Draft EBA/ESMA/EIOPA Guidelines on Cross-Selling

Genworth Response

1. **Question 1: Do you agree with the general description of what constitutes the practice of cross-selling?**

   The intention of the general description is fine, but definitions of what constitutes tying and bundling – although contained, for example, in the Mortgage Credit Directive – still mean different things to different people and should be left to Member States to define. It is for this reason that in the context of the revised Insurance Mediation Directive, the Council of Minsters has largely deleted these abstract definitions which are best adapted to local conditions.

   For example, as drafted, it is unclear whether credit protection insurance sold together with a loan is considered tying or bundling. By its own nature it is linked to a loan and is optional in most Member States (except Mortgage Payment Protection Insurance, MPPI, which is mandatory in France). As credit protection insurance provides cover for a loan/credit product, it should be regarded as bundling provided the primary credit product is available separately. It is important that this is clear.

   We recommend to focus the definition of "tying" to a situation where the primary product is not available without the ancillary product, and where in that case the customer does not have the choice to purchase the ancillary product from a different provider. As explained above, credit protection insurance typically provides cover for a loan/credit product; it is usually not purchased on a standalone basis given that the product is designed by its nature to provide protection for a particular loan or financial commitment. A credit protection policy that is designed to secure a loan would be useless if the customer doesn't take out a loan because in this case there wouldn't be an insurable risk. Therefore, the definition of tying should be limited to a conditional offering where the same agent offers a primary product only if an ancillary product is purchased and there is no choice of an alternative insurance cover to go with the primary credit product. This is consistent with the Mortgage Credit Directive.

   Perhaps an additional definition could be introduced which reads as follows: "Ancillary products which provide cover and protection for underlying risks associated with a primary product are inherently linked, and should be regarded as bundling – provided the primary product is available separately."

In cases such as Mortgage Payment Protection Insurance (MPPI), the insurance is linked to a mortgage loan and the customer may be required in some jurisdictions to buy insurance in order to access the loan. This is seen as necessary because of the high value of the loan for a property and the risk of not being able to meet the mortgage payments in case of accident, sickness or involuntary unemployment. Put simply, the commitment to a mortgage credit agreement is the most significant financial commitment that most consumers will ever make. However, where it is necessary to purchase an insurance in order to obtain the mortgage, this is mitigated by the fact that the mortgage borrower can shop around for alternative providers under both EU law (Mortgage Credit Directive) and national law (e.g. France).

We suggest that it should be made clearer in the guidelines that multi-risk policies are completely exempt from the scope of application. It is not sufficient to refer to some examples of multi-risk policies in a footnote. If companies were forced to offer only individual components of a multi-risk policy, it might become uneconomic to do so and the price of just one component could be very high due to the underlying risk – which is currently pooled in a package.

That said, we do support the clarification on page 19 of the document that "nothing in the guidelines is intended to prevent the offering of products which constitute an inherent or indivisible package (sectoral legislation permitting) which cannot by its nature be offered or sold separately because the components are a fully integrated part of the package". Credit protection insurance is one such example, as it offers protection in case of death, accident, sickness or involuntary unemployment. We regard this as an indivisible package which should not have to be split up (nor is this foreseen in the current version of IMD II).

That said, the definitions as drafted do not take account of the fact that the seller of the primary product could be different from the provider of the ancillary product. They could be two different legal entities, and where this is the case do the provisions of cross-selling still apply? Would this situation be captured by the definition of tying or bundling, or is the legal entity question not seen to be relevant for the determination of the applicable definition and resulting provisions?

In the draft, the definition of "tying" includes the word "from the provider" which indicates that "tying" is only present if the primary product and the ancillary product are offered by the same provider. It is not defined what a "provider" is. A bank usually grants a loan whereas credit protection insurance is underwritten by an insurance company, as the bank is not licensed to underwrite insurance risk. Therefore, one could argue that both products are not "from the same provider" because one product is "provided" by a bank and the other one by an insurance company. The intention of better controls over tying/bundling can therefore not be linked to the provision of the financial service but to the entity/agent who sells/brokers the financial service. E.g. a bank can sell a loan that is underwritten by the same bank and sell an insurance policy that is underwritten by an insurance company. The fact that the bank "sells" both products at the same time may create a situation of tying or bundling.

