

Public Document

**The Bundling of
Insurance and Credit Products in the
Banking Sector**

Final Report of the Executive Director

30/08/2012



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I. Summary

- 1.1 The Competition Commission of Mauritius (CCM) launched an investigation in the banking sector, more specifically, the bundling of insurance and credit products, on the 31st August 2010.
- 1.2 This is the Final Report of the Executive Director and there have been 13 parties to the investigation. At the time the Statement of Issues (Sol) was published, the investigation concerned only the following banks: AfrAsia Bank Ltd, Bank One Limited, 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 Ltd (MCB), Mauritius Post and Cooperative Bank Ltd (MPCB), SBI (Mauritius) and State Bank of Mauritius Ltd (SBM). ABC Banking Corporation was not yet operational when the investigation was launched. In view of potential remedies that the CCM may apply to the banking sector and out of fairness to other banks, it has been decided to include ABC Banking Corporation in this investigation because the latter offers housing loans.
- 1.3 Life insurance is sold together with housing loans, to provide cover to repay the loan in the event of the borrower's death or permanent disability. The 'mystery shopping' exercises carried out showed that some banks do not always offer customers taking out housing loans a free choice of insurance policies. Statistics¹ tend to confirm this and show that customers taking housing loans from a certain bank have their decreasing term assurance (DTA) from the insurance company with which that particular bank has an agreement.
- 1.4 Analysis of data received from the relevant institutions shows that the customer could reasonably have benefited from a cheaper DTA had he been informed by the bank that he can shop around and take a DTA from an insurance company of his choice. Such behavior may be/is in breach of the monopoly provisions of the Competition Act 2007 ("the Act").
- 1.5 Several banks have suggested that their housing loan sales are below the 30% market share threshold specified in the Act for existence of a monopoly situation, and therefore that the CCM cannot investigate them. After assessing the two possible market definitions outlined in the Sol, the 'housing loan market' and the 'Point of sale', the CCM has decided, for reasons stipulated in the report, to go for the 'Point of sale' market definition.
- 1.6 Following this market definition, all banks offering housing loans are in a monopoly situation within the meaning of the Act. This will be discussed more thoroughly in the Section on Market Definition in Section 3 of this report.
- 1.7 Based on the market definition, an in-depth analysis has been performed for the banks having agreements with one or more insurance companies. The CCM found that whilst most of the

¹ Refer to Annex B, Chart C, D and H.

borrowers are getting a cheaper deal through the bancassurance than they would, had they gone directly to the insurance company, borrowers could nevertheless have got a cheaper deal if they had shopped around in the insurance market.

- 1.8 While ABC, Afrasia, Baroda, Habib and SBI banks have been seen not to be in breach of Section 46 of the Act, the CCM found that Bank one, Barclays, Bramer, BM, MPCB, HSBC, SBM and MCB are in breach of Section 46 of the Act. By bundling their housing loan products to the life insurance policy product of an insurance company with which the banks have an agreement, those banks are engaging in conduct that has the effect of preventing, restricting or distorting competition.
- 1.9 The Act provides that the Commission may give appropriate directions to enterprises as it considers necessary, reasonable and practicable to remedy, mitigate or prevent the adverse effects on competition that the Commission has identified.
- 1.10 It is up to the Commissioners to decide whether any breach of the Act has been committed and to determine the remedies, if any. The Commissioners will do this once the Final Report is submitted to them and after a formal hearing, if required, on the matter.
- 1.11 The Executive Director recommends to the Commission that banks offering bancassurance facilities provide more than three insurance quotes from different insurance companies and more information to customers in relation to choice of life insurance from different loan providers.
- 1.12 The Final Report is intended to set out the CCM's findings on anti-competitive issues it has identified during the course of this investigation. Interested parties have been given the opportunity to comment on the CCM's provisional findings. The Executive Director has had regard to any reasons in writing or oral evidence submitted or given to him following the notice of the provisional finding, and has taken his final decision and proceeded to make the report final and to submit it to the Commission with his recommendations.
- 1.13 This Report is issued under Section 51 of The Act and identifies issues as described under the subheading 'Assessment of Conduct' contained in Section 6 of this Report. Following the issue of this Report and in the event of a hearing before the Commission, no party shall be entitled to produce additional evidence which was in its possession or knowledge but was not submitted to the Executive Director during the investigation, before the Commissioners, except where the criteria specified at Rule 23(3) of the Competition Commission Rules of Procedure 2009 are met².

² Rule 23(3) of the RoP details the criteria to be met.

2. Introduction

2.1 Following an enquiry³, the CCM launched an investigation⁴ into the banking sector to determine whether banks offering housing loans are tying their housing loans to DTAs. The CCM is investigating whether banks which offer housing loans are in a monopoly situation and whether by tying their housing loans to DTAs, they are acting to prevent, restrict or distort competition in the provision of DTA for the purpose of contracting a housing loan.

The Investigation

2.2 After an initial enquiry into the allegation, the Executive Director launched an investigation (INV007), in accordance with Section 51 of the Act into the bundling of insurance and credit products in the banking sector on 31st August 2010.

2.3 The main parties to the investigation were informed and a press release was issued. The information gathering procedure was initiated, different parties were interviewed and Information request Orders were sent to the main⁵ and auxiliary⁶ parties in this investigation.

2.4 DTA is sold together with housing loans, to provide cover to repay the loan in the event of the customer's death or permanent disability. After a series of 'mystery shopping' exercises in this industry, it appeared that some banks do not always offer customers taking out housing loans a choice of insurance policies.

2.5 If the way in which banks offer such insurance results in there being little or no competitive pressure on the cost of the insurance to the consumer, this may be a breach of the monopoly provisions of the Act.

2.6 After a preliminary information gathering and interviewing process, the CCM produced in December 2010 the Sol, a document setting out CCM's views on the basis of initial evidence gathering and raising possible concerns at the preliminary stage of the investigation, and which was sent to the main parties to the investigation for their comments and responses. A public version of the Sol was published on the CCM's website on the 17th January 2011 with a view to giving members of the

³ Rule 5 of the Competition Commission Rules of Procedure 2009 empowers the Executive Director to make such enquiries as he thinks appropriate in order to *inter alia* satisfy himself that there is reasonable ground to believe that a restrictive business practice has occurred or is occurring or about to occur, prior to launching a formal investigation.

⁴ Section 51 of the Competition Act 2007 provides that where the Executive Director has reasonable grounds to believe that a restrictive business practice is occurring or about to occur, he shall investigate, or cause to be investigated, such restrictive business practice. A formal investigation may only be launched where the requirement of reasonableness is met.

⁵ Refers to the 13 banks engaged in the selling of housing loan.

⁶ Refers to insurance companies in the life insurance business, Mauritius Housing Company Ltd and Mutual Aid Ltd.

public and any other interested parties the opportunity to comment on the issues identified by the CCM as potentially anti-competitive.

2.7 As stated in the Sol, there were two possibilities of defining the market; either the “housing loan” market or the “point of sale” market.

2.8 Several banks have suggested that their housing loan sales are below the 30% market share threshold specified in the Act for existence of a monopoly situation, and therefore that the CCM cannot investigate them. Market shares depend upon market definition⁷ and it should not be assumed that market share of a broadly-defined banking market is appropriate in this case. As set out in the Sol, the CCM had not reached a conclusion on market definition at that stage.

2.9 The CCM received substantial comments from MPCB⁸, SBI⁹, BM¹⁰, SBM¹¹, HSBC¹², Bramer¹³, MCB¹⁴, , Barclays (Mauritius)¹⁵ and SBI.

2.10 The CCM continued its information gathering process, data compilation and analysis after the production of the Sol.

2.11 Having taken stock of the comments made by the parties subsequent to the Sol, the CCM proceeded to conducting a market survey to gather further evidence for the purpose of market definition and determining whether banks have a point of sale advantage. The survey was conducted by TNS Analysis, an independent custom market research company.

2.12 The CCM then produced a Provisional Report embodying its provisional findings and welcomed comments and responses to the questions raised and any other submissions on any issue relevant to the investigation.

2.13 The CCM has given due consideration to the comments/responses received from the banks before reaching the conclusion to this report. Key Comments obtained from banks and the views of the Executive Director are attached in Annex D of this report.

⁷ See CCM 2 Guidelines, Paragraph 1.4.

⁸ Letter dated 21st December 2010 (ref: CSU/hkr/10/2644).

⁹ Letter dated 22nd December 2010 (ref: COM/KP/MD/411/10).

¹⁰ Letter dated 12th January 2011 (ref:CON/2/11).

¹¹ Letter dated 19th January 2011 (CSU/NM/11).

¹² Letter dated 21st January 2011.

¹³ Letter dated 21st January 2011 (Ref: IADL/01/01/11).

¹⁴ Letter dated 10th February 2011.

¹⁵ BARCLAYS PLC, MAURITIUS BRANCH Response to the Issues Statement, 4th February 2011

3. Background

The Credit Industry in Mauritius

- 3.1 There are different credit products that are offered by different institutions: banking institutions and non-banking financial institutions. The two main categories of credit products in Mauritius are loans and leases.
- 3.2 The focus of this investigation is on the banking sector – more specifically commercial banks offering housing loans. Leasing is not considered in this investigation because people acquiring a land/house or building a house do not in principle resort to leasing but to housing loan facilities.

Banking Institutions

- 3.3 Banking institutions are regulated by the Bank of Mauritius under the Banking Act 2004.
- 3.4 The banking industry in Mauritius comprises, as at end of July 2011, 20 banks licensed by the Bank of Mauritius to carry out banking business in Mauritius. Of these, 8 are local banks, 7 are foreign owned subsidiaries and 5 are branches of international banks. A new bank, licensed to conduct Islamic banking business in Mauritius, started operations effective 31st March 2011.
- 3.5 Banks provide a wide array of services to their customers; the traditional ones include: accepting deposits, providing loan facilities, card-based payment services such as credit and debit cards, internet banking and phone banking facilities. More specialized services such as fund administration, custodial services, trusteeship, structured lending, structured trade finance, international portfolio management, investment banking, private client activities, treasury and specialised finance are also offered by some banks.
- 3.6 The Bank of Mauritius regulates and supervises banking institutions and non-bank deposit-taking financial institutions under the provisions of the Banking Act 2004 and the Bank of Mauritius Act 2004. It is mandated with overseeing financial institutions (both banking and non-bank deposit taking institutions) in order to determine their soundness, stability and compliance with governing laws, rules and regulations.

Banking Act 2004

- 3.7 Prior to the coming into force of the Banking Act 2004, banks engaged in ‘domestic’ and ‘offshore’ banking activities were required to obtain a separate licence and there were restrictions on the use of the domestic currency and on operations in the domestic banking environment. The Banking Act 2004 eliminated the separate licensing of Category 1 banks and Category 2 banks and provided for a single banking license to cover both activities. Accordingly, all banks are free to transact in all currencies, including the Mauritian rupee.

3.8 In order to implement the requirements set out in the Banking Act, the Bank of Mauritius issued, in 2005, a 'Guideline on Segmental reporting under a Single Banking Licence Regime' dividing the banking business into two segments, defined as follows:

- a) Segment B banks activities' are essentially directed to the provision of international financial services that give rise to "foreign source income". Such services may be fund based and/or non-fund based. Segment B assets will generally consist of placements with and advances to foreign financial institutions, notably associated companies, parents or overseas correspondents, and investments in foreign securities, stocks and debt instruments and claims on nonresidents and/or Global Business Licence (GBLs). Segment B liabilities will normally arise from deposits, borrowings, funds deposited by non-residents, GBLs and residents and capital. These liabilities must be used exclusively to provide international financial services that generate "foreign source income". Segment B activity can now be conducted in foreign currencies or Mauritian rupee.; and
- b) Segment A activity relates to all banking business other than Segment B activity. The financial services provided therein may be fund and/or non- fund based. Segment A business will essentially consist of transactions with residents of Mauritius, both on the liability side and the assets side, even though banks conducting Segment A business are at liberty to take on deposits from non-residents and GBLs.

3.9 For the purposes of this investigation however, the focus is mostly on [the provision of] credit services, more specifically housing loans, by banks. Only Segment A banks engaged in the retail banking are the main parties to this investigation because they operate differently from non-banking financial institutions; the very core business of banks being the taking of deposits and the lending of money (loans).

3.10 The banks under investigation are:

Parties to the Investigation

ABC Banking Corporation Ltd

3.11 ABC Banking Corporation Ltd forms part of the ABC Group of Companies. Previously known as ABC Finance & Leasing Ltd, ABC Banking Corporation Ltd ABC Banking Corporation Ltd commenced its operations as a full-fledged commercial bank on 9 December 2010.

3.12 ABC Banking Corporation Ltd offers traditional as well as innovative banking products and services to retail, corporate and international customers.

AfrAsia Bank Limited

3.13 Headquartered in Mauritius, AfrAsia Bank Limited is a boutique bank offering a comprehensive range of financial solutions to both the local and international markets. The bank was incorporated

on 14 January 2007 with anchor shareholder GML, the largest conglomerate in Mauritius. AfrAsia Bank focuses on 3 business lines: Corporate and Investment Banking; Private Banking and Wealth Management; and International Banking.

3.14 Products and services offered by the bank include corporate and project finance, debt capital market and bond issuance, structured trade finance, treasury, global custody services, investment banking, amongst others.

Bank of Baroda

3.15 Bank of Baroda was established as a small regional bank of India which commenced its operations on 20 July 1908 in Baroda, India. Since then, it has continuously grown into a top notch Indian Public Sector Bank with a pan Indian presence of 3,386 branches in 26 countries.

3.16 Incorporated as a branch in Mauritius, Bank of Baroda commenced its operations in 1962 and has, at present, 6 domestic branches, one Offshore Banking Unit (OB) and 6 ATMs. Bank of Baroda also provides mobile banking services to customers of far-off villages in Mauritius, covering around 30 villages each week. The bank employs 87 staff covering both domestic and offshore banking business.

Bank One Limited

3.17 Bank One Limited is a joint venture between CIEL Investment Ltd (50%) and Investment & Mortgages Bank of Kenya Limited (50%).

3.18 Bank One Limited is a medium sized bank providing universal banking solutions for all its customers through its Retail, Private, Corporate, SME, and International Banking segments.

Banque des Mascareignes Ltée

3.19 Banque des Mascareignes Ltée (BM) started operations in Mauritius in 2004 and subsequently merged with Mascareignes International Bank Ltd which was set up in 1991 as a global business bank.

3.20 Backed by its strong parent company, BM aims to offer quality banking services and operates in the retail, corporate, global business and international finance markets from its head office in Port Louis and through its branch network in 10 locations.

Barclays Bank PLC

3.21 Barclays presence in Mauritius dates back to 1919, and ever since then, the bank has played a key role in the expansion of business on the island. Barclays in Mauritius operates as a branch of Barclays Bank Plc UK and is present in both domestic and international divisions of the financial sector.

3.22 Barclays Mauritius provides a range of banking services to personal and corporate customers. Personal services comprise a range of current and savings accounts, currency accounts, loans - including housing loans and multi-purpose loans; credit cards, ATMs and telephone banking.

3.23 Business services include lending products, trade and export finance and many specialist services such as treasury, foreign exchange and capital markets capability. Barclays Mauritius is also present in the asset finance business through the Barclays Leasing Company Ltd. Barclays Mauritius employs some 1,497 staff and has more than 150,000 customers.

Bramer Banking Corporation Ltd

3.24 Bramer Banking Corporation, formerly known as South East Asian Bank, was licensed by Bank of Mauritius in August 1988 and started operations in June 1989.

3.25 Bramer Bank provides retail, private and commercial banking, deposit services, loans and advances and also offshore banking. Over and above the existing products and services, the bank aims to provide tailor-made products to its customers.

Habib Bank Ltd

3.26 Habib Bank Limited (HBL) is present in 25 countries, serving a customer base of over 5 million worldwide, with its head office located in Karachi, Pakistan. HBL started its operations in Mauritius in 1964. Currently the bank has a network of 3 branches in the island.

Mauritius Post and Cooperative Bank Ltd

3.27 The Mauritius Post and Cooperative Bank Ltd was formed as a result of a merger between the New Co-operative Bank Ltd and the Post Office Savings Bank in August 2003.

3.28 MPCB Ltd has a network of 13 branches across the island with 14 onsite ATMs and 3 offsite ATMs. As part of the bank's agreement with The Mauritius Post Ltd, in areas where there is no MPCB branch, basic banking services are provided at the Post Offices. In addition to offering a range of products and services encompassing Personal Banking, Corporate Banking, Trade Finance and Treasury services, the bank continues to enlarge its product portfolio to include new financial products to meet market needs.

SBI (Mauritius) Ltd

3.29 SBI (Mauritius) Ltd (SBI) was formed as a result of the amalgamation, in October 2008, of the Indian Ocean International Bank Ltd, a domestic bank, with the SBI International (Mauritius) Ltd, a global business bank, which had been operating in Mauritius since 1989. SBI is a locally incorporated bank and a subsidiary of the State Bank of India, the largest commercial bank in India.

3.30 SBI offers a range of advances and deposit products for both corporate and retail customers, apart from remittance facilities to anywhere in the world and in all the major foreign currencies. It also provides a comprehensive range of global business banking services to corporate financial institutions and intermediaries.

State Bank of Mauritius Ltd

3.31 The State Bank of Mauritius Ltd (SBM) Group is a leading financial services group in Mauritius with a growing international presence. It is owned by nearly 17,000 domestic and international shareholders, and offers services over 375,000 customers through its network of 48 service units and counters in Mauritius, India and Madagascar. SBM provides the services of a universal bank within a diversified business model. The lines of business include: Retail Banking, SMEs, Private Banking and Wealth Management; Corporate Banking and International Banking & Global Business; Treasury services; and eBusiness.

The Hongkong and Shanghai Banking Corporation Limited

3.32 The Hongkong and Shanghai Banking Corporation Limited is the founding and a principal member of the HSBC Group which, with around 7,500 offices in 87 countries and territories and is one of the world's largest banking and financial services organisations.

3.33 HSBC offers a wide range of products and services including accounts services, credit cards, investment products, housing loans, personal loans and custodian services to domestic customers.

The Mauritius Commercial Bank Ltd

3.34 Established in 1838, the Mauritius Commercial Bank Ltd (MCB) is the oldest Mauritian bank and is listed on the Stock Exchange of Mauritius since 1989. In line with its vision, MCB has over time extended its business to various countries. The Group has also diversified and entrenched its participation into non-bank financial services like factoring and leasing, as well as a comprehensive range of investor services.

Non-banking Financial Institutions

3.35 The different non-banking financial institutions offering housing loans in Mauritius are: insurance companies, leasing companies, the Mauritius Civil Service Mutual Aid Association Ltd (hereinafter "Mutual Aid") and the Mauritius Housing Corporation Ltd (hereinafter "MHC Ltd").

Insurance Companies

3.36 Insurance companies are licensed by the Financial Services Commission (hereinafter "FSC"), under the Insurance Act 2005 (as amended in 2011) to conduct insurance business.

- 3.37 *‘Insurance business’ is broadly defined as the ‘business of undertaking liability, by way of insurance or reinsurance, under long term insurance policies or general insurance policies, as the case may be, and includes external insurance business and the business of a professional reinsurer.’*¹⁶ Accordingly, the Insurance Act classifies insurance business into either general insurance business or long term insurance business.¹⁷ The First Schedule to the Insurance Act in turn provides a breakdown of the two above-mentioned categories into their constituent classes of insurance policies. By way of example, accident and health policy is underwritten by general insurers whereas life assurance business falls within the long term insurance business. As such, a DTA, as the type of life assurance cover usually pledged by customers taking a housing loan from a bank, is underwritten by long term insurance providers.
- 3.38 As at April 2011, the insurance sector counts 22 insurance companies licensed by the FSC out of which 8 are long term insurers.
- 3.39 Subject to Section 81(7) of the Insurance Act 2007, the free choice policy Section “shall not apply to a loan granted to a policyholder by a long term insurer against a security of a long term insurance policy”. As such, long term insurers granting a loan to a policyholder against security of a long-term insurance policy is excepted from giving of free choice policy.
- 3.40 Since, the main line of business of the long term insurance companies is to provide long term insurance services and that by law, the free choice policy would not apply to them when granting loan, insurance companies are therefore **not** included as main party to this investigation.

