Decision of the Commissioners of the Competition Commission

Decision

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05 November 2012
COMMISSION/HG/004/05

Decision of the Commissioners of the Competition Commission

Hearing COMMISSION/HG/004 – The Bundling of Insurance and Credit Products in the Banking Sector

Decision HG/004/05 – Relating to Barclays Bank Plc

Commissioners – *Mr R.T. Servansingh – Acting Chairperson*
Mr R.J.R. Rama – Commissioner
Mrs P.J.S. Poonoosamy – Commissioner
Mr M.R. Sadool – Commissioner

Pursuant to the report produced by the Executive Director of the Competition Commission (The *ED*) in the matter of the Bundling of Insurance and Credit Products in the Banking Sector, more specifically relating to ***Barclays Bank Plc*** *(Barclays)*, the Commissioners state the following:-

A. Introduction

1. On 31st August 2010, the Executive Director of the Competition Commission (ED), in the exercise of his powers under Section 30(c) and in accordance with Section 51(1) of the Competition Act 2007 (the Act), launched an investigation into whether banks offering housing loans are in a monopoly situation and whether they are tying those loans to decreasing term assurance (DTA).

2. DTA is a form of life insurance that a borrower procuring a housing loan generally takes out as a means of guaranteeing the repayment of the housing loan in the event of either death or permanent disability of the borrower.

3. Although there are some twenty banks licensed to operate in Mauritius, only 13 were under investigation on the basis that they provide housing loan facilities. The 13 banks under consideration were ABC Banking Corporation (ABC), AfrAsia Bank Ltd (AfrAsia), Bank One Ltd (Bank One), Barclays Bank Plc (Barclays), Banque des Mascareignes Ltee (BM), Bramer Banking Corporation Ltd (Bramer), Bank of Baroda (Baroda), Habib Bank Ltd (Habib), The Hong Kong and Shanghai Banking Corporation Limited (HSBC), The Mauritius Commercial Bank (MCB), Mauritius Post and Cooperative Bank (MPCB), SBI [Mauritius] and State Bank of Mauritius (SBM).

4. On 4th July 2012, the ED submitted his Final Report entitled "The Bundling of Insurance and Credit Products in the Banking Sector" to the Commissioners in accordance with Section 51(2) of the Act.

5. The ED found that in the case of eight of the banks under investigation, namely Bank One, Barclays, BM, Bramer, HSBC, MCB, MPCB and SBM, there had been breaches of Section 46 of the Act in that these banks were in a monopoly situation in

their respective housing loan/DTA markets, which breaches have the effect or object of preventing, restricting or distorting competition and that these banks are otherwise taking advantage of the monopoly situation.

6. The report concluded that the eight banks, all of which had agreements with insurance companies, did not offer housing loan borrowers a free choice as to DTA provider, which DTA was often bundled with the provision of the housing loan. It has been further argued that this resulted in more expensive DTAs and reduced choice for the borrower than had there been effective competition. This has been seen to be particularly anti-competitive in light of the existence of agreements between the banks and DTA providers.

7. In relation to the alleged contraventions of the Act, the ED has also proposed a remedy which he considers to be most apt, namely that banks requiring that a borrower take out a DTA provide at least three insurance quotes from different insurance companies and more information to customer in relation to choice of life assurance from different loan providers.

8. It should also be noted that the ED also concluded that in the case of five of the thirteen banks, namely ABC, AfrAsia, Baroda, Habib and SBI, no breach of section 46 of the Act had been committed.

9. The Commissioners proposes to examine in detail the cases of each of the individual banks, whether or not the ED has found that there has been a breach or not. In this decision we shall be looking most particularly at the conclusions of the ED relating to Barclays.

B. The Legal Background

10. Before looking at the details of the case, an overview of the law is important so as to situate the case put forward by the ED.

