints by terminal producers. The prevailing technology for card-based financial transactions at the point of sale in Switzerland is called EMV/ep2. EMV is the international specification, which describes the structure and interaction between chip cards and the payment terminal. ep2 is the domestic processing protocol for EMV-transactions for terminals, a standardised technology, which sets the basic technical guidelines for actors in the electronic payment business for the development of products and services (soft- and hardware). The project to develop the ep2-specification was launched in 1996 by

28 For details see e.g. OECD June 2006 WP 2, Roundtable on Increasing Competition between Payment Cards, Contribution from Switzerland or Swiss Competition Commission, Kreditkarten – Interchange Fee, decision from the December 5, 2005, RPW/DCP 2006/1.

29 See the decisions by the Swiss Competition Commission (RPW/DCP 2004/4, p. 1002), the Appeals Commission for Competition Matters (RPW/DCP 2004/2, p. 625) and the Federal Court of Appeals (RPW/DCP 2004/4, p. 1193).

Telekurs Multipay, Postfinance and the VEZ[30], with the goal to standardise the transaction process of the card issuers. The ep2-technology is today the relevant standard in Switzerland, although there is no obligation to work with this specification. However, for new developments and services which are not ep2-compatible there is basically no market.

Although the development of a common standard for the processing of payment cards surely leads to some important efficiency gains in the industry, the proprietary nature of ep2 bears a considerable potential for market distortions. This potential is mainly linked to questions of access to the standard and certification procedures for new products.[31] In Switzerland, the members of the ep2-project started, in cooperation with the Secretariat of the ComCo, to adopt remedies, such as open access rules and objectified certification procedures, for these problems.

5.2.2 Interbank Clearing

In connection with the clearing systems of SIC and the Swiss Post the ComCo recently studied whether a price decrease for receivers of electronic payments in the SIC system, leading to an adjustment of the respective prices of the two undertakings, constitutes a price fixing agreement. These two undertakings are however operating in different markets. While SIC operates a real-time system processing transactions between financial institutions, the clearing system of the Swiss Post is primarily aimed at the processing of payment transactions of the public. The ComCo therefore came to the conclusion that from an antitrust perspective, no major problems justifying the opening of a procedure are evident at the time.

5.2.3 Financial Information

Just recently the ComCo received a complaint from a competitor in the financial information market about a possible abuse of a dominant position (product bundling and predatory pricing) by Telekurs Financial Information Ltd. The ComCo is currently evaluating these claims.

One of the issues is the question of access to the security identification numbers that are provided by the National Numbering Agency (NNA). In Switzerland, Telekurs Financial Information Ltd. is the designated NNA providing the national security numbers (so called "Valorennummer") for Swiss and foreign securities. This number is used as an identification device by Swiss exchanges, banks, brokers and other financial intermediaries as well as undertakings dealing with financial information (Bloomberg, Reuters, etc). Another issue is the question whether the database of Telekurs Financial Information Ltd., which contains data that is necessary for banks and asset managers to manage the securities in a deposit and to settle transactions, is an essential facility which can be used to deter market entry by third parties in neighbouring markets. At the moment, it is however too early to present any conclusions.

5.3 Conclusions

From an economic point of view joint ventures in the financial market primarily make sense where economies of scale and scope can be exploited. This is in particular the case where a joint venture provides real financial infrastructure services. Access to these platforms seems not to be a problem in Switzerland even though the joint ventures are privately owned and largely controlled by the big banks. By all means, so far the ComCo didn't have to deal with complaints about discriminatory access or other forms of restrictions of competition from domestic or foreign entrant banks. In contrary, in connection with the UBS

30 VEZ ("Verein für Elektronische Zahlungsmittel") is an association specialized on electronic payment means, representing the Swiss retailers.

31 For a more detailed discussion see OECD June 2006 WP 2, Roundtable on Increasing Competition between Payment Cards, Contribution from Switzerland.

merger case (see as well section 4.2.2) the ComCo obliged UBS AG not to withdraw from the joint ventures in the financial market infrastructure during the period of 5 years. This because it was feared that after the merger UBS AG would be large enough to displace the joint ventures and provide the respective services internally respectively profit-orientated for other banks. In particular for smaller banks this would have caused a substantial disadvantage.

However, the joint ventures of the Swiss banks are as well operating in business fields where a common provision of services is not necessarily efficiency enhancing. In particular the Telekurs Group is historically active in business fields, such as payment card acquiring, POS terminal production and provision of financial information, which can be and are supplied by independent undertakings. Most of the above cited antitrust cases typically concerned such business fields which illustrates a certain susceptibility for antitrust concerns, such as market foreclosure, entry deterrence, discrimination of third parties etc. It is therefore very important to closely monitor the market behaviour of such privately owned joint ventures and ensure a pro-competitive environment. As an extreme measure even requiring the divesture of parts of joint ventures where a common provision of services is not decisive may be an option.

TURKEY

1. Banking Sector in Turkey

Turkey has gone through an economic crisis in 2000-2002 that was characterised by severe inflation and disruption in the banking system. New monetary and fiscal policies have subdued inflation, while restructuring and improved regulation and supervision in the banking sector has increased credit funding for investment[1].

The banking sector is subject to detailed legal regulations and supervisions due to the delicate function it fulfils between savings holders and those requesting funds. Therefore, in the banking sector the joint existence of efficiency, competition and stability in legal regulations is important.

Traditionally, the banking system has a majority share in the financial sectors in Turkey. In the Turkish banking sector, the products or services (credit, deposits, stocks and bonds…) provided by the banks are to a great extent homogenous. The prices of different products (interest rates, commissions, and expenses) differ from one bank to another, in other words the government does not limit them. Nevertheless, banks are using various selling and marketing techniques. In addition to that, they try to further strengthen their brand images via advertisements. Moreover, banks aim to increase their customer portfolio by product differentiation. These efforts show that banks in Turkey try to increase their market shares not only on the basis of price competition but also on the basis of non-price competition[2].

New regulations were introduced in the Turkish banking system via the Banks Act no 4389, adopted on 18.06.1999 which was amended by the Act no 4491, adopted on 17.12.1999. With the regulations put forward, the "Banking Regulation and Supervision Agency" having the nature of an independent administrative institution has been set up for purposes of ensuring regulation and supervision in the banking sector. The Banking Regulation and Supervision Agency founded through amendments to those articles of the Banks Act, which provide the supervision of banks has been empowered with transferring banks in difficulty to the "Savings Deposit Insurance Fund" (TMSF). With the regulations set forth in article 14 paragraph 6 of the Act, entitled "Measures to be Taken As a Result of Supervisions", the Fund has been conferred the power to transfer banks in difficulty to other volunteering banks or to a bank to be established, or to merge them with another bank which has a volunteer. In implementation of this power, an exception has been brought to the controlling power of the Competition Board *in transfer and merger transactions to be carried out by the Fund*, via the provision in the same article, reading as "….articles 7, 10 and 11 of the Act on the Protection of Competition No. 4054 shall not be applicable provided that the sectoral share of the total assets of the banks to be subjected to transfer or merger does not exceed 20 %…". In case of the practice of this authority, the power of the Turkish Competition Authority (TCA) to control is limited in merger and acquisition transactions to be made by the *Fund*. Later on with an amendment made in the Banks Act, this exclusion was widened to comprise *all banks.* In year 2005, the Banks Act no 4389 was replaced by the new Banks Act no 5411.

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1 OECD Peer Review Report "Competition Law and Policy in Turkey", 2005, p.12.

2 Güzel O., "AT Rekabet Hukuku Kurallarının Bankacılık Sektörüne Uygulanması", Rekabet Kurumu Yayınları 2003, p. 123-124.

2. Competition Law and Banking

Under the *Turkish Competition Law*, there is no sector in which the competition rules cannot be implemented except for the above mentioned merger transactions in the banking sector. Emergency banking legislation that adopted in 1999, subsequently expanded and renewed in 2005 is the only example in Turkish competition law of an *exclusion* from the Act on the Protection of Competition no. 4054 (the Act on Competition no 4054).

According to the Turkish current banking legislation (article 19 of the Banks Act no 5411), mergers in which the merged entity has a market share below 20% of the Turkish banking market are expressly made exempt from the merger provisions of the Act on Competition no 4054 and they are subjected to control only by the National Banking Regulation and Supervision Agency. This ceiling is high enough to constitute a *de facto* exclusion of all bank mergers given the fact that even if the biggest two commercial banks with private capital would merge, their *sectoral share of total assets* would be below the threshold limits mentioned in the Banks Act no 5411, thus they would be out of the scope of the article 7 of the Act on Competition no 4054 and Communiqué no 1997/1 on the Mergers and Acquisitions Calling for the Authorisation of the Competition Board (Communiqué 1997/1). In fact, the threshold unity -in the form of *sectoral share of total assets*- that is used to exclude certain mergers out of the scope of competition law is different than the market share criteria used in the competition law and policy applications.

The reason for such exemption is explained as follows: The unhealthy functioning experienced in the banking sector for long years has transformed into a systemic crisis within the year 2001 due to the failure of the economic program implemented. Thus, restructuralisation and reform works required to be carried out in the sector, ensuring stability in financial markets. In the meantime, in works carried out under the rehabilitation of public banks, transfer transactions have also been realised between public banks in accordance with the provisions of private law. The TCA proposed the repeal of this exemption in 2002 once the bank emergency had been resolved, although there is no conflict of power in between the agencies (the banking sector regulator and the TCA). Within the same respect, in the Peer Review Report 2005 prepared by the OECD it is recommended that Turkey shall restore competition policy oversight of banking sector[3]. Furthermore, as pointed out in the same report the government has not proposed such legislation despite the urging of the TCA[4] to date.

Nevertheless, *antitrust rules* found in the Competition Act no 4054 -mainly in two forms-, are still applicable to those anticompetitive practices of undertakings in the banking sector. Accordingly:

- Agreements which restrict competition are prohibited (Article 4 of the Competition Act no 4054),
- Abuse of dominant position is prohibited (Article 6 of the Competition Act no 4054).

Although the regulations that are carried out under the Banks Act no 5411 and steps taken for ensuring efficiency and stability in the regulation and supervision of the sector via banking regulator especially following an economic crisis period are favourable, the permanent implementation of the Banks Act no 5411, which take mergers and acquisitions in the area of banking out of the control of the competition agency is not compatible with the perspective of competition policy in the long run - as competition policy deemed to play a central role in the process of restructuralisation following an economic crisis.

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3 OECD Peer Review Report "Competition Law and Policy in Turkey", 2005, p.8.

4 Ibid, p. 27

In the meantime in Turkish banking sector, there are legal barriers to entry arising from banking regulation in force. Those banks that are established in Turkey should be joint stock companies having 20 trillion TL paid capital. Moreover, they need authorisation from the Banking Regulation and Supervision Agency.

3. An Opinion and A Case

Below initially, the opinion of the Competition Board on the theme of providing commentary with respect to proposed legislation arose from an application filed by the Banks Association of Turkey that complained about certain existing laws is discussed. Afterwards, a recent case about an infringement of competition through fixing clearing commission rate by the banks is given:

3.1 The opinion of the Competition Board upon the application of Turkish Union of Banks (dated 15.05.2003 and numbered 03-32/404-176):

In the application filed with the Competition Authority by the Banks Association of Turkey[5] (TBB) in year 2003, it was communicated that with the then Banks Act issued in 1999 and the amendments to this act, differences between public and private banks were eliminated, but intervention in the selection of banks where public institutions and organisations would deposit their monies, through the provisions introduced in budgetary acts not only contradicted with the principle of free competition but also was contrary to the Constitution's principle as to "The Equality Before Law", "The Fundamental Principles of Law", and the notion of "Legal State". It has been stated that the efficiency which might be displayed by the banking system in the collection of resources and having them utilised within the market mechanism would be distorted by such interventions preventing the flow of resources, and it would lead to serious negativities in the bank system which was undergoing the stage of reform.

Provisions introduced in statutory regulations mentioned in the application of TBB, and practices based on such provisions are not compatible with the principles of free competition due to the limiting and discriminatory provisions introduced in the entry of public resources to the banking system, and do mean a discriminatory practice between banks which have to operate within same conditions. In the same way, the limitation of activities of state economic enterprises, their affiliated partnerships, establishments and enterprises which are supposed to utilise their resources and operate within the system under the conditions of free market presents as distorting competitive conditions in the sector where these enterprises operate. In this context, the claim by TBB that public treasury is required to be conducted by all banks is justifiable in terms of competition policy. Even though it is accepted that the policy-making as to how to incorporate the resources of public institutions into the system would be a political choice, the ability to verify such a choice in terms of competition policy may be possible if it encompasses an equal practice for all actors.

With regard to the legislative regulations mentioned and in accordance with the Competition Act no 4054, the Competition Board possesses the task of notifying that an amendment be made to the relevant legislation, in case the State commits practices distorting competition, through acts and other legislations, or decisions of the Council of Ministers which is the executive body. The issue was discussed in the Competition Board meeting dated 15.05.2003 and numbered 03-32/404-176 as a result of which the Board advised the government to remove provisions in various budget acts that required public institutions to maintain their accounts at public banking institutions rather than at private banking companies. As mentioned in the "Peer Review Report 2005" prepared by OECD, banking legislation in 1999 had formally eliminated the distinctions between the two types of financial institutions and there was no reason to deny

[5] The Association bears a legal entity and is the representative body for all the banks operating in Turkey. All banks operating in Turkey are legally bound to become members of the Banks Association of Turkey.

public organisations the benefits of competition as customers for financial services. However, the Board's recommendation is pending[6].

3.2 Interbank Card Centre (BKM) Decision (dated 01.07.2005 and No. 05-43/602-153)

Upon the complaint of Turkish Union of Employers of Gasoline Dealers and Gas Companies (TABGİS), the TCA initiated an investigation against Interbank Card Centre (BKM) in order to determine whether there is an infringement of competition through fixing clearing commission rate by the banks under the body of BKM. During the investigation process, BKM requested for *exemption* for its practice of fixing a common clearing commission and as a result, assessment for exemption is included in the investigation decision. In the Decision, the relevant market for fixing clearing commission rate is determined as "market for paying services by credit cards".

BKM is a joint stock company carrying out clearing transactions between banks in the card payment system. In card transactions, BKM's Board of Directors determines the clearing commission rate paid by the acquiring bank to the issuing bank. *Issuing banks* are those which publish credit cards and distribute them to customers; *acquiring banks* are those which provide point of sale (POS) terminals for member stores by means of making agreements with these stores against a certain amount of commission (member store commission). Clearing commission obtained by issuing banks from acquiring banks are reflected on acquiring banks as cost and acquiring banks reflect this cost to member stores as member store commission. Clearing commission rate is equally applied among all of the banks. Essentially, clearing commission is a service cost reflected first by the issuing bank to the acquiring bank and then by the acquiring bank to the member store within member store commission; therefore it has a nature of price.

In card payment systems, clearing commission determined by banks together with financial institutions is a practice that calls for the attention of competition authorities and thus has been the subject of a number of cases throughout the world.

BKM argued that fixing clearing commission rates is not contrary to the Competition Act No. 4054 and exemption should be given to the application of fixing common clearing commission rate. Moreover, it is argued that each of the items contained in the fixed clearing commission rate is an element of cost in terms of issuing banks. In this frame, it is stated that BKM needs a centralised clearing commission rate since payment guarantee provided by issuing bank includes risks such as fraud in the card market and thus constitutes a high-cost item. Moreover, it is put forward that the funding costs resulting from the period between shopping date and payment date are a burden for issuing banks.

During the investigation process, it is understood that the BKM fixes some of the costs and the income of issuing and acquiring banks. Furthermore, the determination of a common clearing commission rate among banks affects competition at issuing and acquiring levels. Besides, issuing banks cannot pursue an individual pricing policy for the services they provide for acquiring banks. Last but not least, the clearing commission, which is the minimum price for member store commission, also constitutes an important element of the cost from the member store perspective. Within this regard, fixing clearing commission rates by the BKM is considered as "a decision of an association of undertaking" according to Article 4 (prohibiting restrictive agreements) of the Competition Act No. 4054, which is contrary to the law.

As a result of this anti-competitive conduct, the TCA imposed a minimum administrative fine on and it added that the application of fixing clearing commission rate can be granted an exemption if certain conditions[7] are fulfilled -due to the peculiar conditions of card payment systems market.

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6 OECD Peer Review Report "Competition Law and Policy in Turkey", 2005, footnote 82 on p.84.

4. Conclusion

As discussed above, except for a certain type of merger in the banking sector, competition rules can be enforced without exception to all sectors of the economy in Turkey. The TCA following the restructuralisation period of the banking sector due to the 2000-2002 financial crisis, proposed the restore of competition policy oversight of the banking sector which is also supported by the Peer Review Report 2005.

[7] The individual exemption might be granted upon the fulfillment of the following condition: overnight interest rate determined by the Turkish Central Bank shall be taken as a basis in the formula applied by BKM for the calculation of funding cost and sunk cost is not taken into consideration in operational costs item. The period of exemption is set as 2 years following the fulfillment of necessary requirements. The reason for the minimum administrative fine arises from the provisions foreseen for the individual exemption.

UNITED KINGDOM

The OECD wishes to enhance understanding of the competitive process of retail banking systems for individuals and small and medium-sized enterprises (SMEs); and has highlighted a number of areas of particular interest. This submission covers these issues by focusing on three key themes: (I) supporting and enhancing consumer choice; (II) protecting and promoting competition; and (III) maintaining good relations between the competition authority and the financial services regulator.

1. Background

The OECD's background paper sets out the rationale for special regulations in banking. It also raises questions about whether competition law should apply to retail banking, and what the appropriate relationship should be between regulation and competition law. In view of this, it is perhaps worth first setting out our views on what the role of a competition and consumer body should be.

From the OFT's perspective, our mission to make markets work well for consumers applies just as much to retail banking as it does to other sectors of the economy. This translates into ensuring that consumers are well-informed and able and willing to act rationally on that information; that firms compete actively to serve consumers' interests (so that commercial incentives are aligned with consumers' interests); and that government interventions in retail banking enhance rather than unduly restrict the way markets work. Together these factors bring benefits for consumers, improve economic efficiency, and hence productivity and economic growth.

Our interest therefore is in understanding significant consumer detriment driven by persistent competition or information problems, aggressive commercial practices, or situations where consumers fail to act rationally on available information. It also extends to identifying government interventions that, although well-intentioned, have become outdated, are heavy-handed, or have unintended side-effects and unduly restrict the competitive process.[1] In all cases the mere existence of a problem is not sufficient to justify our intervention.

When considering how to intervene, our preference is for measures that support and enhance consumer choice, and protect and promote the competitive process. Where a more interventionist stance is required we look, where possible, to facilitate a collaborative, non-regulatory approach. A key example here is our work in relation to payment systems infrastructure. Nonetheless, there are occasions when (as in other sectors) we need to make use of our powers under consumer law. In banking this has arisen for example from the need to protect consumers from unlawful penalty charges.[2]

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1 The OFT has a role to advise the Government on the effects of regulation. One key way in which it carries out this function is by conducting market studies. The Government has committed to responding publicly to OFT advice on market studies within 90 days of receipt of the OFT's report. The OFT also has an active programme of competition advocacy, providing advice to government departments including in the context of regulatory impact assessments, which are required for any form of regulation and should be carried out for all policy changes (European or domestic) that could affect public or private sectors, charities, the voluntary sector or small businesses.

2 http://www.oft.gov.uk/News/Press+releases/2006/68-06.htm

From the OFT's perspective then, ***our competition and consumer tools apply equally to retail banking as to other sectors***. There may however be grounds for taking a more strategic and holistic approach in retail banking given factors such as: the size and economic significance of the sector and scope for consumer detriment, the linkages between different products (particularly due to cross-selling) and the similarity of issues that can arise (e.g. in relation to customer behaviour). In addition, there are clearly strong areas of overlap between our work and that of the financial regulator, the Financial Services Authority (FSA). It is important to ensure that we work closely together to ensure consistency and draw effectively on each others' skills, resources and toolkits.

2. Supporting and enhancing consumer choice

Active, informed consumers are not only better able to secure good value for money but can also help drive competition and efficiency improvements. To make informed decisions, consumers need practical information, and to be able to process that information to compare products and providers effectively. They also need to be able and willing to switch. Within this context, recent work by the OFT, Competition Commission (CC)[34] and others suggest that a lack of transparency, and low customer mobility can hinder the way retail banking markets work. These two features are closely related as a lack of transparency not only makes it difficult for new account holders to identify suitable products and providers but also hinders the switching process.

The following paragraphs discuss these two issues in turn before considering measures that might address them.

2.1 Lack of transparency

Available evidence in the UK suggests that individuals and SMEs can find it difficult to compare financial products and providers. This is particularly true for products with more complex charging structures,[5] and is exacerbated when different providers use different terminology and present interest rates and charges in different ways. For example, in its investigation into personal current accounts in Northern Ireland (NI), the CC found that pricing leaflets provided by the main banks presented interest rates and charges in different ways. In its study into home credit,[6] it also found that it was difficult for consumers to compare prices, among other reasons because there was no single clear measure of prices and because annual percentage rates (APRs)[7] alone are a particularly poor measure of the price of home credit loans, especially for short term loans.

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3 The OFT is the independent National Competition and Consumer Authority in the UK, responsible for the enforcement of Chapter I and II prohibitions of the Competition Act 1998 and Articles 81 and 82 of the EC Treaty (as well as responsible for consumer protection). The CC is the second-phase competition authority responsible for conducting in-depth inquiries into mergers, markets and the regulation of the major regulated industries, undertaken in response to a reference made to it by another authority: usually by the OFT, but in certain circumstances the Secretary of State, or by the sectoral regulators.

4 References for key reports are provided at the end of this note.

5 For example with current accounts there are fees for specialist services (including use of cash machines overseas, obtaining bankers draft) as well as for unarranged borrowing, unauthorised transactions, default etc

6 Home credit is the provision of credit, typically small sum loans, the repayments for which are collected in instalments (often weekly or fortnightly) by collectors who call for that purpose at the customer's home.

7 The purpose of an APR is to produce a standard measure of a loan's interest rate (including defined non-interest payments made by the debtor), which allows consumers to compare in advance the relative costs of loans which may have differing interest rates, fees and other charges. (See also footnote 23).

In relation to SME customers, the CC found a lack of transparency over price and terms for overdrafts and general business purpose loans. This lack of transparency stems in part from the fact that SME charges are typically subject to negotiation.

2.2 Low customer mobility

Levels of customer mobility are likely to vary from product to product. For example, for individuals there is evidence to suggest that switching rates are higher for products such as credit cards[8] than for current and savings accounts.

For ***current accounts***, (often seen as a gateway to other products, raising potential concerns in relation to bundling[9]), both individuals and SMEs appear reluctant to change unless very dissatisfied with service. This appears to be due to a combination of perceived high switching costs (which may be different from actual switching costs) and low perceived benefits of switching.

In terms of the potential costs of switching:

- Switching is perceived to be a ***complex, time consuming process***[10] because of the need, for example, to transfer direct debits[11] and standing orders[12] and also to prove identity (in compliance with money laundering regulations). A qualitative survey by the CC in NI found that many consumers assumed switching would be a "troublesome and time consuming process, particularly if there were a large number of direct debits / standing orders in place."[13] There are also concerns held by SMEs in particular that payments may be missed, which would damage the SMEs' reputation.

- Concerns about the costs and risks of switching are likely to be greater if ***retail customers have more than one account or product with their provider.*** For example the CC found that there were likely to be additional costs for SMEs when switching if it was also necessary to transfer loans or security, particularly because the latter may need to be evaluated by the new bank.[14]

- Retail customers appear ***reluctant to lose long term relationships***: Both individual consumers and SMEs perceive there to be value in having long term relationships with financial service providers. SMEs for example typically believe that establishing a track record as a good borrower helps secure better terms. There are also concerns that if an SME changes bank it suggests that the SME is at fault and may damage its reputation. As a result

8 Don Cruickshank, *Competition in UK Banking*, March 2000

9 See for example CC findings on bundling in relation to SME banking.

10 This is in spite of evidence suggesting that in practice few customers experience significant problems.

11 A direct debit is pre-authorised debit on the payer's account initiated by the payee.

12 A standing order is an instruction from a final customer to his bank or building society to make payments of a specified amount to a named creditor.

13 See footnote 20, page 42 *Working paper on switching,* published alongside the CC's Emerging thinking on NI banking

14 See paragraph 2.78 of the CC's report on *The Supply of banking services by clearing banks to small and medium-sized enterprises within the UK*, March 2003.

> SMEs have long term relationships with banks (on average almost 15 years[15]); and few are prepared to switch more than once. The CC has also found that individuals are concerned that it will be harder to borrow, particularly on favourable terms, if their bank has no experience of their financial behaviour.[16]

Moreover, ***retail customers perceive the benefits of switching their main provider of retail banking services to be low***. This appears to be due to a combination of reasons, including lack of interest in current accounts (which are seen as functional); satisfaction with their existing provider; perceptions that there is little difference in services across providers; and because switching current accounts may not result in significant cost reductions for an SME, or savings for individuals.[17]

In addition, the CC found that banks often dropped their fees and charges or improved services if SMEs told them they were considering switching.[18] The CC considered this to be a form of price discrimination, "reducing prices to retain the business of more price sensitive customers and avoiding the need for price reductions to other customers and preventing these other customers from receiving the benefits of competition."[19]

The above factors result in relatively low switching rates. For example a recent study by the Warwick Business School estimated an overall rate for SMEs changing their main business account provider of 2% p.a.; and estimates of switching rates for individuals range from around 1% to 4% p.a.[20] Studies by the Department of Trade and Industry (DTI)[21] and the National Consumer Council (NCC)[22] comparing switching rates for individuals across a range of markets have found that current and savings accounts have the lowest levels of switching (primarily in comparison with utilities, mobile phones, car and home insurance)

2.3 Measures to improve transparency and facilitate switching

Issues of transparency and switching have been considered extensively by UK competition authorities. Although some private companies, such as MoneyFacts, offer retail customers help in choosing financial services providers there are additional measures in place to help improve transparency and facilitate switching. These range from the use of OFT powers to stop misleading advertising, to commitments by banks, either in the form of formal undertakings, or in a code of practice. These are discussed in turn.

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15 Warwick Business School *Finance for Small and Medium-Sized Enterprises A Report on the 2004 UK Survey of SME Finances* 2004

16 See for example paragraph 2.83(a) in Lloyds TSB / Abbey National; and paragraph 123 of Working paper on switching in NI banking (see footnote 13).

17 The CC found that money transmission costs represent on average less than 1% of SMEs' turnover. An NCC survey found that only around 12% of consumers thought that they could make major financial savings from switching current account.

18 Two thirds of SMEs who had told their banks they were thinking about switching were offered better terms and conditions, CC's report on SME banking paragraph 2.81 (see footnote 14).

19 See paragraph 2.117 of the CC's report on SME banking (see footnote 14).

20 Taken from estimates cited in the CC's report on NI banking.

21 DTI is the UK government department responsible for trade, business, employers, consumers, science and energy (see http://www.dti.gov.uk/about/index.html).

22 The NCC is a consumer group that receives funding from the DTI. Its mission is "to help everyone get a better deal by making the consumer voice heard" http://www.ncc.org.uk/about/purpose.htm

The OFT has powers to tackle ***misleading advertising***, (which would reduce transparency). It has, for example, taken action to stop credit card providers from potentially misleading customers through the use of the term "introductory APRs", when consumer credit legislation provides that the APR should measure the overall charge for credit, including interest and other charges over the lifetime of an agreement.[23]

Following the CC's report on SME banking, the main UK banks[24] gave a series of ***undertakings***, which included measures to improve transparency and facilitate switching. For example, measures to improve transparency included a requirement that banks publish a list of their standard tariff charges for core money transmission services[25] and standard rates of interest paid on business current accounts. Measures to facilitate switching include targets for transfer of direct debits and of the available balance in SME's accounts, a scheme to compensate SMEs where the targets are not met; requirement to refund charges incurred due to mistakes on the part of a bank when switching; and publication of performance against switching targets. These measures are intended to help build retail customers' confidence in the switching process.

The FSA does not regulate the provision of current or savings accounts for retail customers. Instead there is a system of self-regulation, in the form of the UK's ***Banking Code and Business Banking Code***.[26] These are voluntary codes that set standards for good banking practice for personal and business customers respectively and have been adopted by all major banks and building societies in the UK. Compliance is monitored by the Banking Code Standards Board (BCSB).[27] There have been two independent reviews in the last six years.[28]

The Codes include measures to make it easier for consumers to choose a financial services provider. For example there are commitments to provide clear and not misleading advertising and promotional material. The Banking Code (for personal consumers) also includes commitments to facilitate the switching process for consumers (in terms of targets for providing the new bank with details of direct debits and standing orders, and to give consumers all they need to use a new account within 10 working days).[29] There are also commitments to facilitate switching in the Business Banking Code, including not to make extra charges for closing or switching an account (other than those agreed) and to forward on to the new bank details of the firm's credit history when requested to do so.

2.4 Summary

Existing studies of retail banking markets in the UK have found that retail customers can find it difficult to compare terms and conditions for key products and providers; and that once they have chosen a provider they may be reluctant to switch. Retail customers appear to value having a long term relationship

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23 One of the main themes of the Consumer Credit Act 1974 was that there should be "truth in lending". (See also footnote 7).

24 AIB Group (UK) Plc, Bank of Ireland, Barclays Bank Plc, Clydesdale Bank Plc, HBOS Plc, HSBC Bank Plc, Lloyds TSB Bank Plc, Northern Bank Ltd and The Royal Bank of Scotland Group Plc

25 Money transmission services covers services relating to the transfer of money to or from an account.

26 http://www.bba.org.uk/bba/jsp/polopoly.jsp?d=140

27 This is a self-regulatory body, set up to ensure that banks, building societies and other providers of banking services comply with the Banking Codes. It is sponsored by the British Bankers Association, Building Societies Association (BSA) and the Association for Payment Clearing Services (APACS); but has an independent board of directors.

28 By DeAnne Julius in 2000/1; and Elaine Kempson in 2004

29 There is a similar commitment in the Business Banking Code.

with their main provider in particular, and overall the costs of switching are perceived to be high relative to the benefits, particularly when a customer has more than one product with their main financial provider. There are measures in place to help improve transparency (for SMEs) and to facilitate switching in the form of undertakings and voluntary codes of practice, to which all main providers are signatory. It is clear however, that addressing both transparency and switching concerns requires a combination of supply-side and demand-side measures.

3. Protecting and enhancing competition

In addition to improving transparency and facilitating switching, steps have also been taken in the UK to protect and enhance the competitive process. Such measures typically focus on supply-side considerations, and in this sense are complementary to measures discussed above on increased transparency and facilitating switching. Broadly speaking, the competitive process can be protected by applying competition law to tackle anti-competitive behaviour and prevent mergers that would significantly restrict competition. It can be enhanced by tackling barriers to entry. These two approaches are discussed in turn below.

3.1 Anti-competitive behaviour and mergers

The retail banking sector is subject to competition law, both in terms of the prohibitions in relation to anti-competitive agreements[30] and abuse of a dominant position, and merger control.

The most significant banking merger considered by the UK competition authorities in the last few years was the ***proposed acquisition of Abbey National by Lloyds TSB***. The OFT referred this to the CC on 23 February 2001.[31] The CC considered the likely impact of the merger on personal current accounts, savings accounts and mortgages for consumers, and current accounts, deposit accounts and loans for SMEs. It found that the merger would result in the loss of a significant player in a market where competition was constrained by the entrenched position of the main four banks and low customer mobility. New entry from telephone and internet-based banks had thus far had limited impact and even building societies[32] that had expanded into retail banking services had seen slow growth in market share. It also found that features of the personal current account market made it vulnerable to tacit collusion in pricing.

Overall, the CC found that this merger would reduce competition in the markets for personal current accounts and the supply of banking services to SMEs with adverse effects for consumers and SMEs. The merger was prohibited, as potential remedies were unlikely to adequately address the adverse effects of the merger.

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30 See for example investigations into the interchange fee paid to card issuing banks on transactions made using a MasterCard credit or charge card http://www.oft.gov.uk/News/Press+releases/2005/168-05.htm The decision, which related to the historic interchange fee system has been withdrawn, but the investigation of the current system is continuing.

31 This merger was considered under the Fair Trading Act 1973. Today, under the Enterprise Act 2002, the OFT, has a function to obtain and review information relating to merger situations and a duty to refer to the CC for further investigation any relevant merger situations where it believes that it is or may be the case that the merger may (or may be expected to) result in a substantial lessening of competition in a UK market. The CC investigates mergers referred to it by the OFT (and occasionally by the Secretary of State) to determine whether there is a merger situation that qualifies for investigation and if so whether that merger has resulted or may be expected to result in a substantial lessening of competition.

32 A building society is an organisation owned by its members (rather than by shareholders) which pays interest on deposits and lends money on the security of property to enable members to buy their own homes.

Mergers between providers of retail banking services are also subject to the ***FSA's change of control procedure***. The Financial Services and Markets Act 2000 (FSMA) requires individuals or corporate bodies that want to take or increase control in an authorised firm to seek approval from the FSA. The key test is whether the acquirer is "a fit and proper person" to have control over the authorised firm; and whether the interest of consumers would be threatened by the change in control. This is judged from the perspective of whether the firm will still meet five threshold conditions[33], which are laid down by FSMA and replicated in the FSA's handbook of rules ("the FSA Handbook") and are the minimum standards for a firm becoming and remaining authorised.[34]

When making its decision, the FSA must consult with certain EEA regulators if there is an EEA connection. If the FSA objects, or approves subject to conditions, a warning and decision notice procedure applies. The controller[35] can choose to refer the FSA's decision to the Financial Services and Markets Tribunal, an independent tribunal created by FMSA and run by the Department for Constitutional Affairs.[36]

The FSA is committed to markets which are efficient, orderly, and fair. It treats financial institutions – irrespective of the nationality of their shareholders or their management – on the same basis, without preference for or protection of British institutions (see, for example the treatment of the acquisition of Abbey by Banco Santander).[37]

These sorts of structural controls help ensure that the conditions of competition are not lessened. Instead, firms are encouraged to compete for new business "on the merits."

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33 These five conditions relate to:

(i) *legal status* (whether the firm concerned is an individual, a body corporate, a partnership or an unincorporated association);

(ii) *location of offices* (where the firm's head office is located i.e. the location of its central management and control)*;*

(iii) *close links* (whether any links firm A has with firm B would prevent the FSA from effectively supervising firm A);

(iv) *adequate resources* (whether the firm's resources i.e. capital, provisions against liabilities, holdings of or access to cash and other liquid assets, human resources are adequate in relation to the regulated activities that it seeks to carry on, or carries on); and

(v) *suitability* (whether the firm conduct its business soundly and prudently and in compliance with proper standards).