Leasing Companies

- 3.41 Leasing companies are licensed by the FSC by virtue of Section 14 of the Financial Services Act (FSA). Since a number of leasing companies accept public deposits (11 out of 13 entities) as a means of raising funds for their leasing business, they are also subject to supervision from the Bank of Mauritius which is in line with the provisions of Section 12(2) of the Banking Act 2004 requiring non-bank deposit taking institutions to seek authorization from the Bank of Mauritius prior to conducting any such business.
- 3.42 Leasing (also known as asset finance) has come a long way in establishing itself as a strong alternative source of funding to conventional bank financing. It is a process involving an agreement between a ‘lessor’ and a ‘lessee’ whereby the lessor conveys to the lessee, in return for a payment or series of payments, the right to use an asset for an agreed period of time. As an asset-backed term financing product, leasing avoids the need collaterals. As at 31st December 2010, 13 licenses had been issued to financial institutions providing leasing services under the FSA including both non-bank financial institutions and banking institutions having their own leasing subsidiaries

¹⁶ Section 4 of the Insurance Act 2005 (as amended in 2011)

¹⁷ Section 4(1)(a) of the Insurance Act 2005 (as amended in 2011)

3.43 Leasing companies are mentioned for completeness of the background of the financial services sector but they are not relevant to this investigation.

The Mauritius Civil Service Mutual Aid Association Ltd

3.44 The Mutual Aid was established on November 1893 by a group of 175 civil servants to provide financial support to its then founding members at a time when access to banking facilities by the working group was difficult. Over the years, the Mutual Aid has opened up its membership to other components of the public namely, persons holding a permanent and pensionable post with:

- (i) the Government of Mauritius; or
- (ii) such institutions as approved by its Board of Directors.

3.45 The Mutual Aid has, in addition to opening up its membership, also widened its scope of activities – taking deposits from the general public¹⁸; providing retirement savings schemes and granting other forms of loan facilities. Brief details of the various loan schemes being operated by the Mutual Aid are as follows:

- (a) personal loans, depending on salary and repayment capacity with at least one guarantor;
- (b) quick loans up to Rs 100,000 without security, payable over 5 years;
- (c) educational loans;
- (d) loans secured by contributions made to the Retirement Savings Fund; and
- (e) Collateral Loans secured by either mortgage on property/ fixed charge or fixed deposit with the Mutual Aid or Life Assurance Policy.

3.46 The Mutual Aid does also provide housing loan facilities but only in respect of its staff and not to its members.

3.47 The CCM has not included the Mutual Aid as a main party in this investigation because Mutual Aid:

- (a) does not provide housing loan facilities to its members; and
- (b) is not engaged in any insurance business.

¹⁸ The Mutual Aid is licensed by the Bank of Mauritius to accept deposits from the public.

The Mauritius Housing Company Ltd

3.48 The Mauritius Housing Company Ltd (MHC Ltd) was incorporated in 1989 as a public company limited by shares. It is at the forefront of the housing development in the country and has the mission, *inter alia*, to enable as many as possible to acquire a house.

3.49 The MHC Ltd offers a wide range of loan schemes to low-income earners, middle-class and upper middle class people. Each scheme serves a particular purpose and has specific conditions attached; but, overall, the schemes tend to cover the following: construction projects, extension, completion, purchase of property/residential land, construction on existing housing unit, renovation and re-financing of non-MHC Ltd housing loans. The MHC Ltd also aims at providing a one-stop shop for housing loan financing to its customers by providing a range of solutions with respect to the promotion of house ownership namely, architectural, technical, legal, insurance services as well as deposit taking and saving schemes.

3.50 The MHC Ltd has different missions and objectives, of which the core mission is to provide “un toit pour tous”.

3.51 Following the publication of the Sol comments received from main parties to the investigation, it was suggested that the MHC Ltd should also be party to the investigation and as such, should be included in the market share analysis. The CCM took note of these suggestions.

3.52 After assessing the suggestions from main parties, MHC Ltd has been excluded as a main party to this investigation because:

(a) the Mauritius Housing Corporation Act 1974¹⁹ (hereinafter “MHC Act”) empowers MHC to “carry on transactions in the nature of insurance business –

(i) in relation to any property owned by the Corporation or a borrower or offered as security or additional security for a loan; and

(ii) on the life of a borrower or of a surety.”

Apart from insurance companies, MHC Ltd is the only lending institution empowered to carry on insurance business of its own. Consequently, the issue of bundling does **not** arise in the case of MHC Ltd because it is mandated by the MHC Act 1974.

(b) As a result, MHC Ltd is, in essence, different from a commercial bank. It is engaged in the provision of housing loans but its main activity remains the implementation of the social housing project devised by the government i.e. providing subsidized housing loan facilities

¹⁹ Section 4(b) Mauritius Housing Corporation Act 1974

to low-income people. Moreover, MHC Ltd also offers services like free drawing plan to low income earners.

- (c) The focus of this investigation is on the bundling of insurance products (DTA) and credit products (Housing Loans) in the banking sector but MHC Ltd is mandated to provide both housing loan and insurance facilities under the same roof. It is to be highlighted that MHC Ltd can offer insurance facilities only to its customers taking a housing loan. Customers are also free to take their life insurance policy from other insurance companies if they do not wish to take the insurance policy provided by MHC Ltd.

3.53 For the above reasons, the CCM does not deem it appropriate to include MHC Ltd in the ambit of this investigation.

Housing Loan in Mauritius

The Background

3.54 A 'housing loan', also referred to as home loan or mortgage loan, is a secured loan offered by a bank or any other financial institution against the security of a house/property which is funded by the bank/financial institution. The housing loan is used *inter alia* to finance purchase of land and/or acquisition, construction, completion, extension or renovation of a house/flat/bungalow. Normally, the housing loan should be used solely for the purpose for which the application was made and granted. Should the banking facility be used for any other purpose, the bank reserves the right to recall the facility upon notification.

3.55 Throughout the duration of the loan, the bank reserves conditional ownership upon the house/property so acquired such that in the event of default of payment on the part of the borrower, the banker can retrieve the sum owed by the latter by selling the house/property. This is the first security required by banks in case of default in payment. Banks also usually require a second type of security – a life insurance policy for borrowers taking a housing loan, in case of death or permanent disability.

The Borrower Protection Act 2007

3.56 It has become common practice since the advent of the Borrower Protection Act 2007 (as amended in 2010) ("BPA") that institutions offering credit facilities require the borrower to take out an insurance policy. In this sense, Section 13 of the BPA is to the effect that:

- (1) Where an immovable property is given as a security for the grant of a credit facility, the lender may require the borrower to take out an insurance policy to guarantee the repayment of any amount due to the lender in case the borrower is unable to honour his obligations because of death or permanent disability.

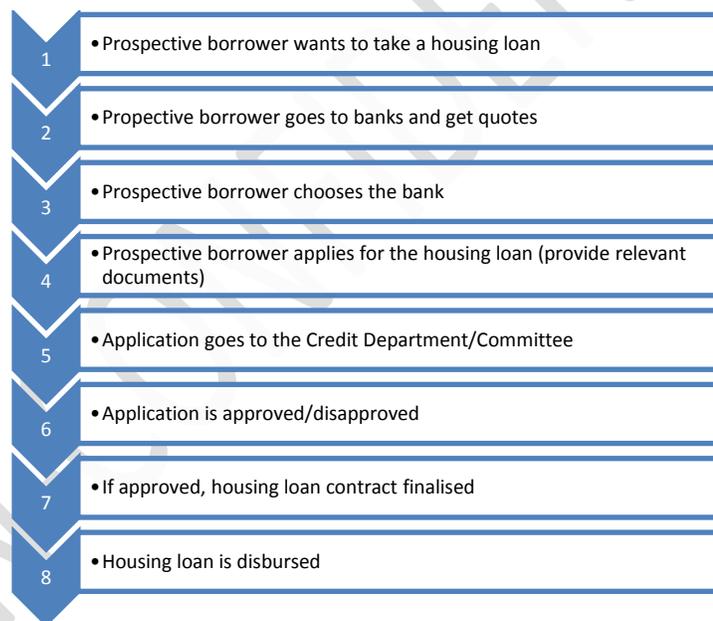
- (2) Where an insurer grants a credit facility to a borrower and the latter is required to take out a policy of insurance pursuant to subsection (1), it shall not be lawful for the insurer to require the borrower to take out another life insurance policy in respect of that credit facility.

3.57 Section 13(1) of the BPA therefore adopts a permissive language in that the lender “may²⁰” require the borrower to take out an insurance policy. As such, although the BPA does not require it of lenders, it allows the lender to condition the approval of a loan application upon the taking out of an insurance policy by the borrower.

Process of Loan Application

3.58 The following figure sketches out the main stages that a customer applying for a housing loan has to go through before a decision is taken by the bank as to whether to approve or disapprove the housing loan application.

Chart 1: Housing Loan Application Process



Source: Data provided by banks

3.59 As illustrated above, once a prospective borrower decides from which bank he will take the housing loan, the latter will have to make an application at the chosen bank and provide supporting documents such as his pay slips, title of deeds, valuation and proof of the ownership of property, a

²⁰ The word "may" shall be read as permissive and empowering. Sec 5(4)(b) Interpretation and General Clauses Act 1974.

fixed charge agreement, insurance policy, etc... . Once the loan application is received at the bank's branch, its risk-assessment team/committee would then perform a credit assessment i.e. assessment of the repayment capacity on the proposed borrower. The time taken to complete this assessment will vary depending on the availability of supporting documents provided by the applicant. Once credit approval is received, an initial letter (equivalent to a first proposal of housing loan agreement) is issued and sent to the applicant and all the conditions precedent met, the housing loan can finally be disbursed.

Life Insurance Policies

3.60 There are different types of life insurance products namely:

- (i) Term Insurance (endowment, educational plan, annuities *etc.*)
- (ii) Cash-back life insurance
- (iii) Decreasing Term Assurance (DTA)

3.61 Term life insurance (also known as term assurance) is life insurance which provides coverage at a fixed rate of payments for a limited period of time, the relevant term. After that term expires, coverage at the previous rate of premiums is no longer guaranteed and the client must either forgo coverage or potentially obtain further coverage with different payments and/or conditions. If the insured dies during the term, the death benefit will be paid to the beneficiary.

3.62 Cash-back life insurance is a type of life insurance which offers the possibility of a refund of some or the entire premium if the policy is held for the duration of the term. Part of the premium is used to provide death benefits and the remainder is available to earn interest. Given that cash-back life insurance is both a protection plan and a savings plan; this insurance usually entails a higher premium than protection-only insurance.

3.63 The insurance product that is commonly used when a borrower takes a housing loan is the DTA whose premium is lower than that for term insurance. In principle, a DTA is linked to a loan. As the term 'DTA' demonstrates, the premium decreases over time and as the loan is being repaid, the sum assured decreases every year accordingly.

The Insurance Act 2005

3.64 In principle, where a person taking a loan or a credit is required to take an insurance policy to secure the interests of the creditor, he has the freedom of choice as to the insurer with which the policy is to be entered into. Section 81 of the Insurance Act 2005 (as amended in 2011) affords statutory protection to the above principle by providing that –

- (1) Where a party to a contract in terms of which money is loaned, goods are leased or credit is granted, requires, whether as a condition thereof or otherwise, that an insurance policy or its policy benefits

- be made available and used for the purpose. Of protecting the interests of a creditor, the person who is so required to make that policy or those policy benefits available shall have a free choice –
- a) as to whether he wishes to enter into a new policy and make it available for that purpose, or wishes to make available an existing policy of the appropriate value for that purpose, or wishes to utilize a combination of those options ;and
 - b) where a new policy is to be entered into-
 - (i) as to the insurer with which the policy is entered into and as to the insurance agent, if any;
 - (ii) as to whether or not the policy benefits concerned are to be provided in an event other than death or disability of the life insured; and
 - (iii) as to whether or not the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, shall exceed the value of that debt or other obligation.

3.65 However, Section 81(7) of the Insurance Act 2007 waives the free choice policy requirement in the case of a loan granted to a policyholder by a long term insurer against a security of a long term insurance policy. Accordingly, the long-term insurer may impose that the insurance policy to be pledged as security against the loan be taken from that insurance company itself.

Agreements between Banks and Insurance Companies

3.66 Given that the taking of a life insurance policy becomes an important consideration to the borrower while applying for a housing loan, many banks have, with a view to providing one-stop-shop facility to their customers, entered into commercial agreements with insurance companies.

3.67 The most common types of agreement that are shared by banks and insurance companies are the 'Agency Agreement' and the 'Master Policy Agreement'.

Agency Agreement

3.68 An Agency Agreement is a document recording the terms on which the bank becomes an appointed representative of the insurance company and setting out the terms and conditions on which the bank shall be remunerated. Under the agency agreement, the bank agrees to act on behalf of the insurer for the main purpose of promoting, marketing and selling insurance products based on any business and marketing plans agreed with the insurance company.

Master Policy Agreement

3.69 The Master Policy Agreement also referred to as Group Master Insurance Policy or Group Credit Insurance Agreement (hereinafter the 'Agreement') is the document that will govern the agreement between the insurance company and the bank. Governed by the Code Civil, this Agreement sets out

the terms and conditions on which the insurance contract has been concluded. Basically, the object of the agreement is to guarantee, subject to terms and conditions, the refund to the bank of the capital due, after the death or permanent disability (if applicable) in respect of persons to whom the bank has granted credit facilities.

Commission

3.70 Under both agency agreement and Master Policy Agreement, the insurer will normally pay a commission/a fee to the bank in respect of assurances entirely effected and completed. The rate of the commission will normally be negotiated between and agreed by the parties but this rate usually depends on the number and value of insurance policies issued.

4. Legal Background - Possible restrictive practices

4.1 Section 46 of the Act defines a monopoly situation and states the tests to determine whether an enterprise which is in a monopoly situation has engaged in a restrictive business practice that contravenes the Competition Act 2007.

4.2 Section 46(1) of the Act sets specific thresholds for market shares²¹ below which enterprises are presumed not to be in a monopoly situation and consequently may not be investigated by the CCM. It states that:

A monopoly situation shall exist in relation to the supply of goods or services of any description 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.*

4.3 The application of Section 46 of the Act to an alleged restrictive business practice will depend firstly on the definition of the particular market in which conduct concerning the supply of goods or services is under investigation and the calculation of market shares in that market. These matters will be considered in the next section.²²

4.4 The mere existence of a monopoly situation is not in itself a contravention of Section 46. Rather, the market share tests are thresholds, which, if crossed, can trigger a review of the monopoly situation if the Commission has reasonable grounds to believe that an enterprise in the monopoly situation is “engaging in conduct that has the object or effect of preventing, restricting or distorting competition or constitutes exploitation of the monopoly situation”.

4.5 The circumstances in which a review of a monopoly situation will occur are set out in Section 46(2) of the Act, which states:

A monopoly situation shall be subject to review by the Commission where the Commission has reasonable grounds to believe that an enterprise in the monopoly situation is engaging in conduct that –

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

²¹ Market shares will depend on the market definition adopted by the CCM and may differ from the market in which parties to the investigation perceive themselves to operate. Guidance as to how the CCM proceeds in defining ‘relevant market(s)’ may be sought from Guidelines CCM 2: *Market Definition and the Calculation of Market Shares*.

²² Refer to section on Market Definition and Market Share Analysis.

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

4.6 To apply either of these tests in the review of a monopoly situation, the Commission is required to consider the factors set out in Section 46(3) of the Act, which states:

In reviewing a monopoly situation, the Commission shall take into account –

- (a) *the extent to which an enterprise enjoys or a group of enterprises enjoy, such a position of dominance in the market as to make it possible for that enterprise or those 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 or are likely to be detrimental to the interests of consumers.*

4.7 Section 46(3)(a) of the Act introduces the term ‘a position of dominance’ and some of the related elements of the economic concept of ‘market power’. As a general principle, an enterprise or group of enterprises that lacks market power will not be in such a position of dominance in the market that it, or they, can engage successfully in conduct that contravenes Section 46 of the Act.

4.8 In the case of a single enterprise in a monopoly situation, the CCM is required to take into account whether the enterprise, acting alone, is in a position to adjust prices or output, without effective constraint from competitors or potential competitors.²³ If the evidence available to the CCM shows that an enterprise is unable to increase prices or reduce output in such a way, this may indicate that it does not enjoy such a position of dominance even though it is in a monopoly situation.

4.9 The factors set out in paragraphs (b) and (c) of Section 46(3) of the Act are important to the assessment of whether an enterprise enjoys the position of dominance described in paragraph (a) of that section. If substitutable products are available or become available in the short term, an enterprise will not enjoy the position of dominance described in paragraph (a). In the event that it increased prices or reduced output, consumers would switch to competing products and the

²³ The same will apply to a group of enterprises which are found to be in a monopoly situation for the purposes of Section 46.

enterprise would be denied the benefits of the change. This would include where the goods or services are not currently available but another enterprise can produce them in the short term by switching production or by importing.

- 4.10 Finally, paragraph 46 (3) (d) requires the CCM to consider evidence of actions or behaviour by the enterprise that has or is likely to have effects of the kinds described in that paragraph. This will normally require the CCM to identify particular conduct and then assess the actual or potential impact of that conduct on the efficiency, adaptability and competitiveness of the Mauritian economy or the interests of consumers.
- 4.11 Because Section 46(3)(d) refers to “evidence of actions or behaviour by an enterprise ... that have or *are likely to have an adverse effect* ...” [emphasis added], the assessment of the likelihood of an adverse effect does not require the CCM to wait until actions or behaviour have been successful before it can review the conduct. If the CCM finds that an enterprise in a monopoly situation is engaging in conduct with the object of preventing restricting or distorting competition, it can take action to remedy the situation. In the alternative, if it can be shown that the enterprise in the monopoly situation did not engage in the conduct with that object, but the conduct is likely to have that effect the CCM can also take remedial action.
- 4.12 The factors that Section 46(3) requires the CCM to consider for the purposes of assessing the monopoly situation of an enterprise will also be relevant to the definition of the market. This will particularly be the case with the factors in paragraphs (b) and (c),
- 4.13 The application of the factors in Section 46(3)(a) – (d) is discussed further in paragraphs 2.15 – 2.27 of CCM 6 – Guidelines on monopoly situations and non-collusive agreements.
- 4.14 If the review of conduct falling within Section 46 of the Act leads to a finding that competition in any market is adversely affected by conduct which contravenes either of Section 46 (2)(a) or 46(2)(b), the Commission must also consider the factors set out in Section 50 of the Act. The application of Section 50 of the Act is described in more detail in the Section 7 on potential remedies.

Bundling

- 4.15 The particular conduct under investigation in INV007 is called ‘bundling’. It can be a form of exclusionary conduct in which an enterprise that holds a position of dominance that satisfies the test set out in Section 46(3)(a) of the Act uses that position of dominance to exclude competitors and potential competitors from the market in which it supplies goods or service, with the object or the effect of preventing, restricting or distorting competition.
- 4.16 Bundling will not always be anti-competitive. It, together with the related concept of ‘tying’, is described in ‘CCM 4 - Competition Commission of Mauritius Guidelines on Monopoly Situations and Non-Collusive Agreements’. As CCM Guidelines 4 notes:

Tying and bundling are normal business practices that are not by any means necessarily anti-competitive. Many products are sold jointly, or in varying combinations. Indeed, in a sense all products are 'bundles'. It would be inefficient and unworkable to try to prohibit cars being sold as 'bundles' of engine, body, wheels and tires.

However, in some cases bundling might be used anti-competitively. If an enterprise has market power in the sale of one product, but sells another in more competitive markets, then it might 'leverage' market power to reduce competition in the second market. To the extent customers have to buy the monopolized (tying) product, they are forced in effect to buy the other (tied) product, reducing the sales of competitors for that second product. This is not in itself anti-competitive. However, if this irreparably damages those competitors or forces them out of the market, this might damage competition itself and therefore be regarded as anti-competitive foreclosure.²⁴

4.17 The bundling in this case can be distinguished from many situations in which anti-competitive bundling can occur, because it does not concern an enterprise that produces products in two markets, in one of which it has market power, or a position of dominance of the kind described in Section 46(3)(a), that it leverages into the other market where it faces competition. Instead, the enterprises under investigation in this matter are bundling their own products with those of third parties that operate in markets in which the enterprises under investigation are not participants. They are acting as representatives or agents of those third parties in return for payment of a commission. The principal rationale for engaging in anti-competitive bundling would appear to be absent in the present situation. However, the bundling may still have, or be likely to have, an anti-competitive outcome, and the enterprises have incentives to engage in the conduct.

Experience of other Competition Authorities

4.18 Competition authorities have extensive experience of bundling, including anti-competitive bundling of the kind in which enterprises that operate in two markets leverage market power that they possess in one market into the second market where they face competition. Situations in which bundling of a third party's product occurs have arisen less frequently. The CCM is aware of three decisions in which overseas agencies and tribunals have reviewed situations that are comparable to the circumstances in this matter. Those decisions are:

- (a) the 'Payment Protection Insurance market investigation' by the Competition Commission in the United Kingdom, published on 29 January 2009;
- (b) the decision of the Competition Appeal Tribunal in *Barclays Bank Plc v Competition Commission* [2009] CAT 27, in which Barclays Bank challenged the

²⁴ Paragraphs 3.26 and 3.27 of Guidelines CCM 4: Monopoly Situations and Non-collusive Agreements.

decision of the Competition Commission in the ‘Payment Protection Insurance market investigation’; and

- (c) the report of the Competition Commission in the United Kingdom entitled ‘Extended warranties on domestic electrical goods: A report on the supply of extended warranties on domestic electrical goods within the UK’, from 2003.