11. Prior to tackling the pertinent Sections of the Act, the ED considered the legal enactments relating to the provision of housing loans. Whilst both loans and leasing in Mauritius were initially considered, the ED concluded, that leasing would not be considered for the purpose of the investigation as it was not normally linked to the buying or renovation of a house. Furthermore, the ED, taking note of the provisions of the Insurance Act 2005, considered that insurance companies ought not to be part of the investigation as they did not provide housing loans.

12. Therefore, only housing loans were considered, and given that these are offered by banking institutions, the ED naturally looked at the Banking Act 2004. More particularly, the ED looked at the fact that the Banking Act has a segmented industry

consisting of those banks offering *international* financial services and those dealing in transactions with Mauritians. It is the latter category that is concerned with the ED's investigation given that it deals in housing loans to Mauritians, hence the targeting of those banks which offer this service.

13. It should also be noted that two organisations, the Mauritius Housing Company Ltd and the Mauritius Civil Service Mutual Aid Association Ltd, both of which provide housing loans, were excluded from the investigation in that the respective pieces of legislation creating these entities either limit to whom the loans may be given or how those loans are given.

14. Another piece of legislation looked at was Section 13(1) of the Borrower Protection Act 2007, whereby it is stated that a lending institution ***may*** require a lender to take out an insurance policy specifically as a means of guaranteeing against non-repayment of the loan in the event of death or permanent disability of the borrower. It is pertinent to note that despite this being optional banks will invariably require this second form of security prior to the approval of a housing loan.

15. Let us now look at the Sections of the Competition Act 2007 (the Act) that have been considered. Under Section 46(1) of the Act, a monopoly situation is deemed to exist in relation to the supply of goods and services where:

    a) *30 per cent or more of those goods or services are supplied, or acquired on the market, by one enterprise; or*

    b) *70 per cent or more of those goods or services are supplied, or acquired on the market, by 3 or fewer enterprises.*

16. It should be noted that the existence of a monopoly is not in itself a breach of the Act and Section 46(1) should be read in conjunction with Section 46(2) which states that a *"monopoly situation shall be subject to review"* where there are reasonable grounds to believe that a monopolist is engaging in conduct that:

    a) *has the object or effect of preventing, restricting or distorting competition; or*

    b) *in any other way constitutes exploitation of the monopoly situation.*

17. These two Sections set the scene for a possible breach of the Act by a monopolist. Section 46(3) of the Act also which ought to be looked at to determine the existence of a breach by a monopolist, namely:

a) *the extent to which the an enterprise enjoys or a group of enterprises enjoy a position of dominance in the market as to make it possible for that enterprise or group of enterprises to operate in that market, and to adjust prices or output, without effective constraint from competitors or potential competitors;*

b) *the availability or non-availability of substitutable goods or services to consumers in the short term;*

c) *the availability or non-availability of nearby competitors to whom consumers could turn in the short term; and,*

d) *evidence of actions or behaviour by an enterprise that is, or a group of enterprises that are, a party to the monopoly situation where such actions or behaviour that have or are likely to have an adverse effect on the efficiency, adaptability and competitiveness of the economy of Mauritius or are likely to be detrimental to the interests of consumers.*

C. The Issues

18. Before considering the individual cases in this matter, we shall now proceed to define the main issues which need to be determined in light of the ED's report. These issues may be summarised in the form of the following questions:

a) *Is the basis of the investigation founded?*

b) *Has the market been correctly defined?*

c) *In light of the above, which institutions are in the relevant market?*

d) *Can we infer the existence of monopoly situations?*

e) *Should all of these institutions have been considered for investigation? If not, which ones should not have been considered?*

f) *Which of the investigated institutions, if any, are in breach of the Section 46 of the Act?*

g) *What remedies, if any, would correct any anti-competitive practices deemed to exist?*

19. We propose to look at questions (a) and (b) and (c) initially, prior to responding to questions (c), (d), (e), (f) and (g) specifically in relation to each of the parties to the investigation.

