



Submission to the Irish Financial Services Regulatory Authority: Consultation on Consumer Protection Code (CP10)

Submission S/05/003

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The Competition Authority
An tÚdarás Iomaíochta

1. Introduction

1. This is the Competition Authority's ('the Authority') response to the Irish Financial Services Regulatory Authority's ('IFSRA') consultation on the proposed Consumer Code ('the Code'). The Authority welcomes the opportunity to comment on this important document.
2. Since late 2002 the Authority has focussed a considerable amount of its advocacy efforts on competition issues arising in the retail financial services sector. In recent months the Authority has published two relevant reports:
 - Competition in the (non-investment) Banking Sector ('the Banking Study') Preliminary Report published by The Competition Authority, Dec 2004¹; and
 - Competition Issues in the (non-life) Insurance Market ('the Insurance Study') Final Report published by The Competition Authority, March 2005.²

This submission draws on these reports.

3. The structure of the submission is as follows:
 - Section 2 addresses a number of the specific questions posed in the consultation document – responses are not provided to all questions posed, only those where the Authority believes it has competency;
 - Section 3 turns to the specifics of the Code and tries to tie in a number of the recommendations developed in the Banking Study and the Insurance Study; and
 - Section 4 makes some concluding comments.

¹ Available at <http://www.tca.ie/banking.html>

² Available at <http://www.tca.ie/insurance.html>

2. Responses to Questions (Part 1)

Credit Unions

4. At present, when providing services additional to their 'core services' (i.e., savings and loans services) credit unions must comply with existing codes that apply to the provision of those services (e.g., insurance intermediation). Existing codes, however, do not apply at present to the core services that credit unions provide.
5. It is IFSRA's view that *"the Code should apply to all services provided by regulated entities, including credit unions, because credit union members are entitled to the same protections afforded customers of other financial services providers."* Moreover, IFSRA are currently developing a series of enhancements to the supervision of credit unions.
6. IFSRA propose that *"the Code will apply to credit unions when providing non-core services only"*, but add that during 2005 they *"intend to commence discussions with the credit union movement as to how to apply the Code to other areas of credit union business."* IFSRA anticipates that the Code will apply, at least to some extent, to credit unions in 2006.

Q *Please let us know the extent to which you think the Code should apply to credit unions and how soon it should apply.*

7. The Authority would agree that consumers of credit union services are entitled to the same protection as other financial services consumers. However, it is important to note that 'credit unions' are not a homogeneous group, but are in fact extremely heterogeneous in terms of balance sheet assets, sophistication of operations, numbers and types of staff, pace of development and innovation in service provision.
8. For this reason, it may not be appropriate to treat all credit unions in the same fashion. For example, some credit unions are so small in terms of number of members, balance sheet assets and staff numbers, that compliance with every aspect of the Code, may prove excessively burdensome. Similar arguments may apply to small credit unions as apply to moneylenders. Accordingly, a modified version of the Code may be appropriate. In contrast, other credit unions are significant providers of financial services with large membership, significant balance sheet assets and staff numbers and as such should be subject to the Code in its entirety. Making distinctions between credit unions may, however, require significant IFSRA resources.
9. If a decision is taken not to apply the Code in its entirety to credit unions, or to certain classes of credit unions, then measures should be taken to ensure that consumers of their services should be fully aware that they are not as protected as consumers of financial services from providers who are subject to the Code in its entirety.
10. It is also worth noting that if credit unions are to be subject to the same level of supervision as that of other credit institutions, then the legislation which details the kinds of services which they may provide should be relaxed to allow them a greater degree of flexibility in the kinds of services they may wish to provide.

Unsolicited Contact ('Cold-calling')

11. IFSRA has consulted on the issue of financial service providers 'cold-calling'. According to IFSRA it *"was generally accepted that, in the interests of the prevention of pressure selling to customers, there is a need for some restrictions on cold-calling"*, but that there is a counter argument that such restrictions might act as a barrier to entry and accordingly may impede competition. In particular, there was a concern *"to ensure that some providers do not gain an unfair advantage over others on the basis of size or the range of services they provide."*
12. Under existing rules, cold-calling is allowed where *"the regulated entity has within the previous twelve months, provided advice or a financial service to the customer"*. IFSRA note that it *"has been suggested that this permits a firm to contact a person to offer a product totally unrelated to the existing service and favours the larger firms"*. The Code attempts to address this issue by requiring that the previous service must be *"similar to the proposed purpose of the cold-call"*.