34 These conditions are unique to FSMA.

35 A "controller" in this context is a person who:

(i) Holds over 10% of the shares in the firm or controls over 10% of the voting power;

(ii) Is able to exercise significant influence over the management of the firm because of his shareholding or voting power in the firm;

(iii) Holds over 10% of the shares in a parent of the firm or controls over 10% of the voting power in the parent; or

(iv) Is able to exercise significant influence over the management of a parent of the firm because of his shareholding or voting power in the parent.

36 This is the government department responsible for upholding justice, rights and democracy.

37 In this context it is worth noting that the European Commission is drawing up amendments to the relevant insurance, banking and securities directive dealing with cross-border mergers and acquisitions to prevent any misuse of supervisory powers for political or protectionist purposes.

3.2 Barriers to entry and expansion

There are likely to be a number of barriers to entry to, and expansion in, the provision of retail banking services. Key potential barriers highlighted in UK competition studies to date include obtaining regulatory authorisation; securing access to payment system networks; low customer mobility; lack of access to credit histories; reputation; and the need for a branch network.[38] The focus below is on the first three factors: regulatory authorisation, access to payment systems and access to credit histories.[39]

In terms of ***regulatory authorisation***, the FSA's entry process for banks is assessed against the five threshold conditions (see footnote 33 above). The distinction comes in the level of detail the FSA expects to be supplied in the application and the requirements that the application will be assessed against. Depending on what business is being applied for, different parts of the handbook will apply and therefore the information required for regulatory authorisation varies between the different classes of credit institutions.

UK banks and building societies are subject to specialist prudential and notification rules and can also be subject to other parts of the FSA Handbook depending on the business undertaken.[40] [41] Banks already authorised within the European Union do not need to seek additional authorisation within the UK. For non-EU banks, the extent to which additional measures need to be taken will depend on the nature of the authorisation procedure in the bank's domestic regulatory regime. For entirely new entrants to the retail banking sector, the FSA sets a higher than average minimum capital ratio, reflecting experience of higher risks for new entrants. The impact of this requirement has been considered in the past by the CC (in relation to SME banking) but was not found to be a significant barrier to entry. The CC found that in practice existing banks hold ratios significantly above minimum required ratios, suggesting that the ratios were unlikely to be binding in practice.

Existing evidence suggests that although obtaining regulatory authorisation may prove to be a time-consuming process for a new entrant,[42] it does not represent a major barrier to entry.

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38 The need for a branch network is likely to be more important for some products (such as current accounts) than for others (such as certain types of savings accounts).

39 Low customer mobility was discussed at paragraphs 11 to 21; including reference to ability SMEs to request details of their credit history to be passed to a new bank. The need for a branch network is not a barrier that competition authorities can directly address.

40 The FSA only deals with applications for permission to carry out a regulated financial services activity. The FSA does not issue consumer credit licences or any other type of permission that the Bank may require prior to starting business.

41 Separate FSA rules exist for credit unions (a mutual association formed by people with a common affiliation such as employees, a union or a religious group) and e-money issuers (defined in Directive 2000/46 as the taking up, pursuit of and prudential supervision of the business of electronic money institutions as an undertaking or any other legal person other than a full credit institution). Credit unions have permission to accept deposits but they also have a requirement to only undertake the business of a Version 1 (or Version 2) credit union. Credit Unions also have to be registered under the Industrial and Provident Societies Act and the Credit Unions Act. E-Money issuers have their own specialist rules and their applications will be assessed against those. In addition the regulated activity relating to e-money firms is "issuing e-money" not "accepting deposits."

42 The FSA is required by statute to decide any application for authorisation within 12 months from the date the application is received by the FSA or 6 months from when it becomes complete, whichever is the sooner. However, each firm is individual and the time taken depends on factors such as the quality of the

Access to payment systems is of critical importance for providing retail banking services. The Cruickshank report[43] expressed concerns that access to payment systems was limited to large financial organisations, and that other bodies could only get access to systems through those large financial organisations. Cruickshank found that this put non-members at a commercial disadvantage. He concluded that although there were legitimate reasons for restricting access to payment systems these included unnecessary restrictions.

Following the report, and further study by the OFT, a Payments System Task Force[44] was set up to take the work forward. A Working Group of the Task Force has considered the issues in the context of access to BACS, the clearing house responsible for bulk clearing of electronic payments between bank accounts in the UK, run by BACS Payment Schemes Limited (BPSL). Only credit institutions subject to prudential capital and liquidity regulation are entitled to settlement membership.

The Working Group considered ways of broadening membership but in view of limited interest from users (including government departments), it also recommended changes to the governance structure of BPSL to improve the situation. In particular there is now an Affiliates Interest Group to enable users to raise issues directly with the BPSL board, commitment to use formal consultation procedures, and the potential adoption by BPSL of a revised objective to incorporate the interests of users.

In its study of SME banking, the CC found that banks need ***access to credit histories*** for individual SMEs as well as the risks associated with lending to SMEs in general (or in particular sectors). Although in the UK there are general statistics in relation to SMEs and financial information on larger SMEs that file accounts, the CC found that there was no source of financial information on smaller SMEs that do not file accounts. This information was only immediately available to the SME's clearing bank, and represented a potential barrier to entry. As a result one of the undertakings required to be given by the banks following the SME banking report was that the signatory banks should provide a credit history on the request of an SME. Since 31 October 2003, credit histories must be supplied within 5 days of the day of request. In addition (as noted above), the Business Banking Code now includes a commitment to provide credit histories to a new bank, if the business asks their old bank to do so. (More generally, in the UK credit databases are run privately and are independent of the banks, rather than owned and managed by a joint venture of local banks, who within such a structure, may have incentives to restrict access to new entrants).

3.3 Summary

In the UK, competition law applies to the retail banking sector; there is no special treatment. For example, a merger between two significant UK banks was prohibited on competition grounds in 2001. Potential barriers to entry highlighted in previous studies include access to payments systems, low customer mobility; regulatory authorisation and access to credit histories. Low customer mobility was discussed above. In relation to the other factors:

- securing regulatory authorisation can be a time consuming process for an entirely new entrant, but is not considered to represent a significant barrier to entry in the UK.

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application, how complete it is on submission, whether the FSA knows the group and the workload of the relevant specialists at the time the application is made.

43 This report was commissioned by the Chancellor of the Exchequer, in 1998, to investigate the banking industry in the UK, excluding investment banking.

44 This comprises representatives from the banking industry, retail, consumer and business sectors, as well as the Bank of England and Treasury. It is chaired by the OFT.

- the OFT has been exploring, through the Payments Systems Task Force and associated working groups, practical ways of giving users of clearing systems who are not members of a greater say in how they operate, particularly in view of their limited interest in alternative membership options.

- SMEs can now ask their old bank to provide their new bank with details of their credit history.

4. Maintaining close relations with the FSA

The FSA is an independent body that regulates the financial services sector in the UK under the Financial Services and Markets Act 2000. The FSMA gives the FSA four statutory objectives, which relate to maintaining confidence in the financial system; promoting public understanding of the financial system; securing protection for customers; and reducing financial crime.[45]

The FSMA also requires the FSA to have regard to a number of principles of good regulation, one of which is the need to minimise the adverse effects on competition arising from its activities and the desirability of facilitating competition among the firms it regulates.[46] Unlike regulators in some other industry sectors, (e.g. energy, telecoms, rail and water), the FSA does not have concurrent competition powers over the financial services industry generally or the banks and competition powers remain with the OFT.[47]

Therefore although the OFT and FSA have different roles and powers, there are substantial areas of overlap in our work, in relation to consumer protection and education in particular, as well as an interest in seeing a competitive financial services industry.

The OFT and FSA are committed to working effectively together to deliver greater benefits to markets, consumers and the economy as a whole. This includes efforts to improve communication with consumers, reduce the burden of regulation by, for example, reducing administrative costs where possible, and by ensuring that, where our interests overlap, our actions are consistent and complementary. This commitment is demonstrated in a ***joint action plan***,[48] which outlines how the OFT and FSA are improving the way they work together. For example through:

- Enhanced communication, including through regular meetings between our Chairmen and the Chief Executives and regular contact between the directors given responsibility for primary senior level contact for OFT/FSA matters. This complements regular contact at a working level.

- Close joint working in relation to Payment Protection Insurance (PPI)[49], to ensure that the FSA's thematic work on PPI and with trade bodies, and the OFT's market study on PPI are consistent and complement one another.

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45 http://www.fsa.gov.uk/Pages/about/aims/statutory/index.shtml

46 http://www.fsa.gov.uk/Pages/about/aims/principles/index.shtml

47 It does however have concurrent powers in relation to unfair contract terms, see paragraph 43(c) of this paper

48 *Delivering better regulatory outcomes, A joint FSA and OFT Action Plan*, April 2006

49 PPI protects a borrower's ability to maintain repayments and should help them avoid getting into debt should they be unable to keep their repayments due to accident, sickness or unemployment.

- A concordat to formalise working relations on unfair contract terms. Both the OFT and FSA have powers in relation to unfair contract terms. The concordat formalises commitment to co-ordinate enforcement action and to co-operate as far as possible to ensure joined-up delivery of consumer protection.

Therefore the OFT and FSA have a range of mechanisms for ensuring effective relationships.

In addition to the above, the FSMA gives the OFT a ***duty to keep the regulating provisions and the FSA's practices under review*** from a competition perspective.[50] If the OFT considers that these provisions or practices have an adverse effect on competition it is required to make a report to the Competition Commission, which in turn is required to investigate and make a report to the Treasury. The Treasury is then able to direct the FSA to take action to remedy the adverse effect.

Under the FSMA, for instance, the OFT has investigated the London Stock Exchange's charges for issuer fees and obtained a reduction of these fees as a settlement in 2003.[51]

The OFT has also, at the request of HM Treasury, commissioned a review of the FSMA to assess the likely impact on competition. This review did not find any indications that the FSMA has had a significant adverse effect on competition in financial services markets.

4.1 Summary

The OFT and FSA recognise the need to work closely together and have a number of mechanisms in place to promote cooperation and consistency of approach. These are set out in our joint action plan. In addition, the OFT has a duty to keep the FSA's regulatory provisions and practices under review from a competition perspective to help ensure that the FSA's actions do not unduly restrict competition.

5. Conclusion

It is clear from the above themes that fostering consumer welfare and productivity growth in the retail banking sector depends on a clear appreciation of the complementarities of various supply-side and demand-side tools. The range of work undertaken by the OFT, CC and FSA is striking in its breadth and depth, covering everything from definition of APRs to merger assessment in personal current accounts. The OFT's ability to deploy both competition and consumer tools is therefore of particular value in achieving our mission in financial services work. Of particular note is the "competition scrutiny" role that the OFT was given under FSMA. A joined-up approach to market and competition issues between the FSA and OFT is therefore critical to the success of our respective missions.

50 Section 159 of the Financial Services and Markets Act 2000

51 http://www.oft.gov.uk/News/Press+releases/2003/PN+153-03.htm

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Warwick Business School Finance for Small and Medium-Sized Enterprises *A Report on the 2004 UK Survey of SME Finances* 2

UNITED STATES

This paper addresses the working relationships that have developed between the Department of Justice's Antitrust Division and the various U.S. banking authorities such as the Federal Reserve, and the manner in which the Department applies general competition law to the banking arena. We will also touch on certain relatively recent developments in the integration of financial services and traditional banking services, and the existence of entry restrictions that can play a role in competitive analysis.

1. The Transparency of Bank Merger Review

The United States Department of Justice Antitrust Division's Merger Review Process Initiative ("MRPI"), established in 2001, is designed to promote quicker identification of the critical legal, factual and economic issues regarding proposed mergers; more efficient and focused investigatory discovery; and more effective evaluation of evidence.[1] While these are important goals for merger review in all industries, the Antitrust Division's bank merger review process has provided transparency to bankers and a fast track in our merger review for years.[2]

The banks that are subject to our bank merger review are keenly aware of the tools we use in our review, but this does not mean we do not periodically revisit our investigative tools to ensure that we are accounting for changes that are occurring in the marketplace. Antitrust merger analysis is sufficiently flexible in that it can readily account for any change in market dynamics. We have great confidence in the soundness of the principles that we use to examine the potential anticompetitive effects of bank mergers and we will continue to evaluate our review process and tailor it, as appropriate, to reflect industry conditions. Before we begin a detailed discussion on Antitrust Division review of bank mergers, it would be helpful to understand the structure of the United States Banking Industry.

2. Background on the United States Banking Industry

2.1 Structure of the US Banking Industry

Perhaps the most striking aspect of the US banking industry is the sheer number of institutions. There are over 7,900 separately insured banking entities operating in the United States. Almost 1,800 banks have national bank charters, and over 6,000 other banks are chartered by the governments of the fifty states. More than 6,100 of these national and state banks operate as subsidiaries of the over 4,900 bank holding companies. These bank holding companies hold over 97% of all bank assets. One thousand three hundred banks operate independently of holding companies, but most are relatively small, with less than $100

1 The Merger Review Process Initiative can be found at: http://www.usdoj.gov/atr/public/9300.htm.

2 Bank Mergers and Antitrust, address by Constance K. Robinson, Director of Operations, Antitrust Division of the U.S. Department of Justice, Before The 31st Annual Banking Law Institute, May 30, 1996. See also, Consolidation in the Banking Industry: An Antitrust Perspective, address by Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, before the Federal Reserve Bank of Chicago 32nd Annual Conference on Bank Structure and Competition, May 2, 1996, and Bank Merger Process Overview: Mergers and Acquisitions in the Financial Services Industry by Maribeth Petrizzi, Chief and Erin Carter Grace, Attorney, Litigation II Section, Antitrust Division, U.S. Department of Justice before the Practicing Law Institute, January 18, 2005.

million in assets each. At the state chartering level, the banks can also be broadly divided into groups. About nine hundred of the state chartered banks belong to the Federal Reserve System ("FRS"), the same agency that regulates the bank holding companies. However, the great majority of state banks, some 5,200 in all, are not members of the FRS. The various differences in chartering authority and FRS membership are significant, in part, because they determine which regulatory agency oversees a particular institution.

In addition to the nationally- and state-chartered banks, the United States also has about 850 "thrifts"[3] and 8,700 credit unions.[4] These institutions are different from banks in significant ways. Thus, the Department, in analysing the impact of bank mergers, usually does not give thrifts and credit unions the same weight as banks when reviewing commercial banking markets, because they usually will not be as well-positioned to provide competition in all lines of banking business to ameliorate the effects of a bank merger.

2.2 The Statutes Regulating the United States Banking Industry

The banking industry operates under a dual state/federal regulatory system. Both states and federal authorities are empowered to grant bank, thrift, and credit union charters and to regulate their operations. This system provides an incentive for the regulators to continually revise their regulatory practices and procedures as their banks have the ability to switch their primary chartering and regulatory agency among the chartering agencies. However, all bank, thrift and credit union deposit insurance is provided by federally chartered agencies — the Federal Deposit Insurance Corporation and National Credit Union Share Insurance Fund. Over 8,800 FDIC insured bank and thrift institutions in the U.S. operate over 80,000 branches. In addition consumers are served by a network of over 8,700 credit unions, many of which also operate branch networks.

Bank Holding Companies ("BHCs") are regulated by the Federal Reserve Board under The Bank Holding Company Act ("BHCA").[5] The BHCA prohibits a BHC from acquiring direct or indirect control of the voting shares of any company which is not a bank. However, the BHCA also allows for exceptions to the preceding by allowing the acquisition of entities that are in businesses "closely related to banking."[6] Thus, this provision has allowed BHCs to engage, through their affiliates, in a variety of closely-related businesses such as mortgage banking, securities trading, a limited range of insurance underwriting, and very limited securities-related activities while preserving the "firewall" between the traditional federally-insured bank and the nonbank affiliates.

2.3 Evolution of the United States Banking Industry

The United States banking industry has evolved from a highly regulated industry to an industry that now operates in a more competitive and evolving regulatory environment. In the 1980's and 1990's the banking industry witnessed a breakdown of geographic and product barriers along with the globalization of

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3 Thrifts were originally chartered as special purpose depository institutions whose primary function was to accept deposits and invest them in residential mortgages, thus encouraging home ownership. As a result of regulatory reform, the thrift industry has been allowed to broaden its investment portfolio, particularly in the area of commercial lending. References to the U.S. banking industry usually include both traditional banks and thrifts.

4 In 1934, Congress created the credit union system as not-for-profit, member owned depository institutions, that promote consumer thrift. Today credit unions serve nearly 82 million members with deposits exceeding $520 billion and loans over $355 billion.

5 12 U.S.C. § 1841.

6 12 U.S.C. § 1843(c)(8).

financial markets and entry into their traditional product markets by nonbank financial service providers. Rapid technological advances, such as point of sale systems ("POS") and on-line banking, hastened the need for regulators and the U.S. Congress to seek dramatic reform in the regulatory environment. Regulators and Congress responded with a series of reforms that eliminated restrictions on deposit prices, types of products offered, geographic operating areas, and lines of commerce. However, Congress has chosen to retain the U.S.'s somewhat unique wall between banking and other forms of commerce in that non-banking companies cannot own banks.[7]

Probably the most significant alteration to the legal framework governing banking organisations occurred as a result of the enactment of the Gramm-Leach-Bliley Act in 1999 ("GLB").[8] Since the 1930's, federal law had limited the powers of banks to functions that were "closely related to deposit taking and lending." In addition, federal law prohibited banks from underwriting, selling, or distributing securities and also prohibited securities firms from accepting commercial bank deposits.[9] The intent of these restrictions was to prevent the risks associated with underwriting and dealing in securities from undermining the safety and security of the payment systems and the system of federally chartered deposit insurance. GLB repealed those restrictions and created a two-way street wherein banks, securities firms, and insurance companies could affiliate with each other through the financial holding company ("FHC") structure. Today, the over 630 FHCs control over 970 banks. The vast majority of banks in the U.S., however, continue to operate in the traditional structure as members of one of the almost 5,000 bank holding companies. [10]

3. Relationship Between the Banking Regulators and the Department of Justice

Unlike other industries, bank and bank holding company mergers are exempt from the merger review process under the Hart-Scott-Rodino Act of 1976 ("HSR").[11] Authority to approve or deny banking mergers rests with the bank regulatory agencies. The question of which banking agency has authority is determined by the type of institution which would result from the merger. Thus, if a BHC acquires a FDIC regulated bank, the approval authority rests with the FRB as they are BHC's regulator. The Bank Merger Act[12] ("BMA") and the Bank Holding Company Act[13] require the appropriate regulatory agency to consider the probable competitive effects of proposed mergers and to deny those which threaten competition unless the probable anticompetitive effects of the transaction are clearly outweighed by the probable effect on the convenience and needs of the community to be served.[14] Once the banking agency

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7 An exception is the special type of bank charter known as an Industrial Loan Company (ILC), which a few states permit. These ILC charters permit non-bank companies, such as BMW or Volkswagen, to perform limited types of banking service such as processing credit cards and accessing the electronic payment systems, and to offer special types of loans, such as financing the purchase/lease of products offered by the company owning the ILC.

8 Pub. L. No. 106-102, 113 Stat. 1338 (1999).

9 12 U.S.C. §§78 and 377 and commonly referred to as the Glass-Steagall Act.

10 The 630 FHCs account about 84% of all banking assets in the U.S., while the traditional bank holding companies, which are not FHCs, account for about 13% of all banking assets. To become an FHC an entity must first register as a BHC.

11 Hart-Scott-Rodino Act ("HSR") 15 U.S.C. §18. Mixed transactions, those allowed in the post-Gramm-Leach-Bliley world, may require both a bank merger or holding company application and an HSR for the "non-banking" portion of the transaction. The bank portion of these mixed transactions will be reviewed by the Department but the HSR reportable transaction may be reviewed by either the Department or the Federal Trade Commission.

12 12 U.S.C. § 1828(c).

13 12 U.S.C. § 1842(c).

14 12 U.S.C. §§ 1828(c) and 1842(c).

approves a merger, the Antitrust Division has a 30 day post-approval period in which to file suit under the U.S. antitrust laws (Section 7 of the Clayton Act) to block the transaction. If the Antitrust Division files suit, there is an automatic stay in which parties are barred from consummating the transaction until a federal district court conducts a review of the transaction. Antitrust immunity under Section 7 of the Clayton Act accrues if no suit is filed within the 30-day post-approval period.[15]

The Antitrust Division is tasked with reviewing all bank merger transactions that are proposed throughout the United States. Banking is unique in many respects, one of which is the regulatory scheme through which banks operate. In addition to the Division, bank agencies are tasked with evaluating the competitive effects of the transaction. Because of this dual review, there is a significant level of inter-agency staff cooperation. While the Division conducts a separate competitive review, we do share with the banking agencies our conclusions and the bases for the conclusions, including divestiture requirements. We may also consult with the agencies on timing, and invite the agencies to have a joint meeting with the parties to discuss a proposed merger. The competitive impact of bank and bank holding company mergers is simultaneously reviewed by the Division and one or more of the four responsible primary banking agencies: the Board of Governors of the Federal Reserve System ("FRB"), the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision ("OTS").[16] Under the statutes, the Division must formally comment on the application by issuing a report on the competitive factors.[17] The Department is not required by statute to send a competitive factors report on certain BHC transactions but will if a competitive concern is raised by the transaction.

4. United States Competition Law and Its Application to Banking Mergers

As discussed above, the banking regulators are the agencies charged with approving or disapproving bank mergers, and the formal notice requirements of the HSR Act, which govern the Department's review of mergers in other industries, do not apply. However, the Department does provide advice to the regulators regarding the likely competitive effects of a given merger, and thus must perform its own independent antitrust analysis. In doing so, the Department uses the basic United States antitrust laws and antitrust analysis used in other contexts. The analysis of banking mergers is different primarily in the amount and type of information available and the tools we use in evaluating this information.

4.1 Banking Merger Analysis - Initial Screening Process

As noted, banking mergers are evaluated in much the same way as other mergers. However the basic similarity of the factual issues across the range of banking mergers, and the very large numbers of these mergers that occur every year, have both permitted and necessitated the establishment of certain procedural "shortcuts," without which the efficient review of banking mergers in the United States would be much more difficult.

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15 12 U.S.C. §§ 1828 (c) and 1849(b).

16 In addition to coordinating with the banking agencies, staff will also conduct joint investigations with State Attorneys General offices in states affected by the merger.

17 12 U.S.C. §1828 (c)(4). See J. Robert Kramer II, *Antitrust Review in Banking and Defense*, 11 Geo. Mason L. Rev. 115 n. 23 (2002). The Department of Justice reviews each proposed transaction and sends one of four competitive factors reports in response: (1) a "not significantly adverse" competitive factors report; (2) a "significantly adverse" letter; (3) a "conditional letter"; or (4) an "advisory report." The most recent significantly adverse letter was sent on September 15, 1999 to the Board of Governors of the Federal Reserve System.

The actual bank merger review process begins when the acquiring party to a merger files an application with its primary regulator, who then sends a copy of the application to the Department. The Department reviews the application through a "screening process." The Department screens approximately 1,000 bank merger applications annually. The screening process is described in detail in a document jointly issued in 1995 by the Department, the FRB, and the OCC titled "Bank Merger Competitive Review Screening Guidelines."[18] The purpose of this screening is to identify quickly proposed mergers that clearly do not have significant adverse effects on competition and allow them to proceed.

There are two screens used, Screen A and Screen B. Screen A looks at competition on FRB predefined banking markets by calculating the Herfindahl-Hirschman Index ("HHI"), based on deposits in the relevant market with thrifts at 50% weight.[19] The deposit data, by branch, is available from the FDIC[20] so it is easy to tell whether the transaction will raise questions. If the transaction does not result in a post-merger HHI over 1800 with a change of over 200, the banking agencies and the Division are unlikely to further review the transaction. If, however, the proposed merger approaches or exceeds the 1800/200 threshold, the Division will conduct Screen B. Screen B is a calculation of the HHI for commercial banks and thrifts making commercial loans in the relevant market.

Unlike the banking agencies, the Division includes thrift deposits in its Screen B calculations at either 100% or 0%, depending on the product market definition at issue. In retail product markets, thrift and credit union deposits are given full weight as these institutions may be alternatives for the customer seeking retail products and service. This is not always the case in small business product markets. In small business lending, the Division generally relies on a "2% test"[21] as a general guideline to determine whether a thrift is an active participant in commercial lending. This test is not a hard and fast rule but rather a screening tool to identify commercial lenders that are not commercial banks. If the relevant product market at issue is small business lending, credit union deposits are not included in this calculation. Experience tells us that credit unions are rarely committed participants in small business lending.

4.2 Application of United States Merger Analysis to Banking Mergers

4.2.1 Investigation Process

Like investigations in other industries, the staff requests information from the parties using a request for information. This request is sent to the merging parties shortly after the Division opens an investigation. Unlike other investigative staffs, our banking unit rarely uses Civil Investigative Demands to request information from the merging parties and relevant third parties. The staff seeks branch level data for each branch in a relevant market, including, location and descriptive information about the location and condition of the branches, amount of commercial & industrial loans and commercial real estate loans, commercial deposits, number of loan officers and branch personnel, and customer contact information. Staff may also request information from regulators and bank examiners on occasion.[22] Staff may also ask

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18 The Bank Merger Competitive Review Screening Guidelines can be found at: http://www.usdoj.gov/atr/public/guidelines/6472.htm.

19 The HHI is calculated by summing the squares of the individual market shares of the participants.

20 The Summary of Deposit data is collected annually by the FDIC website at the branch level. The web address is: http://www3.fdic.gov/sod

21 The "2% test" is measured by the ratio of commercial industrial loans divided by total assets. If the institution exceeds this ratio, its deposits are included in Screen B at 100%. If it does not meet this ratio, its deposits are included at 0%.

22 Under Section 132 (a) of Gramm-Leach-Bliley Act of 1999, the OCC, OTS, FDIC, and the FRB "shall make available to the [DOJ and FTC].any data in the possession of any such banking agency that the

the parties to share the information with the banking agency. Staff always has the option of using compulsory civil process if deemed necessary.

The investigation process in bank mergers is both similar to and different from the merger investigation process used in reviewing mergers in other industries that may result from a filing under the HSR Act. Both bank and non-bank mergers are subject to competitive review under the Division's Merger Guidelines, but they differ because (i) bank merger transactions receive antitrust immunity after the post-approval waiting period expires, (ii) if the Department files suit, there is an automatic stay and a federal district court would conduct a de novo review of the transaction, and (iii) the timetable for bank merger review is defined in the banking statutes. Another difference is that there is a significant amount of public information available for banks that is not available for other industries, such as FDIC Summary of Deposit data[23], bank call reports, and Community Reinvestment Act ("CRA") data.[24] Because of this access to information, the bank merger review process typically is more transparent and predictable.

4.2.2 Substantive Review

Background

Merging parties in any industry must comply with the requirements of the Clayton Act, which makes illegal any acquisition where the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly. In making this determination, the Department must first decide whether there is a "line of business" – usually referred to as the relevant product market – in which the acquisition will have the effect of lessening competition. The Department must also identify a "section of the country"– usually referred to as the relevant geographic market -- in which the impact on that product market will be felt. Often the geographic market in a particular matter is nationwide, but in other cases, including banking cases, the impact of a merger is felt in much narrower markets, and each must be analysed separately.

Once the relevant product/geographic market has been established, the Department must determine the impact of the acquisition on that market. The first step is to determine the degree of concentration in the market before the acquisition, and the extent to which the acquisition increases that concentration. The concentration measurement most heavily relied on is the HHI, which is based on the squares of market participants' market shares, and is a more robust tool than market shares alone. In most cases, calculation of pre- and post-merger concentrations is only the beginning of the analysis, as it still must be determined whether there are factors in the particular market being analysed that are likely to make the effect on competition either more or less likely or severe than the concentration numbers alone might predict. Among these factors is the likelihood that entry or the threat of entry will cause market participants to continue to act competitively.

If the antitrust evaluation reveals that a particular acquisition is likely to have substantial adverse effects on competition in the relevant market, the Department and the parties must determine if there is a remedy that can be agreed to that will satisfy the Department's concerns. If such a remedy cannot be agreed to, the Department may have to bring a lawsuit to block consummation of the acquisition.

Identifying the Relevant Product and Geographic Markets

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antitrust agency deems necessary for antitrust review." This section also requires confidential treatment of this information.

23 http://www2.fdic.gov/sod/index.asp

24 Community Reinvestment Act (12 U.S.C.§2901 et. seq.) This act is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate.

Unlike the banking agencies, the Division looks at disaggregated product markets because banks are not constrained to raise uniformly the prices of all the services they offer. We do apply the tests as outlined in the merger guidelines.[25] Staff examines separately the range of products offered by banks to retail customers, small businesses, and middle market business, and may also look at syndicated lending[26] and non-bank activities such as custody services, merchant card processing, credit cards and sub-prime lending. The product markets are generally well-defined, so the issue in most mergers is the appropriate geographic market definition.

The starting point in a geographic market determination is the FRB-defined banking markets.[27] If there is a Ranally Metro Area ("RMA") within a FRB-defined banking market, we will analyse the effects of the transaction in the RMA.[28] If the FRB market is multi-state, multi-county, or divided by a geophysical barrier (e.g., a river or a mountain range), we might examine the transaction in a more narrowly defined market (i.e. by county).

Geographic market definition in our investigation is dependant on the product market at issue. In retail banking, generally, the geographic market is defined by where the customers live and work. Journey-to-work data collected by the Census Bureau may be useful for this determination.[29] For small businesses, customers generally choose a bank that is within a few miles of their business location. We generally view the geographic market as local – often the RMA or the county. The geographic market for middle market customers is generally larger than that for small businesses.[30] Interviews with local bankers, and occasionally customers, help determine geographic markets, local market conditions, and the extent of in-market and out-of-market competition. Also, CRA data can be used to support geographic market definition.

Concentration

In addition to measuring market concentration using deposits (as discussed in the section on Initial Screening above), staff will also review other measures of concentration. In particular, staff will review CRA small business lending data, which is publicly available on the county level.[31] This data is collected

25 http://www.usdoj.gov/atr/public/guidelines/hmg.htm

26 Small businesses are generally firms with sales less than $10 million annually seeking extensions of credit less than $1 million. The middle market is generally defined as companies with sales ranging from $10 to $100 million annually with credit extensions ranging from $1 million to $10 million. Syndicated Lending is generally participation in large loans by more than one institution, and is generally for amounts that exceed the level that those institutions are comfortable lending on their own. Syndicated lending includes investment grade, leveraged and highly leveraged loans.

27 http://federalreserve.gov/generalinfo/applications/afi/marketinfo.htm

28 Ranally Metro Area ("RMA") as defined in the "Rand McNally Commercial Atlas and Marketing Guide."

29 http://www.census.gov/population/www/cen2000/commuting.html

30 In the Fleet/Bank of Boston (1999) transaction, DOJ staff had significant concerns over middle market lending in New England. Staff conducted interviews with competitors and customers that strongly suggested that middle market lending was a regional market. Dunn & Bradstreet data confirmed the lack of lending by banks outside of New England. Additionally, Federal Reserve Board studies supported the contention that mid-sized businesses, especially non-public companies, were not solicited by out-of-market banks because limited credit information was available about these customers. Consequently, the divestiture included the entire business unit serving middle market customers.

31 http://www.ffiec.gov/craadweb/aggregate.aspx

annually and includes data from all banks meeting certain reporting criteria[32] that are lending in a particular county. CRA data is a great tool to get a "quick look" at the small business lending in a particular county. The CRA data also provides valuable information about out-of-market banks' lending activities in a particular county.

Staff will also review information and calculate HHIs using branch concentration data. Branches are probably the most important delivery channel for a bank, particularly for small business lending, and the number of branches a merged entity will have post-merger can provide a glimpse of the competitive effects of the transaction.

Entry

There are few remaining regulatory barriers to entry in banking in the United States since passage of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,[33] which made it easier for banks to cross state lines. Riegle-Neal permitted bank holding companies to acquire banks in any state and permitted banks to engage in interstate branching if both the "home state" and the "host state" had not opted out of Riegle-Neal by the June 1, 1997 trigger date. States had significant discretion under Riegle-Neal to continue to impose some conditions that could be viewed as barriers to entry, including deposit caps, requirements that banks be in existence for five years before acquiring an out-of-state organisation, and restrictions on de novo branching and the acquisition of individual branches. Of the states that opted in to Riegle-Neil, 20 adopted the most stringent requirements, prohibiting de novo entry and the acquisition of a single branch and implementing a five year minimum age requirement before a bank can be acquired by an out-of-state organisation.

Regardless of these restrictions, entry in local banking markets appears to be driven largely by factors such as growth of economic activity in the area and the current density of banks and branches, not by profitability of incumbent banks or by competition for specific banking products. The Division reviews likelihood of entry, primarily the attractiveness of the area, and not whether an area is "overbanked."

Remedies

If the Department concludes that a bank merger will cause a substantial lessening of competition in one or more geographic areas, the Department is usually able to resolve any competitive concerns by coming to an agreement with the merging banks by which the banks will sell off sufficient branches, in the areas where the specific problems exist, that concentration after the acquisition will be at or below acceptable levels. The divestiture requirements are well-established and provide merging parties a measure of certainty on how divestitures will be structured.[34]

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32 The Community Reinvestment Act (12 U.S.C.§2901 et. seq.) requires that all institutions regulated by the Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision that meet the asset size threshold are subject to data collection and reporting requirements. The asset size threshold that triggers data collection and reporting for all agencies is $1 billion as of December 31 of each of the prior two calendar years.

33 12 U.S.C. 1811

34 Unlike merger remedies in other industries reviewed by the Department, in banking, the terms of the divestitures are memorialized in a Letter of Agreement ("LOA") rather than a consent decree. The LOA will usually require the merged bank to: divest customer relationships associated with the divested branches; sell closed branches (real estate without loans or deposits) to other commercial banks; suspend non-compete agreements with loan officers and branch managers; and manage the branches as currently managed, including refraining from taking any actions that would encourage customer run-off. The LOA

Generally, the Department requires the branches to be divested to be those belonging to the target, rather than the acquirer, unless the merger involves a clean sweep (e.g. the merging parties are divesting all of one party's branches). We require that any resulting branch network provide broad geographic coverage, and we may prefer that the divestiture include a larger number of smaller branches than a smaller number of large branches. The branches must be in good condition, in good locations and have a good mix of commercial loans, industrial/commercial real estate loans, and commercial deposits. The parties are required to divest all of the loans and deposits associated with the branch to be divested. It is generally the parties' responsibility to select a divestiture package that will meet the Department's requirements, but we may require substitutions to branches in the parties' proposed package to achieve the mix of branches and loans necessary to resolve the Department's concerns.