D. Is the basis of the investigation founded?

20. The basis of investigation rests upon the decision of the ED to investigate an allegation that banks offering housing loans are acting in a monopoly situation and have tied these loans with the insurance taken out to secure the repayments on the initial loan; and that many of the banks may have agreements with certain insurance companies in relation to these insurance policies. Under Section 51 of the Act, the ED has a duty to investigate where he has "reasonable grounds to believe a restrictive business practice is occurring or is about to occur" which empowers the ED with all the reason he needs.

21. As seen above (paragraphs 15 and 16), it is clear that any such behaviour, if proved, may amount to anti-competitive behaviour in contravention of the Act, more particularly Section 46 of the Act in that they may have the object or effect of preventing, restricting or distorting competition or that it may constitute exploitation of a monopoly situation.

22. We find this to be a legitimate basis for the investigation and that any institution found to be behaving in such a manner would indeed be breaching the Act.

E. Has the market been correctly defined?

23. The first element to decipher is the definition of the market. The relevant market is described in *CCM 2 - Guidelines on Market Definition and the Calculation of Shares* as *"... a defined set of products and a defined geographic area, within which competition occurs. Relevant markets could be defined narrowly or widely....The narrower the market definition, the higher is likely to be any given enterprise's product share of the market."*

24. This is an essential factor to determine and has the purpose of aligning those products or services whose suppliers are in direct competition with each other, thus forming the basis upon which any analysis of this kind must rest. The two elements of any market definition are the geographic market and the relevant product market.

25. For the definition of the geographic market, the Commissioners agree with the ED's conclusion that this would be **Mauritius** (including Rodrigues) as the offering of DTAs would be offered in relation to home loans taking place within this clearly

defined geographic area. For example, it would be hard to imagine a home loan being taken out in Mauritius relating to a property in Madagascar.

26. As regards the determination of the relevant product, there is a need for far more in-depth analysis. The ED then went on to analyse the compatibility of both markets in relation to the case put forward. The ultimate question that needs to be answered is which of these is the correct choice and why.

27. The Commissioners consider that one of the crucial elements that needs to be determined is which market definition is correct. This rests in the mind of the consumers. Which is more important to the customer, who they want as the credit provider (i.e. the bank) or the cost of the DTA premium? Herein lies the determining factor and the answer is found in the survey results carried out by TNS Analysis at Annex E of the ED's Report.

28. The survey questions geared towards finding the most important issues for home loan seekers, show that these relate predominantly to issues surrounding the bank and its services, not the cost of the DTA premium. For example, trustworthiness of the credit provider (26%), reputation (26%), experience (18%), all rate highly as important factors to consider prior to choosing. Perhaps most pointedly, interest rates were considered more important than insurance premiums by the persons questioned. In other words, prior to considering the DTA, the customer has normally made up his/her mind as to which loan provider to contract with. Implicit in this is the conclusion that the DTA is more of an afterthought, rather than a major consideration for the customer. Factors such as the bank's reputation and stability, the interest rate being charged, hassle-free procedures and the amount of the loan are the most important considerations for the loan-seeker.

29. We can deduce from this that the customer's choice of DTA provider is almost invariably decided upon well after the decision to contract with the loan provider. This would infer that the customer chooses the loan provider before even considering the question of the DTA provider. Inherent in this reasoning is the conclusion that customer will only decide on the DTA provider at the point of sale (i.e. at the point when he or she has already chosen the loan provider) and not before. This would indicate that the point of sale argument has more applicability to the case at hand and that each individual bank is a market unto itself at that point

30. The distinction to be made here is a subtle, yet simple one. When considering the housing loan market the customer may look at all the banks offering home loans and decide who to contract with on the basis of a number of determining factors as explained above. It appears that once this choice is made, and almost always only then, will the loan-seeker bring his/her mind to the question of the DTA. Therefore, the choice of DTA occurs at the point of sale and not before.