Q *Do you agree that the current rules favour the larger providers?*

Q *If you agree, do you think the proposed change can resolve the difficulty?*

Q *If not, what rules would you like to see included in the Code?*

13. On the issue of whether restrictions on cold-calling act as a barrier to entry, it may be worth noting the following. Firms seeking to enter markets or expand into closely related markets have many possible strategies, e.g., advertising and other forms of product promotion. Cold-calling is one such strategy. To the extent that restrictions on cold-calling prevent firms using a particular promotional tool, they act as a barrier to entry. Such restrictions may also act as a barrier to rivalry – reducing competition between the existing financial service providers. In general, it is difficult to see how any restriction other than an outright ban on cold-calling could avoid distortionary effects on financial services markets, though it may be possible to minimize distortionary effects.
14. Under the current rule, new entrants to the financial services market are immediately faced with a disadvantage of not being able to cold-call any potential customers. The current rule also implies that providers with narrower product ranges have less opportunities to cross-sell their products. Inserting the phrase *"similar to the proposed purpose of the cold-call"* may go some way toward alleviating these concerns. (The use of the word 'similar' is a somewhat vague and some additional guidance may be appropriate). However, by allowing cold calls to be made only within product markets (and not across product markets), this new restriction could act as a disincentive for incumbent financial institutions and intermediaries to enter new markets, and encourage them to focus on particular markets or market segments, thus dampening competition between existing competitors.

Financial Access

15. IFSRA is concerned with the issue of financial access for the elderly or “those without access to or familiarity with technology and the specific forms of identity required by financial institutions to open accounts.” IFSRA addresses this issue in the Code through General Principle 11 and Common Rules 1 and 2.

General Principle 11: A regulated entity shall ensure that in all its regulated business activities it does not, through its policies, procedures, or working practices, create a barrier of access to financial services.

Common Rule 1: A regulated entity should not deny a person access to financial services solely on the grounds that they do not possess a particular type of specified identification documentation.

Common Rule 2: A regulated entity must ensure that its use of technology does not, inadvertently or otherwise, result in a barrier of access to financial services for those without access to computers.

16. Together, these provisions of the Code “require regulated entities to broaden the types of identification documentation acceptable for opening an account by using all forms of documentation referred to in the Prevention of Money Laundering Guidelines”. They also require that “the use of technology should not be used as a barrier to access.”

Q Do you believe that the relevant provisions of the Code will give vulnerable persons easier access to financial services and a better understanding of any risks they might incur?

Q Can a code be developed that would prevent the use of technology from acting as a barrier to access while still facilitating and encouraging the use of different delivery channels? Could such rules prevent firms from delivering their services solely via the Internet?

17. The Authority welcomes any requirements that would broaden the types of identification that financial institutions must accept as forms of identification.
18. As the Code is currently drafted, it would appear to require that financial institutions maintain some form of physical/traditional access channel, i.e., a branch. Such a requirement would tend to sustain the importance of the branch network as a delivery channel for financial services. The draft Code would appear to prevent the entry of providers seeking to deliver their services only via non-traditional channels, e.g., over the Internet. “Internet-only banks” currently operate in a number of European countries (e.g. the UK, Netherlands, Sweden) and yet not in Ireland. The Authority would be concerned about any regulation which might promote this situation.
19. A branch network, or the requirement to maintain a branch network to remain competitive, is a barrier to entry. The adoption of new technologies is however eroding the importance of the branch network and therefore barriers to entry to the sector. The Code may have the effect of halting this natural progression.
20. Furthermore, it is unclear how Common Rule 2 of the Code would operate in practice. For example, how extensive would a branch network have to be to

ensure sufficient coverage to allow reasonable access? Given that different providers vary in the extent to which they have geographical coverage over the State, do current providers have sufficiently extensive branch networks to ensure reasonable access?