4.19 These cases are considered in more detail in the next section.

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5. The Market Definition

Market Definition

Introduction

- 5.1 In this section, the CCM defines the relevant market for the distribution of housing loan. It is primarily done by assessing the two possible market definitions mentioned in the Sol, “The Housing Loan Market” and the “Point of Sale Advantage”.
- 5.2 The CCM’s approach to this analysis is set out in The Guidelines – CCM 2: Market Definition and the calculation of market shares²⁵ (“The Guidelines”). The CCM considered the appropriate product and geographic market definitions, applying the methodology set out in its Guidelines²⁶ and does not regard market definition as an end in itself, but rather as a framework within which to analyse the effects of market features.
- 5.3 Moreover, as stated in CCM Guidelines 2 “ given the uncertainty over the true market definitions, as well as the inevitably arbitrary threshold values, the CCM will not engage in protracted debate over which method to use to calculate market share.”

Guidelines

- 5.4 The monopoly provisions of the Competition Act only apply to enterprises with market shares in excess of limits defined in that Act. Calculating market shares requires the definition of a market. More generally, competition concerns can only arise when enterprises have market power – “the ability to operate in that market, and to adjust prices or output, without effective constraint from competitors or potential competitors.” The CCM takes into account factors listed in Section 46(3) (a) to (d) of the Act when assessing a firm’s market power. The higher the market share of the enterprises concerned, the more likely the enterprise is to have market power.
- 5.5 For these reasons, and to identify the conditions of competition more generally, it is important to define the relevant market within which the products under investigation are sold.
- 5.6 The CCM will normally define ‘the relevant market’ for any given goods or services in two dimensions: product market and geographic market (Para 2.6 of CCM 2 Guidelines).
- 5.7 As the Guidelines note at Para 2.1:

“The ‘relevant market’ (the terms ‘market’ or ‘economic market’ are also used) has a precise meaning in competition policy. It is a defined set of products, and a defined geographic area, within

²⁵ [http://www.gov.mu/portal/sites/ccm/pdf/CCM 2%20-%20Guidelines%20-%20Market%20definition_Nov09.pdf](http://www.gov.mu/portal/sites/ccm/pdf/CCM%20-%20Guidelines%20-%20Market%20definition_Nov09.pdf)

²⁶ See CCM 2 Guidelines

which competition occurs. Relevant markets could be defined narrowly or widely, in either of these dimensions. The narrower the market definition, the higher is likely to be any given enterprise's product's share of that market."

5.8 The Guidelines then set out in detail how the CCM will approach this task. The main definition is provided at paragraph 2.16:

Following standard international practice, the CCM will take as its relevant market the narrowest candidate market for which a monopolist of all the products in the candidate market would be able profitably to increase the price of the product being investigated by a small but significant amount (typically 5-10%) over a sustained period.

5.9 This paragraph, and the Guidelines as a whole, makes clear that market definition is an analytical process involving consideration of competition. The market definition that results from this analysis may be very different from what participants think of as 'the market' within which they operate. The market as defined for competition policy purposes is only the set of products that compete in the manner described above. Often, people will speak of products which are physically similar as being in the same market. However, if two products do not compete in the sense set out above, in that a rise in the price of one does not result in substitution to the other, they are not in the same market for competition law purposes, no matter how similar they are.

5.10 The Guidelines also state at paragraph 2.37 that:

The CCM may also take into account reasoned decisions of other authorities on market definition. Where competition authorities overseas have defined markets using similar principles to those defined here, the CCM may have regard to those conclusions and the analysis supporting them. However, such analysis will not always be directly relevant to the matter being examined by the CCM. Product markets will differ in different countries, for example reflecting different customer tastes and opportunities. Furthermore, the purpose for which markets were examined may affect the market definition arrived at and even the same authority might reach different market definitions when assessing different issues. The CCM will also consider whether any previous decisions and analysis by sector regulators or other authorities in Mauritius may be informative about market definition. Any market definition exercise by other authorities would only provide information to the CCM's own analysis, however, and should not be regarded as setting a binding precedent.

5.11 As stated in the Sol, at that time, the CCM did not come up with a final market definition and had identified two possible market definitions: **'The Housing Loan Market'** and **'The Point of Sale Advantage'**.

Possible Market Definition I: The Housing Loan Market

- 5.12 As stated in Paragraph 2.7 of the CCM Guidelines 2, the product market is the set of products which are substitutes for the product being examined in any specific investigations.
- 5.13 The purpose of defining the relevant economic market will therefore be to group together all those products and services whose suppliers place direct competitive constraint on one another, and to identify the geographical area over which this competitive interaction occurs.
- 5.14 In looking at the relevant product market, the CCM considered the extent to which there would be demand-side or supply-side substitution in response to a small but significant non-transitory increase in price (SSNIP) test.
- 5.15 Demand-side substitution occurs because an increase in price makes a product less attractive to customers who therefore decide to purchase less of it and more of a substitute. Supply-side substitution occurs when a price rise prompts other firms to start supplying, at short notice, an effective substitute to the product in question.
- 5.16 If different loan providers' insurance offers compete with one another effectively, the market will then be as wide as 'housing loan'. For example, suppose customers can readily assess the cost of insurance offered by different providers of housing loans, and take that into account in their decision as to which credit provider to buy from. Then there will be competition between insurance offered by different credit providers, as customers can compare the combined price of the 'package' of insurance and credit. If customers do readily compare prices in this way, and credit providers therefore compete to offer the lowest possible price (or best terms) for this bundled credit-insurance package, then competition in offering insurance is essentially part of the competition in offering credit. Consequently, the relevant market is the market for housing loans, as a supplier would only have market power over the sale of insurance to the same degree that it has market power in the supply of housing loans.

Product Market

- 5.17 The CCM started with the product market, using the SSNIP test and identifying the narrowest possible market definition (Refer to paragraph 2.1, CCM 2 guidelines) and work progressively wider.
- 5.18 In this investigation, the narrowest conceivable market would be the sale of housing loan in a particular bank. The analysis then considered the substitutability of housing loans within the banking sector.
- 5.19 The CCM finds that when choosing a housing loan, borrowers do not necessarily regard the housing loan as a bundled product as described in Paragraph 5.16 above. Based on the conjoint

analysis results from the market survey²⁷, consumers focus mainly on the level of interest rate charged for the housing loan as well as the duration of the loan.

5.20 Starting from a housing loan that can be contracted from a bank for the purpose of purchasing land, constructing, renovating or buying a house, an assessment of the competitive constraints on this particular product is conducted. The housing loan product has been designed for a specific purpose that is for purchasing land, constructing, renovating or buying a house. The other loan products such as personal loans, car loans and educational loans do not have the same terms and conditions attached to them and are definitely for different purposes. Although, consumers could also contract personal loans for the purpose of land purchase, constructing, renovating or buying a house, it cannot be regarded as a reliable substitute, as the duration of the loan, the interest rate charged as well as the amount of the loan that can be provided for personal loans differ significantly and is not attractive for consumers to substitute to instead of contracting a housing loan. The same applies for the other types of loans such as educational or car loans.

5.21 Moreover, as the survey showed that the reputation of and trustworthiness in the bank are also two very important factor for the prospective borrower, a housing loan offered by one bank faces competitive constraints from the same product of another bank. In essence, in terms of the SNIPP, should the price of the housing loan of one bank increase by 5-10%, it is very likely that consumers would switch to other banks offering a housing loan.

5.22 There are also other institutions such as insurance companies, MHC or Mutual Aid where the prospective borrower could turn to following a change in the price of the housing loan. But based on facts stated in Section 2, Background, of this report, and the nature and conditions of the case, the option of going to the institutions mentioned in Background section of this report does not fall within the scope of this investigation. This is because:

(a) Insurance companies, as a financial institution is mandated by Section 81(c) of the Insurance Act 2007 to provide insurance to its loan customers (refer to Para 3.39 and 3.40).

(b) Mutual Aid does not provide housing loan facilities to its members (refer to paragraph 3.47).

(c) MHC Ltd, subject to Section 4(b) of the MHC Act 1976, is mandated to provide for insurance exclusively to its customers (refer to Para 3.52).

5.23 The CCM also considers whether substitution can occur on the supply side²⁸ such that following an increase in the price of housing loans whether other sellers are likely to quickly switch production into that market.

CCM 2 Guidelines, Paragraph 2.18 states that:

²⁷ Refer to Annex E, 'Survey on Bundling of Insurance Products and Credit in the Banking Sector', Page 17.

²⁸ CCM 2 Guidelines, page 4, Para. 2.4.

“The constraints on such price increases could arise from customers switching to other products (‘demand-side substitution’) or other suppliers switching production to enter the market (‘supply side substitution’). The CCM will normally consider whether sufficient substitution would happen within a year to render a price increase unprofitable, when assessing market definition.”

5.24 The CCM will normally consider whether sufficient substitution would happen within a year to render a price increase unprofitable, when assessing market definition²⁹. However, given the long term nature of the housing loan, and the long term commitment of banks towards the sale of their products, the CCM’s view is that it would be very difficult for banks to shift from their actual commitment, for example car loan or educational loan, in order to provide housing loans in a year (which also entails a long term commitment for the bank).

5.25 The CCM therefore concludes that there is no substitution on the supply side of housing loans.

5.26 Therefore, the product market is the market for housing loan in the banking sector.

5.27 Based on the above analysis, the product market would therefore be the market for housing loan from banks.

The Geographical Market: Mauritius

5.28 The appropriate geographical market seems self-evidently to be ‘Mauritius’ as we would not expect significant numbers of customers to seek housing loans from banks without a presence here. Nor should the geographic market be narrower, as a housing loan is a significant decision for which customers might be expected to travel within Mauritius, were the best deal not available locally.

5.29 The geographic market is therefore ‘Mauritius’ (including Rodrigues).

5.30 The relevant market is the market for housing loan from banks in Mauritius.

Market Share

5.31 Refer to Annex A, Market Share Analysis.

DTA Market

5.32 Referring to Paragraph 3.63, the DTA is normally required when a borrower takes a housing loan whether from a bank or any other financial institution (Para 3.56). DTA is therefore currently sold as a secondary product.

²⁹ CCM 2 Guidelines, page 4, Para. 2.18.

5.33 In looking at the relevant product in the secondary market, the CCM considered the extent to which there would be demand-side or supply-side substitution in response to a SSNIP test.

Product Market

5.34 In this investigation, the narrowest conceivable market would be the sale of DTA when a borrower needs to take an insurance policy to secure against a housing loan. It is obvious that the borrower will not be able to substitute a DTA/life policy for a housing insurance policy, or any other insurance policy as these policies are designed for different specific purposes. The substitutability of DTA across the insurance industry is next considered.

5.35 However, the borrower can choose to take a life insurance as mentioned in Para 3.62 instead of the DTA insurance policy. But, It should be noted that the premium for life insurance is higher than what the borrowers would have paid under the DTA insurance policy. Therefore, following a DTA premium increases, the borrowers are unlikely to substitute the DTA insurance policy by the life insurance policy. DTA insurance policy is indeed the most common insurance policy taken by the borrower when taking a loan.

5.36 Any increase in the DTA insurance premium by one insurance company, will result in the borrower shifting to other insurance companies. There are also some banks offering bancassurance facilities, in this case following a rise in the insurance premium, the borrower will also be able to shift to another insurance company in the industry.

5.37 On the supply side, the CCM also considers whether substitution can occur on the supply side³⁰ such that following an increase in the DTA insurance premium whether other sellers are likely to quickly switch production into that market.

5.38 The CCM will normally consider whether sufficient substitution would happen within a year to render a price increase unprofitable, when assessing market definition³¹. However, given the long term nature of the housing loan and the long term commitment of that insurance companies towards the sale of the different long term insurance products, the CCM's view is that it would be very difficult for insurance companies to shift from their actual commitment, for example permanent health insurance policy or pension plan, in order to provide DTA/Life insurance policy in a year (which also entails a long term commitment from the insurance company).

5.39 Therefore, the product market is the market for DTA in the insurance sector.

³⁰ CCM 2 Guidelines, page 4, Para. 2.4.

³¹ CCM 2 Guidelines, page 4, Para. 2.18.

The Geographical Market: Mauritius

5.40 The appropriate geographical market seems self-evidently to be ‘Mauritius’ as we would expect significant numbers of borrowers to seek DTA insurance policy in Mauritius itself.

5.41 The geographic market is therefore ‘Mauritius’ (including Rodrigues).

Relevant Market

5.42 The relevant market is the market for DTA in Mauritius.

Possible Market Definition II: The Point of Sale Advantage

5.43 As stated in the Sol, in the process of securing a housing loan, the customer might not consider insurance and the cost of that insurance until late in the process. At that time, ‘the point of sale’, the customer might be quite insensitive to the price of the insurance offered. Many customers faced with a high price for insurance may choose only to substitute to alternative possibilities available there, at the point of sale, rather than abandoning the process and considering alternative credit providers. If this is the case, the relevant market will be an extremely narrow one, including only those insurance options available at the point of sale³². Moreover at this point the credit provider would have an advantage over other insurance providers to sell the bancassurance to the customer.

Experience of other Competition Authorities

5.44 The Competition Commission in the United Kingdom has conducted two investigations in which the point of sale was a critical feature of the market. The Competition Appeal Tribunal has conducted a judicial review of one of those decisions. We begin with a general introduction to each of those cases, before considering the treatment of the ‘point of sale advantage’.

Market Investigation into Payment Protection Insurance

5.45 The UK Competition Commission (UKCC) conducted a two-year market investigation between 2007 and 2009³³ into “Payment Protection Insurance” – insurance offered bundled with various sorts of credit, including housing loans to cover repayments on the insured credit product if the borrower suffers an insured event³⁴ - and subsequently issued its report on 29th January 2009, referred as UKCC1 in this report.

5.46 The UKCC found that due to the lack of competition arising in the process of selling PPI by each distributor and intermediary, it was highly profitable for distributors to sell PPI sold in combination

³² alternatives offered by the bank plus the option if available of assigning an existing insurance policy to the bank)

³³ <http://www.competition-commission.org.uk/inquiries/ref2007/ppi/index.htm>

³⁴ Insured event usually includes accident, sickness, unemployment or death.

with the credit it insured. This in turn resulted in higher prices and less choice for consumers than there would have been if there was effective competition between PPI providers. The UKCC therefore concluded that there were serious deficiencies in the competitive process for selling PPI policies, and, in order to remedy the adverse effects identified, a package of remedies would be required which included some significant restrictions on what service providers selling both PPI and credit can do (and also impose some burden on parties that offer only PPI to consumers).

5.47 In order to explore customers' perceptions of the PPI market and their experience in becoming a PPI customer, understand the customer motivations and behaviours, establish the extent of searching for stand-alone PPI policies and combinations of PPI and credit prior to a credit application being made, the UKCC undertook two quantitative surveys and a qualitative experiment among PPI customers.

5.48 They found that most PPI policies are sold by distributors at the point of sale of the credit being insured.

5.49 As far as the advantage itself is concerned, the UKCC describes it as being the combined ability "to offer [the service or product] at the point of sale [...], and be the only provider to do so, [which] gives distributors an advantage over those who cannot do so."³⁵

5.50 They also found that "sale of retail PPI at the initial point of sale and continued exclusive access to customer accounts restricts the extent to which other PPI providers can compete effectively, and is therefore a feature of relevant markets which prevents, restricts and distorts competition in the supply of retail PPI".

5.51 They concluded that they should impose:

(a) *"a prohibition on distributors and intermediaries from selling PPI to their credit customers within seven days of a credit sale, unless the customer has proactively returned to the seller at least 24 hours after the credit sale;*

(b) *a prohibition on selling single-premium PPI policies (where the premium is paid in one upfront payment, generally by adding the premium to the credit borrowed);*

(c) *a requirement on retail PPI distributors to offer retail PPI separately when they also offer retail PPI bundled with merchandise cover;*

(d) *and several requirements to provide specified information in marketing materials, at the points of sale of credit and PPI, and each year after the PPI policy has entered into force"*³⁶.

³⁵ UK Competition Commission Report 'Market Investigation into Payment Protection Insurance,' Page 117, Para. 5.91

Barclays Bank PLC³⁷ v Competition Commission

- 5.52 The report of the UKCC was challenged before the Competition Appeal Tribunal ('the CAT') by Barclays Bank PLC ('Barclays') supported by Lloyds Banking Group PLC and Shop Direct Group Financial Services Ltd, which resulted in the judgment, dated 16th October 2009³⁸. The Tribunal conducted judicial review of the decision and did not consider the merits of the Commission's reasoning.
- 5.53 The grounds claimed by Barclays in its criticism of the report of the UKCC were summarized into two categories by the CAT, whereby "[t]he first three [grounds], all of which overlap, are aimed at the imposition of the POSP [point of sale prohibition] as part of the package of remedies.³⁹"
- 5.54 The fourth and last ground "attack[ed] the Commission's [UKCC's] relevant market analysis, and the Commission's [UKCC's] findings as to the competition problems which it found to exist in the markets thus identified.⁴⁰" The market definition was attacked by Barclays claiming that the narrow market definition was a result of the failure to carry out a proper analysis and that the Commission failed to take account of evidence suggesting a wider market definition. The Tribunal rejected these criticisms. No criticism was specifically aimed at the concept of point-of-sale advantage in Barclays' application. As a note, the CAT concluded on the fourth ground put forward by Barclays that "this ground has not been made good⁴¹".
- 5.55 The Tribunal quashed the Commission's decision to impose one remedy, the Point of Sale Prohibition, and remitted the matter to the Commission to reconsider that remedy. The Tribunal did not exclude the possibility that the Commission could lawfully impose that remedy again after reconsidering the matter.⁴²

'Extended Warranties on Domestic Electrical Goods by UKCC'

- 5.56 The UKCC also conducted an investigation on the point of sale - extended warranties (EW) for domestic electrical goods (DEG) to investigate the existence or possible existence of a monopoly

³⁶ UK Competition Commission Report 'Market Investigation into Payment Protection Insurance,' Page 117, Para. 5.91

³⁷ Refers to the Barclays Bank PLC in the UK

³⁸ CAT Judgment, Case No 1109/6/8/09 (http://www.catribunal.org.uk/files/Judg_1109_Barclays_16.10.09.pdf)

³⁹ CAT Judgment, Case No 1109/6/8/09 (http://www.catribunal.org.uk/files/Judg_1109_Barclays_16.10.09.pdf), Page 13, Paragraph 30

⁴⁰ CAT Judgment, Case No 1109/6/8/09 (http://www.catribunal.org.uk/files/Judg_1109_Barclays_16.10.09.pdf), Page 14, Paragraph 30

⁴¹ CAT Judgment, Case No 1109/6/8/09 (http://www.catribunal.org.uk/files/Judg_1109_Barclays_16.10.09.pdf), Page 29, Paragraph 64

⁴² CAT Judgment, Case No 1109/6/8/09 (http://www.catribunal.org.uk/files/Judg_1109_Barclays_16.10.09.pdf), Page 80, Paragraph 181

situation in relation to the supply of extended warranties for domestic electrical goods in the UK (UKCC2).