31. In the UK Competition Commission Report, *Extended Warranties on Domestic Electrical Goods* it was succinctly put that *"...the point of sale is the time when customers are likely to focus their attention on the needs which Payment Protection Insurance (PPI) is designed to meet, and is therefore an opportune time for distributors to attempt to sell PPI to the customer."*

32. Drawing a comparison in the case at hand, the Commissioners agree with the ED's argument that a similar situation exists as regards banks providing housing loans secured by DTAs. Given that the decision to contract with one particular bank has already been taken by the customer, that customer having chosen his/her loan provider then has to decide as to the DTA provider. Given the unique access that the loan provider has to the customer at this stage, it is a potentially opportune moment to push the customer to taking out a DTA with the bank's preferred provider.

33. This aspect was also explored in the UK Competition Commission Report, "Market Investigation into Payment Protection Insurance (PPI)", where it was stated that *"the sale of PPI at the initial point of sale and continued exclusive access to customer accounts restricts he extent to which other PPI providers can compete effectively, and is therefore a feature of relevant markets which prevents, restricts and distort competition in the supply of PPI market."*

34. Expanding upon this point, one needs to look at the possible harm that such a situation could *potentially* cause a customer. The ED has looked at two possible ways in which use of the point of sale could harm or potentially harm consumers. The ED carried out a detailed study into two "theories of harm":

    (a) Exploitative Abuse – Unilateral Market Power;

    (b) Exclusionary Abuse – Foreclosure.

35. In simple terms, exploitative abuse describes a situation where a good or service provider in a monopoly situation abuses its dominant position to exploit consumers by charging high prices, reducing quality or reducing choice. Applying this to the current case, one could argue that a bank in a monopoly situation by virtue of a point of sale advantage could abuse its dominant position to exploit its customers by reducing those customers' choice of DTA provider and also by not ensuring that the customers get the best prices or quality – all of this to the ultimate benefit of the bank and its chosen partner(s). Such behaviour would be in breach of Section 46(2)(b) of the Act.

36. Foreclosure describes a situation where a monopolistic provider of a good or service, through an anti-competitive act, effectively excludes equal right of entry

to all players within a particular market by abusive use of its market power; an act which has the effect or object of preventing, restricting or distorting competition. Such an Act would be a breach of Section 46(2)(a) of the Act. Applying the concept to the case at hand it could be argued that a bank in a monopoly situation by virtue of its point of sale advantage and which has an agreement with a DTA provider may by virtue of that agreement be engaging in anti-competitive behaviour which may have the object or effect of preventing, restricting or distorting competition, to wit, by excluding other DTA providers from gaining equal access to the market.

F. Barclays Bank Plc (Barclays)

37. Barclays is a provider of housing loans to customers and it exercises its right to require all customers requiring this product to take out an insurance policy to cover repayments in case of default as per S13 of the Borrowers Protection Act. As explained above, if the point of sale advantage is applied to the case of Barclays, one may conclude that Barclays is in a monopoly situation with regard to the provision of a DTA to its housing loan customers given that it has sole access to those customers at the point in time when the provision of the DTA is considered.

38. Barclays is one of the four banks that requested a hearing following the ED's report. In this regard we shall look firstly at the case against Barclays as per the report, and then consider the representations proffered by Barclays during the hearing, before giving our decision.

39. The ED has found that evidence provided by the survey of TNS Analysis leads to number of conclusions, namely that:

a) Barclays has an agency agreement with ✂ and non-exclusive insurance agreements with several DTA providers namely ✂, ✂, ✂, ✂, ✂ and ✂. However, no information has been provided regarding the commissions, if any, which Barclays receives from the insurance providers with which it has agreements. An average of 90% of Barclays' housing loan customers have taken out an insurance policy with ✂;

b) ✂% of Barclays customers stated that they had been guided in their choice of DTA provider, whereas ✂% had not. Some ✂% of Barclays borrowers also stated that they had not been informed of their free choice of DTA at the time of negotiations;

c) On average, ✂% of Barclays customers would have benefitted from a cheaper DTA had they shopped around;

d) Barclays does not charge a fee if a borrower takes out an insurance policy other than one preferred by Barclays;

a) As a result of the combination of the monopoly situation in existence and the evident effect of the agreement that Barclays has with ✂, there is an absence of choice for Barclays' home loan customers which has an anti-competitive effect in breach of Sections 46(2)(a) and 46(2)(b) of the Act.