21. This issue is really about placing a universal service obligation on providers. Achieving universal service provision of any kind is difficult without distorting market outcomes and compromising efficiency, both allocative and productive. For this reason, this issue deserves an extremely thorough treatment and analysis. In particular, while the solution provided in the draft Code is attractive in its simplicity, it is likely not the most effective tool available to IFSRA to achieve its objective. The Authority would encourage IFSRA to seek an alternative way to encourage financial access and inclusion.

Voluntary Codes

22. In a consultation, held by IFSRA in 2004, the issue of voluntary codes was raised. According to IFSRA, *"many respondents felt that voluntary codes have a role in a regulatory framework by complementing the statutory codes."* However, questions were raised about the enforcement of these voluntary codes.
23. On the 31st January 2005, the members of the Irish Bankers Federation launched a voluntary switching code ('the IBF Code'). IFSRA note that they *"will monitor the operation of the switching code, and in order to keep informed of the progress of its implementation and effectiveness will attend, in an observer capacity, meetings of the IBF sub-committee on switching."* Further, IFSRA intend *"to publish information on the effectiveness of the switching code, and on the performance of the individual banks in this regard, in the report of the Consumer Director that will be contained in the Annual Report of the Financial Regulator for the year ended 31 December 2005."*
24. In the context of the Code, IFSRA believes that:
- *"the issue of effective enforcement would be facilitated by making failure to comply with the switching code subject to the administrative sanctions regime";* and
 - effective enforcement *"may be best accomplished by incorporating the switching code as it now exists into the Code."*

IFSRA consider that *"any additional costs which compliance with a statutory code would impose on firms, over and above the costs which compliance with a voluntary code would carry, should be negligible."*

25. IFSRA's consultation seeks views on *"whether it is preferable that the issue of switching should be incorporated into the Code."*

Q ***How do you think compliance with the voluntary code could be enforced?***

Q ***Do you think that the switching code should be incorporated into the Code at this time?***

26. In its submission to the August 2003 Banking Study Consultation, Indecon International Economic Consultants provided survey results regarding the views of Irish consumers on the importance of several potential barriers to moving accounts from one financial institution to another. 52% of survey respondents rated the difficulties in rearranging standing orders and/or direct debits as either an extremely or fairly important factor. Furthermore, 64% responded that the general inconvenience of moving or switching suppliers was an extremely or fairly important barrier. Finally, 61% responded that a lack of information on the procedures and administrative hurdles required to switch suppliers was either an extremely or fairly important barrier.
27. Having an effective Switching Code is an important part of enabling consumers to take advantage of the options available to them in the marketplace. Another submission made to the Authority during the Banking Study cited data showing that personal current account switching in the UK nearly doubled from 460,000 in 1999 to 920,000 in 2003 after switching was made easier by the implementation of a revised British Banking Code in January 2001.
28. Thus, the Authority welcomes the IBF Code and believes that an effective Code will have a significant impact on the sector.
29. The Authority notes that The British Bankers' Association also has a switching code. This switching code is similar to the Irish Bankers' Federation Switching Code in that it requires institutions to explain the process and also requires the old bank to provide information to the new bank regarding direct debits and standing orders. The British and Irish codes are also similar in that they both include a pledge to have the new account operational in 10 working days. The earlier British code was modified, however, so that as of 1 August 2003, the British banks have pledged to transfer direct debit and standing order *information* within three working days; a different pledge to the promise of transferring direct debit and standing order *activity* within seven days in the Irish Bankers' Federation code.
30. The author's of the report by economic consultants LECG³, part of the Authority's Banking Study, made the following recommendations with respect to the IBF Code:

Recommendation P1: The Irish Bankers' Federation should update its Switching Code with the goal of reducing the timescales. A modified Switching Code should be released by the end of 2005.

Recommendation P2: In its monitoring of the Switching Code, IFSRA should make public its findings regarding the Switching Code's effectiveness. Any such report on the Code's effectiveness should include the performance of individual banks in completing their functions under the Switching Code in an accurate and timely manner. IFSRA's monitoring of the Switching Code should be on-going and not a one-off assessment. IFSRA's initial reporting on the Switching Code's effectiveness should be released by June 2005 and should be updated prior to the first notifications called for in Recommendation P10.