- 5.57 The report issued in 2003 was concerned with distributors which offered extended warranties (EWs) on a specific category of goods, namely Domestic Electrical Goods (DEGs). These warranties were basically insurance schemes that were used to insure the goods for a longer time period than the period granted under the manufacturer warranty embedded in the product. Moreover, extended warranties provide users with protection from other circumstances than those found covered by the manufacturer warranty. These extended warranties were available for sale either at the electrical goods retailers or at other sellers such as insurance firms.
- 5.58 The UKCC found and stated in its report that the “most significant element of differentiation among different providers of EWs is between those providers that sell EWs at the point-of-sale of DEGs [...] and those that do not, that is, direct sales by insurance companies, most manufacturers’ EWs, and sales through credit card and utility companies.⁴³”
- 5.59 Survey results into consumer behaviour were also used by the UKCC in assessing point of sale advantage. More specifically, the UKCC looked into whether consumers compared prices and terms of EWs across different suppliers prior to their purchases. The survey went as far as determining whether consumers even thought about getting EWs from different providers and at the point where the majority of EWs were bought, namely at POS or non-POS sales points.⁴⁴
- 5.60 It was established that there was a link between consumer behaviour and the advantage that this behaviour granted to DEG retailers. The UKCC concluded that “it [was] clear that the fewer the consumers who base their purchase decision on active search and comparison of different EW offers, the weaker the competitive constraint placed on POS EWs by other providers⁴⁵”. The UKCC also determined whether consumers who do not purchase POS EWs do so at all even with different providers.⁴⁶
- 5.61 The UKCC established that buying at the point of sale reflects a benefit to consumers both in terms of timeliness and in terms of convenience.⁴⁷ It however mitigated this view by highlighting that the issue behind this was with the degree of “information [...] available to consumers at the POS as opposed to any other time,⁴⁸” stating that “if consumers [found] it hard, or for any other reason [did] not obtain and compare information covering different EW offers, they [were] more dependent on the information available at the point of sale.”⁴⁹ Relevant alternate reasons included

⁴³ UKCC Report on ‘Extended Warranties on domestic electrical goods, Page 261, Paragraph 12.33

⁴⁴ See UKCC Report on ‘Extended Warranties on domestic electrical goods, Page 261, Paragraph 12.35

⁴⁵ UKCC Report on ‘Extended Warranties on domestic electrical goods, Page 261, Paragraph 12.36

⁴⁶ See UKCC Report on ‘Extended Warranties on domestic electrical goods, Page 262, Paragraph 12.38

⁴⁷ See UKCC Report on ‘Extended Warranties on domestic electrical goods, Page 261, Paragraph 12.40

⁴⁸ UKCC Report on ‘Extended Warranties on domestic electrical goods, Page 262, Paragraph 12.41

⁴⁹ UKCC Report on ‘Extended Warranties on domestic electrical goods, Page 262, Paragraph 12.41

the lack of in-store research possibilities, costs to the consumer, gathering of information, variations in terms and conditions of EWs which made it difficult for the consumer of determining the best EW, possibility of internet access for the consumer and the fact that access to a telephone line for the consumer did not reduce the consumer's search cost simply to the cost of the telephone calls but that costs of time and effort should be added to financial costs.⁵⁰

5.62 The Commission then turned to look at the alternate methods available to non-POS EW sellers of overcoming point of sale advantage, as suggested by point of sale EW providers.⁵¹ It also carried out a SSNIP test and determined whether there was room for a cellophane fallacy in the test results.⁵²

5.63 According to the UKCC, point of sale providers could in effect raise their prices far higher than non-POS providers without reducing profitability while non-point of sale providers had a relatively low maximum price they could charge for same.⁵³

5.64 The UKCC, in this case, found it problematic to apply the SSNIP test in a strict manner and therefore chose to include both point of sale and non-point of sale providers in its analysis while highlighting that a central feature of the analysis was that point of sale suppliers had a substantial advantage over non-point of sale suppliers which was reflected in terms of prices charged.⁵⁴

Determination of Point of Sale Advantage

5.65 After extensive analysis (set out in detail in its Final Report⁵⁵), the UKCC1 report concluded⁵⁶ that:

We conclude that, for all types of PPI policies, the relevant product market is the sale of PPI to an individual distributor's, or intermediary's, credit customers by that distributor or intermediary.

5.66 This is equivalent to the 'point of sale' market definition set out here (the UKCC uses the term 'distributor' to mean a credit provider such as a bank). Referring to paragraph 5.89, 5.90 and 5.91, the UKCC1 report describes the 'point of sale advantage' as follows:

The point-of-sale advantage is the benefit which distributors enjoy from having sole access to customers at the time that they are buying their credit.

⁵⁰ See UKCC Report on 'Extended Warranties on domestic electrical goods, Page 262, Paragraphs 12.42 and 12.43

⁵¹ See UKCC Report on 'Extended Warranties on domestic electrical goods, Pages 263 to 265, Paragraphs 12.45 to 12.60

⁵² See UKCC Report on 'Extended Warranties on domestic electrical goods, Pages 265 to 267, Paragraphs 12.61 to 12.72

⁵³ See UKCC Report on 'Extended Warranties on domestic electrical goods, Page 268, Paragraph 12.82

⁵⁴ See UKCC Report on 'Extended Warranties on domestic electrical goods, Page 268, Paragraphs 12.83 and 12.84

⁵⁵ <http://www.competition-commission.org.uk/inquiries/ref2007/ppi/index.htm>

⁵⁶ Final Report, para 3.139

It has been put to us that the point of sale is the time when customers are likely to focus their attention on the needs which PPI is designed to meet, and is therefore an opportune time for distributors to attempt to sell PPI to customer.

“..., the ability to offer their PPI at the point of sale (either on an advised or non-advised basis), and be the only provider to do so, gives distributors an advantage over those who cannot do so.”

- 5.67 When considering the evidence of a point of sale in the UKCC1 report, the survey found that one half to three quarters of customers had not considered PPI before the point of sale. Another piece of evidence is that some people thought that the chances of their credit application would be enhanced by taking the PPI along with the credit. Moreover, a large number of PPI holders believed that they could not have bought PPI from a provider other than their credit provider. During the mystery shopping exercise, many firms also did not make it clear whether the loan product and the PPI product were separate, such that the mystery shoppers were left with the impression that the PPI ‘comes with the loan’.
- 5.68 The UKCC1 report found that customers do not compare prices of the ‘package’ of credit and insurance in a way that would result in the market being wide (like ‘the housing loan market’). Instead each credit provider has a monopoly over its point of sale.
- 5.69 In the UKCC2 report, the DEG retail market appeared to be characterized by vigorous price competition, by contrast, there was relatively little competition on the pricing of EWs.
- 5.70 In the UKCC2 report, “All DEG retailers accepted in their submissions that there was a point of sale advantage arising from their position as the retailer of the DEG. Reasons given for this included: the convenience factor and peace of mind for the consumer in purchasing the EW at the same time as buying the DEG (for example, consumers could avoid further search costs and are reassured that the EW offered is appropriate to the DEG and there will be no disputes between a retailer and EW provider as to where responsibility for remedying faults lie)”.
- 5.71 They also reported that customers appeared to decide whether to buy an EW in part by assessing the cost of the EW against the potential cost of replacing the DEG. Prices set by point of sale retailers appear to be set to a considerable extent at levels that consumers will bear rather than in the light of competition from readily available alternatives. Prices did not appear to reflect variations in underlying costs or risks. Most manufacturers did not actively promote their own EWs, nor do they compete with retailers to supply EWs at the point of sale.
- 5.72 They distinguish between the provision of the EWs at the point of sale of the DEG and away from the point of sale of the DEG in the EW market such that:

“Selling an EW at point of sale of the DEG provides a significant competitive advantage; the EW can be sold as an immediate and relevant secondary purchase at a convenient moment for the customer. Thus non-point of sale providers have much less opportunity to sell EWs, and point of sale providers enjoy a significant advantage.”

5.73 In line with the market definition adopted by the UKCC in the two cases cited above, a similar finding of a point of sale advantage for banks engaged in the provision of housing loan and life insurance/DTA would imply that each bank is in a monopoly situation, at the point where customers make their decision to purchase DTA.

5.74 The next section presents the CCM's analysis to determine whether the point of sale advantage market definition is valid in this investigation.

Point of Sale Advantage in Banks

5.75 As reported in the Sol, paragraph 3.35, the CCM expected to adopt a 'Point of Sale' market definition, unless it received convincing arguments for not following the approach set by the UKCC in its PPI investigation. Under this definition, most banks or other providers of housing loans are likely to be in a monopoly situation within the meaning of the Act. As UKCC1 report stated⁵⁷:

"We note that existing distributors, with access to credit customers at the point of sale, could potentially substitute between the supply of various types of insurance to those customers, including all the alternatives above. This raises the prospect that the product market, at the point of sale, may be wider than PPI. However, the incumbent distributor would still have a monopoly position over the supply of any insurance to those credit customers. This aspect of market definition does not therefore affect our assessment of competition between suppliers; we therefore did not consider this aspect of market definition further."

5.76 After the Sol, comments submitted by banks argued that:

(a) It is inappropriate for the CCM to follow the analysis of the UKCC and as such the product market definition should be supported by its own analysis of the particular features of the market for the relevant product in Mauritius.

(b) The term 'point of sale' is inappropriate when assessing the market as a point of sale offers a range of products rather than a single product. [X-Commercially Sensitive Information] argued that the analysis should rather focus on the product and that a product market definition should be used i.e. the 'housing loan market' instead of 'point of sale' analysis.

(c) Irrespective of the type of analysis to be adopted by the CCM, the most important part of this investigation is to determine whether the liberty of choice is given to customers so as to enable them to compare between insurance products available on the market as well as being given the opportunity to seek professional advice.

⁵⁷ See UK Competition Commission Report 'Market Investigation into Payment Protection Insurance,' Page 65, Footnote 34.

- 5.77 The CCM took account of the different comments received and decided to undertake a survey so as to be able to determine the existence of a point of sale advantage in the local market and opposed to rely solely on the UKCC1 report.
- 5.78 Based on data provided by banks, the CCM found that customers were likely to take a DTA/life insurance with the insurance companies with which the bank has agreement. Chart 2 clearly shows that such customer behaviour is very common across all the banks having agreement with a particular insurance company for the period 2010-2011. The pattern shows that for some banks a very high percentage (90%) of the borrowers have taken their DTA insurance from a particular insurance company⁵⁸.
- 5.79 This result gives an indication that banks may have a point of sale advantage in the selling of DTA when selling housing loan.
- 5.80 To provide further empirical evidence on whether banks have a point of sale advantage when selling housing loans to customers, the CCM has decided to conduct a survey. TNS analysis has been chosen to conduct the survey on behalf of the CCM following a procurement exercise. The CCM is aware that survey results may not always be giving entirely consistent results but it is important to have a general perspective of the results.
- 5.81 The terms of reference and the survey questionnaire was subsequently circulated to the 13 banks involved in this investigation as well as the Bank of Mauritius for their comments on the 30th March 2011 and 10th August 2011 respectively.
- 5.82 The terms of reference included the following so as to enable the CCM to determine:
- (a) whether each bank offering housing loan has a point of sale advantage on the selling of insurance products to its customers;
 - (b) at what stage of the housing loan application process customers are aware of the requirement to take a life insurance policy covering the loan (DTA – Decreasing Term Assurance);
 - (c) freedom of choice of the insurance company in the loan process;
 - (d) the ability of consumers to make use of this freedom of choice.

⁵⁸ Also refer to Charts 5 and 6

Survey Methodology

- 5.83 The sample size of the survey is 50159. The sample size consisted mostly of 10% of the respondents who took their loan in the year 2009 (as from December 2009) and the remainders of the respondents are almost equally spread over the years 2010 and 2011⁶⁰.
- 5.84 The sample data has been weighted in terms of housing loans per bank as per the national market share, provided by the CCM61 so as to be representative of the housing loan population from the different banks of Mauritius.
- 5.85 Based on the weighting applied, the current database accounts for 43% of the respondents having taken loan up to Rs 500,000, 35% between Rs 500,000 and Rs 1.5m and 8% above Rs 1.5m. It should be noted that 15% of the respondents refused to mention the loan amount during the survey.
- 5.86 The socio-demographic profile of the sample is shown annexed⁶².
- 5.87 Interviews were conducted from the 17th of October 2011 to 27th of January 2012.
- 5.88 Data was gathered through face-to-face and pen-and-paper interviews with people who have taken a housing loan with a bank as from December 2009.
- 5.89 A conjoint analysis has been performed in order to measure customer preferences with respect to credit providers and to understand how product features influence customers' choice.
- 5.90 Analysis is done with standard statistical software Sawtooth, Sphinx, SPSS and Web Stats Statistical Software⁶³.
- 5.91 20% of call check and double entry respectively were carried out for quality check purposes.

⁵⁹ Population sample size has been reviewed from 1000 to 500 during the survey due to difficulty of obtaining such personal information on the field.

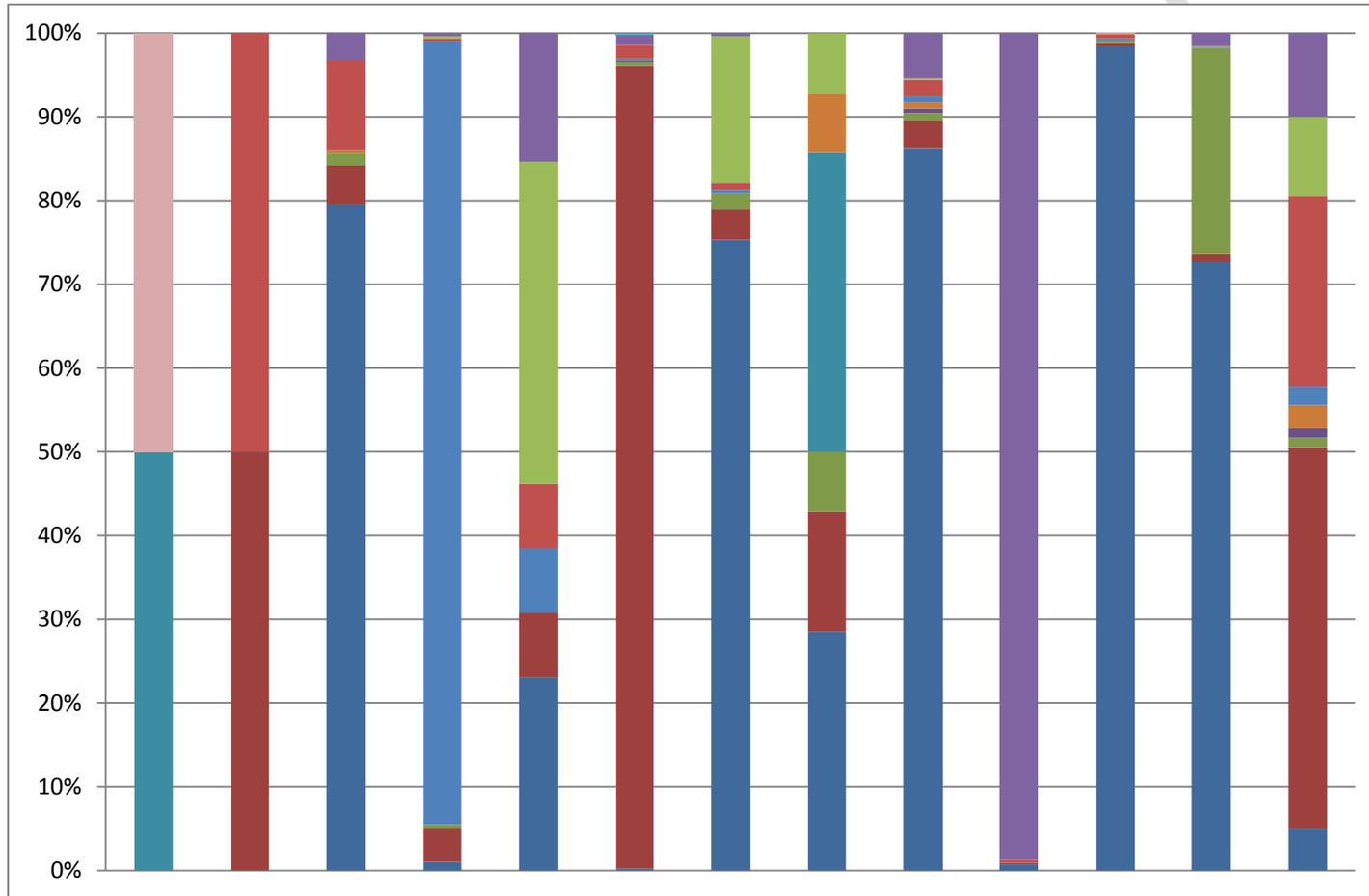
⁶⁰ Refer to Annex B, Chart D.

⁶¹ Refer to Annex B, Chart D.

⁶² Refer to Annex B, Chart C.

⁶³ They are standard survey software used for conjoint analysis and statistical (quantitative/ qualitative) analysis.

Chart 2: Percentage of housing loan customers taking a Life Insurance Policy/DTA from the different insurance companies in period 2010-2011



Source: Data from respective banks

Assessment of Point of Sale Advantage

I. Typical profile of customer interviewed

- 5.92 The majority of the people interviewed (73%) consisted of qualified workers, people working in sales/service, administrative personnel/supervisor, and white collar jobs without degree. 43% of the respondents have contracted a loan of up to Rs 500k and 35% are within the Rs 500k – Rs 1.5m range.
- 5.93 The survey revealed that for a customer, trustworthiness (26%) and the reputation of the credit provider (26%) are the most important criteria that are taken into consideration when choosing a credit provider. Years of existence/experience of the credit provider (18%) and the financial stability/growth prospects of credit provider (18%) are also other important factors.
- 5.94 As for deciding about the housing loan, the customer would give upmost importance to the amount of interest and insurance they would pay on a monthly basis (59% of the respondents), the amount of processing fees and charges they would pay (49%) and need for guarantee (48%). The survey also showed that more specific features related to the life insurance taken such as insurance premium (36%), waiting time before insurance payment to bank starts (13%) or the amount of insurance provider would pay out when claimed (10%) were of relatively low importance.
- 5.95 The choice of a specific loan provider is primarily based on the reputation of the provider (26% acknowledged having taken this criterion at the starting point among all the considerations set). The existing relationship that they already share with the provider (22%) is also one of the key motivations.
- 5.96 Moreover, taking into account all the factors considered by the respondents while finalising their deal with the bank, it is noted that three most important criteria are reputation of the provider, less complicated procedures and the total amount of interest and the life insurance they would pay each month.
- 5.97 Respondents are relatively less concerned about specific Life Insurance formalities. For instance, compared to 64% who were concerned about the monthly payment of interest and life insurance, only 27% were concerned with extent of the life insurance cover.
- 5.98 The survey also shows that before the respondents would approach a loan provider, 71% of them had already decided to purchase their life insurance with the bank⁶⁴. 13% stated that they had no choice but to take the life insurance with the bank, 7% were not aware that they could choose

⁶⁴ This appears to be consistent with the finding of the survey conducted by the UKCC about behaviour of consumers in the country. Refer Para. 17(C), page 4 of the UKCC1 report.

their insurance provider and only 4% had decided to purchase it from a provider other than the one proposed by the bank.

5.99 A majority of the respondents (76%) were aware that taking a Life Insurance is a requirement of housing loans at the initial stages. The remaining 24% of respondents that were not aware of the life insurance requirement and this proportion also includes those who were not aware that they were paying a life insurance for their loan.

5.100 At the time of taking a housing Loan, 43% of the respondents were already aware about the possibility of buying a Stand-alone Life Insurance from another provider. However, 34% were not aware that they could choose their insurance provider and 17% believed that they could only buy from the company where they are taking the housing loan.

5.101 The conjoint analysis also confirmed that the bank (reputation of the bank), interest rate and duration of loan are the main factors that drive the choice for a housing loan.

Observations: Based on the above information, it can be said that the average profile of a customer is that of someone who is literate, who gives significant consideration to the reputation and trustworthiness when deciding which bank to choose and to the total amount of interest and the life insurance they would pay each month, fees and charges when choosing the housing loan. It can also be concluded that while many respondents were already aware that life insurance is a requirement for a housing loan, before selecting a loan provider, a vast majority of them had also already decided to take the life insurance with the bank itself.

2. Experience of the customer with the loan provider

5.102 The survey demonstrated that the majority of the respondents (57%) learnt about the requirement for life insurance in the housing loan process right at the beginning of the loan process, 26% somewhere in between negotiations, 11% at the time of first proposal given by the bank and 4% at the end when nearly finalising the deal.

5.103 Furthermore, 94% of the customers were clearly explained the importance of life insurance by the bank. While 13% of the respondents were proposed a specific insurance provider, two third were however not explicitly proposed a specific life insurance provider. Of the 13% who were specifically proposed a specific insurance provider, 16% of them acknowledged being pushed towards a specific provider while 83% did not feel so.

5.104 The survey shows that the majority of the respondents (91%) stated that the bank employee clearly mentioned the amount of life insurance to be paid,

5.105 Regarding the choice of life insurance provider, 56% of the respondents were not informed by the bank, while 31% of the respondents were informed.

5.106 Moreover 43% of the respondents said that they were aware that it was possible to buy life insurance from a different loan provider, while 34% said they were not aware that they could choose their insurance provider, 17% believed they could only buy the insurance from the bank they are taking the loan.

5.107 For the 43% who were aware of the possibility of buying life insurance from a different loan provider, a majority of 72% were informed by the bank while 24% were not. For the 34% who were not aware that they could choose their insurance provider, 89% stated that they were not informed by the bank either that they could choose their insurance provider, and for the 17% who believed they could only buy insurance from the bank they took the loan, 89% were also not informed by the bank that they could choose their insurance provider.