40. Barclays chose to exercise its right to a Hearing in this matter and was heard by the Commissioners. Barclays representations during the Hearing may be summarised as follows:

a) the relevant market is not the market for the distribution of DTA at Barclays' point of sale, but a broader market for the provision of housing loans in Mauritius;

b) the ED's report does not substantiate or establish the alleged prevention, restriction or distortion of competition in any market in contravention of Section 46 of the Act;

c) Barclays has already put measures in place to enhance the customer experience which would render superfluous the remedy proposed by the ED.

41. Let us take each of these points in more detail. The question of the relevant market, as explained above, is of prime importance. However, Barclays argued during the hearing that the market definition is only an element of the case at hand, whereas the ED had not been able to distinguish the market definition from that of the Theory of Harm I. Furthermore, Barclays stated that the ED had erroneously determined the relevant market to be the Point of Sale and that this definition had been heavily reliant upon (the wrong) selective data contained in the survey carried out by TNS Analysis and on the two UKCC market studies mentioned earlier.

42. As regards the first part of the argument, the Commissioners wish to state that this reasoning is inexact and misleading. The market definition as, discussed above is taken merely as a feature, albeit central, of the entire investigation. The need for a market definition which is coherent and relevant to the investigation is of primary concern as it sets the boundaries within which the study can take

place. It is inevitable that the use of statistics is crucial to determining the market and those statistics give vital indictors as to the existence (or not) of market power being wielded. The interpretation of statistics can be used in different ways and for different purposes. This does not mean that when reference to certain statistics is made in relation to the market definition and then in relation to a theory of harm that the premise for both is one and the same. In the example put forward by Barclays, the ED's report is cited as saying:

> "Although the majority of borrowers were made aware of the requirements of the DTA by the banks right at the beginning and somewhere between negotiations, a majority of borrowers were not made aware about the free choice policy and their right to choose the insurance provider of their own"

43. It is contended by Barclays that this is the same argument that has been used to justify the market definition and the theory of harm and that the two have not been separated. The Commissioners wish to state that these are two distinct features of the investigation and have been treated as such. The importance of the market definition has been discussed above. It is a primary consideration and its definition is not dependent upon any conclusions as to anti-competitive behaviour. On the other hand, the theories of harm are ways in which to demonstrate how that market has been "harmed" or subjected to anti-competitive behaviour. To state that these have been treated as one and the same is misleading – they have been dealt with as separate concepts where the existence of one is necessarily dependent on the existence of the other, but not vice versa. The market must exist first for any theory of harm to be able to be deduced, but not the other way around. The determination of the point of sale advantage as the relevant market uses statistics merely to define the parameters within which the investigation is meant to operate. On the other hand, in relation to the theories of harm the statistics are used to determine more precisely the way in which each of the banks has acted or may act anti-competitively. The chapters of the report relating to the theories of harm are not general or generic – the arguments put forward are specifically relevant to each bank and have been explicitly detailed as such. The conclusion cited above relates to an overall conclusion by the ED, coming after the detailed analysis, and it is simply made as a general observation after comparison of that analysis.

44. As regards the argument that the economic analysis does not substantiate the alleged prevention, restriction or distortion of competition under the Act, the Commissioners wish to iterate the following:

a) More than 40% of survey respondents were not aware of the need for insurance at the outset of negotiations for a housing loan with a bank

– indicating that not all information is made available to all customers at the same stage of the process;

b) The choice of insurance provider was only given to some ✂% of Respondents, with some ✂% not being informed of same. It does not suffice to merely inform customers as to the need for insurance, but more specifically to inform them as to their freedom of choice of insurer;

c) As regards Barclays particularly, the fact remains that it has agreements with several insurance firms, the main one being with ✂, which is the ultimate beneficiary of more than ✂% of DTAs linked to Barclays' housing loans. Couple this with the survey findings that some ✂% of Barclays customers are not made aware of the need for insurance at the outset and the fact some ✂% of Barclays customers were not informed about their free choice as to choice of insurance provider, and one is inclined to conclude that the lack of information available to Barclays loan customers has the effect of channelling those customers towards Barclays' option of loan provider. It is also pertinent to note that in ✂% of cases, Barclays customers were provided with insurance premium quotes from one particular provider, a statistic which may indicate a form of pressure being indirectly put on the customer to take out that particular insurance policy;

d) Also important to note is the fact that some ✂% Barclays home loan customers could have benefitted from a cheaper DTA had they gone to ✂ for their insurance.