The Department and the banking agencies must approve any buyer. The buyer must be an active commercial lender, or if it is not, then the buyer must demonstrate plans to enter small business lending. If the buyer is unable to meet these requirements, the Department may reject the buyer. Staff will review business plans, product offerings, and the staffing and backroom support available to the buyer.

If a transaction raises competitive concerns but those concerns are not sufficient to require a divestiture, the Department may impose a non-divestiture remedy (e.g., a requirement that the parties sell or lease any branch they close in a relevant market for a three year period after the consummation of the transaction). Physical branches, even absent deposits and loans, are valuable assets, particularly in fast-growing markets, and making existing branches available for purchase may facilitate entry or expansion because the facility is already set up for the business of banking with teller cages, a vault, drive-thru lanes, and the like. Also, existing branches may be prime real estate in commercially active areas which make them attractive for new entrants or expansion by in-market banks.

5. Conclusion

The Antitrust Division believes that all parties involved in banking industry mergers benefit from our policies of transparency and of working with the other federal agencies, state officials and the merging banks: the governmental agencies get the needed information more quickly; the merging banks are more likely to receive uniform substantive antitrust review from the various governmental agencies involved; and consumers of banking services are properly protected from any potential competitive harm that might otherwise have resulted from the merger of competing banks.

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is incorporated into the relevant bank agency's order. Staff always has the option of using civil process and consent decrees if deemed necessary.

EUROPEAN COMMISSION

The material contained in this submission is mainly derived from Interim Report II of the European Commission's sector inquiry into retail banking, published in July 2006. The inquiry is ongoing and will publish a final report by the end of 2006. The Interim Report II is available here: http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/financial_services/interim_report_2.pdf

This submission is structured as follows:

- Section 1 examines supply side barriers to competition in retail banking
- Section 2 examines demand side barriers to competition in retail banking
- Section 3 discusses European competition policy in retail banking

1. Supply side barriers to competition in retail banking

This section examines the following supply side barriers in retail banking:

- Access to clearing and settlement systems
- Access to credit registers
- Merger and acquisition regulations
- Geographic restrictions on banking activity

1.1 Access to clearing and settlement systems

Access to payment systems is necessary for any bank considering entering a retail banking market and intending to offer customers core banking services, such as current accounts or payment cards. If payment markets are insufficiently competitive or contestable, efficiency benefits from innovation, consolidation, exploitation of economies of scope and scale may fail to be realised or to be passed on to consumers. In particular, established networks are potentially in a position to create entry barriers that impede competition and innovation.

These competition barriers in clearing and settlement systems may take a variety of different forms:

- Operation of the clearing infrastructure and lack of inter-system competition
- Different classes of membership and special requirements for direct members
- The 'need to be a bank' requirement
- Membership fees and fees structure

- Interchange fees
- Need to adapt to different national standards

1.1.1 Operation of the clearing infrastructure and lack of inter-system competition

In most countries there is one clearing infrastructure, which is operated either by the National Central Bank or by a membership associations controlled by (the main) banks operating in the country. It has long been assumed that the various functions involved in the organisation of payment arrangements enjoyed some kind of 'natural monopoly', since economies of scale and network effects tend to give rise to strong conglomeration effects. However this view underestimates the potential role of competition in achieving lower prices and a greater range of payment services. Entry barriers faced by a potential new network are normally high, which may create several risks including a lack of innovation or adaptation to end users' needs; possible anticompetitive restrictions on access; poor transparency and anti-competitive pricing.

As concerns the management of clearing infrastructures by the National Central Banks (NCBs), in August 2005 the European Central Bank published a policy statement regarding central banks' provision of retail payment services in euro to credit institutions. This statement mentions the problem of possible competition problems and recognises the importance of avoiding competitive distortions or crowding-out of market initiatives when NCBs provide retail payment services to credit institutions.

1.1.2 Different classes of membership and special requirements for direct members

Various clearing systems distinguish between different classes of membership, although to varying degrees. From a competition viewpoint, these membership arrangements are only relevant where they pose some risk of distorting the conditions under which the individual member institutions concerned compete with each other or under which potential new members can compete with the incumbent ones.

The distinction between 'direct' and 'indirect' ('ancillary', 'affiliate' or others) members, in combination with a different participation in decision making and participation rights, requires further assessment for three reasons. First, an indirect member will depend on the goodwill of a direct member (a competitor in the downstream market) with whom the indirect member will have to negotiate an agency contract. This adds an additional layer of intermediation to the system and possibly lead to an increase in total costs. At the same time, the possibility of joining a clearing system as indirect member could be seen as increasing choice for smaller banks and niche players, who can benefit from not having to comply with the requirements linked to settlement and direct membership.

Second, indirect members normally do not fully participate in the decision making process (determining prices, deciding on membership application, on technical standards and other rules). In practice, direct members might in some way decide the costs that all banks will have to bear to use the infrastructure. As an example, in France only the 12 founding members participate in the main decisions concerning the system.

Third, direct members receive better information than indirect, both concerning the systems as a whole and the data they receive from indirect members. On this point, the collection of business-sensitive data through direct member banks as 'agent' leads to a one-sided information exchange, as indirect members have to share their list of payments with principal members. The information collecting bank may therefore gain a competitive advantage over the indirect member. As the information collecting bank typically is a bank with voting rights on the scheme's Board, such one-sided exchange of information may reinforce the concern that decisions might be taken that limit competition.

1.1.3 The 'need to be a bank' requirement

All surveyed systems require members to be regulated financial institutions. Some of these schemes also require banks to be supervised by the National Central Bank, or require a physical presence in the Member State. According to respondents, these restrictions address the need to ensure that a system is financially secure, that systemic risk is minimised and that new members are able to interact properly from a technical and operational perspective. However, while the oversight by National Central Banks may be an efficient tool to guarantee the financial reliability of players acting in payment systems, it could be worthwhile to explore other ways to achieve financial stability within these systems. The proposal for a Directive for a New Legal Framework for Payments in the Internal Market is also meant to open up EU payment systems to non banks.

The exclusion of non-banks means that non-bank enterprises cannot be direct members of the clearing system. This also means that non-financial institutions (such as some processors or some customers) are not involved in a network's decision making and thus a network may develop in ways that do not meet the needs of a significant sector of users. Concern has also been expressed that the inability of corporate clients to access clearing systems directly might tie them unduly into their current banking arrangements.

1.1.4 Membership fees and fees structure

In certain Member States the way in which the fee system is structured could potentially be considered a barrier to entry for new or small players. The joining, annual and transaction fees of the multilateral bank cross-border credit transfer networks are generally set by boards made up of representatives of their shareholders, who are also (some of) the network's members. Fees paid by the new members in some cases cover initial members' costs for developing the scheme.

However, the question arises as to whether joining fees charged hamper effective competition by dissuading entrants or raising their cost significantly. In one country, one bank withdrew its request to participate in the system allegedly due to the high entry fee. One bank asserts that the fee system in one clearing house, by offering large volume discounts, creates a competitive advantage for the largest entities. Regressive fees on the basis of volume do apply in other systems. As the sector inquiry has shown, volume discounts or fixed periodic fees may influence banks with low transaction volume, typically new entrants or niche players, in their choice to enter a market.

1.1.5 Interchange fees

In several Member States banks have agreed upon an inter-bank payment for direct debit and for certain types of credit transfer. Interchange fees for credit transfers can go from payer's bank to payee's bank, or in the opposite direction. These fees are fixed by banks or bank associations; i.e. by likely competitors in the downstream retail banking market. According to industry players, inter-bank fees have multiple purposes, including maximising network externalities; promoting certain type of payments (e.g., electronic payments); or 'covering' costs for services provided from one bank to another.

Interchange fees create a multilateral transfer between banks, which by being multilaterally fixed, do not take into account specificities in banks and the relationship of a bank with its customers. The existence of an interchange fee may distort competition between means of payment as well as competition within banks to provide payment services to the customers. Competition between means of payment may be distorted in so far as banks have an incentive to promote the use of payment means that have high interchange fees. The existence of interchange fee may reduce the transparency of costs and pricing for providing particular services: as an example, customers who chose to use direct debits for recurrent

payments to utilities may consider that these are offered free, but in fact costs are simply shifted from the payer to the payee.

1.1.6 Need to adapt to different national standards

Member banks normally have to respect certain technical specifications, and a testing and certification procedure. In some systems this can take between 6 - 12 months. Banks that operate in different Member States need to adapt to some 25 different procedures and technical standards.

1.2 Access to credit registers

Credit registers are established mainly at a national level to collect various kinds of financial information on individuals. This data is provided by lenders and, together with data from other sources (such as courts or tax authorities), will be used by central banks, private companies or professional associations. These forms of credit data sharing can have some positive effects. First, they reduce the information asymmetry between a bank and its potential customer, which is likely to result in lower default rates. Second, credit data sharing acts as a borrower discipline device: borrowers know that if they default, their reputation with other lenders is affected. This could make more expensive or even impossible for the customer to obtain credit. Third, credit reporting diminishes the effects of the adverse selection, ensuring more credit under better conditions. Finally, data sharing is also linked to consumer mobility: it has been argued that banking markets where databases are more active show more consumer mobility.

Credit and finance companies need good quality information in order to assess the creditworthiness of borrowers prior to granting the credit; therefore, access to such databases on a cross-border basis is essential where new incumbents want to enter the market. It is possible that credit information sharing could also lead to foreclosure problems in the market, for example when members of a credit bureau refuse to admit potential entrants, or where such an entry is granted on a discriminatory basis.

Moreover, as discussed in payment systems, the ownership and management of profit-oriented credit databases can create barriers to competition. Where a credit bureau is owned and operated by the lenders, there are risks of foreclosure of the market. From the point of view of banks considering entering a Member State, there is a risk that they would not be granted equal and non discriminatory access to the data of the credit bureau. From the point of view of credit data providers wishing to enter a new Member State, this may be made more difficult where the data on customers has to be provided by lenders that already own and operate a credit database.

In general, access to credit databases has received relatively little attention as a competition issue in retail banking. This may be because in practice competition barriers are limited. It may also be because informal rules and conditions regarding access to credit data, particularly for foreign banks, have not had sufficient competition scrutiny.

1.3 Merger and acquisition regulations

Banks wishing to operate in another EU Member State have a number of routes open to them, in terms of mode of supply and means of market entry. There are several possible modes of supply:

- Branch operations allow banks to establish in another Member State, on the basis of the single ‘passport’. The new operation remains part of the existing corporate structure and subject to the same supervision

- Subsidiary operations allow banks to establish a new and separate corporate entity that is subject to the legal, tax and supervisory rules of the host Member State

- Cross-border selling allows a bank to sell direct to consumers in another Member State without requiring a physical presence in the host Member State.

There are several options for the means of market entry:

- Greenfield investment describes an entrant bank's construction of a branch or subsidiary operation in the host Member State

- Joint ventures between incumbent banks and banks entering the host Member State allow the entrant to sell its own products while capitalising on the incumbent's brand name and distribution network

- Merger or acquisition gives one bank a significant or controlling interest in another bank.

The European Commission attaches considerable importance to tackling barriers to cross-border mergers and acquisitions (M&A) in banking. There are three reasons for placing such emphasis on cross-border M&A. First, cross-border M&A is an important means for larger players to enter new markets and quickly acquire sufficient scale in their operations to launch a competitive challenge to domestic banks. Second, there is clear evidence that in the banking sector, cross-border M&A – more than other means of market entry – tends to generate significant benefits for consumers in the host economy. Third, there remain significant barriers to cross-border M&A in banking, particularly arising from the current framework for banking supervision.

The European Commission has put forward a proposal that will tighten the procedures that Member States' supervisory authorities have to follow when assessing proposed M&A deals in the banking, insurance and securities sectors. Current EU rules allow supervisory authorities to block proposed M&A if they consider that the 'sound and prudent management' of the target company could be put at risk. The proposed new Directive, which amends various existing Directives[1] in these sectors, will in particular clarify the criteria against which supervisors should assess possible M&A operations. This will improve clarity and transparency in supervisory assessment and help to ensure a consistent handling of M&A requests across the EU.

The proposed Directive provides supervisory authorities with a clear and transparent process for decision-making and notification. In particular, there is now a closed list of criteria on which the acquiring company should be assessed, such as reputation of the proposed acquirer, reputation and experience of any person that may run the resulting institution or firm, financial soundness of the proposed acquirer, compliance with relevant EU Directives, and risk of money laundering and terrorism financing. Also, the Directive reduces the assessment period from three months to 30 days and allows the supervisory authority to 'stop the clock' only once, under clear conditions.

[1] The proposed new Directive amends the following existing Directives: the Banking Directive (2006/48/EC), the Third Non-life Insurance Directive (92/49/EEC), the Recast Life Assurance Directive (2002/83/EC), the Reinsurance Directive (2005/68/EC), and Directive 2006/48/EC on markets in financial instruments.

1.4 Geographical restrictions on banking activity

In some Member States there are restrictions on the regional scope of the activities of certain types of banks such as savings banks and/or co-operative banks. In Germany, the so-called regional principle still plays an important role with respect to Volksbanken and Sparkassen and is, regarding the latter, also ruled by the Sparkassen laws of the Länder. Large cooperative and savings banks groups operate in several other EU Member States including France, Spain, Italy and Austria. The European Commission intends to look further into the regulations governing the status and activity of savings and cooperative banks throughout the EU.

2. Demand side barriers to competition in retail banking

This section examines the following issues concerning the demand side of retail banking:

- Switching costs
- Customer mobility
- Customer mobility and market performance

2.1 Switching costs

The European Commission has considered this issue on the basis of the existing literature on switching costs in banking and other economic sectors. The Commission has identified five main factors that reduce customer mobility in retail banking:

- Administrative burden: the transactional switching cost that occurs when the change of service provider is implemented.
- Information asymmetry and low price transparency: Product complexity can create information asymmetry and discourage consumers from switching bank. In addition, a consumer wishing to switch bank may find that potential suppliers are unable to price competitively owing to a lack of data on the new prospective client.
- Cross-selling and bundling of banking products: Cross-selling is the strategy to sell additional products or services to existing customers. By widening the customer relationship, cross-selling raises switching costs and increases the customer's reliance on its bank.
- Customer preferences and choice: Customers' behaviour suggests that they place a premium on particular characteristics of suppliers and on a long-term commercial relationship. These factors imply an additional opportunity cost when considering changing banks.
- Closing charges: Banks may charge customers for terminating various services. Since closing charges are explicit financial charges, they are the easiest type of switching cost to quantify in retail banking.

The sector inquiry interim report argues that high levels of switching costs in the retail banking industry may reduce competition in three ways:

- Increase banks' market power. High levels of switching costs give banks a degree of market power. If suppliers can discriminate between new customers and repeat customers, they will

charge lower prices to attract new customers. However once customers are locked in to a banking relationship, the supplier can charge higher prices, since customers will price their switching costs into any decision to switch supplier.

- Discourage new market entry. Switching costs serve as entry barriers as new entrants must offer price benefits that compensate customers for the cost of changing provider. Where switching costs are high, it is likely to be uneconomic for a new entrant to provide a sufficiently competitive offer to induce customers to switch. Incumbent banks which have large numbers of established customers should be relatively more profitable and so better able to withstand an extended period of price competition.

- Discourage product innovation. In a market with low switching costs, customers could quickly adopt a new product or service in large numbers, presenting a potentially large economic reward for innovators. However, where switching costs are high suppliers will be aware that new offers, even if successful, will attract relatively fewer new customers. Thus the rewards to innovation will generally be lower in markets with high switching costs. In such circumstances a rational strategy for most retail banks would be to focus product development efforts on satisfying the needs of existing customers and attempting to cross-sell other products to them.

2.2 Customer mobility

The European Commission's analysis of customer mobility relies on data on the current account markets for consumers and SMEs. The sector inquiry examined mobility related to current accounts for three reasons. First, current accounts are widely held and are the most frequently used banking product. Second, unlike some other products such as customer loans which expire after a set time-period, current accounts are open-ended. Third, and partly because of the open-ended nature of the current account relationship, current accounts play a gateway role: banks often use the current account as the basis for cross-selling other products to their customers.

The data used in sector inquiry were collected from banks and not customers. Thus customer mobility is measured in an indirect way, based on the replies of banks on the inquiry. Customer mobility in retail banking is illustrated with two different indicators:

- The first measure of mobility, which is referred to here as 'churn', tries to capture the share of customers who change current account providers in a given year. Churn is defined here as the ratio of the sum of current accounts opened in a year plus current accounts closed in a year divided by two times the total number of accounts at the beginning of the year.

- The second indicator, which may be called 'longevity', is a measure of the average length of existing banking relationships, defined as the weighted average of the number of years that existing current accounts have been active at a given bank.

Both measures described above are influenced by two factors other than mobility: the general growth rate of the retail banking market, and demographic changes. Based on the results of the inquiry, the churn measure will be controlled for the industry growth rates in each country. However, some remaining differences in demography might still influence country comparison. In the case of longevity such correction was not possible.

The table below illustrates the average age for current accounts for consumers and SMEs. On average EU consumers have maintained their current account with the same bank for around ten years. Longevity is much higher in the Nordic countries and in the Netherlands than in the other member states. There is a

sharp difference in the average longevity between New Member States and the EU-15. In the new Member States banking relationships are much shorter; around six years on average for consumer and five years for SME current accounts, which, however, is partly explainable by a relatively large share of new relationships in these fast growing markets. As expected, there is a strong correlation between the two measures of mobility.

	Net customer churn (%, 2005)		Longevity of current account (years)	
	Consumer	**SME**	**Consumer**	**SME**
Austria	6.57%	10.42%	11.64	8.42
Belgium	5.27%	8.90%	10.04	9.99
Cyprus	10.33%	13.00%	6.65	4.63
Czech Republic	8.61%	10.70%	7.91	7.87
Denmark	10.02%	15.43%	12.06	9.75
Estonia				
Finland	4.23%	6.27%	17.44	13.98
France	6.84%	12.26%	11.06	8.39
Germany	8.46%	15.15%	11.55	9.85
Greece	2.36%	3.55%	4.34	5.23
Hungary	10.41%	17.59%	6.26	4.29
Ireland	5.44%	6.95%	8.13	10.14
Italy	7.68%	11.23%	9.39	8.23
Latvia	6.74%	7.13%	3.11	4.81
Lithuania	7.73%	3.34%	6.23	4.46
Luxembourg	6.46%	11.29%	7.20	6.45
Malta	5.39%	6.49%	8.83	6.64
Netherlands	4.17%	8.88%	14.33	10.45
Poland	9.11%	17.00%	6.18	4.04
Portugal	11,88%	14.34%	11.21	8.87
Slovakia	10.81%	15.80%	4.49	5.54
Slovenia	5.97%	10.89%	7.02	3.06
Spain	12.12%	10.34%	6.91	6.02
Sweden	5.62%	8.80%	11.82	12.33
United Kingdom	5.07%	13.72%	10.66	7.66
EU-15 Average	*7.55%*	*12.21%*	*10.40*	*8.56*
NMS Average	*9.02%*	*14.82%*	*6.28*	*4.67*
EU-25 Average	*7.78%*	*12.63%*	*9.74*	*7.93*

Notes: Churn: (new currents accounts+closed current accounts)/(2* number of current accounts beginning of year).
The estimates for EU-15, New Member States and EU-25 are country-level averages weighted by population.

2.3 Customer mobility and market performance

The table below contains the correlation estimates for indicators of mobility and market structure, controlling for country effects (estimates for country dummies are not reported in the table). The numbers reported in bold indicate that the coefficient is statistically significant (different from zero) at 5%.

Estimate (t-statistic)		Profit ratio	Market share
Churn	**Consumer**	**-1.05**	**-0.44**
		(-3.07)	(-3.46)
	SME	-0.04	**-0.24**
		(-0.18)	(-2.43)
Longevity	**Consumer**	1.64	**1.24**
		(1.81)	(3.97)
	SME	**3.00**	**1.93**
		(2.37)	(4.43)

As might be expected, bank-level analysis shows a negative relationship between mobility and profits both for consumers and SMEs using churn for consumers and longevity for SMEs. The estimates are significant at reasonable degrees (less than 5%) except for the estimates between longevity and profit ratio for consumers (significant at 10%); and between churn and profits for SMEs. The analysis shows also a negative relationship between mobility and market share both for consumer and SMEs.

The sector inquiry's preliminary findings are that indeed customer mobility is negatively correlated with profit ratios and market share; and that these correlations tend to be statistically more significant when longevity is used instead of churn as a measure of mobility. Bank level data show that mobility seems to be correlated with typical market power indicators, as more concentrated and more profitable markets also seem to show lower levels of mobility.

However, the sector inquiry has not drawn the immediate conclusion that low mobility indicators signal that highly profitable and concentrated markets in Europe are solely the result of a lack of competition. The evidence provided here is suggestive but the analysis has not controlled for the effects on mobility of third variables absent in the analysis. This advises complementing the preliminary conclusions of the sector inquiry with multivariable correlation analysis at a later stage.

3. European competition policy in retail banking

This section discussed the following issues:

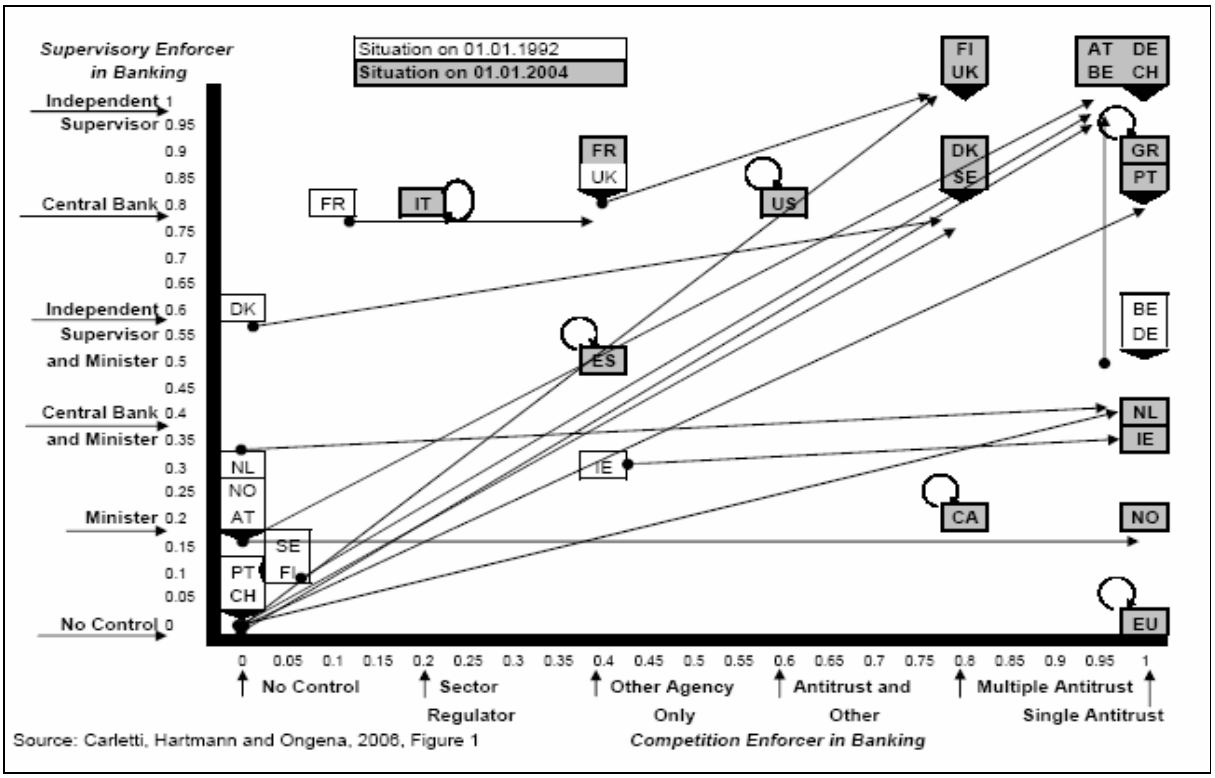
- Antitrust oversight of the banking sector in the EU Member States
- Banking competition and financial stability

3.1 Antitrust oversight of the banking sector in the EU Member States

The orientation of policy in the European Union and other advanced economies is towards increasing competition in the banking sector. This is consistent with the general thrust of policy reform across the financial services sector, which relies on sound regulatory and supervisory frameworks to underpin market functioning and on the competitive process to drive innovation and productivity growth.

In the past five years several national competition authorities (NCAs) have been highly active in the retail banking sector, recognising its direct contribution to total output and its large indirect contribution to overall economic efficiency. Several NCAs have launched competition investigations into the banking sector. These competition investigations have in certain countries helped to develop a broad policy agenda for public authorities and the banking industry to take forward.

Two additional developments in Member States are significant. First, special exclusions for banking from full antitrust law have been removed. For example, such exclusions have been removed in Germany, France, Finland and Portugal. A second important change at Member State level is the shift in institutional competence for merger approval in banking. The figure below summarises the shift in competence for merger approval using 1992 and 2004 as the benchmarks for comparison.



Source: Carletti, Hartmann and Ongena, 2006, Figure 1

The figure shows that the responsibilities of the competition authority in several European countries have significantly expanded between 1992 and 2004. In 1992, several countries – including all the Nordic countries – had little if any oversight of banking mergers. Germany and Belgium were the only European countries surveyed which granted full oversight of bank mergers to their competition authority. However, by 2004 a clear majority of the countries surveyed had granted full scrutiny to the competition authority. Against this pattern, in 2004 banking merger control in France and Spain was in the hands of the Economy Ministry. The institutional arrangement in the United States is different to that of many EU countries: responsibility for bank mergers is shared between the Department of Justice as antitrust authority and the Federal Reserve, which approves prudential aspects of mergers. Finally, it should be noted that in 2005 the Italian government transferred merger control in the banking sector from the Banca d'Italia to the competition authority, Autorita Garante della Concorrenza e Mercato.

3.2 Banking competition and financial stability

Some authorities have assumed that there is a trade-off between strong competition in the banking sector and the level of financial stability. More recently, a survey of the empirical evidence has concluded that competition should not be viewed as in any way dangerous to the stability of the banking sector.

Over the last twenty years there have been significant advances in supervisory tools and in the quality of banks' own risk monitoring. It is likely that these new instruments have enhanced the stability of the banking system. For example, the risk-based capital requirements framework developed by the Basel

Committee provides strong safeguards against excessive risk-taking by banks. An OECD study argues that: 'the OECD countries that are characterised by strong competition in banking activities have not been subject to instability in recent decades. One reason why stronger competition may not risk greater instability is that the authorities have developed tools to foster prudent behaviour without adverse impact on competition.'[2]

Stronger supervisory architecture for banks has also been coupled with more stable long-term macroeconomic performance, with the EU and other economies appearing more resilient to major shocks than in previous decades. Against this background authorities should ensure that competition policy applies fully to the banking sector and take steps to create an environment that is favourable to tough competition among banks.

Alongside strengthening the role of competition policy, it is important to set an appropriate regulatory framework for retail banking. On the one hand, governments will wish to see strong competition driving an efficient, innovative banking sector to deliver value for consumers and businesses. On the other hand, regulation of the banking sector – especially pro-competitive regulation – requires expert sectoral knowledge. This knowledge is likely to be deepest with the banking regulator. Therefore an institutional framework is required which creates incentives for the competition authority and banking regulators to cooperate and for banking regulators to promote competition.

[2] DE SERRES, A., KOBAYAKAWA, S., SLØK, T., and VARTIA, L. (2006, forthcoming): Regulation of Financial Systems and Economic Growth, OECD Economics Department Working Papers.

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During the last decade, the Brazilian banking industry has endured deep regulatory and technological modifications that placed it among the most advanced banking industries of the world. After the real risk of a systemic crisis in 1995, many legal instruments have been edited with the purpose of creating a prudential legal landmark and strengthen the National Financial System. In this process, however, the aspects related to competition have been neglected in favour of the financial system's stability. In fact, two of the most important actions adopted by the financial regulators were the concession of fiscal incentives for the incorporation of banks and the creation of a special credit line to finance administrative, operational and partnership reorganisation of the national banks. As a result, there was a significant reduction on the number of banks operating in the country, but the increase of market concentration wasn't seen as a problem, since the government authorities believed that the opening of the national market to foreign banks would hinder the national banks from exerting their market power. The common view, however, is that the entrance of foreign banks wasn't sufficient to guarantee a satisfactory level of competition on the banking industry and, in the last couple of years, with the monetary stability and the increase of the part of the population that use bank services, the competition issues of this market have attracted more attention from government authorities and society as a whole.

We must mention that in the opinion of the regulation authorities, the concentration in the Brazilian banking industry is not unusual vis-à-vis the degree of concentration observed in other countries. The literature which tested the level of competition rejected that the Brazilian banking industry operates under cartel, but it also rejected the hypothesis of perfect competition[1]. A paper published by FMI, however, contradicts these results. According to this study, there's positive evidence of the presence of a noncompetitive market structure in the Brazilian banking system, and that could explain the costly and relatively low intermediation activity observed in the country, as well as, the inefficiency of Brazilians banks[2].

In Brazil, the financial institutions aren't subjected to the competition law[3]. The Law nº. 4.595/64, that created the Central Bank of Brazil (Bacen) and regulates the functioning of the Brazilian Financial System, states in its Art. 18 § 2º, that the Central Bank will regulate the competition conditions among financial institutions, restraining abuses by the application of penalties. The Art. 10, X, *c,* of that same law disposes that the Central Bank has the privative competence to authorise financial institutions to merge, amalgamate and takeover. Besides, the Law nº. 9.447/97 granted the Central Bank the power to intervene in unbalanced financial companies and to decide *ex officio* about the transfer of control or reorganisation of these companies, even by means of takeover, merger or amalgamation if necessary.

On the other hand, there's no explicit exemption of the financial institutions from the competition law. Nevertheless, the General Attorney's Office ("AGU")[4], has decided that according to the legislation in

1 Nakane (2001); Nakane (2003) e Araújo, Neto e Ponce (2005); Nakane, Alencar, e Kanczuk (2006).

2 Belaisch (2003).

3 Law nº. 8.884/1994.

4 Among other things, the General Attorney's Office is responsible to give legal advice to the Executive Branch agencies.

force, the Central Bank has the exclusive competence for appreciating concentration acts and for monitoring, investigating and punishing anti-competitive practices involving financial institutions. It is important to highlight that some companies, even though they are indirectly linked to the national financial system, are not under the regulatory attributions of Central Bank and are subjected to the general competition law. This is the case of credit and debit cards companies[5] and insurance companies. Furthermore, when a financial institution enters other sectors – like Internet, real estate or any other kind of commercial or industrial activity – there's no conflict of jurisdiction, prevailing the attributions granted to the Brazilian Competition Policy System (BCPS) by Law 8.884/94.

Although the Central Bank has the role to analyse mergers and to censure violations of competition rules, in practice, the banking industry has been immune from antitrust regulation, since Bacen has not developed a set of particular rules to be applied to this market. Besides, Bacen hasn't a staff responsible for monitoring and investigating anti-competitive conducts. There is currently a bill under analysis at the National Congress (Congresso Nacional) that, if approved, might change this picture.

The Bill nº 344/2002 gives exclusive jurisdiction over bank mergers to the Administrative Council for Economic Defense – CADE[6], except for those cases involving a risk to the stability of the overall financial system, for which exclusive authority would lie within the Central Bank. This bill also revokes Art. 18 § 2º of the Law nº. 4.595/64, which states that it competes to the Central Bank the regulation of competition conditions in the banking sector. Even though Bill nº 344 is a first step toward the defense and promotion of competition in the banking industry, there is controversy whether the proposed relationship between the regulator and the competition agencies is appropriate. The Bill gives the Central Bank priority over the decision of whether a merger case will or will not be analysed by the competition authorities. The regulatory authorities, therefore, will always be able to allege systemic risk issues to prevent financial companies from being subjected to the antitrust analyses.

In our opinion, a more appropriate approach would be to demand that both agencies provide their reviews in all acquisition and merger cases. This is important because even when a merger is desirable from the prudential perspective, it could produce anti-competitive effects that might offset the gains expected by the regulator. Likewise, there can be mergers that have no negative effects over the competition environment, but that would create companies that do not fulfill the prudential regulatory requirements.

Apart from the discussion involving institutional arrangements between antitrust and financial supervisor agencies, the effective law enforcement in the banking sector in Brazil depends, in the first place, on: the development of a methodology of merger review which takes into account the specificities of the banking industry and the improvement of review procedures that turned them more expeditious.

Despite the fact that the competition authorities don't have jurisdiction over the financial institutions, and that the safety and stability of the financial system have always been the main concern of the regulatory authorities, some important actions have been taken in the last years to increase the competition among retail banks in Brazil.

In 2003 the amendment of the Brazilian Constitution withdrew the restrictions imposed upon the entry of international banks in the Brazilian market. The Art. 192 of the Constitution stated that the

5 Although it can be argued that the services provided by credit and debit cards are fundamentally financial services, the credit and debit card companies are not considered as members of the financial system.

6 The Brazilian Competition Policy System is consisted by tree agencies: CADE, which is the administrative tribunal, and Secretariat of Economic Law and Secretariat for Economic Monitoring, that have analytical and investigative functions.

establishment of new branches of banks with international control and the increase of international capital participation in financial companies operating in Brazil would only be allowed in the cases of bilateral agreement, reciprocity or Brazilian government interest. Before this amendment, several international banks had had permission to enter the national market because of the Ministry's of Finance Request nº 311 (Exposição de Motivos nº 311), approved by the President in 1995. This Request pointed out the reasons why the investment of international capital in the Brazilian financial institutions was in the interest of the government and should, hence, be permitted. However, as long as these investments were permitted by an administrative decision, which is a much more precarious instrument than a statute, the amendment of the Constitution was important to enhance the contestability of the national banking industry. Besides, until 1995, the minimum capital amount to operate in Brazil for a foreign bank was double the amount required from a local bank, a condition which was lifted thenceforth.