³ "Study of Competition in the Provision of Non-Investment Banking Services in Ireland: report and Recommendations" carried out by LECG, consultants to the Authority, available at www.tca.ie/banking/html

Recommendation P17: The Irish Bankers' Federation should modify its Switching Code to include the transfer of copies of the identification information necessary for money laundering held by the old institution to the new institution.

Recommendation S1: The Irish Bankers' Federation should expand its Switching Code to include SME customers. This should be accomplished within six months of the release of the Authority's final report.

Recommendation S2: IFSRA should monitor the implementation of the business code discussed in Recommendation S1 and make public its findings regarding its effectiveness. This public study should include the performance of individual banks in completing their functions under the business code in an accurate and timely manner. IFSRA's monitoring of the business code should be on-going and not a one-off assessment.

31. The Competition Authority believes the IBF Code can be improved. In particular, the IBF Code should be expanded to cover SMEs.
32. On the question of ensuring that enforcement of the IBF Code is effective, making failure to comply with the switching code subject to the administrative sanctions regime is likely to be more effective than simply relying on 'reputational effects', i.e., expecting a provider to respond to a 'name-and-shame' policy.
33. Incorporating the IBF Switching Code, or a revised version of it, into the Consumer Code, would have the additional benefit that it could be modified as required, but importantly, in a timely fashion. This would be of particular relevance where a new institution (whether a bank, credit union, or other financial institution) sought to enter the market for current accounts. Industry interests have not proven themselves quick to implement consumer protection measures and it is arguable that the current IBF Code has only materialised because of the unprecedented attention the sector has received in recent times from regulators and other consumer advocates.
34. This said, the Authority refrains from giving a final view on these issues at the present time. The Authority has recently held a consultation on this and a number of other issues and is at present finalising its views. The Authority's final recommendation in this regard will be made when it publishes its final report on competition in the non-investment banking sector during the summer of 2005.

3. Comments on the Code (Part 2)

35. This section details some of the recommendations contained in the Banking Study and Insurance Study, which IFSRA might consider incorporating into the Code. Considerable detailed analysis supporting these recommendations is contained in the Studies.

Chapter 3 – Banking Products and Services

36. In the Banking Study, the LECG consultants to the Authority made the following recommendations which might also be incorporated into the Code. For example:

Recommendation P11: As part of its consumer protection function, IFSRA should require banks to provide interest rate information for PCAs and other personal accounts to their actual and potential customers. This includes, for example, posting PCA and other personal account interest rate information on bank websites. Institutions should also be required to provide the account's current interest rate on each statement issued to a customer. Banks should make this information available within the next six months.

Recommendation P14: Banks should make available upon customer request a statement providing at least a full, one-year account history. This account history should be provided in either electronic or hard copy form at the customer's option. Each bank should make this service available to its customers prior to the lifting of its fee and charge regulation under the Consumer Credit Act, 1995, so that consumers can use this information to support credit applications if they decide to switch suppliers when the regulation of the fees and charges for their accounts ends. In any event, each bank should offer this service by the end of 2005.

Recommendation P14: Banks should make available upon customer request a statement providing at least a full, three-year account history for any business loan, deposit account, or current account. At a minimum, this information should be made available in electronic format. Each bank should make this service available to its business customers prior to the lifting of its fee and charge regulation under the Consumer Credit Act, 1995, so that businesses can use this information to support credit applications if they decide to switch suppliers when the regulation of the fees and charges for their accounts ends. In any event, each bank should offer this service by the end of 2005.

37. As mentioned earlier, the Authority has recently held a consultation and is currently finalising its views on the recommendations contained in the Banking Study. The Authority's final recommendations will be made when it publishes its final report on competition in the non-investment banking sector during the summer of 2005.