45. It is the Commissioners' conclusion that the above points show very conclusively that the statistics relating to Barclays shadow very closely the statistics for the market as a whole. More importantly, these conclusions lead us to surmise that the assertion made by Barclays cannot be entertained – the survey results and the ED's report do indeed show decisively that Barclays, along with the other banks considered to be at fault, have acted in such a way as to prevent, restrict or distort competition under Section 46 of the Act. Furthermore, to say that the ED has been too reliant upon the reports of the UKCC and not enough on its own empirical data is misleading. The references made by the ED to the UKCC cases is made by way of comparison (and no more than that) given the similarities, but also because of the dearth of local precedents. This is not over-reliance but merely an attempt of showing comparable situations in different jurisdictions.

46. The question relating to the relationship of the banks and the insurance providers, and the failure of the ED to establish that this relationship prevents,

restricts or distorts competition relates to the ED's conclusions as to the two theories of harm and that these do not prove the strength of relationship as alleged by the ED.

47. Barclays believes, in relation to Exploitative Abuse - Unilateral Market Power, that:

a) the statistics relied upon by the ED belie the fact that ✂% of customers decide to take insurance proposed by the loan provider;

b) customers benefit from the banks' relationships with insurance providers, which is in fact a pro-competitive aspect which customers benefit from, especially as customers concerns relating to insurance are not always about the cost, with other factors like reputation and trust being equally valuable;

c) there are only several instances of cheaper insurance which limits the argument that customers could have gone elsewhere for a better deal.

48. We shall answer these three points as a whole. Although factors such as reputation, experience and trust are undoubtedly important in the mind of the customer in relation to the DTA, it cannot negate the fact that a sizeable price difference in insurance premium prices may ultimately sway the decision of any prospective customer. To say that the relationship between banks and insurance providers is pro-competitive is a relative concept. It may be seen as pro-competitive if certain constraints upon customers did not exist – e.g. direct and indirect pressure by banks, the existence of agreements between banks and insurers where commissions are involved and the prevalence of cheaper DTAs on the market. Furthermore, we believe that the term "several instances" of cheaper DTA should be read with caution. As opposed to Barclays' restrictive reading of this, the Commissioners believe that the word "several" is meant to indicate a fairly large number, a reading which is borne out by the statistics which show that in some cases up to 100% of DTAs bought could have been bought elsewhere for cheaper. Indeed in the case of Barclays, this is true in some 90% of cases. Therefore, in conclusion, we do not uphold Barclays' contentions in relation to this theory of harm and maintain that there is indeed exploitative abuse being wielded by the banks.

49. As relates to foreclosure, which is the second theory of harm, Barclays claims that it does not exist because of the following:

a) Customers take conscious decisions as to which DTA to choose;

b) Arrangements between banks and insurers do not exclude other insurers. In fact they promote competition by giving customers lower prices.

c) Arrangements that Barclays has with its insurance providers are made to benefit customers bearing in mind factors such as reputation, financial stability, quality, comprehensiveness and competitiveness, thus avoiding this hassle for the customer.

50. We do not agree with these arguments. We have already shown how banks can influence customer choice in both direct and indirect ways, so it is a misnomer to conclude outright that the customer makes a fully conscious decision. The contention that arrangements are pro-competitive is a superfluous one in that it flies in the face of a host of facts and statistics - the arrangements are made for commission gains and not just in the interests of customers and high percentages of customers would have benefitted from better deals had the markets not been foreclosed. Therefore, foreclosure does indeed exist and is used to permit anti-competitive practices to exist and to exclude other insurers from entering the market.