Also in the direction of reducing the entry barriers in the banking industry, the Central Bank is studying what could be done to stimulate the interoperability and sharing of banking platforms. In Brazil, the payment and transaction systems are fundamentally based on proprietary platforms, with almost no compatibility or interoperability among them. In the case of ATMs, there are 27 proprietary networks, only one of which is of open access type. There is also another open access network, but this one doesn't own terminals, it just interconnects the proprietary networks of its associates. Recent statistics show that less than 37% of the available ATM terminals are shared. It's unlikely that the banks would autonomously engage in ATM sharing agreements because most of them have made great investments in their ATM networks in order to obtain a competitive advantage over their rivals, so the introduction of mechanisms to encourage ATM network sharing would be welcomed.

In relation to the rules set by the regulator with regard to the access conditions to the clearing and settlement payment systems, in general they are not restrictive to competition, but the segmentation of the clearing and settlement infrastructure in several systems imposes costs that might be too high for small banks, since it requires multiple control structures and increases the operational and processing costs. On the other hand, the launch of the Reserve Transfer System[7] (Sistema de Tansferência de Reservas) permitted a more refined control over inter-bank operations and, consequently, reduced the systemic risk, contributing to a more favorable environment for pro-competition interventions.

Regarding the consumer's reluctance to switch providers, many modifications have been made to remove some of the exiting switching costs. In fact, since the traditional antitrust actions can't solve the conflict between stability and competition, the Brazilian government authorities have turned their attention toward the consumers' role in the competitive process, implementing pro-competitive interventions on the demand side.

According to the demand side perspective, one of the first actions adopted by Bacen was to collect and publicise in its Internet site updated information about the tariffs and prices of financial services, as well as the interest rates charged on the main credit operations, in each bank. Also, the banks were urged to make these prices public in their branches[8]. The intent is to lessen the searching costs faced by consumers because of the large quantity of banks and the wide range of different services provided by these banks.

The creation of the so-called "investment account", the obligation of the "wage account", the improvement of the credit operation's portability and the regulation of the positive credit bureaus were some other actions recently implemented to reduce switching costs and leverage consumer mobility.

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7 The Reserve Transfer System is operated by the Central Bank of Brazil and permits inter-bank funds transfers to be settled irrevocably and unconditionally, on a real-time basis.

8 Resolution nº. 2.303.

The investment account is a special depositary account restricted to investment operations. The transfers of funds between investment accounts of the same client in different banks are dispensed from paying CPMF[9], so costumers are free to switch to a more convenient provider at any time. Likewise, the wage accounts are limited-service accounts specific for receiving salary deposits. Because the bank where the salary is deposited is usually chosen by the employer and not by the employee, the government issued a Resolution stipulating that the clients may have their earnings transferred costlessly and automatically to an account in any other bank if so desired. Until this resolution was implemented, the customer usually turned his wage account into a traditional account to avoid the costs and the trouble of transferring his salary every month to another bank. This prevented employers from looking for the bank that offers the best deal and raises the banks' market power.

The credit portability rules were revised to permit that the discharge operation of a renegotiated debt be concluded directly by the financial institutions involved. This will reduce the red tape, the paperwork and the transactional and operational costs, some of the hindrances to credit portability usage dissemination. Another amendment states that the banks are to provide the client's history information directly to third parties whenever the client requests it.

Another switching cost, specific to the Brazilian banking system, was removed by another recent amendment. In accordance to a previous Bacen resolution, cheques had to bear an inscription informing how long the holder belonged to the financial institution that issued the cheques. This created a switching cost to customers, because the merchants usually don't accept cheques from accounts younger than one year. So customers were reluctant to switch banks. Due to the amendment, cheques now inform since when the holder is client of the financial system and not of a specific bank.

Finally, it was announced that the conditions and rules to create positive credit bureaus shall be set soon. Today the Brazilian bureaus only track long overdue payments and defaults. The institution of positive credit bureaus is expected to have significant positive effects on costumers willing to switch banks, since this will make it possible to good borrowers to signalise their type to the banks.

Thus, as we have stated, despite the regulatory authorities bias in favor of stability and against competition, many actions have been implemented in the last few years as an effort to improve the competition environment in the banking industry. The strategy employed so far attempts to promote competition by removing the elements that inhibit it, with no significant alteration to the market structure or to the likelihood of failure and contagion.

According to this approach, we could suggest a few more interventions that should reduce switching costs. For example, the tariffs charged by banks to transfer funds to another bank are very expensive and this discourages the usage of more than one provider, raising the bank's market power over their already locked-in costumers. Maybe it should be the case to invest clients with one free transfer per month.

The common practice of bundling the main services related to current account is another source of switching costs. It's argued that the bundling of products and services are advantageous to consumers since the package of products is offered at better prices than the sum of the prices of the individual products. However, the bundling practice raises the searching costs costumers have to find which product better fits their needs and makes it difficult to compare prices from different banks, once the products' packages are not similar and hence, not directly comparable. Besides, the prices of individual services are set at an almost prohibitive level, forcing the costumer to buy a package that may include products he doesn't need.

[9] CPMF is a tax charged on financial movement. In the case of the investment accounts, the CPMF is charged only once: when the client deposits the funds in the account. The next movements of these funds are exempt.

A suitable solution to this issue could be the creation of standard packages of services in order to allow consumers to make comparisons more easily. The prices of these standard packages should be made public by the Central Bank as are the individual products' prices published today. Similarly, a standard should be created for financial products' and services' nomenclature and this nomenclature should be mandatory to every bank.

Finally, we would like to remark that, although the demand side approach is an interesting alternative to promote competition as it sidesteps the conflict between stability and competition, we are convinced that some kind of structure control is imperative to ensure effective competition in the banking industry. For instance, the Brazilian banking industry is composed mostly of multiple banks[10] that recently have been engaged in enlarging their activities by acquiring portfolios of smaller or specialised banks. Since the switching costs characteristics of this market are sufficiently high to prevent clients to switch providers, the market power for the provision of one product may easily be transferred to other products. Therefore, these acquisition operations should be examined from a competitive perspective. It's also worth remarking that in order to the preventive structure control be effective, it is essential to develop a specific methodology to review merger and acquisition operations in the banking industry, including a careful definition of the relevant market in both its product and geographic dimensions.

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[10] Multiple banks have authorization to operate multiple portfolios like: commercial, investment, financing, savings, real state, development, leasing, etc.

CHINESE TAIPEI

1. Introduction

In preparing the present submission, the Fair Trade Commission (hereinafter the "FTC") consulted with the competent authority, the Financial Supervisory Commission (hereinafter the "FSC"), which is responsible for the financial industry. Financial services in Chinese Taipei are subject to sector-specific regulatory regimes. After a preliminary review, in the present, the FTC has decided to focus on issues related to switching cost for the prepayment of housing loans, access to platform, entry restrictions, the relationship between the competition authority and the financial regulator and the role the FTC plays in implementing its mandate on the banking sector.

2. Switching Cost

According to the Financial Statistics Indicators issued by the Banking Bureau of the FSC (hereinafter the "Banking Bureau"), as of the end of February 2006, a large number of financial institutions operate in Chinese Taipei: 45 domestic banks, 34 foreign banks, 306 head offices of farmers' associations, fishermen's associations and credit cooperatives and a total of 4,471 branches of those. Moreover, based on the data provided in the *Summary of Statistics on Financial Businesses* published by the Banking Bureau, as of the end of February 2006, the HHI index for all local and foreign banks in the deposit market was approximately 425.746, and the four-firm concentration ratio (CR4) was approximately 29.73 %. 73 banks had a market share of less than 5%, and among these, 54 had a market share of less than 1%. In the lending market, the HHI index for all local and foreign banks was approximately 416.879, and the CR4 was approximately 29.48 %. 73 banks had a market share of less than 5 %, and among these, 50 had a market share of less than 1%. Thus, the banking market in Chinese Taipei has low concentration and competition among banking enterprises is very intense.

Since the scale of the banking industry is not large and competition among bank enterprises with their many branch offices is extremely stiff, except for medium- and long-term credit extensions which allow banks to collect penalties for prepayment of housing loans according to the terms in a loan contract, the switching costs for customers between providers of banking services are relatively low, regardless of the direct costs of switching (such as payments for closing an account) and the non-billable costs (such as the time cost to a bank customer for switching a designated account for automatic payments).

For banks, switching costs for time deposits are incurred when a bank customer terminates such time deposits prior to their maturity date. Pursuant to Article 5 of the Rules Governing the Pledge and Early Termination of Time Deposits, the interest accrued during the actual deposit period shall be calculated at 80% of the interest rate quoted by the bank for the deposit period. Therefore, the competent authority the FSC, controls switching costs such that the maximum switching costs is 80% of the interest rates. With respect to lending, if a bank customer obtains a preferential interest loan from a bank, such a bank customer shall pay the bank a penalty for prepaying his/her loan before the date of maturity. Because such switching costs are determined by the competition mechanism in the financial market, the FSC does not need to control them.

In 2002, local financial institutions decreased their interest rates for deposits substantially, but they only made slight adjustments to base rates. As a result, many bank customers filed complaints with the

FTC because they suspected that certain financial institutions had taken advantages of the costs for switching loans (that is, they charged housing loan borrowers a penalty for the prepayment of loans), thus exploiting current bank customers, which would be in violation of the Fair Trade Act.

According to statistical data for Chinese Taipei, as of the end of April, 2004, local banks had extended their customers "housing loans" for the purchase of approximately 1.4 million homes for a total of approximately NT$2554 billion; foreign banks had extended "housing loans" for the purchase of approximately 38,000 homes for a total of approximately NT$83.3 billion. Based on the fact that the extension of housing loans is closely related to people's housing rights and general livelihood, no matter if it is viewed from the perspective of the number of customers applying for housing loans or the amount of the loans extended, or from the perspective of the impact on competition in the housing loans market or of the penalty for prepaying loans, the FTC considers that such issues have an effect on the public interest, and thus, the Fair Trade Act shall have reasons to intervene therein.

Furthermore, although the penalty clause in question is stipulated in housing loan contracts with the mutual consent of both banks and borrowers, evidently, banks and housing loan borrowers are not on equal footing. To explain, when both parties enter into a housing loan contract, the borrower must wait for the bank's approval before being granted a housing loan. Therefore, if the bank exploits its superior position by improperly imposing constraints on housing loan borrowers, this is likely to be sufficient to affect trading order.

Thus, the FTC took into consideration the fact that the extension of housing loans is deeply related to the rights and interests of more than 1,400,000 borrowers and that a prepayment penalty directly affects a borrower's costs in terms of switching loans; this impedes competition in the housing loans market. Thus, the FTC issued the "Guidelines on the Charging of Penalty Fees for Prepayment of Housing Loans by Financial Enterprises" in 2002. When a financial institution negotiates with a borrower about a prepayment penalty for housing loans, it is necessary to determine if such a practice is likely to be sufficient to affect trading order, which would be in violation of Article 24 of the Fair Trade Act.

To be able to provide assistance to banks when they manage their credit extensions, the Joint Credit Information Center (hereinafter the "JCIC") has established a Nationwide Credit Databank. This databank includes relevant credit information on natural persons and juristic persons. Juristic persons include small and medium-sized enterprises. Whether it is a local bank or foreign bank, both are allowed to register as members of the JCIC, and this entitles them to use the JCIC's services to obtain credit information on relevant small and medium-sized enterprises. As such, it should not be difficult to obtain credit information on customers in the financial market, and therefore, the switching costs of a particular bank cannot be higher than those of other banks, because the Nationwide Credit Databank provides all banking members with equal access to these services.

3. Access

In Chinese Taipei, the JCIC established the Nationwide Credit Databank which provides personal credit records as well as operational and financial information about consumers. It is also responsible for protecting the security of credit transactions to ensure the lawful use of credit information queries from member institutions. In addition, the Financial Information Service Co., Ltd. is responsible for planning and developing interbank information systems and the operations of the interbank information network for financial institutions in Chinese Taipei. There is no barrier for new entrant banks to have access to the aforementioned transaction systems.

4. Entry Restrictions

To regulate automatic service equipment outside of the usual business locations of financial institutions, the FSC has issued the "Guidelines Governing the Management of Automatic Service Equipment Outside of the Business Locations of Financial Institutions." These Guidelines require that the locations of ATM machines not limit their ability to operate because of the fact that it is convenient for banks to install, relocate or remove ATM machines. Moreover, according to the "Guidelines for the Management of Banks' Establishment of Mini-branches," banks are permitted to establish mini-branches at locations within supermarkets and department stores.

Article 52, Paragraph 2 of the Banking Act regulates the requirements for the establishment of commercial banks. In general, it takes approximately nine months for the FSC to review an application for approval of the establishment of a new bank.

The entry restrictions imposed on credit cooperatives include the following:

- The establishment of a credit cooperative: Pursuant to Article 3 of the Credit Cooperative Act, the incorporation of a credit cooperative shall be subject to the approval of the central competent authority and shall be registered with the competent authority responsible for credit cooperatives.

- Regulations pertaining to the business areas and branches of a credit cooperative: Article 7 of the Credit Cooperative Act states that the business areas of a credit cooperative shall be delimited or adjusted at the discretion of the central competent authority which, in determining the limits, though not required to conform with the administrative boundaries, shall take into consideration the economic and financial conditions of locality and the business situation of each credit cooperative. A credit cooperative may establish branches within its business area. The regulations governing such establishment shall be identical to those of bank branches.

- Regulations on deposit and lending businesses: Article 15 of the Credit Cooperative Act stipulates that the types of businesses that a credit cooperative may engage in or pursue shall be set out in the business license, as authorised by the central competent authority, which shall not approve any business other than the business of providing services for specific items. In practice, a credit cooperative handling deposit and loan businesses is subject to the regulations governing the ratio of the total amount of deposits to the net value and the ratio of deposits to the loan extension. In addition, the regulations govern the credit extension to the same person or the same related person and transactions with non-members.

5. Relationship Between Competition Authority and the Banking Regulator and

Pursuant to the Banking Act, the FSC is the major regulator of the banking sector. Before July 2004, the Ministry of Finance was the central competent authority governing the financial industry. In June 2002, subsequent to the implementation of the "Financial Holding Company Act," the number of emerging financial conglomerates mergers and cross-industry enterprises gradually increased.

To prevent overlapping and disorganised administration resulting from plural supervisory systems of insurance, securities and finance, etc., and to change the previous plural financial supervisory systems into a single integrated system, thereby ensuring the sound business management of financial institutions, maintaining financial stability and stimulating the development of the financial market, the FSC was established on 1 July 2004 with its mission being to develop, improve and oversee integrated financial supervision. The primary objectives of the FSC are to consolidate supervision and regulations across banking, securities, futures, insurance and other financial related industries, as well as to consolidate the

examination and investigation of financial institutions, thus assuming the role of a single regulator for all of these industries.

The FTC is the competent authority for competition policy and law. The FTC understands that the financial industry is different from other general industries in large part because its funding comes from the public. Moreover, the nature of its operations is that it not only bears risk, but is also subject to the so-called chain effect. To illustrate, if one or more financial institutions is/are in crisis due to poor operations, the "domino effect" may immediately be triggered, thus creating a threat to the entire credit system and having an impact on all economic activity. For this reason, the financial industry is highly regulated in every country.

In Chinese Taipei, the FTC and the banking regulator have their own goals, and this means that they take different stances in relation to policies and law enforcement. To facilitate and nurture the stable and sound development of the financial market, the FTC resolves conflicts through consultation with other authorities, as provided for in Paragraph 2, Article 9 of the Fair Trade Act. Undeniably, this enables competition policy and industry policy to complement each other and thus enhance the stability and development of the overall economy. Besides this, for the easy reference of the general public and the banking sector, the FTC has issued the "Fair Trade Commission Policy Statements on the Business Practices of the Financial Industry," which outlines various types of activities conducted by financial institutions that may be in violation of the Fair Trade Act.

6. Competition Law and Banking

Pursuant to the Financial Institutions Merger Act and the Financial Holding Company Act, the financial competent authority reviews mergers involving two or more financial institutions including the establishment of financial holding companies. The competent authority shall take into consideration the impact of mergers on the degree of competition in the financial market and on the public interest. If such a merger meets the definition of a merger under Article 6 of the Fair Trade Act, the applicants for a merger shall be filed with the FTC, before submitting their application to the financial competent authority.

As regards the review of cases involving the merger of financial institutions, including financial holding companies, the FTC shall first determine the scope of the relevant market, which in principle is not substantially different from cases involving other industries. "Relevant market" here refers to the area or scope where the enterprises engage in competition activities for particular products or services, and it includes both the product market and geographic market.

The current definition used for a product market is based on the business items which financial institutions are allowed to operate-- for example, the deposit/lending business, life insurance, property insurance and securities brokerage businesses, among others. In addition, it takes into consideration consumers' willingness and ability to purchase such products and services as a substitution when the relative price has changed; such products and services collectively constitute a product market. A geographic market basically refers to the national market, or in some individual cases, a regional financial market in a county or in a city.

As for financial holding companies, they provide the management for investing and invested companies; in other words, they provide a platform on which financial institutions can operate among industries. Such operations do not constitute a specific market that would involve competition law. Therefore, the financial holding market does not need to be defined as a relevant market. When financial holding companies apply for mergers, the FTC shall consider their subordinate companies' locations in the product and geographic markets, and based thereon, shall evaluate the degree of market competition.

The market definition is rather flexible. In light of the trends in cross-industry management, the banking, insurance and securities businesses are no longer distinct from each other. In addition, to pay attention to the development of the financial industry and improve its knowledge and ability to enforce the law, the FTC fully understands and controls market variations by thoroughly investigating industries to effectively proceed with competition analysis.

After the scope of a market is defined, the FTC's major concern is whether competition restraints may occur. The factors that it takes into account include the following:

- The degree of market concentration: If the HHI is less than 1,000 or if the HHI only shows a slight increase after a merger, it is generally considered that there is little or no concern about restrictions on competition.

- The unilateral effect of horizontal mergers: If an enterprise has a dominant or controlling position in a product market after a merger, or if an enterprise has a much larger market share than its competitors after a merger, then that enterprise alone has the ability to adjust prices in the market.

- Entry barriers caused by a merger: (1) After a merger, the merged financial institutions expand their market channels, which makes it more difficult for new entrants to enter the market and to compete in terms of branch numbers and locations. (2) However, and this is important, new entrants are able to provide diversified financial products such as banking, insurance and securities for trading counterparts, thereby creating more choices, and this can increase competitiveness among products.

- Conglomerate merger: The FTC shall consider whether there is any likelihood that potential competition in the market would be affected.

When enterprises are highly centralised or have an obvious influence on competition restraints after a merger, the FTC shall strictly review the overall economic interests that the said merger would bring, especially whether the elevation of the enterprises' efficiency may be and could be externalised to improve the whole market. Financial institutions may provide an "externalisation plan for merging enterprises' internal revenue" or specific content stating that such a merger "can help provide services with broader coverage, diversity and higher quality" in order for the FTC to evaluate the overall economic interests.

In 2002, the FTC amended the Fair Trade Act, and the prior approval system for mergers was replaced by a pre-merger notification system. To cope with the adjustment to industry structure and the needs of the economic environment and also to further implement the "pre-merger notification system," the FTC issued the "Guidelines on Handling Merger Filings" in July 2006. It is expected that this will shorten the waiting period for the approval of a merger without apparent competition concerns, while reducing the burden borne by the enterprises reporting the merger and further creating a more efficient environment for competition.

The key points of the Guidelines on Handling Merger Filings are:

- Clearly providing that the procedures for reviewing a reported merger are divided into simplified procedures and general procedures and clearly illustrating the types of reported mergers to which the simplified procedures may apply;

- With respect to the important points to be reviewed in a reported merger, if there is no doubt about apparent restrictions on competition in a merger case, clearly providing that it may be inferred that the benefits due to such a merger to the overall economy are greater than the

disadvantages due to the restrictions on competition. If there is any doubt about the apparent restrictions on competition, then the FTC shall further evaluate the overall economic benefits in order to determine whether the benefits of such a merger to the overall economy are greater than the disadvantages because of the restrictions on competition;

- Providing an explanation of the principles used to define a particular market and the bases used to calculate the market share;

- Clearly providing the factors to be considered when evaluating the effects of restrictions on competition from a horizontal merger and those from a vertical merger and the methods used to review a conglomerate merger; and

- Clearly providing the factors to be considered when evaluating the overall economic benefits.

INDONESIA

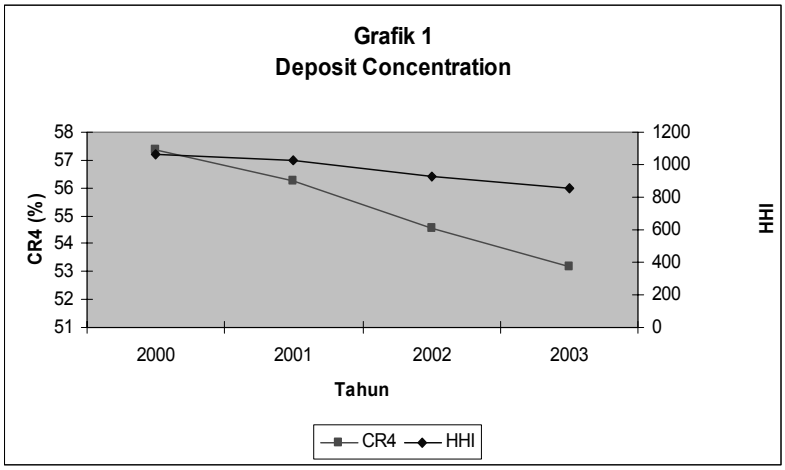
Indonesian banking industry in general is categorised into highly regulated industries. Indonesian banking regulations consist of laws, government regulations and Bank Indonesia regulations. Numerous provisions are made dynamic in nature, products of banking law and central bank has been revised for several times, and a number of Bank Indonesia Regulation (*Peraturan Bank Indonesia* or "PBI") are systematically revised yearly. Those detailed and comprehensive banking regulations have one main purpose, namely to create a strong/solid and prudent banking industry, while the competition aspect between banks is not the main priority yet, at least for the time being.

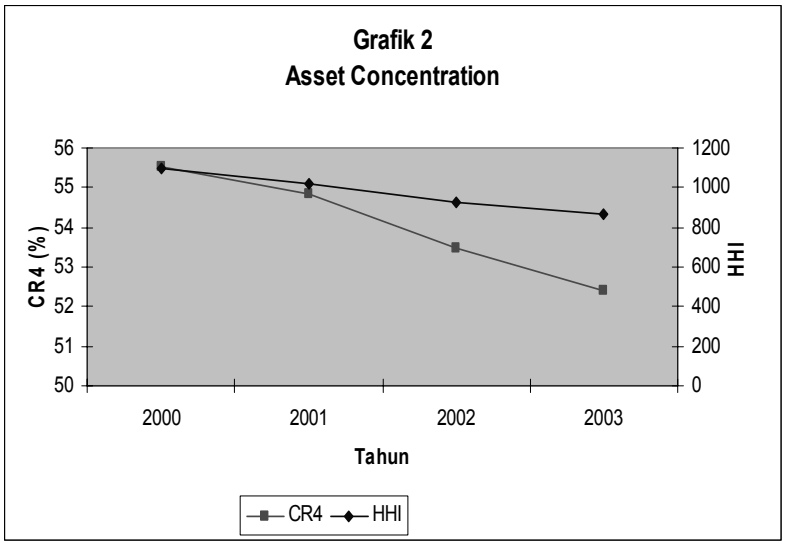
The purpose of this paper is to elaborate some regulations in banking industry which are related to business competition and interaction between the central bank which is Bank Indonesia ("BI") and Business Competition Supervisory Commission (*Komisi Pengawas Persaingan Usaha* or "KPPU"), especially in the framework of implementing competition law in the relevant industry.

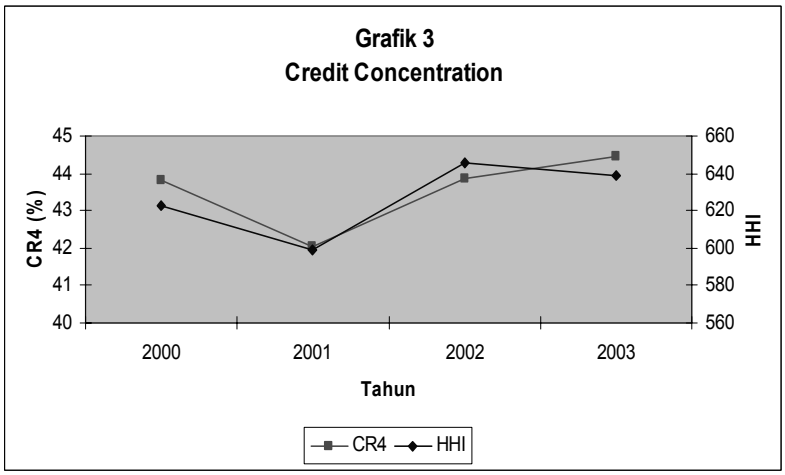
1. Banking Industry Profile in Indonesia

Indonesian banking industry in general has not completely recovered after severely hit by the economic crisis in the midst of 1998. A number of banking indicators such as Loan Deposit Ratio (LDR) at around 50-60% in 2003 and third party fund structure are still dominated by short term funds such as current and saving accounts. This condition shows that banking sector is still unable to carry out its main function in the economic system, namely intermediary function. However, following the banking recovery program, the banking industry slowly began to show an escalation in its performance from its downfall position during the economic crisis, although it has not reached its prior to the crisis level.

Based on the latest composition, the Indonesian banking structure is dominated by 81 banks with the category of limited activities and capital range of 100 billion to 10 trillion IDRs (Indonesian Rupiahs). While there are only 3 banks with national category banks and capital range of 10 trillion to 50 trillion, and 52 banks with the lowest category, namely banks with limited activities and capital range of less than 100 billion. As a highly regulated industry, the concentration level of banking industry in Indonesia is reasonably high, which can be shown from concentration ratio index or HHI ratio in the following table:







The time series analysis shows that there was an increase in the concentration ratio especially for credit products. While, for asset and deposit, the trend was decrease in the level of concentration.

Besides acting as banking regulator, Bank Indonesia also has other role which is equally important, namely acting as central bank which duties are to maintain monetary stability by protecting inflation level and stability of exchange rate. To make effective the regulatory function which is independent and objective, the banking regulatory role is planned to be separated from BI and will be carried out by banking supervisory body which is commonly known as Financial Service Authority (*Otoritas Jasa Keuangan* or "OJK"). Conceptually, the authority of OJK will not only cover banking industry but also non banking financial institutions such as insurance and multi-finance. However, the formation process of such banking regulatory institution is still at an early stage and will most likely be realised in the next five years. Therefore, until the OJK is formed, banking regulatory function is still managed by BI.

2. Conflict of Interest

Conflict of interest potential in the banking industry is relatively high. Such matter is related to the high level of diversification and increase number of different banking products and services. Several rulings on conflict of interest are provided in, among other, regulation on cross-ownership, interlocking

directors and conflict of interest rulings on transaction for public company (Regulation No. IX.E.1 Regarding Conflict of Interest in Certain Transaction, Decision of the Chairman of Capital Market Supervisory Agency (*Badan Pengawas Pasar Modal* or "BAPEPAM") No. KEP 32/PM/2000). Based on the capital market provision, every transaction which causes conflict of interest must be disclosed to public, especially on the form of the transaction and the potential conflict of interest which may occur. Automatically, banks which already going public are included in the coverage of the capital market provision.

3. Interlocking Directors

Some regulations related to interlocking directors be identified in PBI No. 2/27/PBI/2000 Regarding Commercial Bank, specifically article 22 paragraph 5 which states that a member of board commissioners can hold double position as a member of another board of commissioner in another bank or in a Rural Credit Bank (*Bank Perkreditan Rakyat* or "BPR") only; or as a member of board of commissioners, director or executive officer which requires full responsibility in two other non bank institutions/companies or non Rural Banks.

Article 22 regulates interlocking directors for members of commissioners, whether in a bank (maximum in another bank) or in non bank companies (maximum two companies). While for bank directors, it is stipulated in Article 24 paragraph 2 that members of directors are prohibited from having other position as members of board of commissioners, directors or executive officer in other banking institution, companies or other institutions. Therefore, based on Article 24, members of board of directors of a bank are prohibited from having double position as members of directors or commissioners at other financial and as non financial companies. Such regulation is in line with the previous cross ownership prohibition which focused on prudential aspect.

Regulation on interlocking directories is also provided in Law No. 5 of 1999, specifically in Article 26 on interlocking directors. Unlike the spirit of Article 22 of PBI, Article 26 of Law No. 5 of 1999 prohibits (with no mention on the number of companies) interlocking directors for companies in the same market or having closely related in their types of business and can control the goods and services market. Therefore, the prohibition on interlocking directors of banking is stricter than the regulation in Article 26 of Law No. 5 of 1999. The meeting point between both regulations is when interlocking directors takes place between two banks and causes control over relevant market (horizontal) and unfair business competition by both banks.

4. Cross ownership

The issue on cross ownership is stipulated in Article 24 paragraph 3 of PBI 2/27/PBI/2000 which states that members of board of directors are individually or jointly prohibited from having shares more than 25% of the paid-up capital in another company. Explicitly, Article 24 paragraph 3 prohibits members of bank's board of directors from having shares in other companies (financial and non financial) with a proportion of more than 25% ownership. The prohibition on cross ownership is relatively in line with Law No. 5 of 1999, especially Article 27 on cross ownership. As a comparison, Article 27 of Law No. 5 of 1999 prohibits cross ownership (in the same market) which may causes control of more than 50% (for one business actor) and or 75% (for more than one business actor) of the market share. Based on the comparison, the regulation on cross ownership by BI is more focused on the ownership aspect or control over company's shares with the purpose of creating a prudent banking. Meanwhile, the regulation on cross ownership in Law No. 5 of 1999 is focused on the prevention on control over market which may potentially cause unfair competition (structural approach).

5. Merger / Acquisition

Regulations on merger/acquisition in banking industry are provided in laws and government regulations. Based on Article 28 paragraph 1 of Banking Law No. 10/1998, Indonesia believes in the pre notification system in the practice of merger/acquisition in the field of banking. Article 28 mentions that merger, consolidation and acquisition must first be approved by the Management of Bank Indonesia. The provision on merger, consolidation and acquisition itself is stipulated with government regulation. Article 37 of the above mentioned law states that Bank Indonesia may encourage a bank to carry out merger or acquisition by considering the health of the bank itself. Since Article 37 states that in the event where a bank is having trouble which may endanger its business continuity, Bank Indonesia may take action so that the bank is merged into or consolidated with other bank or its assets and or obligations are sold partially or wholly to other banks or parties.

Based on Article 37 (point d and f) of the same provision, merger/acquisition may be done based on BI provision especially if the relevant bank is having trouble which may endanger its operational continuity. In accordance with Article 28 paragraph 2, a more detailed provision on merger/acquisition is regulated in government regulations or in this matter is provided in Government Regulation No. 28/1999 Regarding Merger, Consolidation and Acquisition of Bank.

In point a of the consideration of the government regulation, it is explicitly mentioned that one of the consideration to carry out merger/acquisition is to create a banking competition especially in facing globalisation and free trade. Specifically point a of the consideration of the government regulation states that to create a banking system which is healthy, efficient, solid and able to compete in the globalisation and free trade era, an effort which may strengthen bank through merger, consolidation and acquisition is required.

In line with Article 28 and Article 37 of the 1998 Banking Law, in Government Regulation (*Peraturan Pemerintah* or "PP") No. 28/1999, Article 4 explains that it is the obligation of banks to report on any plan of merger/acquisition to obtain permission from Bank Indonesia. Article 4 of PP No. 28/1999 mentions as follows:

- Merger, Consolidation and Acquisition of Bank which is carried out pursuant to Bank's initiative must first obtain permission from the Chairman of Bank Indonesia.

- The obligation to first obtain permission from the Management of Bank Indonesia as meant in point one above, is also applicable to Merger and Consolidation which are carried out by initiative of special temporary entity in the framework of banking recovery.

Article 5 explains that Merger, Consolidation and Acquisition of Bank must be carried out by considering the interest of the bank, creditor, minority shareholders and employee of the bank, and the public interest and unfair competition in Banking business.

It should also be considered that based on said Article 5, fair competition between banks should be one of the considerations (from various considerations) for bank in carrying out merger/acquisition. One of the requirements to obtain merger/acquisition permission, as mentioned in Article 8 point b, is at the time the merger or consolidation takes place, the total amount of the bank's assets from the merger or consolidation must not exceed 20 % of the total assets of all banks in Indonesia.

Point b of Article 8 explicitly states the maximum asset for a bank that results from a merger. It is likely that the 20% maximum limit is meant to minimize the merged, dominant bank potential for abuse. Still on the topic of merger and acquisition, PP No 29/1999 Regarding Commercial Bank Share Trading

has several rules regulating the practice of bank shares trading. According to Article 3 and 4 of PP 29/1999, in Indonesia there are no limits of bank shares that can be owned by expatriates or foreign companies (up to a maximum of 99%). The two articles goes on to state that a bank can sell up to 99% of its shares through the stock exchange, and investors may buy all (100%) of the shares of a bank sold through the stock exchange. We can then say that Indonesian banking is very open to foreign investment.

Article 6 of the same regulation governs the procedure of share buying, directly or through the stock exchange. There is a small difference between share buying and merger/acquisition; share buying must be reported after the transaction, no later than 10 days after the purchase (post-notification). For share buying through the stock exchange, the transaction must be reported to two regulatory bodies, BAPEPAM and BI. Article 6 state that every direct purchase of bank shares not within the category of bank acquisition as regulated in PP No 28/1999 on Merger, Consolidation, and Bank Acquisition, must be reported to Bank Indonesia no later than 10 (ten) days after the transaction. Should the trade be done through the stock exchange, the report made to the Capital Market Supervisory Body (BAPEPAM) by the share buyer—as is required in capital trading—shall also be passed on to Bank Indonesia.

The form of merger/acquisition that is regulated in Law ("UU") No. 5/1999 is detailed in Article 28 and 29, which are concerned with Merger, Dissolution, and Acquisition. Basically, Article 28 prohibits merger/acquisition that may lead to monopoly and/or unhealthy competition. Article 28 point 3 explicitly charges the government to establish the Governmental Regulations concerning merger/acquisition as the implementation of Article 28. Article 29 explicitly makes clear that merger/acquisition must be reported to the Commission to obtain authorisation no later than 30 days after the date of the merger/acquisition. Therefore, Article 29 leans more toward the post-notification system. As in Article 28, further elucidation of Article 29 will be in the form of Governmental Regulations. As with regulations concerning interlocking directories, regulations on banking merger/acquisition is more detailed and more comprehensive compared with the regulation on merger/acquisition in Law No. 5/1999.