Chapter 5 – Insurance Products and Services

38. From the Insurance Study, the following recommendations of the Authority might be incorporated into the Code. For example:

Recommendation I1: IFSRA should modify its code of conduct for insurers to require that renewal notices for liability insurance be sent by insurers so as to reach buyers at least eight weeks prior to the expiration of the buyer's existing policy.

Recommendation I2: IFSRA should modify its code of conduct for liability insurers to require that, if a renewal notice is received late under the framework set out in Recommendation I1, then the buyer has the option to extend the cover under the old policy, at the minimum of the old rate and the quoted new rate, for the amount of time needed to extend the buyer's time available to shop for new cover consistent with the eight week time period contained in Recommendation I1.

Recommendation I3: IFSRA should modify its code of conduct for motor and liability insurers to require that renewal notices include a certified history of claims for the buyer. Claims histories should cover at least the previous five years and include any outstanding claims from earlier years.

Recommendation I4: IFSRA should modify its code of conduct for motor and liability insurers so that they are required to provide a certified claims history to any buyer upon request. Claims history information should be provided in hard copy if so requested by a buyer.

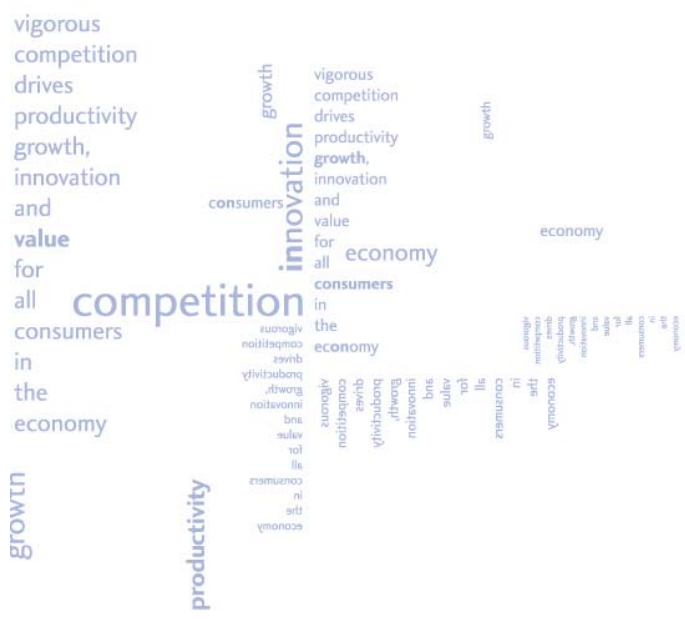
Recommendation I6: IFSRA should modify its code of conduct to require motor insurers to provide initial quotations and renewal notices that break down premiums so as to show the premium charged for different types of cover, such as liability, fire and theft, and comprehensive insurance. Discounts (e.g., accident free discounts) and group risk class descriptions (e.g., male driver aged 26-30) should be detailed as well.

Recommendation I14: IFSRA should modify its code of conduct for insurers to require policies and quotes to indicate their coverage by the Insurance Protection Fund and the coverage provided by the fund.

Recommendation I26: IFSRA should modify its code of conduct for insurers so that insurers would be required to detail per-policy or per vehicle MIBI levies as a separate line item on motor insurance bills.

4. Concluding Comments

39. The Authority welcomes the opportunity to comment on the proposed Consumer Code and believes it constitutes a very significant step toward greater protection of consumers of financial services. Needless to say, once the Code has been finalised, it is crucial that it be promoted and brought to the attention of consumers to the maximum extent possible.
40. The Authority believes that the success of the Code will depend to a significant extent on how the administrative sanctions regime develops into the future.
41. Finally, Chapter 10 of the Insurance Study is devoted to the analysis of insurance intermediaries. Sixteen recommendations are developed with supporting analysis. A number of the recommendations relate to the remuneration of intermediaries and should be considered in the context of IFSRA's consultation on that issue. It may be appropriate that the other recommendations be considered in the context of this consultation or elsewhere. Accordingly we would request that IFSRA review the Insurance Study recommendations relating to insurance intermediaries and assess the appropriate context in which to consider them.
42. The Advocacy Division of the Authority is available for further discussion of the views expressed in this submission or any other relevant matters.



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