5.108 Out of the 20% of respondents who stated that they shopped around for loans and life insurance, 82% of the respondents said that they did not encounter difficulties in conducting a comparison exercise.

Observations: Although banks are explaining the importance and requirement of life insurance when taking a housing loan to customers and mentioning the amount of insurance premium to be paid, a majority of respondents reported that they were not informed of their freedom of choice for the life insurance that they require with the loan. Moreover, the survey shows that those who are not aware of the possibility of taking the life insurance from another insurance provider, were also not informed by the bank of the possibility of taking the life insurance from another insurance provider.

3. Consumer Choice

5.109 Before approaching a loan provider, 13% of the customers thought that they had no choice and had to take the life insurance with the bank, 7% were not aware that they could choose the insurance provider, 4% were still unsure about whether to purchase the insurance from the bank or from another provider and 4% had already decided to purchase it from another provider and not from the bank. The remaining 71% already decided to purchase the life insurance from the bank itself.

5.110 At the time of choosing Housing Loan providers, a third of the respondents took the initiative to compare housing loan offers on the market.

5.111 The reasons provided by the 67% of customers who did not shop around for housing loan providers were: (i) they had already decided to take their Housing Loan with a specific provider in mind (70%), (ii) they know and trust the bank (45%), and (iii) the convenience of obtaining life insurance and housing loan under the same roof (41%).

5.112 Moreover, 90% of respondents opted for the bundled offer where both housing loan and life insurance were provided by the same provider. An analysis of from whom the Life Insurance is purchased by those who compared offers and those who did not, shows that 95% of those who did

not compare took the bundled offer while of those who compared only 70% took the bundled offer and 28% bought the life insurance from another insurance provider⁶⁵.

5.113 Furthermore, 1 out of 5 respondents shopped around for Life Insurance offers. Nearly half of the 'shoppers' do this comparing exercise on learning about the possibility of taking a Stand-alone Life insurance at the bank while others were already aware about this option. For instance, 47% of those who were informed by the bank about the possibility of taking Life Insurance from another provider other than the one suggested by the bank, did compare offers on the market. For those who are already aware of this process though not being informed by the bank, 41% of them made a comparing exercise.

5.114 Respondents who believed they could buy Life Insurance only from the bank they are taking their housing loan were asked whether they would have tried to find out about other insurance providers had they known they could take it elsewhere. 10% said that they would have definitely considered comparing offers followed by 27% who said that they may have done so, while 40% stated that they would not have done so, even if aware.

5.115 The main reasons provided by the respondents for not comparing life insurance policies were: (i) they were happy/satisfied with the life insurance provider suggested by the bank (31%), (ii) it was easier and more convenient to take loan and life insurance at same time (27%), (iii) the offer proposed by the bank was attractive and convincing, (iv) no need to go elsewhere (24%), (v) they trusted the life insurance provider recommended by the bank (23%) and (vi) only 11%, thought it would help his loan application if I took out life insurance with the same company.

Observations: Since only a third of the respondents took time to compare loan offers and only one fifth compared the cost of life insurance, this confirms the data that 71% had already made up their mind and would therefore not be interested to compare insurance costs which is reflected by the 90% of customers who took the bundled offer. Of those who compared, only 70% took the bundled offer. Therefore, it can be said that the fact that most customers did not shop around for a better offer, the choice of the customers was restricted to what was proposed by the bank based on the trust and reputation of the loan provider. A smaller number of customers considered the reputation of the life insurance provider, but this included some who appeared to rely on the bank's implied endorsement of its chosen insurance provider.

Analysis

5.116 Data show that 76% of the respondents were aware that they had to take a DTA and that 84% of them learnt the requirement of DTA right at the beginning of the process up to the time of proposal. It should be noted that 71% of the sample had already decided to purchase their life insurance with the bank itself. It has been shown in the survey that banks have also been explaining to customers

⁶⁵ Refer to page 37 of the survey.

the importance of the DTA concept clearly mentioning the amount of insurance to be paid. However, the survey also reports that the majority of respondents have not been informed of their free choice of DTA by the bank. This practice provides the bank with market power to sell the life insurance to the customer at the point of sale of the housing loan since at that stage customers are focusing mostly on the total monthly payment of interest and insurance and not focusing separately on the DTA insurance product.

5.117 Moreover, once the decision about a loan provider has been made (based on factors such as the bank's reputation and trustworthiness, as stated in paragraph 5.93, the fact that the majority of the respondents are not interested in going to other loan providers or compare insurance premium, gives the bank an advantage at the point of sale to also sell life insurance from its preferred supplier with the housing loan.

5.118 Therefore the fact that the average customer already knows which loan provider to opt (based on reputation and trustworthiness) before approaching the loan provider with the focus of his attention on the monthly amount of interest and life insurance, provides the bank with a position of having sole access to him. This is also an opportune time for that bank to sell the life insurance of its choice to the customer due to the fact that the customer has already decided which loan provider to take before even approaching that loan provider. This consequently leads the bank to have monopoly situation which derives from advantage the bank enjoys at the point of sale and is therefore in a point of sale advantage position.

Conclusion on 'Point of Sale Advantage'

5.119 The CCM has assessed all the results of the survey and evidences gathered that support and that do not support the point of sale advantage market definition before reaching a conclusion on the point of sale advantage market definition in this investigation.

5.120 Based on the analysis above, it can be said that banks do have a 'point of sale advantage' in selling DTA insurance while selling housing loans. Since the customers are more likely to focus their attention on the needs of obtaining the loan e.g. the interest rate or the term of loan making them rather quite insensitive to other processing fees and price of insurance offered, this gives the bank the point of sale advantage to sell life insurance. The POS would therefore be defined as the benefit that banks enjoy from having sole access to customers from the time that the customers chose their loan provider up to the moment that they sign the contract, including the decision to purchase DTA.

5.121 Under this market definition, even relatively small providers of housing loans are in a monopoly position at the point of sale which they may use to make additional sales. In this respect, they become monopolists of the market at the point of sale.

5.122 The market is therefore defined as the market of housing loan for each bank.

Market Definition Conclusion

5.123 After assessing the two market definitions, the CCM has decided to go for the 'Point of Sale' market definition for the reasons mentioned below:

- As per the Guidelines⁶⁶, the CCM will go for the narrowest market definition and going for the "point of sale" is the narrowest market definition in the case.
- As mentioned in the UKCC1 report, the direct application of the SSNIP test is complicated by the cellophane fallacy and may lead to the incorrect conclusion that markets are wide if current prices are in excess of competitive levels.
- The SSNIP test shows that an increase in the cost of housing loan would be unprofitable at current prices since when two goods are substitutable at current prices, this may be attributed to genuine substitutability, or alternatively to the cellophane fallacy, thus leading to an inconclusive finding⁶⁷.
- Moreover, as stated in the UKCC2 Report⁶⁸, SSNIP test should ideally be applied at competitive price levels. In a less than fully competitive market, following an increase in the price of the housing loan, borrowers will ultimately start to switch away to alternatives which they would not have considered adequate substitutes at competitive price levels. At such price levels, a SSNIP test is therefore likely to indicate that a (further) price rise is not profitable as prospective borrowers switch to alternatives, suggesting that these alternatives are in the same market when in fact they are not.
- The CCM also considered that the trustworthiness in the name and reputation of the bank that the housing loan borrowers expressed gave support to the point of sale advantage in this case. That trust makes the housing loan borrowers less sensitive to the price of DTA and less inclined to shop around for alternative offers.

5.124 The relevant market is therefore: the **market for housing loan for each bank**.

⁶⁶ CCM 2 Guidelines, page 6, Pra. 2.16 "Following standard international practice, the CCM will take as its relevant market the narrowest candidate market for which a monopolist of all the products in the candidate market would be able profitably to increase the price of the product being investigated by a small but significant amount (typically 5-10%) over a sustained period"

⁶⁷ See UK Competition Commission Report 'Market Investigation into Payment Protection Insurance,' Page 47, Para. 3.12.

⁶⁸ See UKCC Report on 'Extended Warranties on domestic electrical goods, Page 266, Paragraph 12.66

6. Assessment of Conduct

- 6.1 The fact that all banks are in a point of sale advantage situation, the CCM has come forward with two theories of harm:
- (a) Theory of Harm I - Exploitative Abuse – Unilateral Market Power
 - (b) Theory of Harm II – Exclusionary Abuse- Foreclosure
- 6.2 If the above is true, this will mean that banks are in breach of either or both of paragraphs 46 (2)(a)&(b) of the Act by engaging in a conduct that has the object or effect of preventing, restricting or distorting competition through the agreements that they have with insurance companies across the DTA insurance companies and/or constitutes exploitation of their point of sale advantage by bundling DTA insurance products with housing loan products thus restricting the choice of borrowers.
- 6.3 Data used in this report has mainly been gathered by the CCM using the powers under Section 52(1) of the Act through information request orders, survey results and interviews from different parties involved in this investigation. All data provided and used in the Sol has been updated during the course of the investigation.
- 6.4 The assessment of facts and the ensuing analysis covers the period January to June 2011 for 2011 and the period January to December 2010 for 2010. Therefore, when referring to 2011 in this report, the CCM is referring to period 1st January up to 30th June 2011.

Theory of Harm I - Restrictive practices: Exploitative abuse – Unilateral Market Power

- 6.5 As noted in the 'Legal Background', Section 46 of the Competition Act makes conduct of an enterprise in a monopoly situation subject to review if it: (a) has the object or effect of preventing, restricting or distorting competition; or (b) in any other way constitutes exploitation of the monopoly situation. Given that the CCM has concluded that each of the banks is in a monopoly situation at the point of sale for its housing loan products, it is necessary to determine whether the banks have engaged in conduct that contravenes either of those provisions.
- 6.6 As noted in Paragraph 4.3 of CCM Guidelines on 'Monopoly Situations and Non-Collusive Agreements', in many cases, the CCM will be investigating cases in which both forms of abuse are alleged. The Guidelines state that the remedies are likely to focus more on promoting competition by eliminating or counter-acting the exclusive conduct.
- 6.7 An enterprise which is in a monopoly situation and enjoys the degree of dominance of the kind that *Section 46(3)(a)* requires the Commissioners to consider may have an incentive to exploit that

situation with detrimental outcomes for both consumers and the process of competition in the market or markets under review. As per the CCM 4 Guidelines on ‘Monopoly Situations and Non-Collusive Agreements,’ Paragraph 4.5:

“Enterprises in a dominant position face an economic incentive to exploit their customers. This will normally manifest itself in excessive prices, although it may also appear as reduced quality, choice or service – poor product offerings that may reduce costs or managerial effort, in a way that would not be possible for an enterprise facing competition.”

6.8 This situation might be applicable in the present case if banks in a monopoly situation are engaging in conduct that exploits their point of sale advantage by restricting the choice of the DTA insurance policies of its borrowers, *harming the competition in the market for DTA and borrowers by offering a less competitive DTA premium through bancassurance*⁶⁹. The emphasis here is placed on the harm to competition resulting from the restriction of choice and the consequential harm to the borrowers from the lack of options which reflect the outcomes that a more competitive market would produce. As noted already, such conduct could breach either or both of *Section 46 (2)(a) and Section 46 (2) (b)*.

6.9 Moreover, as per CCM 4 Guidelines on ‘Monopoly Situations and Non-Collusive Agreements,’ Paragraph 4.9:

“Where appropriate, the CCM will also conduct price comparisons. If prices are persistently and significantly lower in other markets, where costs should be similar, that might indicate that in the market under investigation, they are excessive. If prices have risen from a stable level to a higher level, without any equivalent movement in costs, that might also indicate excessive pricing. Even such a price spike, however, can indicate an effective competitive response to sudden changes in demand or supply conditions.”

6.10 The CCM is concerned that the nature of the commercial arrangements between banks and insurance companies might not act to secure the best deal for borrowers. In some cases, banks might be favouring insurance companies with which they have institutional links. Moreover, by exploiting the monopoly situations they enjoy due to the point of sale advantage to sell insurance, banks could be selling an insurance policy that is more expensive than the housing loan borrowers could have bought from another insurance company, while the banks earns a commission.

6.11 The assessment of conduct has been divided into:

⁶⁹ Refers to the sale of insurance and other similar products through a bank. It is the term used to describe the partnership or relationship between a bank and an insurance company whereby the insurance company uses the bank sales channel in order to sell insurance products.

- (a) Assessment of agreements between banks and insurance companies
- (b) Assessment of survey results and premium comparisons

The facts

Assessments of Agreements between Banks and Insurance Companies

6.12 The CCM assessed the different contracts between the banks and insurance companies provided through the information request orders from both banks and insurance companies. The assessment reveals that:

ABC Banking Corporation

[~~Commercially Sensitive Information~~]

AfrAsia Bank

[~~Commercially Sensitive Information~~]

Bank One Limited

[~~Commercially Sensitive Information~~]

Banque des Mascareignes Limitée

[~~Commercially Sensitive Information~~]

Barclays Bank Plc

[~~Commercially Sensitive Information~~]

Bank of Baroda

[~~Commercially Sensitive Information~~]

Bramer Banking Corporation LTD

[~~Commercially Sensitive Information~~]

Habib Bank Limited

[~~Commercially Sensitive Information~~]

The Hong Kong and Shanghai Banking Corporation (HSBC) Limited

[X-Commercially Sensitive Information]

The Mauritius Commercial Bank (MCB) LTD

[X-Commercially Sensitive Information]

Mauritius Post and Cooperative Bank Ltd

[X-Commercially Sensitive Information]

SBI (Mauritius) Ltd

[X-Commercially Sensitive Information]

State Bank of Mauritius (SBM) Ltd

[X-Commercially Sensitive Information]

Conclusion

6.13 Although some banks have agreements with more than one insurance company the data provided show that the customers taking a DTA with the housing loan from these banks have been contracted mainly from one particular insurance company. It is observed that the customers of banks (more than 90%) have taken an insurance policy from a particular insurance company with which the banks have agreement. Based on this, the CCM believes that most of the banks offering bancassurance facilities seem to be proposing a DTA from only one insurance company to its customers, despite having agreements with several other insurance companies. Consequently, based on Para 5.119 and 5.121, each bank that has one or more agreements with particular insurance companies has a 'point of sale advantage' (as defined in the Chapter 3) in the sales of the DTA insurance policy.

6.14 Since the focus of this investigation is on the bundling of DTA insurance policy with the housing loan product and that certain banks do not have agreements with any insurance company and therefore do not sell bundled DTA insurance products/housing loan to its housing loan borrowers, it can therefore be concluded that AfrAsia, SBI, Bank of Baroda, Habib Bank and ABC Banking are no longer party to this investigation.

6.15 SBM, MCB, HSBC, Barclays, Bramer, BM and MPCB remain main parties to the investigation since these banks are engaged in bancassurance and a large percentage of their housing loan borrowers have taken DTA insurance with the insurance company that the bank has agreement.

Survey Results and Premium Comparison

6.16 The next section provides an in-depth analysis in terms of choice provided to borrowers bundling the DTA products with the housing loan and compares the DTA insurance premiums on the market to determine whether such practice is harming the consumer.

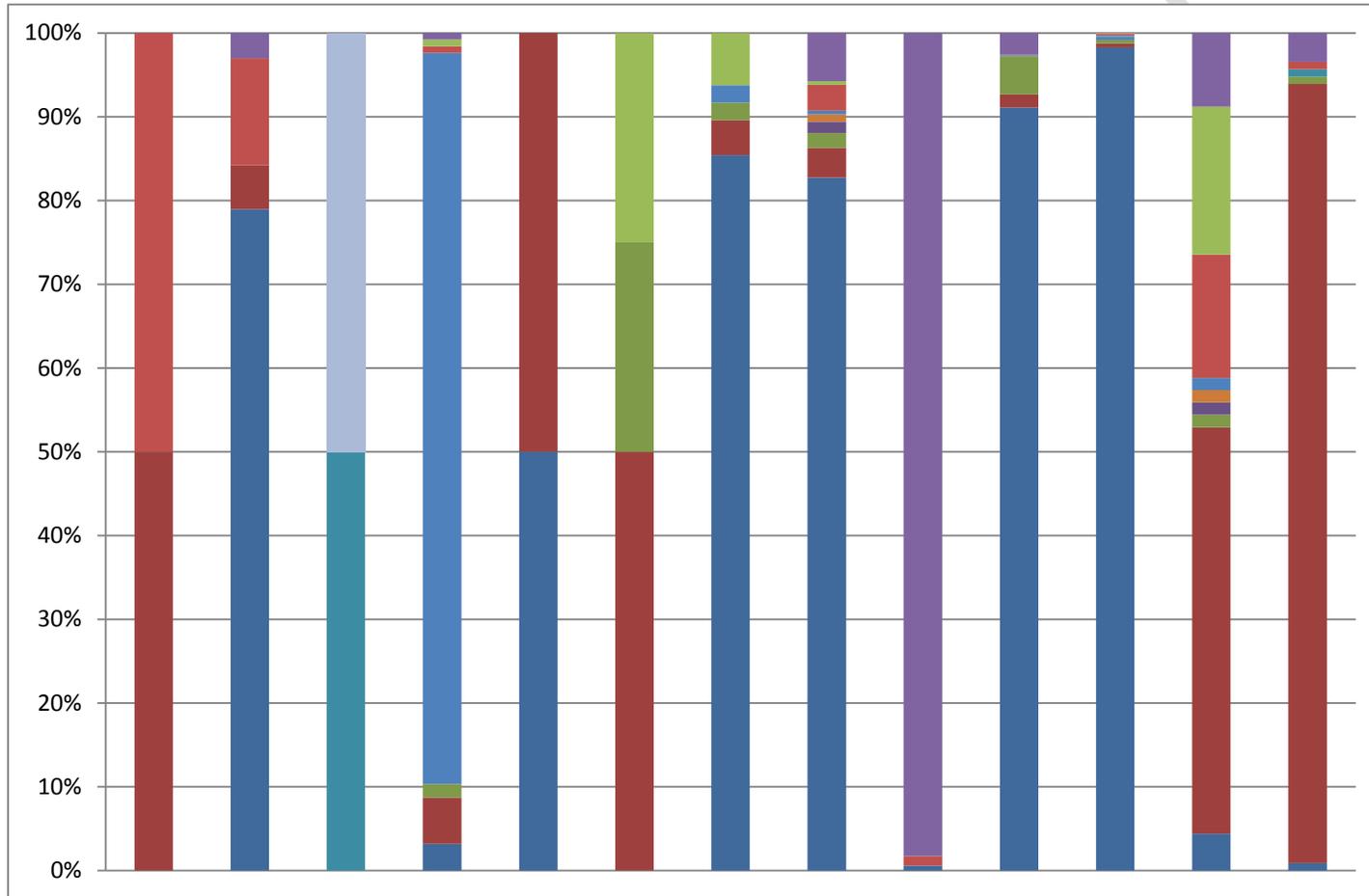
Survey Results

6.17 The survey has also enabled the CCM to obtain information on the different banks such as:

- The awareness of the DTA concept by borrowers across banks
- Whether banks provided explanations on Life Insurance linked to housing loan and were pressurizing the borrowers to choose a specific insurance provider
- The number of borrowers who shopped around for selection of a loan provider
- Number of borrowers who compared Life Insurance offered by Current Bank when finalizing purchase
- Whether the borrowers were informed by the bank about the choice of Life Insurance provider at the time of negotiations

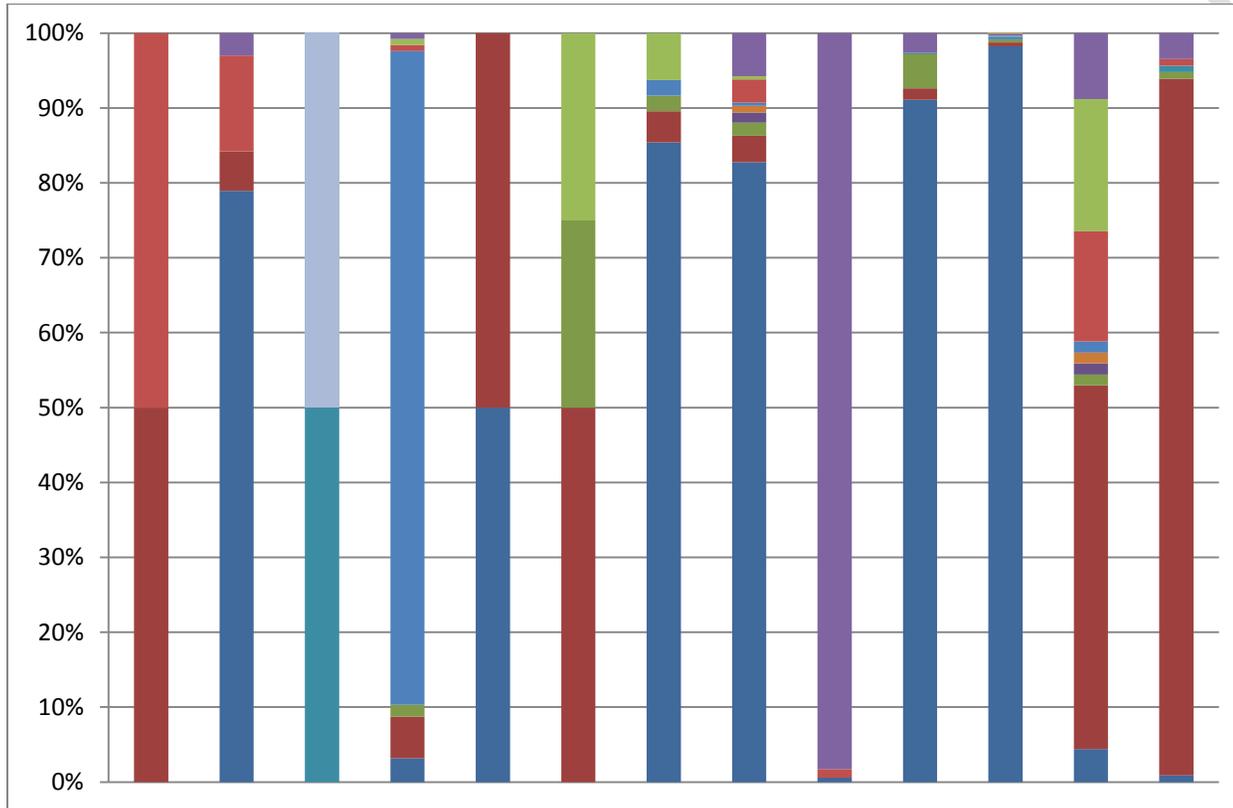
6.18 The results obtained from the survey for each bank are reported in the section below.