6. Architecture of Indonesian Banking and Entry Restriction

After some adjustments during the writing of the blueprint of Indonesian Banking Architecture ("API") in 2003, finally in early January 2004 Bank Indonesia formally announced the implementation of API. This implementation is concurrent with the implementation of the global monetary architecture initiated by the Bank for International Settlements (BIS). The implementation timeframe is five to ten years and is to be done in phases. It is aimed towards the creation of a healthy, strong, and efficient banking system, towards financial system stability in order to assist the growth of the national economy.

One of API's specific agenda is in strengthening the banking structure. This program is intended to strengthen general banking capitalisation (conventional and syariah) in order to improve the banks' capability to manage businesses and risks, develop information technology, or to expand its scale to support the increase in the growth capacity of the banking credit. Implementation of the banking capitalisation-strengthening program is done in phases. Furthermore, BI also places more restriction in the allowable limit for banking capitalisation. By the year 2010, it is targeted that the minimum amount of capital allowed for a bank is Rp.100 billion. Other forms of restrictions are the 12% increase of CAR (Capital Adequacy Ratio) for all banks and the Rp.3 trillion minimum capital for the creation of new banks.

This effort to increase bank capitals can be done by creating a business plan which includes targeted schedule, methods, and phases. Available methods are:

- addition of new capital, from either existing or new shareholders;

- merger with another bank (or several others) to achieve the new minimum capital;
- publication of new shares or secondary offering in the stock market;
- issuance of subordinated loan.

Therefore, it is hoped that within ten to fifteen years time the capital improvement program may lead toward a better banking structure, which are characterised by the existence of:

- two or three banks leading toward international bank status with the capacity and capability to operate internationally, having capital in excess of Rp.50 trillion;
- three to five national banks having very wide business area, operates nationally, and having capital between Rp.10 to 50 trillion;
- thirty to fifty banks with activities that are focused on a specific business field according to the capability and competence of each bank. These banks will have capital between Rp.100 billion to Rp.10 trillion;
- Rural Credit Bank (BPR) and limited business bank, having capital under Rp.100 billion.

7. Horizontal and Vertical Integration

Bank operations, either its scope of business or its practices, is regulated in Banking Law No. 10/1998 which is an amendment of Banking Law No. 7/1992. Generally, allowable activities for banks according to the regulations are to put funds in, to borrow funds from, or lend funds to other banks, either through post, telecommunications, or with bearer draft, cheque or other media, capital participation in banks of financial companies such as financial lease, venture capital, securities company, insurance, and clearing and savings institutions, by following rules established by Bank Indonesia. Also, to perform temporary capital participation to relieve the effects of credit failure or finance failure based on Syariah, with the stipulation that the participation must be withdrawn at some point, as required by Bank Indonesia. Meanwhile, banks are prohibited from working in the insurance business or doing anything other than what is regulated. Limiting the lines of business of banks is more aimed toward the prudential banking aspect, especially customer protection, since some products such as insurance is riskier than the usual banking products.

In the field, banking product and services varies according to the capacity of the company capital and its assets. Small-capital banks usually has limited product and services. These banks' products are savings, current account, deposit and credit. Requirements to obtain the products is simple: filling fully application forms and identity card will suffice. For bank services, these banks usually only give credit (working capital, investment, consumers' credit), transfer, clearing, and collection. Additional facilities such as automated teller machine (ATM), debit and credit cards is not available at this banks category. Other facilities are more geared toward additional features and services such as non-collateral loans and consultation services.

Medium-capital bank has a more comprehensive set of products and services; ATM and online system are not uncommon. A variety of credits are offered, but with limited diversification on consumer, investment, and working capital. Meanwhile, large-capital banks' variety of offerings usually has nearly the entire products and services allowed by Bank Indonesia. To obtain these products and services, the bank usually has similar requirements: proof of identity, statement of income, collateral, et cetera. These banks also aims to facilitate easier customer transaction by providing facilities such as SMS banking, internet banking, tele-banking, ATM, and discount cards. In order to improve customer service, banks of

this category also upgrades its information systems towards an entirely online branch offices. Large banks also offer diverse investment products, custody service, structured finance, cash management, trust agent, et cetera.

Some banks integrate with financial services company, mainly with finance, insurance, and securities. Integration is usually done by ownership, where several companies become subsidiaries of a bank, but may also by cooperation agreements. Through some models of integration, such as channeling (bank cooperates with a finance company), bancassurance (bank cooperates with an insurance company), banks hope to achieve two objectives: firstly, to serve as alternative channels of funds, and secondly, to acquire new customers and retain existing customers. For investment products, banks usually act as selling agents for mutual funds that are offered by securities companies.

The types of integration, high level of diversification and the amount of products and services in Indonesia has potential to increase the competition in related markets. The effects of these integrations has not been widely documented, but may be observed in several specialised market segments. Of the increasing competitiveness as a result of banking integration, the main example is in microfinancing. In this segment, some large banks develop special microfinance units, which targets the small and medium business actors (for instance, Bank Danamon with Danamon Saving Account). All the various microfinance units of the large banks are competing head to head with thousands of microfinance agencies, mainly BPR and credit savings cooperatives. In many respects, the large banks' units have the advantage of economic scale, so they are able to offer better rates with better service (for instance, their service process is accelerated by using paperless fingerprint system). Up to a certain level, the width of the large banks' expansion reflects a positive market reaction. However, there are concerns raised by local BPR actors worried about losing their customers. Up to now, BI is still trying various efforts to regulate microfinancing, the main thrust of which is towards increasing the BPR's capacity so they can be more competitive.

8. Implementation of Competition Law in the Banking Industry

The Indonesian competition law, UU No 5/1999, is cross-sectoral and is specifically addressed toward healthy business competition. Therefore, competition law can be applied to every industrial, trading, and services sector in Indonesia, including the banking industry. As is usual with highly regulated industries, the implementation of the competition law in the banking industry must be supported by the coordination and cooperation of the two associated regulatory bodies, KPPU as the competition agency and BI as the banking regulator.

Between 2000-2006, there has been one case of alleged competition law violation by a bank. The allegation is related to the cooperation of the bank with four insurance companies as insurance partners. Cooperation between the bank and the insurance companies was necessary to protect collateral assets of the banks' creditors. The regulation states that banks are prohibited from insurance business, therefore, in this case, the bank must cooperate with the insurance companies.

Several items of concerns raised by the KPPU within this case is the potential of discrimination since only four insurance companies are appointed and the cooperation by the bank with the appointed insurance companies may lead to exclusive dealing. It is feared that this type of appointment may have the effect of lessening competition, especially for the insurance industry, and to hinder the bank's creditor from determining its own choice of insurance companies.

After some investigation, the court commission decided that there is not enough evidence to prove that there has been a violation of UU No 5/1999, especially the allegation on discrimination and/or exclusive dealing. Therefore, the bank's appointment of insurance companies does not contravene the

competition laws. However, to avoid the potential of such violation in the future, KPPU instructed the bank to give fair and transparent chance to other insurance companies to become insurance partners, through, among others, open tender process. This decision is followed by the bank and shortly after the decision the bank has ten insurance companies as insurance partners, some obtained through open tendering. It can be said that during the entire process, from the start of the investigation up to the decision being read, there are no intervention nor significant obstruction from Bank Indonesia as the banking regulator.

Aside from enforcing the competition law in the banking industry, KPPU often arranges discussions with and coordinates with BI as the banking regulator. Several topics of discussion between BI and KPPU are the commercial paper/letter printing industry, competition in the banking industry in general, competition in the credit/debit card industry, and the arrangements for implementing the sole ownership policy. KPPU has also been active in asking BI to participate in various forums and international seminars on competition in the banking industry, among which in the Competition Committee OECD forum at the beginning of June 2006; in which one of the agenda is a discussion on competition in paperless payment cards. Through these discussion and coordination, it is hoped that KPPU and BI will increasingly share a common perception on competition and the health of the Indonesian banking industry.

9. Conclusion

Competition in the banking industry is a strategic issue and sensitive to some parties. There are two concerns in the banking industry, that of monetary system stability, which is the domain of BI, and that of a achieving a healthy competition climate, which is the province of KPPU. Therefore, it is important that KPPU and BI keep balancing the stability and the competition in the monetary system. There are some common ground on banking regulation with competition laws such as cross-ownership, interlocking directories, and merger/acquisition, but inter-regulator coordination and cooperation must be maintained and improved to enhance the regulation implementation and to achieve a solid and prudent banking system without sacrificing healthy competition.

ISRAEL

1. Background

The financial and banking services provided by the Israeli banking system include services for the capital market, such as consulting in the areas of securities and financial asset trading, portfolio management, mutual fund management, underwriting, distribution and issues.

In the last few years the government sold control of Bank Leumi (the second largest bank in Israel) and Israel Discount Bank (the third largest bank) to foreign investors, thus completing the process of bank privatisation which began over a decade ago. In addition, with the support of the Bank of Israel (the central bank), most of the small banks merged into medium size banks or liquidated.

The Israeli banking system is highly concentrated and the majority of the banking activity is in the hands of two major banks, as illustrated in table 1.

Table 1: The Share of the Five Largest Banking Corporation in the Major Fields

Bank	Total Liabilities & Capital	Credit to the Public	Deposits of the Public	Total Assets
Bank Hapoalim Group	33.7%	36.7%	33.4%	33.7%
Bank Leumi Group	27.4%	25.1%	28.2%	27.4%
Discount Bank Group	14%	12.4%	14.2%	14%
United Mizrahi Bank group	10.4%	12.5%	10.5%	10.4%
First International Bank Group	8.4%	6.5%	8.7%	8.4%
The remainder	6%	6.7%	5.1%	6%
Total	100%	100%	100%	100%
CR2	61.1%	61.8%	61.6%	61.1%
CR5	94%	93.3	94.9%	94%

2. Switching Costs

The banking system in Israel, like other banking systems around the world, suffers from high switching costs that discourage competition.

A survey carried out by the research department of the Knesset (the Israeli Parliament), showed that there is a low mobility of consumers in the banking system, as well as the system being perceived as non-competitive. The results showed that only 15% of customers changed their bank provider in the last five years and that another 11% intended to do so but did not for various reasons. Of this 11%, 38% claimed that the high switching costs were the reason for not changing their provider. Of all those surveyed, 12% did not wish to change banks, giving switching costs as the reason for their decision.

Three major factors influence switching costs in Israel: financial costs, consumer comfort (time and effort) and consumer trust earned over time. In an attempt to address these problems, several major changes were made over the last two years:

- Since bank motivation is to charge high bank commissions for changing bank accounts, the Bank of Israel limited all bank switching commissions (not including stocks and bonds), to a maximum of 40 NIS (~9$, ~7 €).

- In order to solve the problem of the great time and effort required to change banks, the Bank of Israel introduced a "Single Signature Switch": the customer fills out a single form requesting to switch his account to a new bank. The new bank is responsible for expediting all aspects of the transfer of the account from the old bank.

- As the switching customer approaches his new bank with an unknown financial history, and may therefore be offered inferior banking terms, the Bank of Israel obligated all banks to supply their costumers, upon request, with a financial report including all information concerning their banking history, such as assets, account activities and credit ratings. This report can be used by the client in order to negotiate a more attractive offer from his new bank.

- In the past, customers found it difficult to compare different banks due to a confusing plethora of commissions and interest rates. The survey carried out by the Knesset found that 61% of the customers were ignorant of commission rates, and 72% were ignorant of interest rates for loans. In order to simplify consumer comparison between banks, the Knesset, the Bank of Israel and the major banks, agreed that each bank create a common "commission package" which includes all basic bank commissions at a fixed price.

3. Market competition/ Conflicts of interest

3.1 Background

In addition to the problem of a highly concentrated banking system, Israel also suffers from a highly concentrated capital market. As the table below illustrates, until recently Israel's two major banks (Poalim and Leumi) controlled the majority of mutual and provident funds.

Table 2: The Share of the Three Largest Banking Groups in the Capital Market in 2004

Mutual funds	Provident funds	Underwriting
Assets managed	*Assets managed*	*Number of issues*
Poalim—36%	Poalim—41%	Poalim—27%
Leumi—31%	Leumi—19%	Leumi—24%
IDB—13%	IDB—13%	Clal—14%
80%	**73%**	**65%**

Source: Structural reform in the capital market, Inter-ministerial committee report, Sept. 2004.

It was apparent, that one of the factors responsible for the highly concentrated capital markets was a major conflict of interest in the banking system. Due to the wide range of financial services offered by the banks, there was a clear incentive to influence their costumers (by attractive commissions or biased advice) to utilise the bank's services without introducing other market alternatives. In addition, because bank's were credit providers as well as owners and managers of funds, they had an incentive to channel the investments of their funds to companies that were in debt to the bank. Another conflict of interest rose from banks which were both underwriters and owners and managers of provident and mutual funds. These banks had an incentive to sell newly issued securities to the funds under their control, thereby reducing their underwriting risks.

3.2 The Capital Market Reform

In order to solve the structure, which created the above conflicts of interest and to decentralise the capital market, in 2004 the Minister of Finance appointed a committee to make recommendations for increasing efficiency and competition in the financial markets.

The committee proposed that banks will not be permitted to hold any interest at all in a company that manages a provident or mutual fund nor be permitted to hold as much as a 5% interest in any firm or institution that holds more than a 5% interest in a company that manages such funds. Furthermore, the committee proposed that a controlling shareholder of a bank and all entities subject to his control will not be allowed to hold a 5% or more interest in a provident of mutual fund, or in any firm or institution that holds more than a 5% interest in a company that manages such funds.

To prevent the mutual and provident funds market from becoming concentrated again under other institutions, the committee suggested that no permit for the acquisition of a provident fund be given if, after the acquisition, the market share of the purchaser, and its group of companies in the long term saving industry exceeds 15%, and that no permit be given for the acquisition of a mutual fund if, after the acquisition, the market share of the purchaser and its group of companies, in the mutual fund field, exceeds 20%.

The Government and the Knesset accepted the committee recommendations with some minor changes and they have been implemented since July 2005.

LITHUANIA

1. Switching costs

The main factors influencing the private consumers' choice are[1] (in the order of importance): 1) the brand name associated with the reliability and safety of the bank; 2) speed and quality of service, attitude to a client; 3) the convenience to use banks services (the location of the divisions, ATMs, e-banking services, etc); 4) the cost of the services; 5) other factors (one-stop shopping, image, unchanging staff). The factors influencing the business clients have different priority: the quality and range of the services; pricing and quick service delivery time the competence of the staff, etc. The mobility of the customers in the retail banking sector is quite low. The proportion of the closed current accounts as compared to that of newly opened in household sector varies from bank to bank. In 4 out of 7 banks it does not exceed 11% and has a tendency to decrease. In the non-financial corporation sector the mobility is much higher – 29% approximately. The newly opened accounts do not necessarily mean that customers have terminated their earlier bank relationship. Nevertheless, the greater customer activity shows the demand of the service, and the demand in turn determines the importance of different parameters for competition in the sector. Besides that, the high percentage of the closed current accounts could be treated as an indicator of quite favorable conditions to choose the credit institutions without heavy costs.

The intention for customer to switch can be based either on dissatisfaction with their current bank or the better products offered by competing banks. The willingness to switch is usually constrained by some factors, for example by switching costs, personal relations with banking staff or a lack of information. The first factor is the most important. Switching costs first of all mean direct expences. If the customer uses wider range of services, usually he has to incur some costs in order to discontinue his relations with a bank. The cost of closing of a deposit account before the certain date includes the accumulated interest (plus a debit charge in certain banks). The lending facilities cannot be directly transfered to another bank: the customer can only refinance the loan by lending the necessary amount from another bank. This is a costly procedure: if the customer repays his debt before the appointed term, he has to pay a particular percentage of the debt (in some minor banks it varies from 0.5-1 %; in major banks it amounts up to 3% of the payout). But in some credit institutions this is not a rule: the customer has possibility to repay the rest of loan without additional fees. Such conditions, when the customer has a possibility to choose, reduce the market power of the remaining credit institutions, acting in the lending market.

There are some additional fees. The credit refinance fee is 250 LTL (app. 72 EUR) and more, depending on the amount of the loan. Besides, the customer has to bear other costs, e.g. mortgage fee, notarial services, real estate assessment, etc; these fees are unavoidable and paid not to the bank, but to the relevant institutions (hypothec institutions, notaries, center of registers).

The indirect costs are related to difficulties and inconveniencies that customer faces when changing a bank. It is also the responsibility to inform all relevant parties (employee informs his employer, entities inform theirs customers, and other parties, e.g. sometimes utility companies) about the new account details.

[1] The data included in this contribution were collected from a questionnaire sent to 7 commercial banks operating in the Lithuanian payment card market, to the Association of the banks. The inquiry covers a 3 years' period (2003-2005).

Such payments as wages or loan repayments are completed during the switching process (i.e. when changing the credit institution the liabilities cannot be transfered directly).

The credit institutions share the information between themselves about the solvency and riskiness of the customers. They use some data basis. One of such data basis functions in the Bank of Lithuania (The Data Basis of the Risk of the Loans). Another data basis is owned by special company "Infobankas" that administrates the information system of debtors. These systems contain the information about entities as well as about persons. The "Infobankas" reaches the information about the debtor if its debt exceeds 20 Lt (app. 6 EUR) and delayed more than 90 days. The quite sensitive information systems create the situations where the bank that currently has a customer has no superior information about the riskiness of the customer than other banks, i.e. the information about the potential client is available to all credit institutions. Therefore the banks do not become less willing to take on new customers, and this, in turn, reduces the bank's interest to lock-in the existent clientele.

To sum up, the switching costs have double purpose. On the one hand, switching costs seriously impact on the mobility of the consumers and create a lock-in. Therefore very often it is safer and less inconveniant for a customer to be a client of several banks than to switch from one bank to another.

On the other hand, by setting various fees for cancellation of the agreement (either the deposit account or long-term loans or other) the commercial bank intends not only to keep a particular client, but first of all to be able to better plan its own flows of money and the management of the loans. This could be confirmed by the fact that all the commercial banks open and close current accounts, terminated deposit accounts for free as well as the agreements of the internet banking, i.e. the conditions to choose a credit institution and its services are quite favorable to the customers. Some banks indicated that they have reward programs to loyal clients. These programs also serve as a marketing instrument used to retain customers.

2. Conflicts of interests

According to the answers provided by the commercial banks, a conflict of interest is possible in cases where a bank is able to offer to its customers investment funds, which contain the bonds and the shares of the companies to which the bank lends money. In order to avoid such conflict of interest, the bank implements internal control of the transactions involving securities. The risk of the possible conflict is managed by various measures: organisational, preventive, risk management. Furthermore, The Lithuanian Securities Commission has adopted the rules on organising internal control of trading of securities[2]. The rules state that special attention shall be paid to the strict delimitation of duties of employees of the intermediaries dealing with inside information, prevention of the abuse of inside information, supervision of transactions with securities concluded for the account of the intermediaries or their employees, supervision over the avoidance of the conflict of interests and fair treatment of the customers, and the imposition of sanctions for the failure to observe the established rules.

3. Access to common platforms

One of the common settlement systems is called LITAS. It is created to provide clearing, processing, management of risk, related to transactions The payment system LITAS started its operation on 19 January 2004. At the end of 2005 LITAS participants were the Bank of Lithuania, 9 commercial banks, 2 foreign banks branches, 10 financial brokerage firms, the Central Securities Depository of Lithuania (CSD) and the Central Credit Union of Lithuania (CCU).

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2 Rules on organising internal control of the activity of intermediaries of public trading in securities (approved by Lithuanian Securties Commission Resolution No. 13, 21 May, 1999 (as amended 25 September, 2003))

LITAS is designed to process payment instructions in real time and at designated time. The system processes credit and debit transfers. The Bank of Lithuania is the owner and the operator of the system. Settlements are carried out in the national currency litas. LITAS provides the cash leg of securities transactions in real and at designated time following the DvP (*delivery versus payment*) principle. It also establishes a possibility for other payment systems to perform settlements through the accounts of their participants with the Bank of Lithuania. LITAS is regulated by the Rules of Operation of the Payment System LITAS[3] and bilateral bank account agreements between the Bank of Lithuania and other system participants. The operator of the payment system determines membership conditions (licenses, technical basis, etc).

The system is open to banks that have a banking license issued by the Bank of Lithuania and foreign bank branches that have a permission of the Bank of Lithuania to operate in the country, the Central Securities Depository, financial brokerage firms, the Central Credit Union and clearing houses registered in the Republic of Lithuania. A credit institution of a state located in the European Economic Area and, on the decision of the Board of the Bank of Lithuania, a financial or clearing institution of such state may also join the system. All members of the System have a full member status.

The system operator presents the following technical documentation to persons that submitted an application to participate in the system: requirements and recommendations with respect to information systems of system participants and the hardware and system software of connecting servers, descriptions of the information exchange flows, descriptions of message structures, list of instructions for changing payment instructions and their processing conditions, list of priorities and user manual.

Another payment system is called KUBAS[4]. KUBAS is intended to make payments between credit unions or credit union customers (internal payments) and payments between credit unions and credit institutions or credit institution customers (external payments). Lithuanian Central Credit Union and 56 credit unions are members of KUBAS. Central Bank supervises a functioning of KUBAS. Internal payments are made through the accounts of system participants with the Central Union. External payments are made through the account of the Central Union with the Bank of Lithuania. Participation in the payment system KUBAS is open to the Central Union and credit unions that are members of the Central Union.

There are no actual barriers for new participants to enter the Lithuanian payment systems. LITAS or KUBAS payment systems operate on an “open membership” principle. Both systems have no any membership fee. Working principles of LITAS do not contain any special legal or technical conditions of membership that could restrict entry of new members. Current technical requirements are only of general nature and are necessary for the systems to work. All members of the LITAS and KUBAS do not distinguish direct or partial members; all members participate in the systems under equal rihgts. Only the operators of the systems (i.e. the Central Bank and the Central Union) are authorised to admit new members. The present members have no influence on the process of the new entries.

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3 Rules of operation of the payment system LITAS. (Approved by the Resolution of the Board of the Bank of Lithuania No. 124 of 11 December 2003 (as amended by the Resolutions of the Board of the Bank of Lithuania No. 87 of 20 May 2004, No. 150 of 2 September 2004 and No. 84 of 29 June 2006))

4 Resolution of the Board of the Bank of Lithuania No. 11, 12 February 2004.

LITAS service fees are set in accordance with the Resolution of the Board of the Bank of Lithuania[5] based on the principles of full cost coverage, transparency and equal rights of system participants. As from 1 April 2006, the following service fees have been set:

- the price for settling an urgent payment instruction – LTL 0.31 (0.0897 EUR);
- the price for settling an ordinary payment instruction – LTL 0.28 (0,0811 EUR).

The Departments of Information Technologies and of the Payment Systems are responsible for developing, installation and maintenance of software and hardware. Besides that, the Departments evaluate the safety of the system LITAS and prepare necessary documentation.

The transactions with plastic payment cards are not carried out through the payment systems LITAS or KUBAS. Payments between banks are fulfilled through the international or local payment card system.

4. Entry restrictions

The Law on the Bank of Lithuania[6] determines the power of the Central bank to issue licenses to credit institutions. Some entry restrictions of a very general nature to the market of banking services can be found in the Law on Banks[7]. They include formal requirements to banks, licensing procedure and standard minimum capital required. The banks equity capital must be not less than EUR 5 million if the bank's activity isn't specialised; and EUR 1 million if the specialised bank has been authorised only to issue and manage electronic money. The supervisory authority (the Central Bank) examines submitted application and takes a decision on the issuance of a licence not later than within 3 months.

A licence issued to a branch of the foreign bank is also governed by the same provisions of the Law on Banks that are applied to domestic credit institution.

The right to provide financial and investment services is given by the license, if this activity is not restricted in the license. The Lithuanian Securities Commission provides its findings to the Bank of Lithuania on the readiness of the commercial bank to provide investment services. The requirements and limitations applied are the same as to the financial brokerage firms.

5. Relationship between banking regulator and competition authority

The implementation of the Law on Competition is the competence of the Competition Council. Although the Bank of Lithuania does not apply directly the provisions of competition law to the banking sector, there are some common aspects between these two institutions.

Law on the Bank of Lithuanian states that the main goal of the Central Bank of Lithuanian is to pursue the stability of the prices. In order to implement this goal the Lithuanian Bank issues and recalls the licences to the domestic credit institutions, issues and recalls permissions to establish branches of the foreign credit institutions. Besides, the Bank of Lithuania supervises the activities of aforementioned institutions, and takes measures to insure the effectiveness of the credit system. The Bank of Lithuania implements these functions *inter alia* by deciding whether to permit the mergers of banks. Therefore,

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5 Resolution of the Board of the Bank of Lithuania No. 136 of 24 December, 2003 "On Approving the Procedure for Calculating Service Fees of the Payment System LITAS"

6 Law on the Bank of Lithuania, 1994.12.23, No. 99 (VŽ, 2001, No.: 890), acting edition since 25.04.2006

7 Law on Banks, 30.03.2004, No. IX-2085.

concentrations in the banking sector are reviewed both by the Competition Council and the Central Bank. The Law on Bank of Lithuania does not provide specific criteria for the merger clearance. Therefore the Lithuanian Bank has adopted the rules itself[8]. The rules state that the Central Bank would not allow the purchase of shares when this could affect the security and reliability of a credit bank or could endanger the effective functioning of the credit system. The Central Bank evaluates the security and reliability of the possible concentration according to the requirements, set in the Law on Banks, i.e. the requirements of capital adequacy, liquidity, maximum loan to a single borrower and other. Besides that the Central Bank evaluates if the new entity will be able to fulfill the settlements, if the new structure of the shareholders satisfies the requirements. In other words, the Bank of Lithuania assesses the possibilities of the bank to work in the financial market after concentration. The Central Bank has no special rules to assess the effect on competition in the market after the concentration. After the Central Bank issues its clearance, the Competition Council starts another review. According to the Law on Competition, the credit institutions are obliged to present the finding of the Central Bank to the Competition Council together with the notification of concentration. Hence the Competition Council, having the findings of the Central Bank, assesses in detail the impact of the notified concentration to competition. In order to do that the Competition Council performs usual steps of inquiry, that is defines the relevant markets, the aggregate turnover and determines market shares of the merging parties.

6. Competition law and banking

Neither the Law on Banks, nor any other laws regulating the Lithuanian banking sector foresee any exemptions from the application of the Law on Competition. The said law, however, does not define any special rules for the calculation of the aggregate turnover of the merging parties. The Law on Competition only foresees the additional requirement to provide the findings of the Bank of Lithuania. According to the Law on Competition a concentration shall not be deemed to arise where commercial banks, other credit institutions, intermediaries of public trading in securities and other financial companies acquire more than ¼ of shares in another enterprise with a view to transferring them, provided that they do not exercise voting rights in respect of those shares. Any such disposal shall take place within one year of the date of acquisition.

Neither the procedure for the calculation of the aggregate turnover nor any other rules make any distinction between the domestic and foreign acquirers. Therefore in this respect the aplication of the Law on Competition does not cause any distortive effect.

All things considered, a conclusion may be drawn up that the general competition rules are in all respects aplicable to the banking sector save for certain insignificant exceptions provided for in the Law on Competition.

[8] Decision of the Board of Lithuanian Bank No. 144 of 26 June, 1997, "The rules of the issuing the Lithuanian Bank's permission to obtain or (and) to administer the portfolio of Commercial Bank"

RUSSIAN FEDERATION

In Russian Federation the main limitation for the entry to the bank service market, including depository and lending services, is license. Licenses to the credit institutions are issued by the Central Bank of the Russian Federation.

Besides the mentioned limitation, there is also in the acting antitrust law a duty to coordinate establishment of credit institutions with the Federal Antimonopoly Service. However, establishment of the credit institutions can't usually cause a negative influence on the competition in banking sector. Due to this fact, in the frames of Administrative reform oriented on reducing the groundless barriers for market entry, such duty is excluded from the new Federal Law №135-FZ "On Protection of Competition" that will come into effect on the 26th of October 2006.

Credit institutions acquisitions and mergers issues are regulated both by banking and antimonopoly legislation of the Russian Federation.

Now antimonopoly law of the Russian Federation controls the acquisitions of more than 20% stocks (shares in the charter capital) of the credit institution. Control is performed in a way of preliminary coordination of the transaction or by the notification after its accomplishment. Herewith, criteria for defining the type of necessary control is the volume of the registered capital of the credit institution, stocks (shares) of which are being acquired, or organisation, that participate in the acquisition or merger.

New law "On protection of Competition" introduces new control criteria, that essentially reduce the amount of transactions, or other actions that should be coordinated. With the enforcing of a new law the duty to coordinate every action on acquisition of shares of credit institution will be cancelled. The new law fixes that preliminary consent is compulsory only in case of acquisition of share holdings: blocking (25%), controlling (50%) and excluding the opportunity to block shareholder's decisions by third persons (75%) stocks (shares) of credit institution. Necessity to forward a petition would be determined depending on the volume of assets of credit institution.

Protection of the national customer from international one is not regulated by antimonopoly legislation. Also, it's worth mentioning, that banking law defines additional requirements to the creation and activity of credit institutions with foreign investments and foreign affiliates.

In the financial sector credit institutions are controlled by Federal Antimonopoly Service that actively cooperates with the Central Bank of the Russian Federation. In the new law the issues of their joint competence are determined.

Also, there is an Agreement on joint interaction between the Central Bank of the Russian Federation and the competition authority. Under the Agreement the activity related to getting on the permanent basis considerable amount of information, that is needed for the banking sector competition analysis is being held. Besides on a parity principle with the participation of the Central Bank of the Russian Federation and the antimonopoly authority the Commission dealing with the violations of antimonopoly law in the credit institutions activities has been established.

Such close cooperation certainly has an effect on the banking sector. The most interesting example, of the influence that competition law causes on the banking activities, is the case that Federal Antimonopoly Service held against "Bank Russkiy Standart" JSC, accusing it in unfair competition. The violation was in distribution of inadequate information when providing consumer credits services, namely not indication of the periodicity of the fee collection for calculation and cash services.

The case was closed due to the voluntary termination of the violation of the antimonopoly law. Alongside with this following the results of the case and in order of development of the competition on the market of consumer lending services and in order to stop credit institution from getting any non-competitive benefits, the Federal Antimonopoly Service and the Central Bank of the Russian Federation developed recommendations on information disclosure standards when granting consumer credits.

Recommendation are focused on securing principles of fair competition, increasing transparency of the credit institutions activities, lowering debtor's and creditor's risk and increasing peoples' trust towards credit institutions.

Banks that use these recommendations have a right to inform the Federal Antimonopoly Service about it, and then this information is published on the official website of the competition authority. At present, almost 90 institutions voluntary declared using of these recommendations, and have been added to the list.

One of the major activities of the antimonopoly authority in the banking sector is the control over engaging of the credit institutions to the some activities with the Federal budget. For example, dealing with the placement by government authorities of temporarily unallocated funds or obtaining of a credit, reimbursement of which should be assured by the Federal budget. According to the legislation of the Russian Federation credit institution should be chosen for such types of services on the tender basis. Choice of the institution to deal with an individual transaction with the budget funds without tenders creates baseless favorable conditions for such credit institutions. The Federal Antimonopoly Service suppresses and prevents such favorable access to the finance resources.

Actively developed integration processes of the traditional banking services with other financial services, particularly with the insurance services, now attract more and more attention of the antimonopoly authority. So, in case of the consumer lending, the main field of the cooperation between banking and insurance sector is the insurance of the property that is subject of pledge. This takes more than 60% of all insurance services, realised through banking sector.

In this case the Federal Antimonopoly Service is mostly concerned by the fact that banks cooperate with the limited number of insurance companies that can influence competition on the insurance market. In connection with this the antimonopoly authority maintains a position that banks should make wider the range of the insurance company – partners. This is mostly relevant to the regional markets, where capital concentration is still quite high that testifies the small amount of the credit institutions that operate on such markets. Usually, the most part of the population and individual entrepreneurs of the region use one or two banks. Absence of alternatives in case of switching bank providers in a certain region is the factor that considerably influences consumer's costs.

With that, as a whole the credit institutions are aimed at the development and implementation of new products that are profitable for both themselves and their clients. The junction point bank and depositor's interests are the combined products, so called investment deposits. In the case of investment deposits a client places part of the funds on a deposit, and the other part into the mutual funds, bonds and stocks. Thus clients have a chance to diversify their deposits and risks, and banks have a chance to earn higher income for a depositor and itself.

SOUTH AFRICA

1. Introduction

In 2004 a Task Group for the National Treasury and the South African Reserve Bank recommended that the South African Competition Commission should investigate the possibility of a complex monopoly in the governance and operation of the national payments system. The Commission was also aware of widespread public concern regarding the level of charges made by banks and other providers of payment services to consumers.

Following on the findings in the research report *The National Payment System and Competition in the Banking Sector*[1]; the Commission announced earlier this year that it would hold an inquiry into particular aspects of competition in banking. In August this year the Commission formally announced the terms of reference of a public inquiry into competition in banking.

The objects of this inquiry will be:

- to increase market transparency;
- to ascertain whether there are grounds upon which the Competition Commissioner should initiate, and the Commission consequently use its powers to investigate, any specific complaints of contraventions of the Competition Act;
- to engage with the banks, other providers of payment services, the appropriate regulatory authorities and other stakeholders in order to ascertain the extent to which, consistent with the soundness of the banking and payments system, there could realistically be improvements in the conditions affecting competition in the relevant markets, including increased access to the national payments infrastructure;
- to enable the Commission to report to the Minister of Trade and Industry and make recommendations on any matter needing legislative or regulatory attention.

The subject matter of the inquiry will be:

(a) the level and structure of charges made by banks, as well as by other providers of payment services, including:

(i) the relation between the costs of providing retail banking and/or payment services and the charges for such services;

(ii) the process by which charges are set; and

[1] The report, National Payment System and Competition in the Banking Sector, was prepared for the Competition Commission by Dr Penelope Hawkins of FEASibility. A copy of the final report is available on our website: www.compcom.co.za .

(iii) the level and scope of existing and potential competition in this regard;

(b) the feasibility of improving access by non-banks and would-be banks to the national payment system infrastructure, so that they can compete more effectively in providing payment services to consumers;

(c) any other aspect relating to the payment system or the above-mentioned charges which could be regarded as anti-competitive.

This submission will focus on structural and regulatory factors impacting on competition in retail banking in South Africa, and draws substantially from the abovementioned research report.

2. Competition Law And Banking In South Africa

Competition Law does apply to banking in South Africa. In particular, the Competition Commission has jurisdiction to investigate (and the Competition Tribunal to adjudicate) alleged prohibited practices, including restrictive horizontal and vertical practices and abuse of dominance. There has been no formal enforcement activity in the banking sector since 1998. The current inquiry into competition in banking is the first such intervention.