51. In relation to the application of the appropriate remedy, Barclays believes that applying Remedy C as proposed by the ED would not be needed in its case as it has already implemented measures to improve the customer experience with emphasis on information-provision with at least three DTA quotes being provided. Whilst the Commissioners readily welcome the initiatives taken and are of the opinion that making 3 DTA offers available to customers is indeed praiseworthy, this is not enough. Ideally, those offers need to be made independent of any commission gains that Barclays may be gleaning from the arrangements that it has with its preferred DTA providers. Furthermore, Barclays would need to be more forthcoming in its attempts to educate and inform customers in general, not just those with which it is negotiating, as to the question of free choice of insurance provider.

52. The Commissioners wish to state the following in relation to the case of Barclays and in answer to Questions (d), (e), (f) and (g) at Paragraph 18 above:

(d) *By virtue of the Point of Sale advantage discussed earlier,* Barclays *is in a monopoly situation.*

(e) *The ED was correct in continuing to include* Barclays *as a party to the investigation.* Barclays *has agreements with several insurance providers and with one provider in particular.90% of loans are secured by insurance policies from this one provider.*

(f) *The existence of written agreements with several insurance providers gives us with proof of the fact that* Barclays *has a consensual arrangement with these insurers.* Barclays *also receives agency commissions for each customer referred to these insurers.*

Some ✂ % of Barclays*'s housing loan borrowers have taken out insurance with ✂, with which* Barclays *has an agreement.TNS Analysis' survey results show that the majority of borrowers (✂%) do not learn of their free choice of insurer from* Barclays. *Perhaps more revealing is the fact that some ✂ % of the borrowers could have benefitted from a cheaper DTA had they exercised or been encouraged to exercise their right to choose a DTA provider. As a result one can conclude that* Barclays' *borrowers do not have access to the most competitive insurance premiums at the point of sale.*

This happens because, firstly, being in a monopoly situation at the point of sale, Barclays *is in a dominant position and it seemingly uses this to influence its home loan customers to purchase DTA from one of the DTA providers with which it has an agreement. The truth is that had borrowers been able to shop around, they may well have found cheaper DTAs. This influence amounts to exploitative abuse, as explained above and is a breach of Section 46(2)(b) of the Act.* Barclays *has abused its dominant monopolistic position to exploit its customers by influencing them to take out DTAs with its chosen partners.*

Secondly, by favouring its DTA partners, Barclays *is foreclosing the market to exclude other DTA providers. In so doing it is in effect preventing other insurers from entering the market at the point of sale. Therefore, the other insurers have very little opportunity to benefit from selling their DTAs to* Barclays*'s housing loan purchasers. This act has either the object or effect of preventing, restricting or distorting competition and is a contravention of Section 46(2)(a) of the Act.*

Barclays has acted in contravention of the Act.

(g) *The Commissioners, having considered the breaches of the Act which* Barclays *has committed consider that the most apt remedy would be Remedy C as suggested by the ED, namely that* Barclays *should provide housing loan customers with at least three insurance quotes from different DTA providers as well as provide more comprehensive information at the very outset of negotiations to customers as to their free choice in relation to life insurance from DTA providers.*

In addition, the Commissioners also believe that there is a need for a more general directive to be sent out to the Banking Industry. In this context, we would also recommend applying Remedy E in combination with Remedy C, as suggested by the ED. This would entail that the Banking Industry in Mauritius considers adopting a code of practice with a view to having all banks that sell

DTA insurance with their housing loans to align their conduct with the recommendations under our remedy above.

Dated this 05 November 2012

Mr R.T. Servansingh ..... Date 05/11/2012

(Chairperson)

Mr R.J.R. Rama ..... Date 05/11/12

(Commissioner)

Mrs P.J.S. Poonoosamy ..... Date 05-11-2012

(Commissioner)

Mr M.R. Sadool ..... Date 05.11.2012

(Commissioner)