Chart 3: Percentage of housing loan customers taking a Life Insurance Policy/DTA from the different insurance companies in 2011



Source: Data from respective banks

Chart 4: Percentage of housing loan customers taking a Life Insurance Policy/DTA from the different insurance companies in 2010



Source: Data from respective banks

Premium Comparison

- 6.19 The CCM has carried out an analysis to determine whether the DTA insurance policies provided by the banks are cheaper than what the borrower would have paid if he would have gone directly to the same insurance company or agent or to any other insurance company providing a DTA for the purpose of contracting a housing loan.
- 6.20 This analysis will enable the CCM to determine whether it would be worthwhile for housing loan customers in search of a life insurance to shop around or to take the insurance policy offered through the banks.
- 6.21 Prior to carrying out the analysis with a sample size of 294, the CCM carried out a pilot analysis using a sample contract from each bank (a sample size of 9). The results showed that it could be the case that some banks are overcharging customers taking the DTA insurance policy through them.
- 6.22 Some of the banks have agency or master agreements with more than one insurance company. However, for the purpose of this analysis, the insurance company/companies with a majority of borrowers taking the DTA policy with the bank have been taken into consideration.

Methodology

- 6.23 To carry out this analysis, the CCM required banks to provide sample contracts having agreements with particular insurance companies⁷⁰. Different samples of contracts were provided by banks through the information request order.
- 6.24 Information such as age, sex of the borrower, the amount and term of loan taken and term, the interest rate charged and the type of insurance policy was extracted from the selected contracts. The data were compiled and set in three groups:
- (a) Single DTA application with known health status of the borrowers
 - (b) Single DTA application with no health status of the borrowers
 - (c) Joint DTA application with health status of the borrowers
- 6.25 Joint DTA application with no health status of the borrowers was not included in the analysis due to the complexities that would be involved in the calculation of insurance premium.
- 6.26 The compiled data was then sent to insurance companies involved in the life business to obtain the premium that they would have charged if the borrower would have gone directly to them or to their sales agents.

⁷⁰ Confidentiality of customers was respected. The name and address of each borrowers were excised.

6.27 Quotes from 9 insurance companies were obtained namely from La Prudence Mauricienne Ltee, Anglo Mauritius Assurance Society Ltd, Mauritian Eagle Life Insurance Company Ltd, Cim Life Ltd, Mauritius Union, BAI (Co) Ltd, State Insurance Company of Mauritius Ltd, and Island Life Assurance Co. Ltd.

6.28 For those contracts, with no health status (marked by * in the tables), the calculated premium value was based on different health conditions (low risk, medium risk and high risk).

6.29 Monthly insurance premium has been converted into yearly premium to ensure uniformity of data.

6.30 Since [REDACTED-Commercially Sensitive Information] could not provide us with the health status of its borrowers, it has been assumed that they are mild risk individuals after:

- Comparing data and premium for those with health status and non-health status.
- Finding that the difference of insurance premium between the actual premium and the premium under medium and high risk were very significant.
- Concluding that the majority of contracts provided by banks were mild risk borrowers.

6.31 This analysis is based on the premium difference between the premium actually paid by the borrower and the premium he could have paid if he had gone to another insurance provider in the market.

Analysis

6.32 Data analysis has been carried out in two phases:

- a) Comparing DTA premium through bancassurance and if the borrower would have gone directly to the same insurance company offering the bancassurance (under same conditions).
- b) Determining whether the bancassurance premium is the cheapest option on the market.

Findings

Comparing DTA premium through bancassurance and if the borrower would have gone directly to the same insurance company

6.33 Table 1 shows the percentage of borrowers who paid a cheaper DTA premium through the bank. It has been calculated by comparing the premium actually paid by the borrower with the premium they would have paid if they had gone to the same insurance company on their own.

6.34 Using 'Stata' software, the t-test⁷¹ has enabled the CCM to test the significance of the data and to provide an indication whether bancassurance is on average cheaper (CH) or more expensive (EX). (*) represent the sample data with no health status.

Table 1: Premium Comparison of the bancassurance premium and the borrower would have paid if he would have gone directly to the same insurance company

[~~S~~-Commercially Sensitive Information]

Source: Data provided by banks and insurance companies

*Denotes the contracts with no information on the health status of the borrower

Determining whether the bancassurance premium is the cheapest option

6.35 Table 2 shows the percentage of the borrowers who would have benefited from the cheapest deal from all insurance providers that provides DTA for contracting a housing loan and by how much. This has been calculated by comparing the DTA premium actually paid by the borrower with the cheapest premium he could have paid from insurance companies.

6.36 The percentage (%) shows the percentage of borrowers of the respective banks who got a better deal from the other insurance companies on the market. Premium refers to the actual premium which the borrowers have paid through bancassurance.

6.37 The CCM has also compared the DTA premium actually paid by the borrower with the second cheapest premium he could have paid from other insurance companies. The percentage cheapest from Table A, Annex B shows the average percentage by which DTA premium would have been cheaper than the premium paid through bancassurance.

Table 2: Premium Comparison across the market⁷²

[~~S~~-Commercially Sensitive Information]

Source: Data provided by banks and insurance companies

*Denotes the contracts with no information on the health status of the borrower

⁷¹The t-test assesses whether the means of two groups are statistically different from each other. It is most commonly applied when the test statistic would follow a normal distribution if the value of a scaling term in the test statistic were known.

⁷² Refer to Annex B for abbreviations of insurance companies

Results for Each Bank

Bank One Limited

[~~X~~-Commercially Sensitive Information]

Banque des Mascareignes Limitée

[~~X~~-Commercially Sensitive Information]

Barclays Bank Plc

[~~X~~-Commercially Sensitive Information]

Bramer Banking Corporation LTD

[~~X~~-Commercially Sensitive Information]

The Hongkong and Shanghai Banking Corporation (HSBC) Limited

[~~X~~-Commercially Sensitive Information]

The Mauritius Commercial Bank (MCB) LTD

[~~X~~-Commercially Sensitive Information]

Mauritius Post and Cooperative Bank Ltd

[~~X~~-Commercially Sensitive Information]

State Bank of Mauritius Ltd

[~~X~~-Commercially Sensitive Information]

Conclusion of the Assessment of Theory of Harm I

6.38 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.

6.39 Although on average 80% of the housing loan borrowers have benefited from cheaper bancassurance from banks than they would have gone directly to the same insurance company, they could have paid a much cheaper DTA premium if they would had shopped around the different insurance companies.

- 6.40 There are several instances that the premium offered by another insurance company compared to Bancassurance is cheaper for the banks examined even after the first cheapest option has been eliminated.
- 6.41 Each Bank having agreements with insurance companies with exception of BM is therefore exploiting its point of sale advantage by restricting choice of DTA insurance to its borrowers and thus harming the competition in the market for DTA and borrowers by offering an expensive DTA premium and are therefore in breach of Section 46(2)(a)&(b) of the Act. Each these banks including BM are engaged in a conduct that prevents, restricts or distorts competition.

Theory of Harm II – Restrictive practices: Exclusionary abuse - Foreclosure

- 6.42 Foreclosure of firms is one kind of conduct that Section 46 prohibits, if it has the object or effect of preventing, restricting or distorting competition. Often an enterprise will foreclose rivals from the market in which it operates so that the competitive pressures to provide better products and cheaper prices are removed. However, an enterprise may also enter into an arrangement with a supplier of another product that limits the access of its customers to products of rivals of that supplier. Where such conduct occurs, it can constitute a breach of *Section 46(2)(a)*.
- 6.43 In this matter, conduct that forecloses competitors from a market can be considered as occurring in the market for DTA insurance, where it has an impact on insurance companies that wish to sell their product to as many customers as possible, but may be excluded from access to groups of customers whose purchases are being directed to a rival under the terms of a contract that rival has with a bank. The conduct can also be reviewed for its effects in the market at the point of sale for DTA at each bank to determine the actual or likely detriment to the interests of consumers.
- 6.44 The potential contravention resulting from foreclosure is discussed in CCM 4 Guidelines on Monopoly Situations and Non-Collusive Agreements, which reads as follows:

“Anticompetitive foreclosure is said to occur when the conduct of a monopoly enterprise restricts or eliminates the effective access of actual or potential competitors to customers or to supplies, to the detriment of consumers or the economy in general. [...] Foreclosure may be of borrowers: for example when a downstream enterprise refuses to buy from an upstream supplier. It need not involve exclusive dealing, as in these examples, but could include conduct which has the effect of foreclosure – such as incentives for borrowers not to buy from rivals.

Anticompetitive foreclosure will only be held to occur if consumers or the economy more generally are harmed as a result of the effect on competition – not simply because competitors are harmed.”⁷³

⁷³ See CCM Guidelines , Paragraphs 3.5 and 3.6

6.45 The guidelines give an example of this type of conduct in the form of a refusal by a downstream enterprise to acquire goods or services from an upstream supplier. While this example is useful in itself, it paves the way to infer that comparable types of conduct, namely the relationship between upstream and downstream firms, may be used in determining whether anticompetitive foreclosure is present.

6.46 The guidelines also include restriction or elimination of effective access of actual or potential competitors to customers or to supplies as far as determination of the presence of anticompetitive foreclosure are concerned.

6.47 Paragraph 3.11 of CCM 4 also states

“In assessing foreclosure, the CCM will normally consider whether the conduct is likely to result in increased profits for the monopoly enterprise, as a result of reduced competition. Conduct which is not expected to result in higher profits is less likely to be considered to be anticompetitive foreclosure. Conduct that would only be profitable if it results in a reduction in competition is particularly likely to be considered to be anticompetitive.”

6.48 If the CCM finds that the above is true, this implies that banks are foreclosing other insurance companies from entering the housing loan customer market of that particular bank and the bank would therefore be in breach of Section 46(2)(a) of the Act.

The Facts

6.49 In order to determine whether banks are engaged in an exclusionary conduct as defined above, the CCM has conducted an analysis of DTA market share across the different insurance companies. This analysis provides the CCM an overview of the positioning of the different insurance companies in the DTA/Life insurance in the housing loan market.

6.50 The CCM found that 5 out of the 8 banks providing bancassurance facility have an agreement with [§-Commercially Sensitive Information]⁷⁴.

6.51 An analysis of the number of life insurance policies linked to housing loans from the total life insurance policies in 2010 shows that [§-Commercially Sensitive Information] has a market share of [§-Commercially Sensitive Information] in this market, followed by [§-Commercially Sensitive Information] and [§-Commercially Sensitive Information] with a market share of [§-Commercially Sensitive Information] and [§-Commercially Sensitive Information] respectively in Chart 5 below.

6.52 Moreover, when analysing the number of life/DTA insurance customers who applied for housing loans from banks with which the insurance companies have agreements, it is found that [§-

⁷⁴ Refer to Assessments of Agreements between Banks and Insurance Companies.

Commercially Sensitive Information] has [X-Commercially Sensitive Information] of the market share followed by [X-Commercially Sensitive Information], [X-Commercially Sensitive Information].

6.53 [X-Commercially Sensitive Information]

6.54 The fact that [X-Commercially Sensitive Information] has a high market share in the DTA market can be explained by the number of agreements that it has with the different banks⁷⁵.

Chart 5: The number of life insurance policies issued linked to housing loans (2010)⁷⁶

[X-Commercially Sensitive Information]

Source: Data from respective insurance companies

Chart 6: The number of life/DTA insurance policies issued through bancassurance

[X-Commercially Sensitive Information]

Source: Data from respective banks

6.55 As mentioned above⁷⁷, each of the banks having agreements with particular insurance companies, has a ‘point of sale advantage’ (as defined in the Chapter 3) in the sales of the DTA insurance policy. Given that housing loan borrowers do not usually shop around for and base their choice of banks on the reputation and trustworthiness of the latter, the bank is in a monopoly situation when selling housing loan product and the DTA insurance product. As such, when the bank is proposing its insurance product through bancassurance to the housing loan borrower, it is foreclosing other insurance companies that do not have an agreement with that particular bank. The other insurance companies therefore do not have a chance to compete to provide more competitive products to the customer of that particular bank as shown in Charts 5 and 6. The banks’ earlier decisions to enter into an agency agreement with their preferred insurance companies remove the prospect of competition for the business of those customers. This may dull competition based on incentives which satisfy customer needs, including price competition, and substitute instead the commercial objectives of the banks as the immediate determinant of how the market for DTA operates.

⁷⁵ See Chapter 6, page 38.

⁷⁶ Includes the life insurance policies issued to the borrowers both through the agreements that they have with banks (bancassurance), those without agreements and borrowers from other financial institutions.

⁷⁷ Refer to Para 6.51

6.56 This market foreclosure practice from banks is a form of exclusionary abuse of monopoly situation that has the effect of preventing, restricting or distorting competition in violation of Section 46(2)(a) of the Act.

Results for Each Bank

Bank One Limited

[~~X~~-Commercially Sensitive Information]

Banque des Mascareignes Limitée

[~~X~~-Commercially Sensitive Information]

Barclays Bank Plc

[~~X~~-Commercially Sensitive Information]

Bramer Banking Corporation LTD

[~~X~~-Commercially Sensitive Information]

The Hongkong and Shanghai Banking Corporation Limited (HSBC)

[~~X~~-Commercially Sensitive Information]

The Mauritius Commercial Bank LTD (MCB)

[~~X~~-Commercially Sensitive Information]

Mauritius Post and Cooperative Bank Ltd (MPCB)

[~~X~~-Commercially Sensitive Information]

State Bank of Mauritius Ltd (SBM)

[~~X~~-Commercially Sensitive Information]

Conclusion of the Assessment of Theory of Harm II

6.57 Based on the above facts, the CCM concludes that each of the following, Bank One, BM, Barclays, Bramer, HSBC, MCB, MPCB and SBM is in breach of Section 46(2)(a) of the Act by engaging in an exclusionary abuse of monopoly situation that has the effect of preventing, restricting or distorting competition in the DTA market.

6.58 This conclusion is in addition to the earlier conclusions that:

(a) Each of the following banks, Bank One, Barclays, Bramer, HSBC, MCB, MPCB and SBM is exploiting its point of sale advantage by restricting choice of DTA insurance to its borrowers in breach of Section 46(2)(b) of the Act and thus harming borrowers who could have got a more competitive deal across the insurance companies; and

(b) Each of the following banks, Bank One, BM, Barclays, Bramer, HSBC, MCB, MPCB and SBM is preventing, restricting or distorting competition in the market for DTA insurance.

NON-CONFIDENTIAL

7. Potential Remedies

7.1 The CCM has found that the banks that remain under investigation have a point of sale advantage which creates a monopoly situation and they are engaged in conduct that has the object or effect of preventing, restricting or distorting competition and they are otherwise taking advantage of the monopoly situation. Some of these banks have stated that they are providing bancassurance facilities to their customers so that they can benefit from cheaper Life/DTA insurance premium. The CCM has however found that customers could have benefited from cheaper insurance if they had shopped around.

Existence of Monopoly Situation in terms of Section 46 of the Competition Act

7.2 A review of a monopoly situation under Section 46 of the Act does not command any financial penalties. However, under Section 60 of the Act, if the CCM finds that an enterprise is in a monopoly situation falling within the terms of Section 46 of the Act, and if any conduct of the enterprise in the monopoly situation has the object or effect of preventing, restricting or distorting competition, the CCM may provide such directions to the enterprises as it considers necessary, reasonable and practicable to remedy, mitigate or prevent the adverse effects on competition that the CCM has identified.

Breach of the Act

7.3 If the Commission decides that any or all of the concerns expressed in the final report constitute a breach of the Act, it has the power independently to remedy the conduct or take action to mitigate the effects of that conduct. Some potential remedies available to the Commission are set out below. At this stage, these should be regarded merely as a list of options for consideration by the Commission which will decide on any remedies to be applied.

7.4 The CCM is empowered by the Act independently to remedy competition problems that it finds in its investigations. When deciding upon the remedies, the CCM shall have regards to: effectiveness, timeliness and proportionality⁷⁸.

7.5 The purpose of the remedies will be to remove or mitigate the effects of anti- competitive behavior identified by the CCM.

7.6 It is stipulated in Section 60 of the Act that in relation to a restrictive business practice, or a monopoly situation, any conduct of the enterprise – (i) has the object or effect of preventing, restricting or distorting competition, or (ii) in any other way, constitutes exploitation of the monopoly situation, the Commission may give such directions as it deems necessary, reasonable and practicable to

⁷⁸ Refer to CCM 6 Guideline

(A) remedy, mitigate or prevent the adverse effects on competition that the Commission has identified; or

(B) remedy, mitigate or prevent any detrimental effects on users and consumers so far as they have resulted from, or are likely to result from, the adverse effects on, or the absence of, competition.

7.7 Further, as stated in Section 60(2) in determining, in any particular case, the remedial measures required to be taken, the Commission shall have regard to the extent to which any of the offsetting benefits specified in Section 50(4) are present.

7.8 Section 60(3) of the Act stipulates that subject to subsections (1) and (2), a direction under this section may include, but is not limited to, a requirement that the enterprise to which it is given shall –

- (a) terminate or amend an agreement;
- (b) cease or amend a practice or course of conduct, including conduct in relation to prices;
- (c) supply goods or services, or grant access to facilities;
- (d) separate or divest itself of any enterprise or assets;
- (e) provide the Commission with specified information on a continuing basis.

7.9 As pointed out in CCM 6 - Guidelines on Remedies, remedies should not be seen as penalties. By imposing remedies, the CCM aims to make markets work better than they would otherwise have done, in the future.

7.10 Paragraph 4.1 of CCM 6 states that the remedies applied by competition authorities can be divided into structural remedies, which aim to restore or enhance competition by changing the market structure, and behavioral remedies, which aim to change the behavior of enterprises.

7.11 The possible remedies available to the Commission in this case are the following:

- (a) Require that banks offering bancassurance facilities provide at least 3 insurance quotes from different insurance companies.
- (b) Require banks to provide more information to customers in relation to choice of life insurance from different insurance companies and
- (c) Require that banks offering bancassurance facilities to provide at least 3 insurance quotes from different insurance companies and more information to customers in relation to choice of life insurance from different insurance companies.

- (d) If the above would not constitute an effective remedy, take no action.
- (e) Propose to the banking sector that they adopt a code of practice with a view to having all banks that sell DTA insurance with their housing loans adopt a scheme that resembles as closely as possible the directions they decide to issue in this case.