Note that prior to 2000, in terms of a provision in the Competition Act, the competition authorities were not given jurisdiction over industries that were already under the jurisdiction of sector specific regulations. This provision was amended in 2000, giving the Commission concurrent jurisdiction with other sector regulators.

However, an exception was made in the case of merger and acquisition regulation in respect of the banking sector. In terms of section 18(2) of the Competition Act, the Minister of Finance may effectively withdraw the competition authorities jurisdiction in respect of all mergers and transactions for which permission is required in terms of the Banks Act[2]. This covers mergers between domestic banks and acquisitions by foreign banks. When jurisdiction is taken away from the Commission, investigations of mergers in the banking sector are made in terms of the Banks Act and not the Competition Act. This may be to the detriment of the type of investigation that would be conducted in considering the merger. Considerations of mergers under the Banks Act would not include a full and complete investigation of the competition effects of a transaction, as would normally be investigated under the Competition Act. However, the Commission does have a role to play in evaluating mergers in the banking sector and may make recommendations to the Minister of Finance.

In 2000, prior to the amendment regarding concurrent jurisdiction, the Minister of Finance prohibited a hostile merger between two large domestic banks. In this regard, the Commission had recommended that the merger should be prohibited as it would have resulted in a highly concentrated banking sector and thus substantially lessened competition.

In 2005, after withdrawing jurisdiction from the Commission (in terms of the provision in section 18(2) of the Competition Act), the Minister of Finance approved the acquisition by a foreign bank (Barclays) of a controlling stake in one of South Africa's largest domestic banks (ABSA).

[2] This is largely for reasons of managing systemic risk. For example, in the event of a bank failure appropriate steps could be taken without there being regulatory delay as a result of the requirement for competition approval of transactions involving a change in control. Although the amendment was conceived of in respect of systemic risk situations, it is phrased more widely, to include public interest and hence in practice has been used in relation to mergers where there was no systemic risk (eg. the takeover of ABSA).

3. Background On South Africa's Banking Sector.

The Bank Supervision Department of the South African Reserve Bank has prudential and regulatory authority over the banking industry, in terms of the Banks Act no. 94 of 1990. There are currently 21 operating commercial banks. The five largest commercial banks, which account for some 86% of deposits, are ABSA, First National Bank, Nedcor, Standard Bank and Investec.

A report for the National Treasury and the South African Reserve Bank on *Competition in South African Banking*, released in April 2004, found that "the concentration levels of the South African banking industry are high, but not out of line with other emerging markets. However, it is in the market segments rather than at firm level that concentration is even more marked. For example, while the Big Four (ABSA, First Rand, Nedcor and Standard) accounted for 83% of the total deposits of the public in June 2003, they accounted for 92% of mortgage loans and 89% of bank financed installment sales. Each of the Big Four has a scale monopoly (25% or more market share) in one or more of the retail market segments (credit cards, current accounts, mortgages or leasing and installment sales)."

South Africa's national payment system is considered highly efficient by international standards. There is concern, however, that it should develop into one that also caters for the previously unbanked sector of South Africa. The *Competition in SA Banking* report noted that 'around half of South African adults have no or only marginal access to financial services'.

There is also concern that a lack of competition in banking impacts negatively on access to finance and the quality and cost of service that small business receives from banks. This of course impacts on their profitability and prosperity, and ultimately that of the economy.

4. An Overview Of The South African Payment System And Structural And Regulatory Factors Impacting On Competition In Banking In South Africa.

The South African payment system is a national network that embraces:

- The Reserve Bank's SAMOS3 system;
- The National Payment System Department (NPSD) of the Reserve Bank;
- The Payment Association of South Africa (PASA), the industry body with its payment clearing houses (PCHs);
- Payment clearing house system operators like Bankserv, MasterCard, Visa and STRATE; and
- The registered banks, the Post Office, and a number of payment processing providers and retailers.

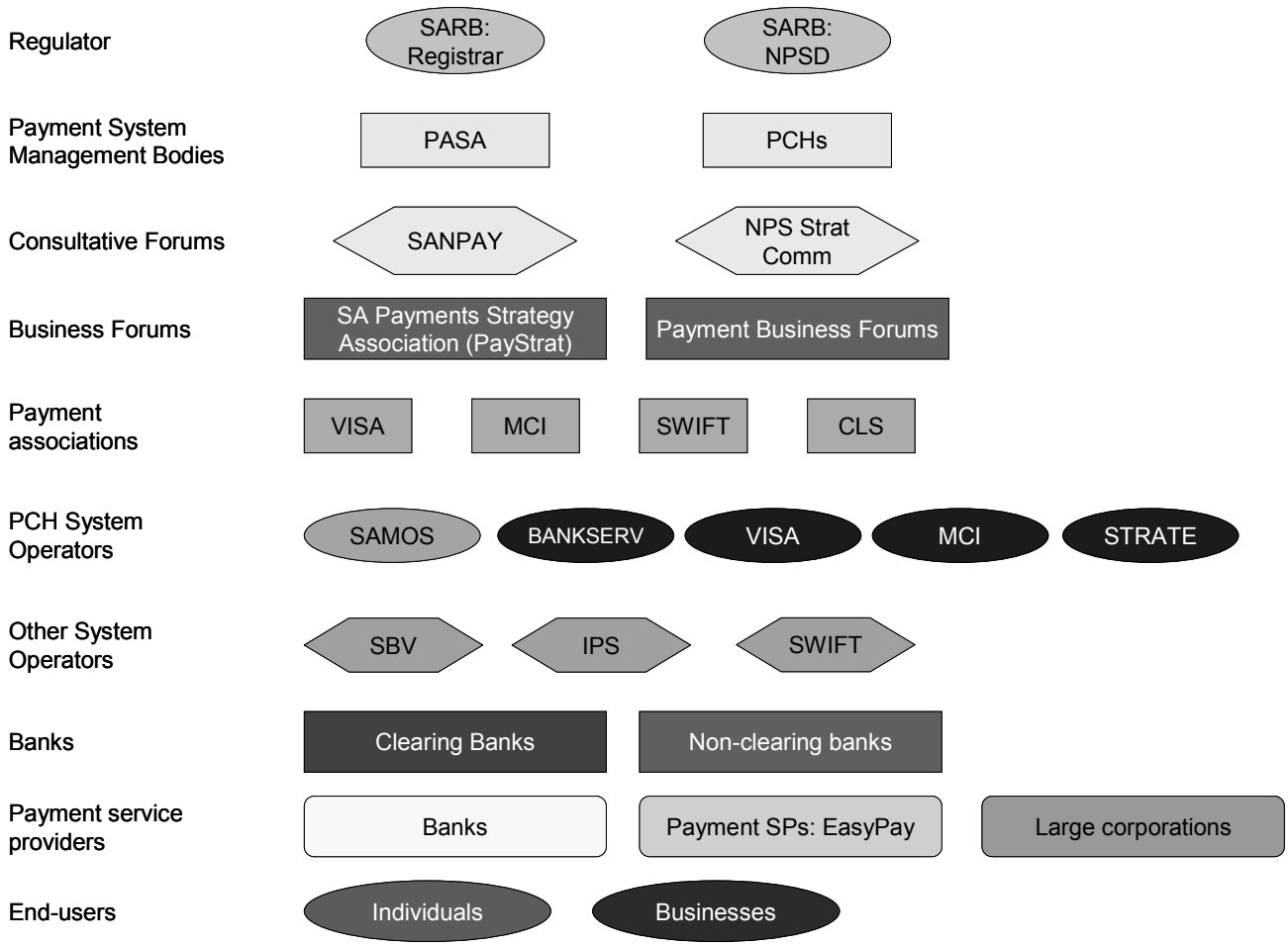
It might be useful here to distinguish between banks and PCH system operators. PCH system operators run systems that receive, collate and transmit payment messages and push the net positions of banks through to SAMOS. We can refer to this as clearing. In South Africa, Bankserv is the dominant retail payment system operator, clearing more than 90% of the retail volume. A PCH system operator will

3 The South African Multiple Options System (SAMOS) enables banks to make payments to and receive payments from the Reserve Banks electronically, through their settlement accounts held in the books of the Reserve Bank. All daily settlements of inter-bank exposures as well as all large-value inter-bank payments are effected through the SAMOS system.

only be recognised as such if two or more system participants (banks) have agreed to the clearing of payment instructions through the operator.

The main participants are identified in figure 1 below.

Figure 1: South African payments landscape



Given this broad scope of players, one might ask if access to the payment system is indeed a concern. This depends to a large extent on what is meant by access. For some, access means access to the clearing and settlement system, an area that has traditionally been the preserve of banks. Access for the NPSD is access to the real-time high-value SAMOS system that it owns and operates. In this regard the main barrier to entry is the fact that in order to operate in SAMOS one must be a registered bank. For some of the non-bank players, access means being allowed to enable clients to make payment against deposits. For others it means having access to bank accounts via their own system operator - rather than Bankserv - which is an operator that is wholly owned by the banks (of which the big banks have a 93 % share).

While there are a number of non-bank players hovering in and around the system, the retail payment system has been and continues to be viewed as a privileged banking space, since banks are the only organisations with immediate and unmediated access to official clearing and settlement systems. Historically, this has to do with their role in the monetary transmission process, their ability to create credit and the fact that they are regulated as deposit takers.

Banks compete with each other in the provision of retail payment instruments and services to end-users but, at the same time, they also co-operate in shared payment networks. There are hence both collaborative and competitive elements in the network. The co-operative part includes shared infrastructure and central hubs or system operators. While both SAMOS and Bankserv are examples of payment system operators, control or ownership of this shared infrastructure appears to be important – no-one complains for example at the SAMOS user fees set by the SARB, but Bankserv's fee structure does come up for criticism. The Commission's research to date, and the current inquiry, brings into focus the need for answers on the questions of whether competition between different infrastructures or competition within one infrastructure is better for society's welfare. And if the answer is that collaborative infrastructure is best for efficiency, then the question of how the governance and control of such infrastructure can best be handled in the consumers' interests needs to be considered.

The Commission's research shows that revenue earned by banks and non-banks directly from payment system activity amounted to almost R31 billion in 2004, or over 2% of GDP. The vast majority of this was earned by the banks, particularly the big banks who dominate the payments domain. Taken as a whole, the banking industry earned 54% of their income from non-interest activities - such as transactions linked to payments.

Transaction-based fee income accounted for 38%, or almost R292 billion of their joint income during 2004. This may even understate the earnings from payment activity. If the existing cost-to-income ratio applies in payment system activity, then the data suggest that the banking industry's profit for such activity was in region of R10 billion in 2004.

The banks earn the lion's share of payment stream revenue – some 94% of the total estimated revenue of R31 billion. Cash distribution is an expensive part of the system and makes up 1.6% of the total costs from payment activity – more than the cost of Bankserv (the major switch that serves the banking industry), which is estimated at around 0.6% of user cost. Since non-banks remain peripheral to the mainstream supply of payment services, they earn relatively little of the payment system revenue.

In South Africa, there appears to be some discontent on the part of consumers over the extent and level of direct charges for payment transactions. It is recognised that in the absence of such direct charging fees may nevertheless be collected in other ways such as lower interest rates on deposits. This kind of obscure pricing means that consumers have difficulty in making payment service choices as they do not know the associated costs. The South African consumer also experiences such difficulties since although transactions generally attract a fee, there may still be cross-subsidisation which obscures the relative cost of payment instruments. Debit cards, for example tend to attract a fee per purchase, whereas credit cards do not. This obscures the fact that the debit card is a more efficient payment stream. Improvement in disclosure will require not only better information on transaction fees, but also on the cost and interest rates associated with other more traditional services, on *comparable* terms.

The extent to which the establishment of second and third tier banks might alleviate competition concerns also needs further consideration. Unlike first-tier banks, which offer the full spectrum of banking products, second-tier banks are prohibited to use public deposits for lending to the private sector. Second tier banks may be 'narrow' or 'core' banks. In the case of 'narrow' banks all deposit liabilities are invested in money-market instruments, and no other credit business is allowed. 'Core banks', on the other hand, can engage in lending to the private sector provided such loans are funded from their second-tier capital. Third-tier banks can use deposit liabilities for lending to the private sector, but only if their depositors and lenders are from the same community. While proposed legislation on second tier banks was published for comment a year ago, concern has been raised as to the commercial sustainability of the viability of these entities within the current provisions.

Technology has allowed non-bank providers to offer payment services all over the world, but their ability to do so is affected by the rules for membership in their respective countries as well as the general approach of their regulators. In most countries, non-banks have neither a voice nor a vote in terms of the rules of their participation. As the role of non-bank players is growing, the supervision and rules of engagement for non-banks is becoming a pressing issue for regulators. The increasing involvement on non-banks may potentially increase risks, which could undermine confidence in the system. In some countries, non-bank players have been allowed into the system as a different class of participant, which means that while they may still be excluded from clearing and settlement activity, they have distinct rules, which diminishes these risks.

In South Africa, there is a wide area of payment activity beyond the clearing and settlement space, which includes companies that facilitate third party payments and IT companies that provide the technology and infrastructure for non-banks and banks alike. They remain unregulated. The regulatory gaps remain in spite of the proposed rules in the *Blue book*, which set out the strategy for the NPS from 1995-2004. Non-banks may not, by law, be members of the payments association of South Africa (PASA) – an industry and regulatory body that oversees the payment clearing houses. Reputational risk for regulated and non-regulated entities exists as a consequence. One may describe the present situation as one where there are high barriers for banks, and non-banks can do as they please, as long as that does not include playing in the clearing and settlement space.

The South African NPS is a highly efficient and sound system and perhaps more advanced than similar networks in more economically developed countries. But an efficient and sound system may nevertheless lack features that would make it also fair to consumers. What is of concern to the Competition Commission is the extent to which present arrangements for control over parts of the payment system may be inhibiting competition throughout banking sector. A number of questions arise in this regard, and provides some pointers, in particular:

- At present the banking industry earns 38% of its revenue (R29 billion) from payment system related fees. At the same time any link between the operating costs associated with a transaction and bank charges is not transparent. It thus may be the case that bank fees have less to do with the cost of the payment system and more to do with the market power of banks in setting their fees.

- Not only the banks, but all the present participants in the NPS appear to find their activity in this regard profitable – indeed this might be the motivation for the clamour to gain access to the system. Only the SAMOS system operated by the NPSD appears to work on a cost recovery basis.

- Apart from SAMOS, the pricing arrangements for each payment stream fall outside the remit of regulation and in the past have been negotiated on a multilateral basis. While some smaller players are concerned that bilateral negotiations may place them at a disadvantage as they wield so little market power, it is possible that bilateral negotiations might benefit the consumer. Further inquiry regarding the pricing arrangements in each payment stream is warranted. There may well be aspects of the NPS where uniform pricing could give way to competitive pricing without compromising the soundness or efficiency of the system.

- While Bankserv costs make up only a fraction of the cost of a transaction, the current profitability of Bankserv and the control and ownership of this essential infrastructure by the banks raises the possibility of broader representation on the board of Bankserv. There is international precedent for this.

- There is an absence of market conduct regulation throughout the banking industry and the NPS in particular. For example, disclosed pricing is often confounded by bundled offerings. In a country where there is an obvious need to improve the access of under-served consumers to financial services; the absence of a market conduct regulator is likely to be particularly keenly felt.

- Legislation and regulation have focused on banks. This has left a regulatory gap in terms of the rules of participation for non-banks and highlights the need for an overall strategy. To the extent that collaborative infrastructure and uniform pricing is necessary for sustaining a sound and efficient NPS for the benefit of consumers, there may also be a need for government oversight.

5. Conclusion

The research to date indicates that although South Africa has a very sound and efficient payment system it may nevertheless lack features which would make it also fair to consumers.

The banking sector is highly concentrated. While a number of operators exist, typically these serve only a single payment stream. The core NPS payment process in respect of EFT and card transactions are dominated by Bankserv which is owned by the large banks who constitute the major users of its infrastructure. While concentration has resulted in a high degree of interoperability and likely economies of scale, it nevertheless inhibits the extent of competition and entry in this vital competitive space.

In terms of the National Payment System Act, 1990 (Act No 78 of 1998) only banks are allowed to participate in the clearing house activities of the payments system and only banks may keep a settlement account with the Reserve Bank. There is concern that mechanisms in the payment-processing procedures favour the account-holding banks, and may thus undermine competition and create disincentives for both bank and non-bank competitors to compete with account-holding banks.

Advances in technology allow for non-bank players to offer competitive payment services. However, their ability to do so is enabled or hindered by the rules for participation and the general approach of regulators. There are regulatory gaps in terms of the rules of participation for non-bank players. Depending on the findings of the inquiry, the Commission may use its advocacy powers to recommend legislative or policy changes that may be necessary in this regard.

In addition to these structural and regulatory issues, the Commission's inquiry will also consider the consumers' experience of retail banking and probe the extent of switching costs faced by customers, and whether these can be reduced so as to facilitate better competitive outcomes for consumers.

SUMMARY OF DISCUSSION

The Chair, Alberto Heimler, began the roundtable on competition and regulation in retail banking by noting that the topic was increasingly receiving attention from the competition policy community as well as from the bodies responsible for regulation of financial institutions. Since the Working Party's previous roundtable on this topic in 2000, the ICN has addressed banking and produced 10 recommendations in this area distributed at the 2005 Bonn meeting, the European Competition Authorities have produced a report in this area in 2005, and the European Commission has begun a sectoral enquiry that has now produced two interim reports this year. The Chair noted that the Committee on Financial Markets will address the paper in a meeting in November taking place in Vienna.

Traditionally, banks have been subject to a number of regulatory restrictions. These have covered branching and new entry, pricing, portfolios, entry restrictions, requirements to direct credit to favored enterprises and special rules concerning mergers or failing banks. In most jurisdictions, these restrictions have disappeared over the last decades. Largely as a result of work in Basel Committee with capital adequacy ratios, there are fewer needs for these forms of regulation than in the past.

Banks face greater financial pressure from other financial providers. A Nobel Peace Price was recently given to Dr. Muhammad Yunus who helped to found microfinance in response to a conservative banking industry. Microfinance serves as a good example of non-bank entry to the provision of banking services.

The Chair noted that the roundtable would not address market failures in banking. Instead, it would focus on retail banking entry and market frictions, such as the existence of switching costs.

1. Access to payment infrastructure

Access to payment infrastructure is indispensable for financial institutions that wish to compete. In order to promote a competitive environment, there should not be any unjustified restriction to access this payment infrastructure.

In Ireland, the applicant to access a payment system must be a bank and it must pay the impact costs of entry to the clearing company. These are supposed to represent the costs borne by existing members for updating their systems, such as costs for adjusting computer systems and other equipment, staff training and project management. Existing banks calculate these costs, but the clearing house keeps the payments. Why is there such a complicated system? Why is there not a price set in advance. How is there any assurance that banks say the truth?

A delegate from Ireland stated that the payment infrastructure is owned by the banks themselves. The Central Bank, which has some coordinating role in this area, urged that payments by new members should not be made to existing members but instead to the payment system. Initially, the charges included a payment to account for the historical costs of setting up the system, but this aspect of the charges has been dropped. To a large extent, the complexity of the system is a legacy from the past.

The Chai**r** noted that a system like this is, on its face, fair but is open to distortions, delays and false reporting that can make the approach highly problematic. The Swedish report addresses access pricing to

the payment infrastructure. In particular, large banks have strong influence over access conditions and raise rivals' cost of entry, especially of small banks, through the design of the terms of access to payment systems. For cash withdrawals, banks agree bilaterally and small banks are discriminated against since they cannot benefit from bulk discounts. Is there any solution to this problem? If the solution is regulatory, who should be in charge?

A delegate from Sweden stated that rules of access are in place that ban discrimination, but only between participants that are equal (in size). Thus large banks would have the same rules between them, and small banks would have the same rules between them. But small banks can face higher access charges than large ones. The rules could be sharpened on that point. At the EU level, the new payments directive will be very important. A balance must be struck between the benefits of a large user and those of small users. Access terms for small banks may have improved over the last ten years. Who should enforce these rules? In Sweden, the regulator is the main party responsible for enforcement of these rules. The role of the competition authority has been mainly advocacy; competition law has not been active. In the late 1990s, efforts were made to use competition law, but these were not successful.

The Chair stated that traditional banks are often the only ones with easy access to the payment structure in South Africa. Do micro credit and postal services have access to the payments system?

A delegate from South Africa stated that micro-credit institutions do not have easy access to the clearing banks system. This creates a barrier to competition and protects banks from competition from small finance institutions. The four largest banks account for 83% deposits and 92% of mortgage loans in 2003. A large percentage of the population is unbanked. Banks have recently been targeting the unbanked population. The concern has often been to protect some customers from getting credit that they could not repay. A banking inquiry is looking at the effect of lack of access to clearing by micro-credit institutions, in order to promote better competition with the big banks.

The Chair noted that in Indonesia, there is separation between large and small banking institutions as well as between banking and insurance. In small banks, ATM machines are not permitted, nor are debit and credit cards. The Chair asked whether more flexibility would be needed to promote a more open and competitive environment.

A delegate from Indonesia stated that there was hindrance to protection of consumers. Before going into non-discriminatory banking practice, the delegate noted that there was a desire to limit the number of banks, in order to better regulate them. The number of banks is being limited gradually.

The Chair introduced Charles Freeland, the Deputy Secretary General of the Basel Committee on Banking Supervision (BCBS) at the Bank for International Settlements.

Charles Freeland stated that the BCBS has done a lot to bring forward more openness to banking. Peer pressure is being applied through markets and rating agencies are becoming important.

Mr. Freeland began by explaining the context in which Basel II was developed. What Basel II is doing is replacing an institutional approach to credit risk by a risk-based approach. Basel I had led to some perverse behaviour, so there was a need to move to an approach that reflects the full spectrum of risk, particularly for the private sector. Basel II provides direct incentives to improve banks' risk management, corporate governance, and transparency. Ministers are interested in the stability of the bank system, especially because failures of big banks could be extremely difficult to control and highly expensive, so the principal focus is on the big banks. But a range of options have been provided to cater for banks of different sizes and specialisations and to ensure that smaller banks are not disadvantaged. Most attention has focused on minimum capital requirements, the first Pillar, where greater freedom is being given to

banks to measure their risks according to internal assessment processes. But this needs check and balances and these are provided by Pillar 2 (the supervisory review process) and Pillar 3 (market discipline). All three Pillars need to be in place for the checks and balances to work effectively. The BCBS has established transparency standards for banks to ensure that market discipline can be effective. The third pillar will provide more public disclosure, through both qualitative and quantitative disclosure requirements. Additional disclosure requirements must be met by those banks that wish to use more sophisticated approaches or recognise particular instruments. The reviewers of these releases are the rating agencies, analysts and academics.

There can, however, be constraints on the effectiveness of the third pillar. Some supervisors have limited authority to ensure that disclosure requirements are achieved. In most countries the national accounting standard-setter establishes disclosure rules for all public companies. There have been active and sometimes difficult discussions with the accounting standard-setters. The Basel II approach wants banks to anticipate the future, not look to the past, but accounting measures take a point-in-time approach looking backwards from the reporting date. But calculation of risk is forward looking and capital needs to be related to unexpected losses. A compromise has been reached with the International Accounting Standards Board on the calculation of credit risk in banks' published accounts.

What information should be disclosed? Generally, material information must be disclosed. While discretion must be given to banks to select what to release, a definition of material information has been developed. Information is regarded as material if its omission or misstatement could change or influence the assessment or decision of a user relying on that information. Information should be provided on a consolidated group-wide basis, i.e. incorporating the activities of all branches and subsidiaries.

Market participants have concerns about disclosing proprietary or confidential information. In a competitive economy, there is value in making information public, but financial regulators would not want banks to disclose information that could undermine a bank's competitive position. Customer information does not need to be revealed. If specific items are not disclosed, there must be a reason for not disclosing. For example, hedge funds are worried about disclosing exposed positions. Financial companies can be destroyed by their competitors if they get into exposed positions. Basel II provides that quantitative information should be released in a timely fashion, at least semi-annually. Many countries will have quarterly disclosure. Qualitative information, such as risk management, can be disclosed annually.

There is a link between pillar 3 and supervisory reporting. Some countries will exchange reporting formats but the BCBS has decided that harmonised reporting is not a feasible option. The EU's CEBS has developed a multi-level template.

A one page reporting form is being developed by the IMF as a guideline for countries wishing to adopt the simple standardised approach.

There will be enhanced focus on rating agencies, which are developing more detailed granular methodologies. These will focus on default rates plus recovery rates. Rating agencies will use Basel II's pillar 3 to exert pressure for greater disclosure. The BCBS supports the rating process as a private process. Many people have complained that ratings agencies make mistakes. But particularly for sovereigns, this helps to avoid political attempts to influence ratings.

Additional market discipline mechanisms will exist, such as inter-bank spreads, equity prices (which may be less sensitive than they should be) and mandatory convertible debt. Subordinated debt has been argued as an area that should be included, but the BCBS is not forcing this on the banking sector though of course many banks already issue such debt.

Minimum required capital will change under Basel II according to each bank's actual risk exposure. Assessing changes against the current measures of capital, for smaller banks, there will be a 60% increase/decrease in capital adequacy. On average, median banks would reduce required capital. If a bank is using internal ratings, it will have to scale up its internal measure by 6%. For the big banks, there is a smaller spread, +/- 40%, bunching a little below 0. Temporary floors exist, so that banks cannot reduce their capital below current measures by more than 20% in the first three years.

Mr. Freeland showed a chart to give some of idea of the dispersion of impacts of Basel II in comparison with Basel I. For most regulators, the dispersion appears reasonable, as the numbers can be explained by the risk appetite of the bank. While changes may seem significant, this is probably because Basel I did not accurately reflect capital requirements to risk. Actually Basel I did not handicap banks. It made them stronger and more resilient. While there is a need for competition, there is also a need for rigorous accounting standards.

The timing of implementation of Basel II will be a national decision. There was a desire to make changes coincide, but this could not be achieved. With one major exception, all major countries will start as of 1 January, 2007. Full approaches will be in force in 2008. The US is still having discussions, and their timetable is about 2 years behind.

A delegate from South Africa asked how the disclosure of expected losses differs from normal disclosure in financial statements.

Charles Freeland noted that disclosures will be based on statistical models. There should be a close relationship between model results and accounting provisions.

The Chair asked how Basel II relates to choices of loan seekers.

Charles Freeland replied that the choices would likely be enhanced, but would also be a little more price-sensitive though the extent of this should not be exaggerated as banks would continue to focus on the risk-reward ratio. Indonesia, for example, and many other EMEs see Basel II as a means of encouraging the more efficient allocation of scarce resources. On credit, this will mean more funds available for appropriate loans.

2. Switching costs

The Chair introduced Hans Degryse, one of the co-authors of the paper for this roundtable.

Hans Degryse stated that banks may have market power. One of the reasons for this is that switching costs are non-trivial. Switching costs are of two main types: transactional switching costs and informational costs. Transactional costs include shoe leather and other search costs, the opportunity cost of time to open and close an account, charges for closing an account and, finally, contractual and psychological costs. The administrative burden of opening a new account can be significant. A client with multiple products at a bank, such as a deposit account and a mortgage, may need to move both products, which can result in large charges, particularly for the mortgage. Closing charges and opening charges are often heterogeneous across countries and not transparent. Information costs arise from a lack of information of "outside banks" about the client's financial condition and reliability.

One way to reduce switching costs is switching arrangements. These arrangements to facilitate current account switching are in place in the UK, the Netherlands, Ireland and Austria, for example. In the Netherlands, new banks are informed of direct debits and do not need to obtain permission to directly debit the new account. The account switcher is sent a reminder about 1 month before automatic forwarding ends.

A second way to reduce switching costs would be to introduce account number portability that permits account numbers to be transferred from one bank to another. This is a structural solution for reducing switching costs, but may require substantial investment costs in setting up new systems or modifying existing systems.

The Chair talked about the Netherlands. One of the proposals of the Dutch authority's report talked about switching. What have been the major outcomes of the report?

A delegate from The Netherlands stated that the Dutch competition authority performed a study with six other countries. This focused on consumer mobility, access to payment systems and SEPA. With respect to switching, the conclusion of the report was that customers do not often switch banks. The first reason for this was a lack of transparency. Banks make it difficult, costly and a lengthy process when customers want to switch. For instance, when a customer has a mortgage, they may be locked into a long-term contract that is costly to change. The paper advises authorities to stimulate transparency, to make it possible for consumers to make better choices. Comparisons websites that show prices for different banks are one way that transparency can be increased. The paper also advises the implementation of retail banking switching facilities, such as objective and up-to-date comparison sites, switching services and last but not least, number portability. The authority hopes that the European payment area will make more options available to consumers, but there are many concerns about implementation therefore a recommendation was made to the European Commission to set up a task force focused on competition issues.

The Chair stated that the Japanese report describes a number of developments. The JFTC concluded a two-sector inquiry. What abuses have been identified? What has happened since the two-sector inquiry has been published?

A delegate from Japan stated that, regarding the first question of possible abuses, a typical example would be the case of Sumitomo Mitsui bank. In this case, the bank forced companies to buy financial derivatives in return for continuous provision of lending. As the scope of bank activities has substantially expanded, following deregulation, in 2004 the JFTC issued guidelines that clarified what kinds of conduct by banks would infringe the Anti-Monopoly Act. Unfair exercises include forced transactions, restrictions on transactions with competitors and deceptive customer inducements. Why is it so difficult for SMEs to change banks? Some of the reasons have already been mentioned by the Netherlands delegate. According to surveys in 2001 and 2006, four reasons were identified: it takes time to start dealings with other banks; other banks may refuse to provide financing; SMEs are concerned that changing banks would reduce credit standing because other banks would believe the original bank limited loans to SMEs even in cases in which SMEs stopped a transaction with the original bank of their own accord; and SMEs have long-term relations with their current banks. About 80% of SMEs maintained relations with their main banks for more than 10 years. More than 60% of enterprises, among those who had been forced to accept some of the original bank's proposals or had not changed banks in the past five years, stated that they had never explored the possibility of transacting with other banks. There appear to be substantial switching costs and a lack of information selling practice in Japan. The JFTC expressed its concerns about dominant bargaining positions of banks to enterprises. The actions taken by the banks after the inquiries included banks enhancing their internal governance in various ways and at many levels to increase compliance with the Anti-Monopoly Act and the banking association encouraging banks to increase compliance with the competition act. The hope is that these actions would reduce transactional switching costs of SMEs, or at least prevent them from increasing.

The Chair stated that the European Commission's report thoroughly addresses informational and transactional switching costs. The paper of the Commission makes interesting suggestions. But there is a

point that needs clarification: how will a change in the European banking system be promoted? Voluntary action or regulatory enforcement?

A delegate from the European Commission stated that in work on SEPA, co-operation is underway with member states. On switching costs, the study shows that only 5-10% of customers switched banks in a given year. Banks are consequently able to price discriminate between established customers and new customers. But the intrinsic costs of switching will always exist, so policymakers have to be realistic in ambition and proportionate in remedies. The Commission's interim report points to a range of possible measures to facilitate customer mobility: i) focusing on switching arrangements, whether regulatory or established by banking industry; ii) reducing the extent of forced tying, by which customers often have to take out a current account when receiving a mortgage; iii) promoting better information and disclosure; and iv) eliminating closing charges.

In order to move implementation forward, the European Commission has set up a working group on customer mobility in DG Internal Market. This group will report in September 2007 and advocate action at the European level. Interventions have occurred at national level. But the delegate emphasised that banks were themselves welcome to come forward with their own ideas.

The Chair noted that the UK report gives a fairly precise report on switching. But the report suggests that retail customers perceive benefits of switching to be low. If there is not much benefit from changing banks, why worry about switching costs?

A delegate from the UK stated that barriers to entry are significant. Within that context, customer perception is that it is difficult to compare charges from one bank to another, because there is a large range of charges, even for one type of service, such as current accounts. The Competition Commission has suggested a number of remedies in Northern Ireland, including making pricing easy to understand and using a common terminology. There is a need to think more about the information provided to customers in their statements.

The Chair noted that relationship banking is important in some countries. Credit registers and ratings may be particularly important in countries that are currently characterised by relationship banking, especially when registers are run by the banks themselves. Mexico had a case in this area, where information was not shared. Although three banks had a contract, they had refused to provide information.

A delegate from Mexico noted that the case was initiated on the basis of informal reports by the credit bureau. But it became clear that while three banks had cancelled their contracts with a credit bureau, they had not refused to provide information. It appeared to be a case in which a company tried to use a competition authority to protect it from competitors.

The Chair stated that in Switzerland, there is a "know-your-customer" rule. What does this mean exactly?

A delegate from Switzerland noted that the "know-your-customer rule" exists to preserve the good name of the banking community and to stop money laundering. The rule is implemented in the so-called Swiss Money Laundering Act. The objective is to establish the beneficial owners of assets. Banks must report suspicions of money laundering. This provokes an administrative burden for the customer – they must show an official identification document, e.g. passport, when they want to open a new bank account. If opening an account by Internet, they must send officially certified copies of such documents, which can be very cost intensive. The delegate noted that the know-your-customer rule can create barriers to entry for foreign banks. A few years ago, a German Internet bank intended to enter the Swiss banking market. Due to the rule, it was obliged to cooperate with other financial intermediaries in Switzerland in order to

guarantee identity of customer. This led them finally to drop out of the Swiss market. Moreover, there is actually no process in use that would simplify the procedure of identification once a customer had already been identified by a Swiss bank.

The Chair noted that this leads to a discussion of an issue that is quite important: a regulation with positive objectives can have other effects, such as on competition, that are not intended. In Brazil, a switching cost was removed recently. Checks had to bear an indication of how long a customer was with bank. This was to make the retailer less uncertain about whether a check was from an established customer. But the system raised the cost of switching, because customers could no longer show the length of time they held an account. Brazil has proposed having a standard package of services whose price would be set by the central bank. Are the delegates not concerned that this might enhance standardisation and collusion?

A delegate from Brazil stated that they were concerned that there might be collusion. But standard packages would promote switching and this was considered to be a highly worthwhile goal.

The Chair stated that in Lithuania, there are two credit registers. One is run by the Central Bank, like in France and Italy, and the other is private, carrying very detailed information. The report suggests that the bank that currently has a customer would have no superior information about the riskiness of the customer than other banks. Does this mean it is easy for people to change banks? Is there any evidence of lower switching costs?

A delegate from Lithuania stated that easily accessible information reduces banks' interest and ability to lock-in an existing client. Of course banks make in-depth analysis about the possibilities to finance a new client, but nevertheless the database makes easier the first contact between a bank and an enterprise or individual. Besides, the customers have less cost associated with obtaining documents about their liabilities to various institutions. But these costs are not significant compared with other lending and switching costs.

The Chair noted that, with respect to transactional switching costs, in some countries, customers have difficulty having their salary credited to an account of their choice. Why is it not possible for employers to send funds to an account of their choice?

A delegate from Mexico stated that in Mexico, most consumer loans not associated with a good or service, are tied to payroll. A great majority of payrolls are assigned to a specific bank by the employer. One reason for this is that transfer fees are substantial between banks, so having payments to the same bank can lead to lower transfer fees. A high concentration of banks makes it difficult for new banks to enter. Banks tend to set high interchange fees, making transfers expensive, including for electronic fund transfers. There are also costs for technical assistance, especially relevant for small enterprises. The tendency to rest with a single bank is also exacerbated by workers tendency to stay with a single system for pension systems. In this area, the Competition Commission is finishing a study soon to be published. High switching costs limit ex post changes in payroll handling.

The Chair asked whether there is any cooperation with the regulator in this respect. If so, what role does this cooperation play?

A delegate from Mexico stated that in Mexico, with respect to pension funds, an investigation was requested by the pension fund regulator. In the banking sector, the competition authority works closely with the central bank, the treasury ministry and the sector regulator.

The Chair noted that Norwegian banks have made an agreement to ease the cost of switching by consumers. Has any analysis been made of the costs, for example the cost to implement number portability? Is the agreement different from a switching code?

A delegate from Norway stated that to answer the questions, the delegate would begin by describing the market structure in Norway. In total, 30% of assets are controlled by foreign-owned banks. Access to payment cards system for foreign banks are relatively transparent. The fees are publicly available. Any bank holding a banking license will be granted access to these systems. However, concentration is fairly high in Norway. The four largest banking groups control about 70% of assets. While lower than the rest of the Nordic countries, the figures are still high. One of the problems that the competition authority found was that in Norway, customers who wanted to switch household loans from one bank to another, had to pay a substantial notification fee. The authority argued that this fee was too high, compared to the cost of producing the report. The fee has now been lowered. . The Nordic competition authorities have proposed a switching code that would imply common rules for how the transfer of a customer from one bank to another would occur. With respect to number portability, the financial authority and banks have suggested very high costs to the introduction of number portability. But this is still being considered as a possible measure.

The Chair questioned what was meant by the word "code". Did the code originate from a law, regulator or private source.

A delegate from Norway stated that, in Norway, the "code" is an initiative on the side of Nordic countries. It has been implemented in Ireland, the Netherlands and has been mentioned by an ECO report and the European Commission as a possible measure. The code would be a common set of rules to be applied when customers want to change their retail bank loan.

The Chair noted that he wanted to move on to Italy. Italy launched an enquiry on switching costs recently. What does the delegation expect the effects of the sector enquiry will be?

A delegate from Italy stated that an inquiry was in progress. Preliminary results suggested that switching costs are quite high and have included high monetary exit costs. This results in an overall reduction in the elasticity of demand. The announcement of the opening of the investigation was followed by a change in behavior from both groups of actors in the market. After the opening of investigations, many banks responded by reducing exit costs and committing themselves not to apply fees. Making public the findings of the investigation should increase consumer awareness of consumer rights as financial consumers. The sector enquiry is seeking to find factual evidence for the potential use in advocacy.

The Chair noted that one point of the Italian experience is that opening the investigation was followed by positive actions by market players. This is a sign of how important actions can occur even in the absence of law enforcement. The announcement of a sector inquiry can have effects. Note that if there was vigorous competition on the demand side, nothing would have happened. The Chair moved on to the Czech Republic. The Office of Protection of Competition opened a case against the three largest banks in the country over switching charges. The Ministry of Finance then entered to provide more guidance to banks. Was there coordination between the competition authority and the Ministry of Finance?

A delegate from the Czech Republic stated that the Ministry of Finance picked up from where the Competition Office left off. The Ministry of Finance started a direct dialogue with the banks and distributed a consultation document to the banks. The Ministry wanted to involve the competition authority, but the competition authority could not enter the discussion with banks over what charges to have. It helped the Ministry of Finance with some questions, reviewing them from a competition perspective, but this was not in close coordination with the Ministry.

The Chair opened the floor for discussion on switching costs.

A delegate from Australia stated that this issue was reaching a political level in Australia right now and welcomed the focus being given to the issue at the OECD, while expressing some frustration at the inability to arrange a joint roundtable discussion with the Committee on Financial Markets. The delegate sought confirmation of his impression from the material presented that the primary source of switching costs in most markets appeared to relate to the 'hassle' costs involved. He also asked whether number portability has ever been implemented. Are there practical examples of number portability? He asked whether switching packs generally focused on removing switching costs or on delaying them.

Hans Degryse stated that contractual costs can vary significantly. In the Netherlands, to switch a mortgage from one bank to another requires paying the notary fee again. Psychological costs can also be quite high. Low churning is not necessarily a result of high switching costs but could also occur with high switching costs. There might be some element of postponing switching costs. Professor Degryse stated that he was not aware of any country that has implemented number portability. In Belgium, when moving from one branch to another, account numbers had to be changed, so there may be technical constraints on number portability. He noted that non-switchers can benefit from the fact that others switch or can switch easily.

A delegate from Korea stated that switching costs are important, but banks are not interested in reducing these costs through switching packs. How can such policies be implemented?

Hans Degryse observed that in The Netherlands, the switching packs developed as the result of an investigation.

A delegate from Norway stated that when speaking with banks, the number system is related to the bank. The first four digits refer to the bank with which the number is associated. If the information in the numbers is diluted, it will be more difficult to see the bank that is being addressed. The rest of the numbers in a bank account have their own meaning as well. Consequently implementing number portability would be difficult.

The Chair suggested that identifying the identity of a bank may not be important for many transactors. For those to whom this information is important, there should be a way of finding out the bank from the number.

A delegate from Ireland noted that the Korean delegation had asked about what makes switching packs possible. In Ireland, a sector inquiry led banks to produce a switching pack standard even before the sector inquiry reported. The threat of the financial regulator imposing a switching code got the banks to design the code themselves. The effect of the switching code was to reduce switching costs. Missing a payment on mortgage was one significant worry of consumers. In Ireland, the two banks must make sure that the process is completed in a way that ensures no payment is missed. Banks have responded to switching packs with much lower prices and no-cost current accounts. The spillover effect has been that concept of switching has become more established. The idea of switching for loans and mortgages has been more discussed leading to increased competition in other areas.

A delegate from Canada commented on minimal churn and suggested there could be some form of price discrimination. How does fierce competition for new customers mesh with the observation in, for example, the UK, where customers are apparently not very interested in switching? In Canada, there is not a change of market share of more than 1% per year by major banks.

A delegate from the European Commission stated that, for particular groups, such as students and new graduates, special terms apply and then after time, these special terms lapse and customers move into standard terms. Credit balances on current accounts are usually very low. But new-to-market customers

may be cross-subsidized as new customers tend to stay. There is much convergence on current account products. The Irish survey on switching attitudes suggests that many customers believe there are substantial similarities.

A delegate from the United Kingdom stated that when the Competition Commission looked at SME banking, when the SME announced to its bank that it wanted to change bank, there was a process of negotiation, in which the old bank would offer different tariffs and services. But when such price discrimination exists, the benefits of switching for those who do not consider switching may not be present. That is, when there is price discrimination, switching customers may not protect non-switching customers.

3. Conflict of interest

The Chair noted that conflicts of interest were potentially a serious problem in commercial banking. In one recent case, banks that held much of a company's debt, recommended that non-bank customers purchase bonds for the company in financial difficulty, before its financial difficulties were fully public. The banks faced a conflict of interest in this case. Denmark has a requirement that whenever a bank faces a benefit from a transaction besides normal income, it must inform the client. These represent a protection of consumer interests. A 2006 report was issued, jointly with the competition authority, the financial supervisory authority and Ministry of Economic and Business Affairs.

A delegate from Denmark stated the reason for the competition authority's involvement was a 2002 review in which the authority wrote about financial services. In 2005, the competition authority felt that a revised version of that chapter was needed, and the competition authority invited the financial supervisory authority and the Ministry to help prepare the report. The 2006 report had a special focus on investment funds, so it was considered wise to bring in the financial supervisor. The role for the authority was largely one of advocacy. There are 4-5 recommendations. One recommendation involving tax rules was put to the tax authorities. Investment funds should make prominent disclosure of the costs of the funds. The rules are embodied in an executive order. As of yet, there have been no cases on violations of the rules relating to conflict of interest.

The Chair stated that the time given for regulatory responses needs to be kept to a minimum. If the regulator provides an authorization in a short time to banks they know well, while delaying authorisations for those they do not know well, this can manipulate the outcome of mergers and acquisitions. So it is important not just to focus on rules but also on the exact ways that rules are applied. Especially when time delays are important, there is high flexibility on implementation of regulations. It is much better to have short time constraints, with justified delays being possible.

4. Relationship between competition authority and financial supervisor

Antitrust competencies are consistently being shifted to competition authorities, but prudential oversight often rests with financial supervisory authorities for mergers and acquisitions. In the UK there is formal cooperation between the OFT and the FSA. The Chair noted that in Poland, the process of competition and supervisory approval of bank mergers are distinct and there does not seem to be formal cooperation.

A delegate from Poland noted that the two areas are fully distinct and unconnected. Thus neither side looks into what is happening with the other area.

The Chair noted that in Russia, FAS and the Central Bank exchange information on consumer credit, but it is not clear from the report what they do in the case of mergers. Moreover, there is a requirement for an open bidding procedure to administer government funds. What would be examined in mergers?

A delegate from Russia stated that there is a close exchange of information between the competition authority and the central bank. There is a formal cooperation agreement between the two. Banking mergers are not permitted without prior consent of the Russian competition authority. Seven members from the Central Bank and seven from the competition authority serve on a panel. The competition authority is now trying to introduce the same level of parity with the financial supervisor and insurance supervisor. It is also talking about public procurement and tenders where an open tender is held. The Anti-Monopoly Service is responsible for supervision of these provisions. Violators shall be subject to administrative sanctions and contracts invalidated by court decisions.

The Chair suggested that in Turkey, there is a de facto exclusion of the competition authority from the treatment of banking mergers. Moreover, the market is not defined in a way that is competition oriented.

A delegate from Turkey stated that before answering the question, it was important to note that while bank mergers are not notified, if the parties have stakes in affiliated companies, they will notify the transaction. At the moment there is no voluntary cooperation agreement between the competition authority and the financial sector authority. Up to this point, neither side has needed such an agreement. Now there is a committee that is discussing issues related to financial markets, including competition issues, and will be reporting to the Cabinet.

The Chair stated that the competition authority of Chinese Taipei has issued a policy statement on various types of activities by financial institutions.

A delegate from Chinese Taipei noted that the competition authority enforces the law directly, but does issue guidelines for some specific industries. So far, we have had decisions based on law directly. We release some information by customers directly. The competition law is quite brief. No deceptive or unfair contracts are permitted.

The Chair stated that the Hungarian report notes that cooperation is frequent between the competition authority and financial regulators. Is the cooperation voluntary or governed by law?

A delegate from Hungary stated that there is no mandatory cooperation, as the cooperation is not based on legal prescriptions. Before going into details on the cooperation, there is a National Bank of Hungary and the Hungarian supervisory authority. There are examples of cooperation and there are common research projects. The competition authority has signed a cooperation agreement with the financial supervisory authority that is currently being revised. There are two areas in which there is cooperation. There is a large project on switching with experts from both the competition authority and the Central Bank. Another area of joint work is developing financial literacy of consumers. This is considered highly important.

When treating the same merger, investigations are run in parallel. Information can be exchanged. But the investigations will not necessarily close at the same time.

The Chair observed that in Israel, after a survey by the Israeli parliament, a cap was implemented on the cost of switching. Did the competition authority play any role?

A delegate from Israel noted that Israeli financial services are relatively concentrated. There has been an effort to try to restructure these to improve competition. The “single switch” was introduced by the Central Bank. The competition authority was involved in developing the concept of having a simple procedure for consumers to switch, but was not involved in fixing the rate. That was the task of the Central Bank, and the financial services and insurance services in the Ministry of Finance. There is a committee that includes the competition authority that brings together these parties. So there is a good flow of

information. The anti-trust authority seeks advice when discussing mergers. The antitrust authority would have different concerns than the regulators on occasion.

A delegate from BIAC stated that they had a couple of comments on the work this morning. Credit and financial institutions can have difficulty in accessing markets outside their own country. One of the barriers is the regulatory environment. For switching, there has been success in some countries in developing voluntary arrangements. The survey of those who do switch finds that switching is not as bad as might be guessed from the remarks made today. It is very important that competition and financial regulators cooperate closely. Looking at calculations of costs of implementation of switching programs would be best done with both authorities.

The Chair agreed that number portability would have to take account of the technical expertise of regulators and banks, but that policymakers must be cautious in interpreting industry concerns. Industry concerns are sometimes related to the fear of increased competition rather than costs.

5. Enforcement of competition law.

The Chair noted that, in banking, in the US the competitive effect of a merger is evaluated both by the competition authority and the Federal Reserve Bank. Can the US delegation describe its peculiar institutional structure and provide us with an evaluation of its effectiveness? In the past few years all agencies in the world have adopted the SSNIP test. Why is it that the FRB still remains attached to the cluster market approach?

A delegate from the United States said that after a merger has been cleared by the regulator, the competition authorities have 30 days to file suit in Federal Court to block the transaction. If they take no action, the bank merger is considered approved, and authorities cannot later challenge on competition grounds. In the U.S., the bank regulatory agencies and the Department of Justice are both involved with competition enforcement. During competition review, there is close cooperation between the bank regulatory agencies and the Department of Justice. Because of publicly available bank merger guidelines and regulatory agency decisions, this process is relatively transparent. Generally, banks are cooperative with the competitive review process to avoid the use of civil investigative demands and consent decrees as banks are interested in concluding deals quickly. When divestitures are required, Letters of Agreement are used in lieu of oversight by courts (e.g. consent decrees).

If divestitures are required, there is a great deal of experience in deciding what divestiture package would be sufficient to replace competition lost due to the merger. Generally divestiture packages require a good mix of branch locations, branch size, and no restriction on the hiring of current branch personnel. As a result of significant past experience with divestitures, even in extremely large transactions, the process works very smoothly. The competition authority focuses on a disaggregated product market approach, while the bank regulatory agencies focus on a cluster of banking services market approach. In effect, the distinction has not resulted in much of a difference in the end result.

The Chair noted that the French report provides reference to the 2000 decision of the Conseil de la Concurrence on mortgage rates. What role did the Banque de France play?

A delegate from France stated that there were agreements between banks on the margins, and this led to a fine of 175 m EUR. There was no special role of the Banque de France in this regard, as the banking sector is not exempted from standard competition rules.

The Chair stated that the discussion with respect to switching costs has been valuable. So he proposed to collect information on switching packs from those countries that have implemented switching packs. While number portability may be a long-term goal, more immediate progress can be made through these

packs. Information on implementation methods for switching packs from different countries could help to establish best practice in this area. One idea is to collect the precise information on switching codes and switching packages.

In conclusion, the Chair observed that switching costs are one important aspect of competition in retail banking services, though there are certainly other aspects that are also important. Switching costs can be divided into two parts: Informational and transactional switching costs. Credit registers are important. There was a comment in the UK report that switching is not common, in part, because consumers do not consider the benefits of switching as very important. The fact that some people could switch should make banks behave better, as long as there are not negotiations with potentially switching customers after they announce their intention to switch. Often there is no need for a law to establish switching packs because voluntary actions can implement these services, as was found in Hungary. In Ireland, there is a requirement that the financial regulator has the responsibility to protect consumers. This can be important. Finally, the Chair noted that even a simple sector inquiry can have an important effect on banks' behavior. Banking relationships are based on confidence, and banks do not like to be referred to in any negative way. The existence of an enquiry can itself lead banks to change potentially problematic behaviors.

COMPTE RENDU DE LA DISCUSSION

Le Président, Alberto Heimler, ouvre la table ronde en notant que ce thème suscite de plus en plus l'intérêt des acteurs de la politique de la concurrence et des autorités de réglementation des institutions financières. Depuis la dernière table ronde du Groupe de travail sur ce thème, en 2000, le Réseau international de la concurrence s'est penché sur le secteur bancaire, au sujet duquel il a formulé 10 recommandations qui ont été diffusées lors de la réunion qui s'est tenue à Bonn en 2005 ; en 2005, le secteur bancaire a fait l'objet d'un rapport des autorités européennes de la concurrence ; enfin, la Commission européenne a entrepris une enquête sectorielle qui a donné lieu à deux rapports d'étape présentés cette année. Le Président note que le Comité des marchés financiers examinera ce document à l'occasion d'une réunion qui aura lieu à Vienne en novembre.

Les banques sont depuis longtemps soumises à de nombreuses contraintes réglementaires. Ces contraintes couvrent les banques de réseau et les nouvelles entrées, la tarification, les portefeuilles, les restrictions à l'entrée, les exigences relatives à l'orientation du crédit vers des entreprises privilégiées et les règles spécifiques aux fusions et aux faillites bancaires. Dans la plupart des pays, ces contraintes ont disparu au cours des dernières décennies. Ces formes de réglementation sont devenues moins nécessaires que par le passé, grâce principalement aux travaux du Comité de Bâle sur les ratios de fonds propres.

Les banques subissent une plus forte pression financière de la part des autres prestataires de services financiers. Récemment, le prix Nobel était décerné à M. Muhammad Yunus pour sa participation au lancement du système de la microfinance devant l'attitude conservatrice du secteur bancaire. La microfinance illustre bien l'entrée d'acteurs non bancaires dans le secteur de la prestation de services bancaires.

Le Président précise que la table ronde n'abordera pas les défaillances du marché dans le secteur bancaire. Elle se consacrera plutôt à l'entrée dans le secteur de la banque de réseau et aux points de friction qui existent sur le marché, notamment les frais de transfert de comptes.

1. Accès à l'infrastructure de paiement

L'accès à l'infrastructure de paiement est indispensable aux institutions financières qui veulent soutenir la concurrence. Pour favoriser un cadre concurrentiel, l'accès à l'infrastructure de paiement ne doit pas être restreint de manière injustifiée.

En Irlande, le demandeur d'accès à un système de paiement doit être une banque. Il doit acquitter des frais à la société de compensation au titre des incidences de son entrée. Les frais d'entrée sont censés représenter les coûts assumés par les membres existants pour actualiser leurs systèmes : ajustement du matériel informatique et autre, formation de personnel et gestion de projet. Ce sont les banques en place qui les calculent mais c'est la société de compensation qui conserve les paiements. Pourquoi le système est-il si complexe ? Pourquoi le prix n'est-il pas fixé d'avance ? Peut-on être sûr que les banques disent vrai ?

Un délégué de l'Irlande indique que l'infrastructure de paiement appartient aux banques. La Banque centrale, qui joue un certain rôle de coordination dans ce domaine, a recommandé que les paiements effectués par les nouveaux acteurs ne soient pas versés aux acteurs existants mais plutôt au système de

paiement. À l'origine, le calcul des frais tenait compte des coûts historiques de mise en place du système, mais ce n'est plus le cas. Dans une large mesure, la complexité du système est un héritage du passé.

Le Président remarque qu'un tel système est en apparence équitable mais qu'il favorise les distorsions, les délais et les fausses déclarations, et peut donc poser d'épineux problèmes. Le rapport de la Suède aborde la tarification de l'accès à l'infrastructure de paiement. Il mentionne en particulier l'influence considérable qu'exercent les grandes banques sur les conditions d'accès en élevant les frais d'entrée imposés à leurs rivales, notamment les petites banques, par le biais de la conception des conditions d'accès aux systèmes de paiement. Pour les retraits en espèces, les banques passent des accords bilatéraux et les petites banques font également l'objet de discrimination parce qu'elles ne peuvent pas bénéficier de remises globales. Y a-t-il une solution à ce problème ? Si cette solution relève de la réglementation, qui devrait être le régulateur ?

Un délégué de la Suède indique que des règles d'accès interdisent la discrimination, mais seulement entre participants de taille égale. En conséquence, il y a des règles pour les grandes banques et d'autres pour les petites. Il arrive toutefois que les petites banques aient à supporter des frais d'accès plus élevés que les grandes. Il y aurait peut-être lieu d'affiner les règles à cet égard. Au niveau de l'UE, la nouvelle directive concernant les paiements sera d'une grande utilité. Il faut parvenir à un équilibre entre les avantages respectifs des grands et des petits utilisateurs. Les conditions d'accès faites aux petites banques se sont peut-être améliorées au cours des dix dernières années. Qui devrait faire appliquer les règles ? En Suède, c'est principalement le régulateur qui en assure la mise en œuvre. L'autorité de la concurrence s'est surtout occupée des activités de sensibilisation ; le droit de la concurrence n'est pas appliqué. À la fin des années 90, les efforts déployés pour faire jouer le droit de la concurrence ont été infructueux.

Le Président fait observer qu'en Afrique du Sud, les banques classiques sont souvent les seules à disposer d'un accès facile à la structure de paiement. Le microcrédit et les services postaux ont-ils accès au système de paiement ?

Un délégué d'Afrique du Sud indique que les institutions de microcrédit n'ont pas facilement accès au système des banques de compensation. Cela constitue une entrave à la concurrence et protège les banques contre la concurrence des petites institutions financières. En 2003, les quatre principales banques réunissaient 83 % des dépôts et 92 % des prêts hypothécaires. Un pourcentage élevé de la population est exclu du système bancaire. Les banques ont récemment centré leurs efforts sur la population non bancarisée. On a souvent cherché, en refusant des crédits, à protéger des clients qui auraient été incapables de rembourser. Une enquête sur les activités bancaires examine les conséquences de l'absence d'accès au système de compensation pour les institutions de microcrédit, afin d'améliorer la concurrence avec les grandes banques.

Le Président observe qu'en Indonésie, il y a une séparation entre grandes et petites institutions bancaires et entre banque et assurance. Dans les petites banques, les guichets automatiques de banque, de même que les cartes de débit et de crédit, ne sont pas autorisés. Le Président demande s'il faudrait davantage de souplesse pour favoriser un cadre plus ouvert et plus concurrentiel.

Un délégué de l'Indonésie fait observer que la protection des consommateurs a été insuffisante. Avant de traiter les pratiques bancaires non discriminatoires, les autorités souhaitent limiter le nombre de banques pour mieux les réglementer. Le nombre de banques est limité progressivement.

Le Président présente M. Charles Freeland, Secrétaire général adjoint du Comité de Bâle sur le contrôle bancaire (CBCB) à la Banque des règlements internationaux.

Charles Freeland rappelle que le CBCB a fait beaucoup d'efforts pour améliorer la transparence des activités bancaires. Il constate la pression exercée par les pairs par le biais des marchés et l'importance grandissante prise par les organismes de notation.

M. Freeland donne d'abord des précisions sur le contexte dans lequel a été élaboré le dispositif de Bâle II. Ce dispositif remplace l'approche institutionnelle du risque de crédit par une approche axée sur les risques. Bâle I avait induit des effets négatifs et il fallait adopter une approche reflétant la totalité du spectre des risques, en particulier pour le secteur privé. Bâle II donne des incitations directes à l'amélioration de la gestion des risques, de la gouvernance et de la transparence dans le secteur bancaire. Les ministres souhaitent la stabilité du système bancaire, en particulier parce que la défaillance de grandes banques pourrait être très difficile à contrôler et très onéreuse. C'est pourquoi le dispositif concerne essentiellement les grandes banques. Un large éventail d'options a cependant été prévu pour prendre en compte des banques de tailles et de spécialisations différentes et pour veiller à ce que les petites banques ne soient pas lésées. Les efforts ont surtout porté sur le premier pilier, à savoir les exigences minimales de fonds propres, et une plus grande latitude a été accordée aux banques pour mesurer leurs risques à l'aide de systèmes internes d'évaluation. Il faut toutefois procéder à des vérifications et à des arbitrages qui sont définis par le deuxième pilier (processus de surveillance prudentielle) et le troisième pilier (discipline de marché). Ces trois piliers doivent être en place pour que les vérifications et les arbitrages soient efficaces. Le CBCB a instauré des normes de transparence pour les banques afin de veiller à l'efficacité de la discipline de marché. Le troisième pilier favorisera une communication accrue des informations à travers les exigences de publication d'informations qualitatives et quantitatives. Les banques qui souhaitent avoir recours à des approches plus fines ou inclure des instruments particuliers devront respecter d'autres exigences en matière de communication. Les informations diffusées seront examinées par les organismes de notation, les analystes et les spécialistes.

Certaines contraintes peuvent toutefois altérer l'efficacité du troisième pilier. Certains superviseurs n'ont pas le pouvoir voulu pour s'assurer que les exigences en matière de communication sont respectées. Dans la plupart des pays, l'organisme de normalisation comptable fixe des règles en matière de communication des informations pour toutes les sociétés qui font appel à l'épargne publique. Des discussions parfois ardues ont été menées activement avec les organismes de normalisation comptable. Dans l'optique de Bâle II, les banques doivent se tourner vers l'avenir et non vers le passé, mais les mesures comptables suivent une approche axée sur un point dans le temps pour mener un examen rétrospectif depuis la date de déclaration. La mesure des risques est en revanche une activité prospective et les fonds propres doivent être corrélés à des pertes inattendues. Un compromis a été atteint avec l'*International Accounting Standards Board* en ce qui concerne la mesure du risque de crédit dans les états publiés par les banques.

Quelles informations faut-il communiquer ? De manière générale, les informations essentielles doivent être communiquées. Bien qu'il convienne d'accorder de la latitude aux banques dans le choix des informations diffusées, une définition des informations essentielles a été élaborée : ce sont les informations dont l'omission ou la modification pourraient transformer ou influencer l'évaluation ou la décision d'un utilisateur qui s'en remet à ces informations. Elles doivent être fournies sur une base agrégée au niveau d'un groupe, c'est-à-dire qu'elles doivent intégrer les activités de l'ensemble des succursales et filiales.

Les acteurs du marché expriment certaines appréhensions au sujet de la communication d'informations exclusives ou confidentielles. Dans une économie concurrentielle, la publication d'informations crée de la valeur mais les régulateurs financiers ne souhaitent pas que les banques communiquent des informations qui risquent de nuire à leur situation concurrentielle. Il n'est pas nécessaire de communiquer des informations sur les clients. La non-publication d'éléments spécifiques doit être motivée. Par exemple, les fonds d'investissement spéculatifs sont réticents à communiquer des informations sur leur exposition aux risques. Les sociétés financières qui communiquent des données sur

leur degré d'exposition aux risques peuvent être anéanties par leurs rivales. Selon le dispositif de Bâle II, les informations quantitatives doivent être communiquées en temps opportun, au moins semestriellement. Dans de nombreux pays les informations quantitatives seront communiquées trimestriellement. Les informations qualitatives, par exemple celles qui concernent la gestion du risque, peuvent être publiées annuellement.

Il y a un lien entre le troisième pilier et les déclarations prudentielles. Certains pays échangeront des modèles de présentation mais le CBCB a décidé qu'un système de déclaration harmonisé n'était pas réalisable. Le Comité européen des superviseurs bancaires (CEBS) a élaboré un modèle à plusieurs niveaux.

Le FMI est actuellement en train de mettre au point un modèle de présentation d'une page pour guider les pays qui souhaitent adopter l'approche normalisée simplifiée.

L'accent portera davantage sur les organismes de notation, qui sont en train de mettre au point des méthodes granulaires plus détaillées. Ces méthodes seront axées sur les taux de défaillance et les taux de recouvrement. Les organismes de notation utiliseront le troisième pilier de Bâle II pour encourager une communication accrue. Le CBCB appuie le fait que le processus de notation soit un processus privé. Bon nombre d'acteurs se sont plaints des erreurs commises par les organismes de notation. Mais ce système, en particulier dans le cas des obligations souveraines, contribue à éviter que des pressions politiques soient exercées dans le but d'influencer les notations.

Il existe d'autres dispositifs de discipline de marché comme les écarts de rémunération des crédits interbancaires, les cours des actions (qui peuvent être moins sensibles qu'ils ne le devraient) et les instruments de dette obligatoirement convertibles. D'aucuns ont avancé qu'il faudrait inclure la dette subordonnée mais le CBCB ne l'exige pas pour le secteur bancaire même si, bien entendu, de nombreuses banques émettent déjà ce type d'instruments de dette.

Dans le dispositif de Bâle II, le niveau minimal de fonds propres requis changera en fonction du degré effectif d'exposition aux risques de chaque banque. Si l'on évalue les évolutions au regard des mesures courantes des fonds propres, pour les petites banques, le ratio d'adéquation des fonds propres augmentera/diminuera de 60 %. De manière générale, les banques de taille moyenne devraient réduire les fonds propres requis. Une banque qui utilise des systèmes de notation internes devra augmenter son échelle de mesure interne de 6 %. Dans le cas des grandes banques, l'écart, moins important, est de +/- 40 %, et tend à se concentrer un peu en dessous de 0. Des limites inférieures ont été fixées temporairement pour que les banques ne puissent pas ramener leurs fonds propres en deçà des mesures courantes de plus de 20 % les trois premières années.

M. Freeland montre un graphique afin de donner une idée des incidences du dispositif de Bâle II comparativement au dispositif de Bâle I. Pour la plupart des régulateurs, elles paraissent raisonnables étant donné que les chiffres peuvent s'expliquer par la tolérance aux risques des banques. Les modifications peuvent sembler importantes mais cela est sans doute dû au fait que le dispositif de Bâle I ne reflétait pas exactement les exigences en matière de fonds propres au regard des risques. De fait, ce dispositif ne mettait pas d'entraves aux banques. Il les rendait plus vigoureuses et plus résistantes. Le besoin de concurrence s'accompagne généralement de la nécessité de normes comptables rigoureuses.

Le choix du moment de la mise en œuvre du dispositif de Bâle II relève d'une décision interne. Certains souhaitaient que les modifications soient simultanées mais cela n'a pas été possible. À une importante exception près, tous les principaux pays commenceront à le mettre en œuvre le 1er janvier 2007. La mise en œuvre intégrale est prévue pour 2008. Les États-Unis poursuivent les discussions et leur échéancier est décalé d'environ deux ans.

Un délégué d'Afrique du Sud demande en quoi la communication des pertes attendues diffère de celle que l'on retrouve dans les états financiers.

Charles Freeland note que la communication d'informations sera fondée sur des modèles statistiques. Il devrait y avoir un lien étroit entre les résultats obtenus à l'aide des modèles et les dispositions comptables.

Le Président demande comment le dispositif de Bâle II s'articule avec les choix des emprunteurs.

Charles Freeland répond que les choix seront vraisemblablement améliorés mais aussi qu'il y aura une plus forte sensibilité aux prix, même s'il convient de ne pas exagérer l'ampleur de ce phénomène étant donné que les banques continueront d'attacher de l'importance au ratio risque/rémunération. L'Indonésie, par exemple, ainsi que de nombreux autres économies des marchés émergents, estiment que Bâle II est un moyen d'encourager une affectation plus efficiente de ressources qui sont rares. S'agissant du crédit, cela signifie que davantage de fonds seront disponibles pour des prêts appropriés.

2. Frais de transfert de comptes

Le Président présente Hans Degryse, l'un des auteurs du document rédigé en vue de la présente table ronde.

Hans Degryse rappelle que les banques détiennent un pouvoir de marché. Cela tient notamment au fait que les frais de transfert de comptes ne sont pas négligeables. Il existe deux catégories principales de frais de transfert de comptes : les frais de transaction et les frais d'information. Les frais de transaction comprennent les coûts de déplacement et autres coûts de recherche, les coûts d'opportunité liés au temps consacré à l'ouverture et à la clôture d'un compte, les coûts de clôture de compte et, enfin, les coûts contractuels et psychologiques. Le fardeau administratif que suppose l'ouverture d'un nouveau compte peut être important. Un client qui souscrit différents produits auprès d'une banque, par exemple un compte de dépôt et un prêt hypothécaire, peut avoir besoin de les transférer vers une autre banque, ce qui peut donner lieu à des frais considérables, notamment au titre du prêt hypothécaire. Les coûts de clôture et d'ouverture de compte d'un pays à un autre sont souvent hétérogènes et opaques. Les frais d'information sont générés par le manque d'informations dont disposent les « banques externes » sur la situation financière et la fiabilité du client.

Les mécanismes de transfert constituent un moyen de réduire les frais de transfert de comptes. Ces mécanismes visant à faciliter le transfert de comptes courants existent par exemple au Royaume-Uni, aux Pays-Bas, en Irlande et en Autriche. Aux Pays-Bas, la nouvelle banque est informée des débits directs et n'a pas besoin d'obtenir d'autorisation pour débiter directement le nouveau compte. Le client reçoit un rappel environ un mois avant la fin des débits automatiques.

Un autre moyen de réduire les frais de transfert de comptes consisterait à introduire la portabilité du numéro de compte, qui permettrait de transférer les numéros de compte d'une banque à l'autre. Cette solution structurelle pour réduire les frais de transfert de comptes risquerait cependant d'entraîner des coûts d'investissement considérables liés à la mise en place de nouveaux systèmes ou à la modification des systèmes existants.

Le Président aborde le cas des Pays-Bas. L'une des propositions du rapport de l'autorité néerlandaise concerne les transferts de comptes. Quelles sont les principales conclusions du rapport à cet égard ?

Un délégué des Pays-Bas indique que l'autorité néerlandaise de la concurrence a effectué une étude de concert avec six autres pays. Cette étude portait sur la mobilité des consommateurs, l'accès aux systèmes de paiements et le SEPA. En ce qui concerne les transferts de comptes, le rapport conclut que les clients ne

changent pas souvent de banque. Cela est principalement dû au manque de transparence. Les banques font du transfert de comptes un processus complexe, onéreux et long. Par exemple, le client qui a souscrit un prêt hypothécaire peut être captif aux termes d'un contrat à long terme qu'il serait onéreux de modifier. Le document recommande aux autorités de stimuler la transparence afin de permettre aux consommateurs de mieux effectuer leur choix. Les sites web comparatifs qui indiquent les prix pratiqués par différentes banques constituent un moyen d'améliorer la transparence. Le rapport préconise également la mise en place de mécanismes de transfert de compte dans le secteur de la banque de réseau, par exemple des sites comparatifs objectifs et actualisés, des services de transfert et enfin et surtout, la portabilité de numéro. L'autorité espère que la zone de paiement européenne offrira davantage de choix aux consommateurs mais il existe de nombreuses préoccupations en ce qui concerne la mise en œuvre et une recommandation a en conséquence été formulée à la Commission européenne afin qu'elle mette sur pied un groupe d'étude qui se pencherait sur les problèmes de concurrence.