Assessment of possible remedies

- 7.12 This section provides an assessment of the proposed remedies at paragraph 6.10 above in light of Section 3 of the CCM guidelines 6 namely effectiveness, timeliness and proportionality as well as in terms of Section 50 of the Act.
- 7.13 By virtue of Section 50 of the Act, if the Commissioners decide that there are adverse effects for competition in a particular case, they have a duty under Section 50(3) (a) of the Act to consider before deciding on any appropriate remedial action whether any of the offsetting public benefits specified in Section 50(4), are present. After conducting this assessment, the Commissioners are required by Section 50(3) (b) to consider whether and to what extent the benefits, if they are present, should be taken into account in determining the remedial action to be taken.
- 7.14 Section 50(4) stipulates that “A benefit shall be considered for the purposes of subsection 3(a) if it is shown that effects of any absence, prevention, restriction or distortion of competition are outweighed by specific gains in respect of –
- (a) Safety of goods and services;
 - (b) The efficiency with which goods are produced, supplied or distributed or services are supplied or made available;
 - (c) The development and use of new and improved goods and services and in the means of products and distribution; or
 - (d) The promotion of technological and economic progress and the benefits have been or are likely to be shared by consumers and business in general”.
- 7.15 In the course of this investigation, the CCM also sought to find out whether customers had any potential benefit when shopping for DTA at the point-of-sale i.e. bundled with the loan they were taking. The CCM found that the main possible benefits to customers were:
- (a) Timeliness and ease of procedure represented by one-stop shopping. When a customer picks the option to purchase DTA at the point of sale, he may benefit from the centralization of tasks whereby both products (the loan and the life insurance) are processed simultaneously. This may prove to be efficient for the customer who is more time-conscious and wants to avoid duplication of procedures.

(b) The CCM also considered whether insurance providers that sold DTA at the point-of-sale through banks might experience cost advantages that would in effect allow for reduced DTA prices at POS. Therefore, if existing, the cost advantage to the bank could potentially be passed on to DTA customers at the point of sale (in the form of reduced prices) thereby resulting in overall increased consumer welfare.

7.16 Pertaining to point 'a' above, the CCM noted from survey results that in total, 35% of total respondents answered '*Easier/more convenient to get combined loan and life insurance from same provider*' when asked about their motivation criteria for choosing a specific bank offer. This would seem to indicate that timeliness and ease of procedure would indeed be a determining factor for at least one third of loan customers. Moreover, the CCM also noted from survey results that out of the 67% of loan customers who did not go to other loan providers, 41% stated that it was more convenient to shop for life insurance from the same provider as the loan provider. Overall, out of the 20% of the total respondents (loan customers) to the survey who chose to compare different loan offers, 70% finally purchased DTA from the provider suggested by the loan provider. Noting these statistics, the CCM would confirm that there exists a convenience factor associated with point of sale sale of DTA.

7.17 The CCM's analysis of prices of DTA insurance premium across banks (bancassurance) and insurance providers⁷⁹ showed that around 78% of loan customers who purchased DTA through Bancassurance benefited from relatively lower prices while the remaining 22% paid for more expensive DTA through Bancassurance when compared to DTA offers they could potentially have purchased by going directly to same insurance companies. This indicates that the CCM's theory on cost advantages being passed on to consumers as per point 'b' above would indeed be the case. Hence, the CCM would confirm that there exists a potential benefit of reduced prices to consumers as a result of point of sale of DTA.

7.18 In conclusion, the CCM is of the view that POS sale of DTA through Bancassurance results in two main benefits to consumers, both in terms of timeliness and ease of procedure and in terms of reduced prices of DTA. The CCM also takes good note at this stage though of the fact that around 22% of loan customers who purchased DTA at point of sale incurred more expensive prices than if they would have gone directly to same insurance company providing bancassurance to the bank in question.

7.19 The CCM has taken note of the comments made by several banks that their handling of bancassurance in the sale of housing loans has changed since the start of the investigation on 31st August 2010. Below is a summary of this evolution.

⁷⁹ Refer to Table I and Table 2

(a) [Redacted-Commercially Sensitive Information]⁸⁰ commented that they train customer facing staff specifically on the issue of making customers aware of their free choice of DTA provider when obtaining a housing loan and requires its customers to complete a consent form acknowledging that they were made aware of their free choice.

(b) [Redacted-Commercially Sensitive Information]⁸¹ commented that in addition to [Redacted-Commercially Sensitive Information], they are currently concluding an agreement with [Redacted-Commercially Sensitive Information] and is also working towards including a third insurance provider at its point of sale.

(c) [Redacted-Commercially Sensitive Information]⁸² also believes that freedom of choice and access to wider competition would be through a reinforcement of existing procedures to ensure that, right at the very beginning of a loan enquiry, the customer is fully informed of the need for life assurance cover as security, b. made aware of his total freedom of choice and given a list of DTA providers other than those with whom we have an agreement to enable them to shop around.

(d) [Redacted-Commercially Sensitive Information]⁸³ has also obtained approval from FSC to act as insurance Agent for 3 DTA providers.

(e) [Redacted-Commercially Sensitive Information]⁸⁴ is already offering life insurance coverage from three insurance providers.

7.20 Moreover, comparing Tables 5 and 6 for year 2011 and 2010 from the Assessment of Conduct Section, a change in the pattern of customers taking DTA insurance policies from banks has been observed.

7.21 Below is an analysis of the remedies proposed.

Remedy A

Require that banks offering bancassurance facilities provide at least 3 insurance quotes from different insurance companies.

7.22 The CCM has determined that the monopoly situation has been created by the point of sale advantage that each of the banks that has been found by the Executive Director to have contravened Section 46 (“**Contravening Banks**”) has when offering DTA insurance together with housing loans. The CCM also found that customers of each of the Contravening Banks are generally getting a cheaper premium through bancassurance than they would have if they went

⁸⁰ Refer to comments received from [Redacted-Commercially Sensitive Information] dated 10th May 2012.

⁸¹ Refer to Letter received from [Redacted-Commercially Sensitive Information] in 27th April 2012.

⁸² Refer to Letter from [Redacted-Commercially Sensitive Information] dated 27th April 2012.

⁸³ Refer to Letter from [Redacted-Commercially Sensitive Information] dated 27th April 2012.

⁸⁴ Refer to Letter from [Redacted-Commercially Sensitive Information] dated 18th May 2012.

directly to the same insurance company. They are nevertheless, not getting access at the point of sale to the cheapest deal currently available on the market.

7.23 In this context, the CCM carried out a simple analysis on premium comparison with [X-Commercially Sensitive Information] which has agreements with both [X-Commercially Sensitive Information] and [X-Commercially Sensitive Information]. It has been found that out of 28 borrowers who took a DTA insurance premium from [X-Commercially Sensitive Information] through bancassurance, 14 (50%) of them could have paid a cheaper premium with [X-Commercially Sensitive Information]. Moreover, from a sample size of 67 borrowers who took the DTA insurance policy from [X-Commercially Sensitive Information] through bancassurance, 27% of the them would have got a better deal with [X-Commercially Sensitive Information]⁸⁵.

7.24 In this context, the CCM carried out a simple analysis on premium comparison with [X-Commercially Sensitive Information] which has agreements with both [X-Commercially Sensitive Information] and [X-Commercially Sensitive Information]. It has been found that out of 28 borrowers who took a DTA insurance premium from [X-Commercially Sensitive Information] through bancassurance, 14 (50%) of them could have paid a cheaper premium with [X-Commercially Sensitive Information]. Moreover, from a sample size of 67 borrowers who took the DTA insurance policy from [X-Commercially Sensitive Information] through bancassurance, 27% of the them would have got a better deal with [X-Commercially Sensitive Information]⁸⁶.

7.25 Therefore requiring the Contravening Banks to propose at least three DTA insurance options to its borrowers is likely to consequently ensure that borrowers have choice in selecting the DTA at a competitive premium from the bancassurance itself. It will also enable the insurance companies to compete in the DTA market.

Remedy B

Require banks to provide more information to customers in relation to choice of life insurance from different loan providers

7.26 This remedy would require each of the Contravening Banks to provide more information to customers in relation to choice of life insurance from different loan providers. Information would be in terms of:

- (a) including the free choice of DTA/Life insurance policies in leaflets and pamphlets that each of them provides to their prospective housing loan customers.
- (b) informing the borrowers about their freedom of choice when choosing their life insurance from the start i.e. when the borrower first comes to the bank.

⁸⁵ See Annex B, Table B

⁸⁶ See Annex B, Table B

7.27 Therefore adopting this remedy will consequently ensure that customers have choice in selecting the DTA from other insurance companies and encourage them to shop around which may enable them to benefit from cheaper DTA premium on the market thereby enhancing competition among the insurance companies. This will also help competition by enabling insurance companies to compete with the DTA insurance policies offered through bancassurance.

Remedy C

Require that banks offering bancassurance facilities to provide at least three insurance quotes from different insurance companies and more information to customers in relation to choice of life insurance from different loan providers.

7.28 This remedy is a combination of Remedy A and Remedy B, as discussed above. For the reasons stated in the discussion of each of them, both remedies are very likely to benefit competition across the insurance companies providing DTA insurance, and combining both remedies is likely capture the benefits arising from both remedies.

Remedy D

If the above would not constitute an effective remedy, take no action.

7.29 By imposing an obligation on each of the Contravening Banks to provide borrowers with three DTA insurance options through bancassurance or requiring them to provide more information to customers in relation to choice of life insurance from different loan providers, the CCM is conscious that the Contravening Banks will have to incur the costs of such actions when engaging with different insurance companies. Moreover, the commissioners may also believe that the benefits that the borrower derives through bancassurance outweigh the consumer harm arising through the restricted choice. It is a matter to see if the benefits of Remedies A, B or C exceed the benefits of the existing situation (Remedy D).

7.30 Having regards to the proportionality, effectiveness and timeliness of the above remedies and to Section 50(4) of the Act, the Commission may decide that the status quo should be maintained. That is, even if the Commission concludes that the Act has been breached, if the Commission sees that costs and benefits of the remedies proposed above do not resolve the primary problems, it might be preferable not to implement any of the above recommendations at all.

Remedy E

Action by the banking sector

7.31 The preceding remedies concern only those banks that have been found to have contravened *section 46* of the *Competition Act*. In the event that the Commissioners decide to adopt any one of remedies, the Executive Director further recommends to the Commissioners that they consider making a proposal to the banking industry in Mauritius and its representatives that they adopt a

code of practice with a view to having all banks that sell DTA insurance with their housing loans adopt a scheme that resembles as closely as possible the directions they decide to issue in this case.

Overview of Potential Remedies

7.32 As set out above, there are many separate possible remedies available to the CCM. However, they are effectively three proposed remedies:

- (a) requiring each of the Contravening Banks to propose at least three DTA insurance options to their borrowers (Remedy A), to remedy the restriction, prevention or distortion of competition and the exploitation of the point of sale advantage situation by the Contravening Banks;
- (b) requiring each of the Contravening Banks to provide more information to customers in relation to choice of life insurance from different loan providers (Remedy B), to remedy the restriction, prevention or distortion of competition and the exploitation of the point of sale advantage situation by the Contravening Banks;
- (c) requiring each of the Contravening Banks to propose at least three DTA insurance options to their borrowers and requiring them to provide more information to customers in relation to choice of life insurance from different loan providers (Remedy C), to remedy the restriction, prevention or distortion of competition and the exploitation of the point of sale advantage situation by the Contravening Banks ;
- (d) The null option, in which no remedies are imposed, if none of the options above seem likely to be effective and proportionate.

7.33 The Executive Director believes that Remedy A is likely to be effective if the Contravening Banks offer different DTA insurance options to their housing loan borrowers thus providing them with more competitive deals. Moreover, the Contravening Banks will be able to work with insurance companies that they trust and have institutional links.

7.34 Remedy B is likely to be effective if the Contravening Banks include more information on the free choice that borrowers have to buy DTA insurance.

7.35 Remedy C which is a combination of Remedy A and B, is likely to be effective if the Contravening Banks provide more information and options to its customers.

7.36 The null option should be considered if there seems to be no realistic possibilities of either of the options above being effective and proportionate.

7.37 The adoption of Remedy E by the banking sector would ensure that the benefits that Remedies A, B or C will spread throughout the banking industry and assist the development of more vigorous competition in the supply of DTA insurance to housing loan borrowers. If the Commissioners decide

to adopt Remedy D, they may consider that Remedy E would be beneficial. The Commissioners do not have any power to impose this remedy, but, after considering the state of competition in the supply of DTA insurance, they can commend it to the banking sector in combination with another remedy which they do have the power to impose on the banks which have contravened the Act.

Recommendations to the Commission

7.38 The CCM is conscious that due to convenience, time constraints, and the attractiveness of the offer from banks that offer bancassurance, borrowers have a tendency to buy the DTA with the bank itself through the bancassurance.

7.39 The Executive Director would therefore recommend Remedy C given that it is likely to promote maximum benefits to competition among the insurance companies selling the DTA products. It is understood that selling DTA insurance through bancassurance (point of sale) entails some benefits to the borrowers but the Executive Director is of view that the benefits of buying the bundled product can be outweighed by the benefit they would obtain if they were provided with more choice and would have shopped around. If the commissioners adopt these remedies and that banks respond by inserting “most favoured nations” clauses in their contracts with insurance companies, it may be necessary to assess the competition effects of that development.

7.40 The Executive Director further recommends that the Commissioners consider making a proposal to the banking industry in Mauritius and its representatives that they adopt a code of practice with a view to having all banks that sell DTA insurance with their housing loans adopt a scheme that resembles as closely as possible the directions they decide to issue in this case.

ANNEX A

Market Share Analysis

Measuring market shares in the 'housing loan market'

As stated in the Statement of Issues, market shares could be measured by the stock of total housing loans outstanding from each institution, or by the 'flow' of new loans in each year. Competition is more likely to occur for new loans than for existing loans (as substitution in the latter case would involve the customer switching mortgages to a new provider). Consequently, we regard market shares for new housing loans advanced, annually, as being the most appropriate measure of market shares.

Based on data obtained during the course of its investigation, the CCM has determined *market share and assessed the market concentration using the Herfindahl-Hirschman Index⁸⁷ (HHI)*. The respective market share of the thirteen banks under investigation in the housing loan market for period January-December 2010 and January- June 2011 as shown in charts below.

The CCM 2 guidelines, paragraph 3.4, states that

"Although market shares based on revenues are usually appropriate, if the CCM believes that volume-related measures of sales better capture the competitive positions of enterprises within the relevant market than do revenue measures, it will use volume-related measures."

In this investigation, market share has been calculated using both the revenue-related (value of housing loan issued) and volume-related (Number of housing loan issued) information.

Chart A.1 shows the market share in terms of value of housing loan issued. In 2010 the market was dominated by three banks namely [X-Commercially Sensitive Information] having respectively [X-Commercially Sensitive Information] of the housing loan market with a concentration ratio of [X-Commercially Sensitive Information] and an HHI index of [X-Commercially Sensitive Information] while in 2011 the market was dominated by [X-Commercially Sensitive Information] having a market share of [X-Commercially Sensitive Information] respectively with a concentration ratio of [X-Commercially Sensitive Information] and an HHI index of [X-Commercially Sensitive Information].

⁸⁷ The Herfindahl-Hirschman Index is calculated as follows: It is the sum of the squares of the market shares of all suppliers to a market, where their shares are expressed as percentages. See CCM 5 Guidelines.

Chart A.1: Market Share (Value of housing loans issued)

(a) 2010

Banks	Market Share in Ranges
AfrAsia Bank	0%-10%
Bank One	0%-10%
Banque des Mascareignes	0%-10%
Barclays	0%-10%
Baroda	0%-10%
Bramer	0%-10%
Habib	0%-10%
HSBC	0%-10%
MCB	30%-40%
MPCB	0%-10%
SBI	0%-10%
SBM	20%-30%

(b) 2011

Banks	Market Share in Ranges
AfrAsia Bank	0%-10%
Bank One	0%-10%
Banque des Mascareignes	0%-10%
Barclays	0%-10%
Baroda	0%-10%
Bramer	0%-10%
Habib	0%-10%
HSBC	0%-10%
MCB	30%-40%
MPCB	0%-10%
SBI	0%-10%
SBM	30%-40%

Source: Data from respective banks**Source: Data from respective banks**

Chart A.2 shows the market share in terms of number of housing loan issued. In 2010 the market was dominated by three banks namely [§-Commercially Sensitive Information] having respectively [§-Commercially Sensitive Information] of the housing loan market with a concentration ratio of [§-Commercially Sensitive Information] and an HHI index of [§-Commercially Sensitive Information] while in 2011 the market is dominated by [§-Commercially Sensitive Information] having a market share of [§-Commercially Sensitive Information] respectively with a concentration ratio of [§-Commercially Sensitive Information] and an HHI index of [§-Commercially Sensitive Information].

Based on the above analysis, the CCM concludes that [§-Commercially Sensitive Information] are in a monopoly situation in the housing loan market.

Chart A.2: Market Share (Number of housing loans issued)

(a) 2010

Banks	Market Share in Ranges
AfrAsia Bank	0%-10%
Bank One	0%-10%
Banque des Mascareignes	0%-10%
Barclays	0%-10%
Baroda	0%-10%
Bramer	0%-10%
Habib	0%-10%
HSBC	0%-10%
MCB	30%-40%
MPCB	0%-10%
SBI	0%-10%
SBM	20%-30%

Source: Data from respective banks

(b) 2011

Banks	Market Share in Ranges
AfrAsia Bank	0%-10%
Bank One	0%-10%
Banque des Mascareignes	0%-10%
Barclays	0%-10%
Baroda	0%-10%
Bramer	0%-10%
Habib	0%-10%
HSBC	0%-10%
MCB	30%-40%
MPCB	0%-10%
SBI	0%-10%
SBM	30%-40%

Source: Data from respective banks

ANNEX B

Chart A: Percentage of housing loan customers taking a Life Insurance Policy/DTA from the different insurance companies (2011)

[~~X~~-Commercially Sensitive Information]

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Chart B: Percentage of housing loan customers taking a Life Insurance Policy/DTA from the different insurance companies (2010)

[~~ⓧ~~-Commercially Sensitive Information]

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Chart C: Socio-demographic Profile of the Sample