Le Président précise que le rapport du Japon décrit un certain nombre d'évolutions. L'autorité de la concurrence japonaise, la JFTC, a mené une enquête sur deux secteurs. Quelles pratiques abusives ont été identifiées ? Quelles ont été les évolutions depuis la publication de l'enquête sur les deux secteurs ?

Un délégué du Japon indique qu'en ce qui concerne le premier point, à savoir les pratiques abusives, un exemple type serait celui de la banque Sumitomo Mitsui. Dans cette affaire, la banque forçait des sociétés à acheter des dérivés financiers en contrepartie de la fourniture continue de prêts. Comme l'étendue des activités bancaires s'est considérablement accrue à la suite de la déréglementation, la JFTC a publié en 2004 des principes directeurs qui ont clarifié les types de comportement des banques qui constituent une infraction à la Loi antimonopole. Au nombre des comportements déloyaux, citons les transactions forcées, les restrictions mises aux transactions avec des concurrents et les comportements frauduleux à l'égard des clients. Pourquoi est-il difficile pour les PME de changer de banque ? Certaines explications ont déjà été fournies par le délégué des Pays-Bas. Des enquêtes menées en 2001 et en 2006 ont fait ressortir quatre raisons : il faut du temps pour amorcer des négociations avec d'autres banques ; les autres banques peuvent refuser d'accorder un financement ; les PME craignent qu'un changement de banque réduise leur capacité d'endettement parce que les nouvelles banques pourraient croire que l'ancienne a restreint les prêts et ce, même lorsque c'est de leur propre initiative que les PME ont changé de banque ; enfin, les PME ont des relations de longue date avec leur banque. Environ 80 % d'entre elles conservent des relations avec leur banque principale pendant plus de dix ans. Plus de 60 % des entreprises qui ont été forcées à accepter certaines propositions de leur ancienne banque ou qui n'avaient pas changé de banque au cours des cinq dernières années ont déclaré n'avoir jamais étudié la possibilité de faire affaire avec d'autres banques. Il semble que les frais de transfert de comptes soient considérables et les pratiques commerciales, opaques. La JFTC est préoccupée par la position dominante des banques à l'égard des entreprises. Les mesures prises par les banques à la suite des enquêtes ont consisté à améliorer la gouvernance interne de différentes manières et à de nombreux niveaux pour mieux se conformer à la Loi antimonopole ; l'association professionnelle a encouragé les banques à mieux respecter la législation sur la concurrence. Il est à espérer que ces initiatives réduiront, pour les PME, les frais de transaction liés au transfert de comptes ou, du moins, les empêcheront d'augmenter.

Le Président indique que le rapport de la Commission européenne traite de façon approfondie des frais d'information et de transaction liés au transfert de comptes. Ce document contient des suggestions intéressantes. Un point toutefois demande des éclaircissements, s'agissant de la façon de favoriser une évolution du système bancaire européen : faut-il privilégier l'action volontaire ou une intervention réglementaire ?

Un délégué de la Commission européenne précise que dans le cadre du travail sur le SEPA, la coopération progresse avec les États membres. En ce qui concerne les frais de transfert de compte, l'étude montre que seulement 5 à 10 % de clients ont changé de banque au cours d'une année donnée. Les banques

peuvent donc exercer une discrimination par les prix entre anciens et nouveaux clients. Cependant, les frais mêmes de transfert de comptes existeront toujours, de sorte que les responsables de l'élaboration des politiques doivent avoir des ambitions réalistes et concevoir des solutions proportionnées. Le rapport d'étape de la Commission attire l'attention sur un éventail de mesures qui pourraient être adoptées pour faciliter la mobilité des clients : i) centrer les efforts sur les mécanismes de transfert, qu'ils soient le fait de la réglementation ou qu'ils soient établis par la profession bancaire ; ii) réduire l'ampleur des achats liés, par le biais desquels les clients doivent souvent ouvrir un compte courant lorsqu'ils souscrivent un prêt hypothécaire ; iii) favoriser l'amélioration de la qualité des informations et de la communication ; et iv) supprimer les frais de clôture de compte.

Afin d'impulser la mise en œuvre de ces mesures, la Commission européenne a mis sur pied un groupe de travail sur la mobilité des clients dans la DG Marché intérieur et services. Ce groupe soumettra son rapport en septembre 2007 et préconisera l'adoption de mesures au niveau européen. Des interventions ont été effectuées au niveau national. Le délégué souligne toutefois que les banques étaient invitées à proposer leurs propres idées.

Le Président fait savoir que le rapport du Royaume-Uni brosse un tableau assez précis du transfert de comptes. Ce rapport semble toutefois indiquer que les clients de la banque de réseau perçoivent les avantages du changement comme étant faibles. Si le changement de banque n'apporte pas beaucoup d'avantages, pourquoi se préoccuper des frais de transfert de comptes qu'il entraîne ?

Un délégué du Royaume-Uni fait remarquer que les barrières à l'entrée sont considérables. Dans ce contexte, les clients estiment qu'il est difficile de comparer les frais d'une banque à l'autre étant donné qu'il y a une grande diversité de frais, même pour un type de service, comme les comptes courants. La Commission de la concurrence a suggéré un certain nombre de correctifs en Irlande du Nord, consistant notamment à rendre la tarification plus facile à comprendre et à utiliser une terminologie courante. Il faut pousser davantage la réflexion sur l'information fournie aux clients dans les relevés.

Le Président note que les services bancaires personnalisés jouent un rôle non négligeable dans certains pays. Les centrales de risques de crédit et les évaluations financières peuvent être d'une grande utilité dans les pays qui se caractérisent actuellement par les services bancaires personnalisés, en particulier lorsque les centrales de risques de crédit sont exploitées par les banques elles-mêmes. Le Mexique a recensé dans ce domaine une affaire de non-partage d'information. Trois banques, bien que disposant d'un contrat, avaient refusé de communiquer des informations.

Un délégué du Mexique indique que l'affaire était fondée sur des rapports informels de l'agence d'évaluation du crédit. Il est toutefois apparu clairement que bien qu'ayant annulé leur contrat avec une agence d'évaluation du crédit, les trois banques en cause n'avaient pas refusé de fournir des informations. Il semble qu'une société ait tenté d'avoir recours à l'autorité de la concurrence pour se protéger contre ses concurrents.

Le Président observe que la Suisse applique un principe d'identification des clients. Qu'est-ce que cela signifie au juste ?

Un délégué de la Suisse explique que le principe d'identification du client sert à préserver la réputation de la profession bancaire et à faire cesser le blanchiment de capitaux. Ce principe est établi par la Loi sur le blanchiment d'argent. Son objectif est d'établir le propriétaire effectif des actifs. Les banques doivent signaler leurs soupçons de blanchiment. Cela fait peser un fardeau administratif sur les clients – qui doivent produire un document d'identification officiel, par exemple un passeport, pour ouvrir un nouveau compte bancaire. Lorsqu'ils ouvrent un compte sur Internet, les clients doivent transmettre des copies officiellement certifiées de ces documents, ce qui peut se révéler très onéreux. Le délégué remarque

que le principe d'identification des clients peut créer des barrières à l'entrée de banques étrangères. Il y a quelques années, une banque allemande sur Internet a souhaité entrer sur le marché bancaire helvétique. À cause de cette règle, elle a dû coopérer avec d'autres intermédiaires financiers en Suisse afin de garantir l'identité des clients. Cette banque a fini par sortir du marché suisse. Qui plus est, il n'y a actuellement pas de système qui simplifie la procédure d'identification dès lors qu'un client a déjà été identifié par une banque suisse.

Le Président note que ces considérations débouchent sur l'examen d'un problème très important, à savoir le fait qu'un règlement dont les objectifs sont valables puisse avoir par ailleurs des effets indésirables, notamment sur la concurrence. Au Brésil, les frais de transfert de comptes ont récemment été supprimés. Les chèques devaient porter une mention indiquant l'ancienneté du client. Cette initiative visait à rassurer le détaillant sur l'ancienneté du titulaire qui avait fait un chèque. Ce système a toutefois fait augmenter les frais de transfert de comptes, du fait que les clients ne pouvaient plus indiquer depuis combien de temps ils étaient titulaires d'un compte. Le Brésil a suggéré l'adoption d'un module de services normalisé dont le prix serait fixé par la Banque centrale. Les délégués ne craignent-ils pas que cela accroisse les risques d'uniformisation et de collusion ?

Un délégué du Brésil remarque que le risque de collusion a suscité des préoccupations. Les modules normalisés devaient toutefois faciliter les transferts de comptes, ce qui était considéré comme un objectif fort souhaitable.

Le Président souligne qu'en Lituanie, il existe deux centrales de risques de crédit. L'une est exploitée par la Banque centrale, comme c'est également le cas en France et en Italie, et l'autre, qui est privée, contient des informations très détaillées. Le rapport laisse entendre qu'une banque donnée n'aurait pas davantage d'informations que les autres banques sur le risque que présente un de ses clients. Cela signifie-t-il qu'il est facile de changer de banque ? Les frais de transfert de comptes sont-ils moins importants ?

Un délégué de la Lituanie précise que la facilité d'accès aux informations diminue, pour les banques, l'intérêt et la possibilité de disposer d'une clientèle captive. Bien évidemment, les banques effectuent des analyses approfondies pour déterminer les possibilités de financement des nouveaux clients mais néanmoins, la base de données facilite le premier contact entre une banque et une entreprise ou un particulier. Par ailleurs, il est moins onéreux pour les clients d'obtenir des documents concernant leurs emprunts contractés auprès de différentes institutions. Les coûts de cette démarche sont infimes en comparaison de ceux qui sont associés au crédit et au transfert de comptes.

Le Président fait remarquer, s'agissant des frais de transfert de comptes liés aux transactions, que dans certains pays, les clients éprouvent de la difficulté à faire verser leur salaire sur le compte de leur choix. Pour quelle raison les employeurs ne peuvent-ils pas exaucer ce souhait ?

Un délégué du Mexique précise que dans son pays, la plupart des prêts aux particuliers qui ne portent pas sur des biens ou des services sont associés à la paie. La grande majorité des salaires sont déposés dans une banque spécifique désignée par l'employeur. Cela tient entre autres au fait que les frais de virement entre banques sont considérables, de sorte que la centralisation des paiements dans la même banque peut diminuer les frais de virement. Une concentration élevée des banques rend difficile l'entrée de nouveaux acteurs. Les banques ont tendance à fixer des frais d'interchange élevés, ce qui fait que les virements sont onéreux, notamment les transferts électroniques de fonds. Mentionnons également l'existence de coûts d'assistance technique, en particulier pour les petites entreprises. La tendance à traiter avec une seule banque est amplifiée par le fait que les travailleurs ont également tendance à n'avoir qu'un seul système de retraite. La Commission de la concurrence est en train de parachever une étude à ce sujet qui sera publiée sous peu. Les frais de transfert de comptes élevés limitent l'apport de modifications ex post en matière de traitement de la paie.

Le Président demande s'il existe une coopération avec le régulateur à cet égard. Dans l'affirmative, quelle forme prend-elle ?

Un délégué du Mexique répond que dans son pays, l'autorité de réglementation des fonds de pension a demandé la tenue d'une enquête sur les fonds de pension. Dans le secteur bancaire, l'autorité de la concurrence travaille en étroite collaboration avec la Banque centrale, le Trésor et le régulateur sectoriel.

Le Président note que les banques norvégiennes ont élaboré un mécanisme visant à alléger les frais de transfert de comptes que doivent assumer les consommateurs. A-t-on procédé à des analyses de coûts, par exemple des coûts de la mise en œuvre de la portabilité des numéros de compte ? Le mécanisme précité diffère-t-il d'un code de conduite en matière de transfert ?

Un délégué de la Norvège indique que pour répondre à ces questions, il commencera par brosser un tableau de la structure du marché en Norvège. Au total, 30 % des actifs sont contrôlés par des banques étrangères. Les modalités d'accès au système de cartes de paiement par les banques étrangères sont relativement transparentes. Les tarifs sont librement accessibles. Toute banque agréée a accès à ces systèmes. Toutefois, la concentration est plutôt élevée en Norvège. Les quatre principaux groupes bancaires contrôlent environ 70 % des actifs. Bien que ces chiffres soient inférieurs à ceux que l'on retrouve dans les autres pays nordiques, ils demeurent élevés. L'un des problèmes recensés par l'autorité de la concurrence est qu'en Norvège, les clients qui veulent transférer un compte de prêt à la consommation doivent acquitter des frais de notification substantiels. L'autorité de la concurrence a estimé que ces frais étaient trop élevés au regard du coût des rapports afférents. Les frais sont maintenant moins élevés. Les autorités de la concurrence des pays nordiques ont proposé un code de conduite en matière de transfert qui établirait des règles communes concernant les modalités de transfert de comptes. Pour ce qui est de la portabilité du numéro, l'autorité financière et les banques ont laissé entendre que son introduction coûterait très cher. Cette mesure est néanmoins toujours considérée comme possible.

Le Président demande des précisions sur le sens de « code de conduite » : émane-t-il du législateur, du régulateur ou d'un acteur privé ?

Un délégué de la Norvège indique que le code de conduite en matière de transfert qui existe en Norvège résulte d'une initiative des pays nordiques. Il a été mis en œuvre en Irlande et aux Pays-Bas et a été mentionné dans un rapport de l'Observatoire du commerce électronique et par la Commission européenne comme étant une mesure envisageable. Le code de conduite en matière de transfert constituerait un ensemble de principes communs qui s'appliqueraient lorsque des clients veulent transférer un compte de prêt vers une autre banque de réseau.

Le Président passe au cas de l'Italie. L'Italie a engagé récemment une enquête sur les frais de transfert de comptes. Selon la délégation, quels seront les effets de l'enquête sectorielle ?

Un délégué de l'Italie déclare que l'enquête avance. Selon les premières constatations, les frais de transfert de comptes, et notamment les coûts de sortie, sont très élevés. Cela entraîne une réduction globale de l'élasticité de la demande. L'annonce de l'ouverture de l'enquête a provoqué un changement d'attitude chez les deux groupes d'acteurs présents sur le marché. En effet, de nombreuses banques ont réagi en réduisant les coûts de sortie et en s'engageant à ne pas imposer de frais. La publication des résultats de l'enquête devrait mieux sensibiliser les consommateurs de services financiers à leurs droits. L'enquête sectorielle cherche à recenser des faits concrets qui pourraient servir dans les activités de sensibilisation.

Le Président note que l'une des principales constatations faites en Italie est que l'ouverture de l'enquête a induit la prise de mesures positives par les acteurs du marché. Cela signifie que de bonnes initiatives sont possibles même en l'absence de mesures coercitives. L'annonce d'une enquête sectorielle

peut avoir des effets. Soulignons que s'il avait existé une forte concurrence du côté de la demande, l'annonce n'en aurait pas eu. Le Président passe à la République tchèque. Le Bureau de la concurrence a engagé une action contre les trois principales banques du pays relativement aux frais de transfert de comptes. Le ministère des Finances est ensuite intervenu pour fournir davantage d'orientations aux banques. Y a-t-il eu une coordination de l'action entre l'autorité de la concurrence et le ministre des Finances ?

Un délégué de la République tchèque indique que le ministère des Finances a pris le relais du Bureau de la concurrence. Le ministère des Finances a amorcé un dialogue direct avec les banques, auxquelles il a distribué un document de consultation. Il souhaitait faire participer l'autorité de la concurrence, qui ne pouvait toutefois pas engager un dialogue avec les banques au sujet des frais qu'il conviendrait d'imposer. L'autorité a prêté son concours au ministère des Finances sur certains points qu'elle a examinés sous l'angle de la concurrence, mais sans qu'il y ait de coordination étroite avec le ministère.

Le Président amorce la discussion sur les frais de transfert de comptes.

Un délégué de l'Australie mentionne que cette question a pris une dimension politique en Australie et se félicite de l'attention que l'OCDE porte au problème. Il déplore toutefois l'impossibilité d'organiser une table ronde avec le Comité des marchés financiers. Le délégué souhaite confirmer l'impression que lui a faite la documentation présentée, à savoir que dans la plupart des marchés, la principale source des frais de transfert de comptes semble associée au « dérangement » occasionné. Il demande également si la portabilité du numéro de compte a déjà été mise en œuvre quelque part. Existe-t-il des cas concrets de portabilité du numéro de compte ? Il demande si les modules de transfert sont généralement centrés sur la suppression des frais de transfert de comptes ou sur leur report.

Hans Degryse indique que les coûts contractuels peuvent varier considérablement. Aux Pays-Bas, transférer un prêt hypothécaire nécessite le paiement de nouveaux honoraires de notaire. Les coûts psychologiques peuvent également être très élevés. Une faible mobilité n'est pas nécessairement le résultat de frais de transfert de comptes élevés mais peut aussi aller de pair avec de tels frais. Il y aurait peut-être lieu de supprimer les frais de transfert de comptes. Le professeur Degryse ignore si la portabilité du numéro de compte a d'ores et déjà été mise en œuvre quelque part. En Belgique, le transfert vers une autre succursale nécessite la modification des numéros de comptes, ce qui signifie peut-être que la portabilité des numéros de compte comporte des contraintes techniques. Les clients qui ne transfèrent pas leurs comptes pourraient bénéficier du fait que les autres le font ou peuvent le faire facilement.

Un délégué de la Corée affirme que les frais de transfert de comptes sont importants mais que les banques ne souhaitent pas réduire ces coûts en recourant à des modules de transfert. Comment mettre en œuvre de telles mesures ?

Hans Degryse souligne qu'aux Pays-Bas, des modules de transfert ont été élaborés à la suite d'une enquête.

Un délégué de la Norvège précise que d'après les banques, le système de numéros concerne la banque. Les quatre premiers chiffres du numéro de compte identifient la banque. Si les informations contenues dans le numéro de compte sont diluées, il sera plus difficile d'identifier la banque. Les autres chiffres de la séquence ont également un sens. Il serait donc difficile de mettre en œuvre la portabilité du numéro de compte.

Le Président avance que l'identification de la banque n'est peut-être pas utile pour toutes les parties à une transaction. Les parties pour lesquelles cette information est utile pourraient peut-être identifier la banque à l'aide de ce numéro.

Un délégué de l'Irlande revient à la question de la délégation de la Corée sur la possibilité des modules de transfert. En Irlande, une enquête sectorielle a conduit les banques à concevoir une norme relative à un module de transfert avant même la publication du rapport d'enquête sectorielle. La perspective de se voir imposer un code de conduite en matière de transfert par le régulateur financier a incité les banques à en élaborer un elles-mêmes, ce qui a entraîné une réduction des frais de transfert de comptes. L'une des principales craintes des consommateurs était celle de sauter un remboursement de prêt hypothécaire. En Irlande, les deux banques concernées doivent veiller à ce que le processus se déroule de manière qu'aucun paiement ne soit sauté. Les banques ont réagi aux modules de transfert en instaurant des prix beaucoup plus faibles et des comptes courants sans frais. L'effet d'entraînement s'est traduit par une meilleure acceptation du concept de transfert de comptes. Le transfert de crédits et de prêts hypothécaires a suscité davantage de discussions, qui ont abouti à une concurrence accrue dans d'autres domaines.

Un délégué du Canada aborde la question de la mobilité minimum et évoque la possibilité d'une discrimination par les prix. Comment la concurrence vigoureuse pour l'obtention de nouveaux clients va-t-elle de pair avec le fait qu'au Royaume-Uni, par exemple, on observe que les clients ne semblent pas tellement intéressés aux transferts de comptes ? Au Canada, la part de marché des grandes banques ne varie pas de plus de 1 % par an.

Un délégué de la Commission européenne déclare que pour des groupes particuliers de clients comme les étudiants et les diplômés récents, des conditions spéciales s'appliquent pendant un certain temps et que les conditions normales s'appliquent ensuite. Le solde créditeur des comptes courants est habituellement très faible. Les nouveaux clients sur le marché peuvent toutefois donner lieu à des subventions croisées étant donné qu'ils ont tendance à rester. Il existe une forte convergence au titre des services de comptes courants. L'enquête menée par l'autorité irlandaise sur les comportements des clients en matière de transfert de comptes donne à penser que de nombreux clients estiment qu'il existe d'importantes similarités.

Un délégué du Royaume-Uni déclare que dans son étude sur les services bancaires aux PME, la Commission européenne a constaté que lorsque les PME annoncent à leur banque leur intention de changer de banque, celle-ci engage des négociations en vue de proposer différents tarifs et services. Mais lorsqu'il existe une telle discrimination par les prix, les avantages du transfert de comptes pour ceux qui n'envisagent pas d'y recourir peuvent être inexistants. Autrement dit, lorsqu'il y a discrimination par les prix, il se peut que les clients qui transfèrent leurs comptes n'apportent aucune protection aux autres clients.

3. Conflit d'intérêt

Le Président remarque que les conflits d'intérêt risquent de poser un grave problème dans le cadre des services bancaires pour les PME. Dans une affaire récente, des banques qui détenaient une grande partie des créances d'une société ont recommandé à des non-clients d'acheter des titres de cette société, qui éprouvait des difficultés financières, avant que ces difficultés soient entièrement connues du public. Dans cette affaire, les banques se trouvaient en conflit d'intérêt. Le Danemark exige qu'une banque qui pourrait retirer d'une transaction un avantage qui s'ajouterait à son revenu ordinaire en informe le client. Cela relève de la protection des intérêts des consommateurs. Un rapport pour 2006 a été publié conjointement avec l'autorité de la concurrence, l'autorité de contrôle financier et le ministère de l'Économie et des Affaires des entreprises.

Un délégué du Danemark mentionne que la participation de l'autorité de la concurrence s'explique par le fait que celle-ci, dans un rapport de 2002, a consacré un chapitre à l'examen des services financiers. En 2005, l'autorité de la concurrence a estimé qu'une révision du chapitre en question s'imposait et a invité l'autorité de contrôle financier et le ministère à prêter leur concours à la préparation du rapport. Le

rapport de 2006 s'attachait principalement aux fonds de placement et c'est pourquoi il a été jugé pertinent de faire intervenir l'autorité de contrôle financier, qui a essentiellement joué un rôle de sensibilisation. Environ quatre ou cinq recommandations ont été formulées, dont une, qui concernait les règles fiscales, était destinée aux autorités fiscales. Les fonds de placement devraient fournir des informations détaillées sur le coût des fonds. Les règles sont intégrées dans un décret d'application. Il n'y a pas encore eu d'affaires de violation des règles relatives aux conflits d'intérêt.

Le Président déclare que le délai de réaction en matière réglementaire doit être le plus court possible. Si le régulateur accorde rapidement des autorisations aux banques qu'il connaît bien et met plus de temps à traiter les demandes de celles qu'il connaît moins bien, les résultats des fusions et acquisitions peuvent s'en trouver faussés. Il est donc important de ne pas s'attacher seulement aux règles mais aussi aux modalités exactes de leur application. En particulier, lorsque les délais sont longs, la mise en œuvre de la réglementation est très souple. Il est de loin préférable de fixer des délais courts tout en prévoyant la possibilité de délais plus longs, qui soient justifiés.

4. Relations entre l'autorité de la concurrence et l'autorité de contrôle financier

Les compétences en matière de lutte antitrust sont généralement déplacées vers les autorités de la concurrence mais le contrôle prudentiel incombe souvent aux autorités de contrôle financier en matière de fusions et acquisitions. Au Royaume-Uni, il existe une coopération formelle entre l'OFT, le bureau de la concurrence, et la FSA, qui est l'autorité de contrôle financier. Le **Président** note qu'en Pologne, les processus d'autorisation des fusions bancaires par l'autorité de la concurrence et l'autorité de contrôle financier sont distincts et il ne semble pas y avoir de coopération formelle.

Un délégué de la Pologne note que les deux domaines sont entièrement distincts. En conséquence, aucun acteur ne cherche à savoir ce que fait l'autre.

Le Président note qu'en Russie, l'autorité antitrust et la Banque centrale échangent des informations sur le crédit aux particuliers mais on ne sait pas au juste, d'après le rapport, quel est leur rôle dans les affaires de fusion. En outre, la gestion de fonds publics nécessite le recours à une procédure d'appel d'offres. Quels seraient les points examinés dans le cas des fusions ?

Un délégué de la Russie indique qu'il y a un échange considérable d'informations entre l'autorité de la concurrence et la Banque centrale. Il existe un accord formel de coopération entre ces deux entités. Les fusions bancaires ne sont pas autorisées sans l'autorisation préalable de l'autorité russe de la concurrence. Sept membres de la Banque centrale et sept membres de l'autorité de la concurrence siègent à un comité. L'autorité de la concurrence tente actuellement d'introduire le même degré de parité avec l'autorité de contrôle financier et l'autorité de contrôle des assurances. Elle envisage également d'organiser des marchés publics et des appels d'offres lorsqu'une adjudication publique est tenue. Le service de lutte contre les monopoles est chargé du contrôle de ces dispositions. Les contrevenants sont passibles de sanctions administratives et les contrats peuvent être annulés par les tribunaux.

Le Président souligne qu'en Turquie, l'autorité de la concurrence est exclue de fait du traitement des fusions bancaires. En outre, le marché n'est pas défini en fonction de la concurrence.

Un délégué de la Turquie mentionne qu'il est en premier lieu utile de noter que même si les fusions bancaires ne font pas l'objet d'une notification, les parties notifient la transaction lorsqu'elles détiennent une participation dans des sociétés affiliées. Pour l'heure, il n'y a pas d'accord de coopération volontaire entre l'autorité de la concurrence et l'autorité de contrôle du secteur financier. Jusqu'à présent, aucune partie n'a eu besoin de recourir à ce type d'accord. Il existe maintenant un comité chargé d'examiner les questions liées aux marchés financiers, touchant notamment la concurrence, et qui fera rapport au Cabinet.

Le Président note que l'autorité de la concurrence du Taipei chinois a émis une déclaration d'orientation relative à différents types d'activités menées par les institutions financières.

Un délégué du Taipei chinois indique que l'autorité de la concurrence assure directement le respect de la loi mais énonce des principes directeurs à l'intention de secteurs spécifiques. Jusqu'à présent, certaines décisions se sont directement fondées sur la loi. Les informations sur les clients sont communiquées directement. La législation sur la concurrence est très succincte. Les contrats frauduleux ou déloyaux sont interdits.

Le Président mentionne que le rapport de la Hongrie indique que l'autorité de la concurrence et les régulateurs financiers coopèrent fréquemment. Cette coopération est-elle volontaire ou régie par la législation ?

Un délégué de la Hongrie déclare que la coopération n'est pas obligatoire étant donné qu'elle n'est pas fondée sur des prescriptions de la législation. Avant de donner de plus amples précisions sur la coopération, il souhaite préciser que la Hongrie possède une banque nationale et une autorité de contrôle. Il y a des cas de coopération et des projets de recherche communs. L'autorité de la concurrence a signé avec l'autorité de contrôle financier un accord de coopération qui est actuellement réexaminé. La coopération s'exerce dans deux domaines. Un vaste projet concernant les transferts de comptes est actuellement mené par l'autorité de la concurrence et la Banque centrale. Un autre exemple de travail conjoint est le développement des connaissances des consommateurs dans le domaine financier. Ce travail est d'une grande utilité.

Les enquêtes concernant les fusions sont menées en parallèle. Il y a parfois échange d'informations. Toutefois, les enquêtes n'aboutissent pas nécessairement en même temps.

Le Président fait observer qu'en Israël, les frais de transfert de comptes ont été plafonnés à la suite d'une enquête du Parlement. L'autorité de la concurrence a-t-elle participé à cette enquête ?

Un délégué d'Israël indique que les services financiers israéliens sont relativement concentrés. Des efforts ont été déployés pour procéder à une restructuration, afin de rehausser la concurrence. La Banque centrale a introduit le « transfert simplifié ». L'autorité de la concurrence a participé à l'élaboration du concept de transfert simplifié mais n'a pas participé à la fixation des frais. Cette tâche a incombé à la Banque centrale, de même qu'aux services financiers et aux services d'assurance du ministère des Finances. Un comité auquel siège l'autorité de la concurrence permet à ces acteurs de se rencontrer. En conséquence, l'information circule bien. L'autorité antitrust sollicite des conseils lorsqu'elle examine des fusions. Dans certains cas, ses préoccupations diffèrent de celles des régulateurs.

Un délégué du Comité consultatif économique et industriel souhaite faire quelques observations au sujet du travail effectué dans la matinée. Les institutions de crédit et les institutions financières peuvent avoir de la difficulté à accéder à des marchés situés hors de leur propre pays. L'une des barrières qui sont posées est celle du cadre réglementaire. En ce qui concerne le transfert de comptes, certains pays ont réussi dans une certaine mesure à élaborer des mécanismes volontaires. À la lumière de ce qui a été dit aujourd'hui, l'enquête réalisée auprès des clients qui effectuent des transferts de comptes révèle que cette démarche n'est pas aussi difficile qu'il y paraît. Il importe que les autorités de la concurrence et les régulateurs financiers travaillent en étroite coopération. L'examen des coûts de mise en œuvre des programmes relatifs au transfert de comptes devrait dans l'idéal être réalisé par ces deux acteurs.

Le Président admet que la question de l'introduction de la portabilité du numéro de compte devrait prendre en compte le savoir-faire technique des régulateurs et des banques, mais que les responsables de

l'élaboration des politiques doivent être prudents lorsqu'ils interprètent les préoccupations du secteur, qui sont parfois liées à la crainte d'une concurrence accrue et non d'une augmentation des coûts.

5. Mise en œuvre de la législation sur la concurrence

Le Président note qu'aux États-Unis, les conséquences des fusions bancaires pour la concurrence sont évaluées tant par l'autorité de la concurrence que par la *Federal Reserve Bank*. La délégation américaine peut-elle décrire la structure institutionnelle et donner une évaluation de son efficacité ? Au cours des dernières années, toutes les agences, à l'échelle internationale, ont adopté le critère de l'augmentation faible mais non négligeable et non transitoire des prix (SSNIP - *small significant non-transitory increase in prices*). Pourquoi la *Federal Reserve Bank* reste-t-elle attachée à l'approche commerciale axée sur le regroupement ?

Un délégué des États-Unis déclare que lorsqu'une fusion a été autorisée par le régulateur, l'autorité de la concurrence dispose de 30 jours pour intenter une action devant le *Federal Court* en vue de bloquer la transaction. Si l'autorité de la concurrence n'exerce pas de recours, la fusion bancaire est considérée comme approuvée et l'autorité de la concurrence ne peut plus contester la décision pour des motifs liés à la concurrence. Aux États-Unis, les agences de régulation du secteur bancaire et le ministère de la Justice participent à la mise en œuvre du droit de la concurrence. Lors des examens de la situation de la concurrence, il y a une coopération étroite entre les organismes de régulation du secteur bancaire et le ministère de la Justice. Du fait que les principes directeurs en matière de fusions bancaires et les décisions de l'agence de régulation sont diffusés publiquement, la procédure est relativement transparente. En général, parce qu'elles tiennent à conclure leurs marchés rapidement, les banques se montrent coopératives dans le cadre du processus d'examen de la situation de la concurrence afin d'éviter le recours à des demandes d'enquêtes au titre de la procédure civile et à des jugements d'expédient. Lorsqu'une cession d'actifs est exigée, les conventions sont jugées préférables à l'intervention des tribunaux (par exemple, par le biais de jugements d'expédient).

De nombreuses décisions ont déjà été rendues pour déterminer quel serait le programme de cession d'actifs adéquat pour compenser la perte de concurrence due à une fusion. En général, les programmes de cession d'actifs exigent une prise en compte appropriée de différents critères, par exemple l'emplacement et la taille des succursales, et l'absence de restriction sur l'embauche du personnel de succursale déjà en poste. Les données concernant les cessions d'actifs, même dans les transactions très importantes, montrent que le processus fonctionne très bien. L'approche du marché privilégiée par l'autorité de la concurrence est celle des produits désagrégés et celle des organismes de régulation bancaire, le groupe de services bancaires. Dans la pratique, cette distinction n'a pas eu d'incidence notable sur le résultat final.

Le Président note que le rapport de la France fait référence à la décision de 2000 du Conseil de la concurrence au sujet des taux hypothécaires. Quel rôle a joué la Banque de France ?

Un délégué de la France mentionne que des banques ayant conclu des ententes sur les marges ont écopé d'une amende de 175 millions EUR. La Banque de France n'a pas joué de rôle particulier étant donné que le secteur bancaire n'est pas exempté des règles normales relatives à la concurrence.

Le Président déclare que la discussion sur les frais de transfert de comptes a été utile. Il propose de réunir des informations sur les modules de transfert auprès des pays qui en ont mis en oeuvre. Si la portabilité du numéro de compte peut être considérée comme un objectif à long terme, il est possible de réaliser des progrès sans tarder par le biais des modules de transfert. La collecte d'informations auprès de différents pays sur les méthodes de mise en œuvre des modules de transfert pourrait contribuer à l'instauration de bonnes pratiques dans ce domaine. On pourrait par exemple réunir des informations détaillées sur les codes de conduite en matière de transfert et les modules de transfert.

Pour conclure, le Président remarque que les frais de transfert de comptes constituent un aspect important de la concurrence dans le secteur de la banque de réseau, bien que d'autres aspects soient certainement tout aussi importants. Les frais de transfert de comptes sont de deux ordres : les frais d'information et les frais de transaction. Les centrales de risques de crédit sont utiles. Le rapport du Royaume-Uni mentionne que les transferts de comptes sont rares, en partie parce que les consommateurs estiment qu'ils ne présentent pas d'avantages notables. Le fait que certaines personnes puissent transférer leurs comptes devrait inciter les banques à améliorer leur comportement et à ne pas négocier avec les clients qui annoncent leur intention de transférer leurs comptes. Très souvent, il n'est pas nécessaire que la législation institue des modules de transfert, du fait que ce type de service peut découler de mesures volontaires, comme c'est le cas en Hongrie. En Irlande, le régulateur financier est chargé de la protection des consommateurs. Cela peut se révéler utile. Le Président fait enfin remarquer que même une simple enquête sectorielle peut avoir un effet non négligeable sur le comportement des banques. Les relations bancaires sont fondées sur la confiance et les banques n'aiment pas être perçues négativement. Le simple fait qu'une enquête soit lancée peut suffire à inciter les banques à modifier des comportements de nature à susciter des problèmes.