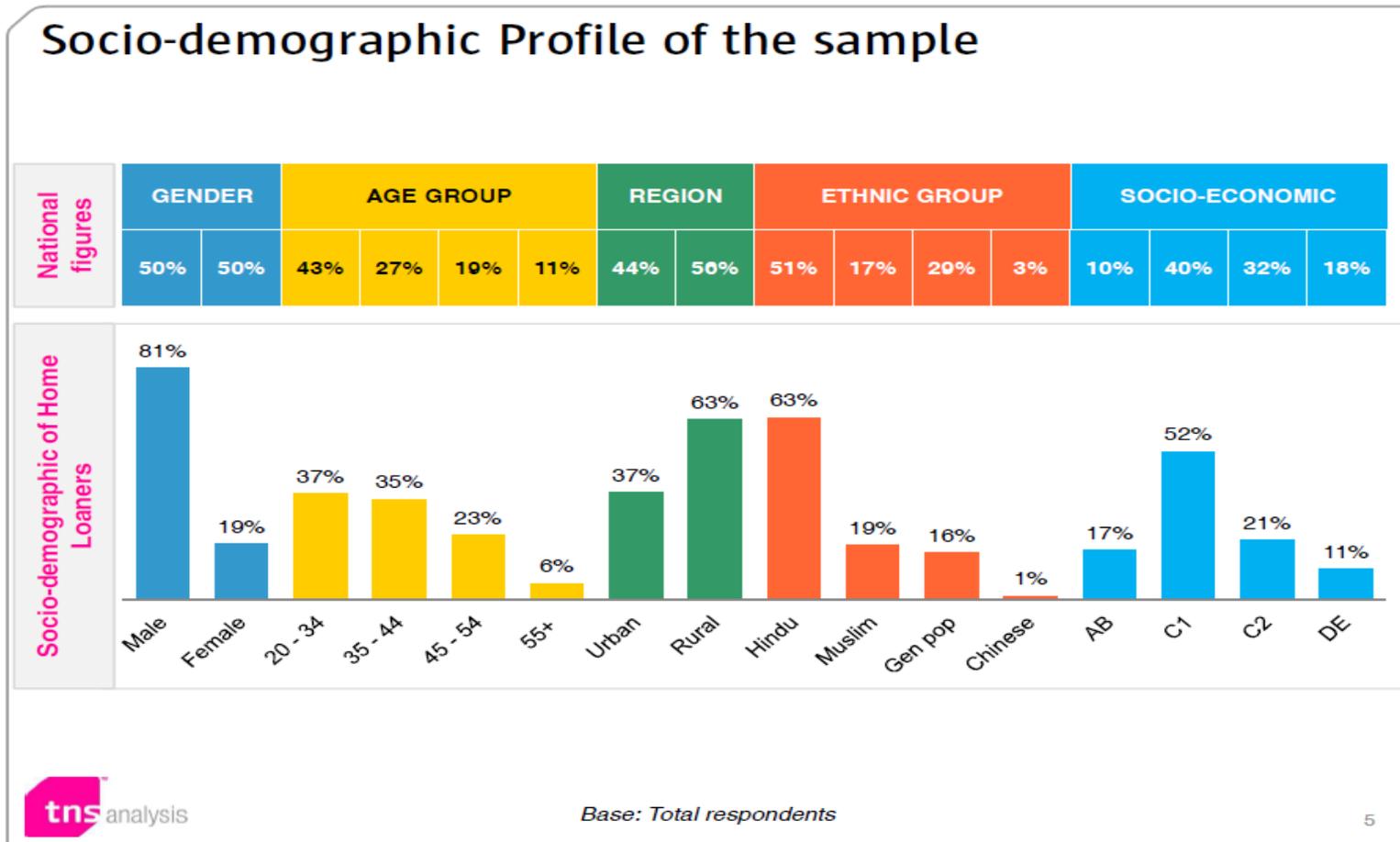


Chart D: Banking Profile of the Sample

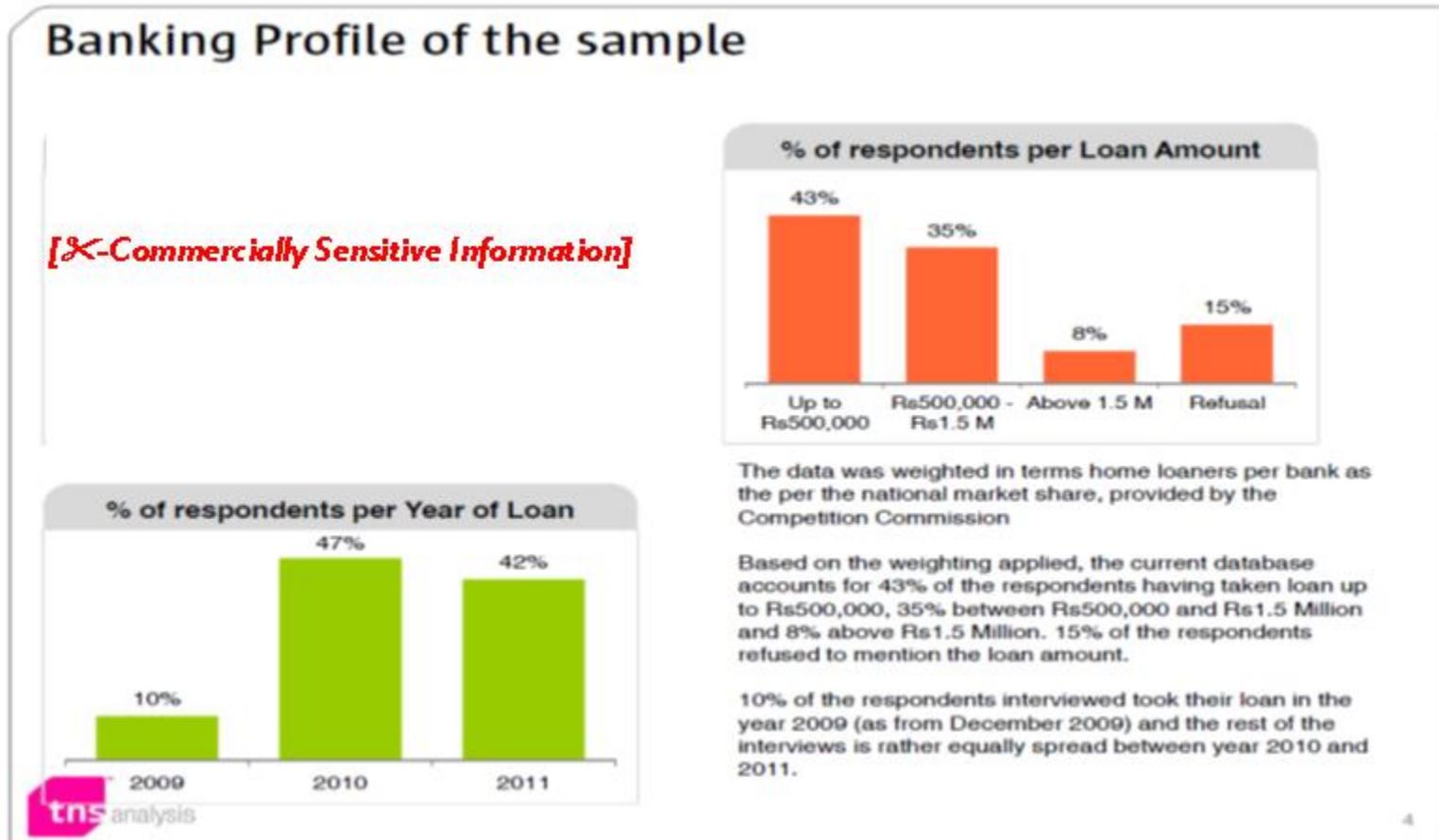


Chart E: Awareness of the DTA Concept across Current Bank

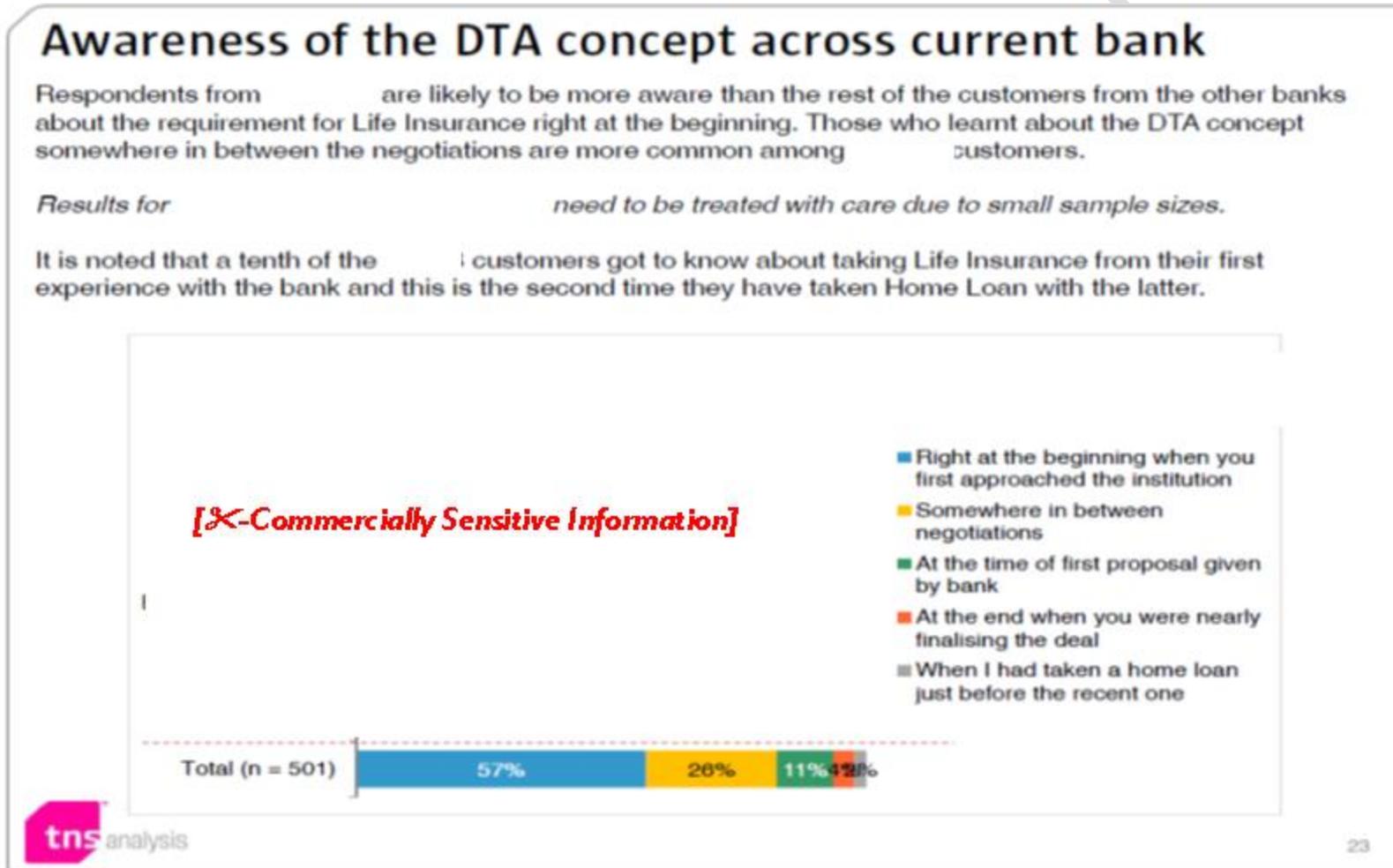


Chart F: Explanations provided on Life Insurance linked to home loan and pressure linked to choice of a specific provider

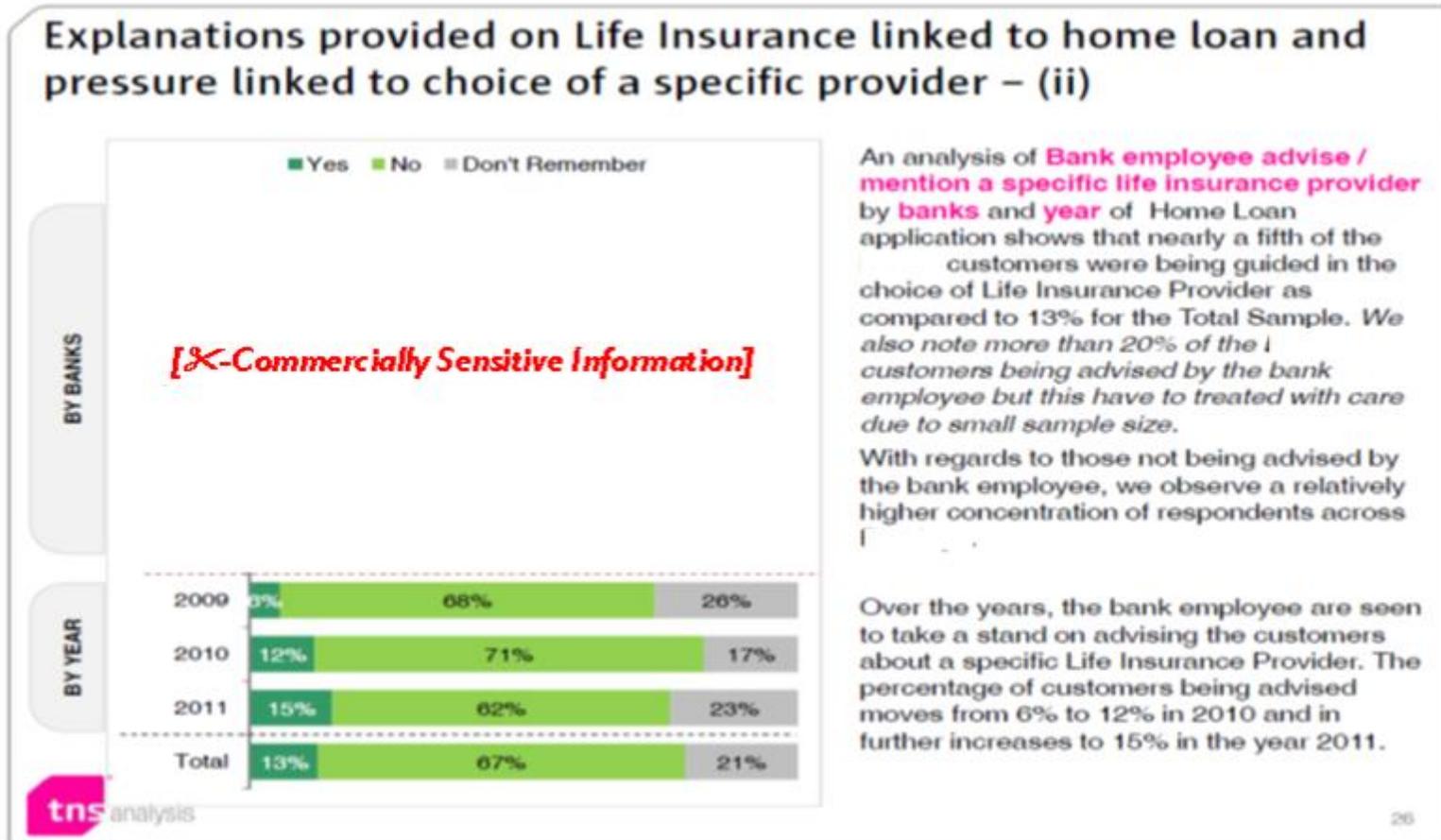


Chart G: Decision Making Process: Customer Experience – Stand-alone Concept

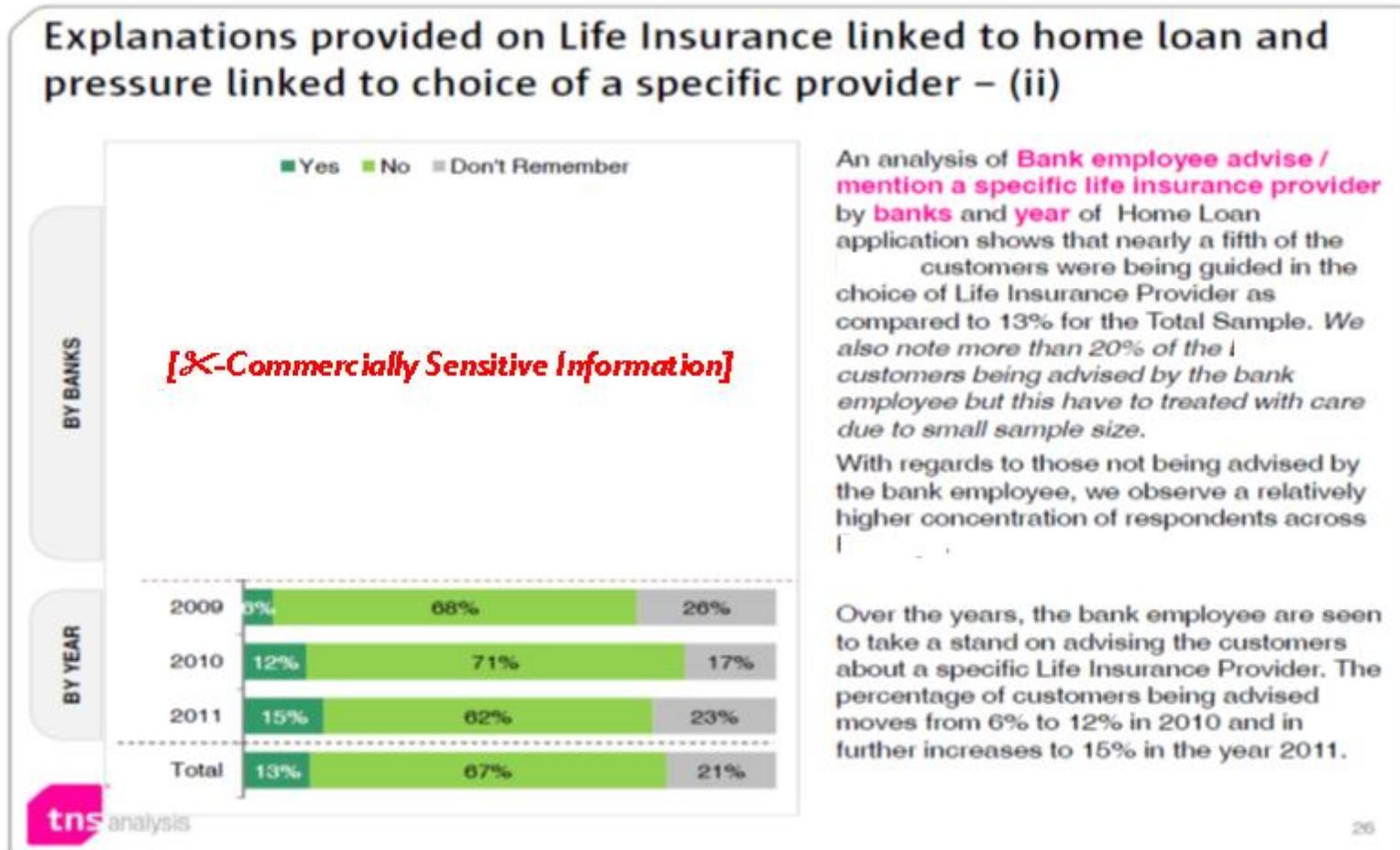


Table A: Percentage by which DTA premium is Cheapest across the Market

[X-Commercially Sensitive Information]

Source: Data from respective banks and insurance companies

Table B: Premium Comparison

[X-Commercially Sensitive Information]

Source: Data from respective banks and insurance companies

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List of Abbreviations

LP- La Prudence Mauricienne Ltee
AN – Anglo Mauritius Assurance Society Ltd
ME- Mauritian Eagle Life Insurance Company Ltd
CL- Cim Life Ltd
MU- Mauritius Union
BAI – British American Insurance
SICOM – State Insurance Company of Mauritius Ltd
IL – Island Life Assurance Co. Ltd

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Selection of Sample Size for the Quantitative Assessment

Background

The CCM undertook a quantitative assessment of the effects of banks bundling life insurance cover with housing loan and thus not giving the choice to these bank customers to look for and choose insurance policy of their own choice which might be cheaper.

The assessment has been based on the premium differentials between insurance cover provided by these commercial banks to their customers together with housing loans and insurance premiums on such housing loans if taken separate from the insurance market.

Life insurance on housing loan is to cover the risk of defaulting on loan repayment (which may lead to seizure of collateral security) following death or permanent physical /mental disability.

Information obtained from commercial banks reveals that in 2010 the total number of loans issued by Rs 12 commercial banks⁸⁸ operating the retail banking segment was 8,949 and the total value of these loans was 17,627 million.

Out of the 8,949 housing loans, 7051 was backed by life insurance. We are given to understand that the remaining 1898 loans were secured against risk of non-payment following death or physical/mental disability by providing collateral securities such as fixed deposits and in very few cases such risk was not covered.

There are two options within life insurance policy. These are: (1) Cash back and (2) Decreasing Term Assurance (DTA). We are given to understand that the majority of the 7051 life insurance taken to cover housing loans is the DTA option. The premiums that are computed on DTA are simpler than on 'cash back policy'.

[<-Commercially Sensitive Information]

The Population

The number of loans with DTA cover out of the 7051 loans covered by life insurance would be the population on which the sample would have been determined. However, we do not have this information. But we are given to understand that DTA would be most common.

The sample size

It would be unreasonable on our part and tedious for commercial banks (unless they have on electronic version) and more importantly for insurance companies to work out quotes for the premiums for life

⁸⁸ MCB, SBM, HSBC, Barclays, MPCB, Bank One, BdM, Bramer, SBI, Baroda, AfrAsia and Habib.

insurance cover for all of the 7051 loans. We, therefore, recommend a sample size equivalent to 5%⁸⁹ or so from the 8 commercial banks which has an agreement with any insurance company.

We therefore reach a sample of 368 housing loan customers broken down into subcategories as shown in the table below:

[~~X~~-Commercially Sensitive Information]

⁸⁹ http://www.ifad.org/gender/tools/hfs/anthropometry/ant_3.htm

$$n = \frac{t^2 \times p(1-p)}{m^2}$$

Description:

n = required sample size

t = confidence level at 95% (standard value of 1.96)

p = estimated prevalence of malnutrition in the project area

m = margin of error at 5% (standard value of 0.05)

ANNEX C: Comments by Main Parties to Provisional Findings

[~~S~~-Commercially Sensitive Information]

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ANNEX D : Comments to the ‘Provisional Findings INV 007’ from Main Parties

This document contains the key comments obtained by main parties in response to the provisional findings sent to them on the 2nd April 2012 as well as the Executive Director’s views on the latter.

The key comments column shows an abbreviation version of the main comments put forward by Bank One, Banques Des Mascareignes, Barclays Bank, Bramer Bank, MPCB, SBM, HSBC and MCB.

The Executive Director’s views column addresses the comments put forward by the banks. The Executive Director chooses not to address the comments made by banks in respect to the Remedies Section because with regard to on the one hand, Section 60 of the Competition Act 2007 and on the other hand, Rule 16 of the Competition Commission Rules of Procedure 2009, the Executive Director deems that remedies as proposed in the Provisional Report are addressed to the attention of the Commission and it remains the sole prerogative of the latter to give such directions as it considers necessary, reasonable and practicable.

The following banks had no comment or objection to the Provisional Findings: ABC, AfrAsia Bank, Baroda Bank, Habib Bank and SBI.

[~~X~~-Commercially Sensitive Information]

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Banks with no comments or Objection to the PF:

ABC Banking Corporation, AfrAsia Bank, Bank of Baroda, Habib Bank Limited, SBI (Mauritius) Ltd

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ANNEX E: Survey on Bundling of Insurance and Credit Products in the Banking Sector

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