An even better definition has been inserted in the current Council of Ministers compromise text for the revised Insurance Mediation Directive (IMD II, or Insurance Distribution Directive, as it is now called). Member States have very wisely chosen to simplify the definition which now reads as follows: "Cross-selling practice means the offering of an insurance product together with another service or product as part of a package or as a condition of taking another agreement or package." This is much easier to understand and should be reflected in the ESA guidelines.

Although we would prefer the definitions of tying and bundling to be decided at national level, the following changes should be made if the ESAs would like to retain the approach taken in the consultation document:

a) a bundled offering, where **the primary product** of the products/services **offered by the same agent** is available separately and where the client retains the choice to purchase each component of the package separately; or

b) a tied or conditional offering, where **the primary product** of the products/services offered in the package **by the same agent** is not available separately to the customer from the provider.

2. **Question 2: Do you agree with the identified potential benefits of cross-selling practices?**

   The potential consumer benefits are well explained. One could add that cross-selling has the added benefit of convenience for many customers, who would otherwise not be insured against the risk of involuntary unemployment (in the case of our products) at a time when the economy in most European countries is still fragile and state welfare benefits are becoming ever more limited.

   An additional benefit resulting from cross-selling of financial products is the sharing of underwriting decisions. Typically, a customer is eligible for credit protection insurance if he is eligible for the underlying loan. There is no extra underwriting for the credit protection insurance but by sharing the underwriting decision of the bank the insurer can secure a good portfolio quality which helps keeping premium rates at a reasonable level.

3. Furthermore, all the benefits of credit protection insurance – whether sold together with a credit/loan or standalone – are well explained in point of sale information through our distribution partners.

4. **Question 3: Do you agree with the identified potential detriment associated with cross-selling practices?**

   The description of potential consumer detriment should reflect the fact that many of the sales practices described in paragraph 4 are already banned by local laws. For example, the practice described in paragraph 4a. (pre-setting default options for ancillary products in an online-sales channel) has been ruled illegal in the courts in a number of countries (e.g. in Germany) or is prohibited by law. Sales of general insurance products are already subject to a whole range of pre-contractual information requirements; irrespective of whether a product is tied or bundled or sold standalone. This includes, for example, extensive disclosure of contractual terms and product features as well as cancellation rights during the cooling-off period.

It is misleading to associate certain unfair sales practices as described in paragraph 4 with "tying" and "bundling", as such sales practices can occur to the same extent if products are sold standalone. Cross-selling does not, by nature, result in "long term contractual relationships" as suggested in paragraph 10. In Germany, an insurance policy can be cancelled by the end of the third year or each subsequent year if it was taken out for a fixed term of more than 3 years. This does not only apply to cross sold insurance policies, but also to standalone products. There are many credit protection insurance providers who allow the customer to cancel by the end of each month, so that there is not "long term contractual relationship" that the customer doesn't want. In the Nordics, for example, a customer has the right to terminate any bundled product immediately whenever the customer wishes during the loan period.

5. **Question 4: Please comment on each of the five examples above, clearly indicating the number of the example to which your comment(s) relate.**

   Existing laws across Europe already prohibit these practices. None of the examples listed should happen in practice anymore.

Question 5: Please comment on the proposed guidelines 1 and 5 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

Paragraph 13: With regard to guideline 1, we agree that the price of the insurance product should be indicated separately every time it is sold together with another financial product. In other words, in the case of our products, the customer should be told the price of credit protection insurance and the price of the primary loan/credit product. However, this disclosure should not apply to multi-risk policies that represent one product; only to two or more products sold in a package.
Paragraph 14: The term "a clear breakdown and aggregation of all relevant costs associated with the purchase of the package" is not properly defined. It is unclear whether the remuneration of the sales agent has to be disclosed here. Given that not all Member States are supportive of full commission disclosure, we suggest that it is clearly stated here that only fees **payable by the customer** shall be disclosed.However, transaction costs, pre-payment or early exit penalty charges are not applicable to the sale of credit protection insurance products, and the illustrative example is more applicable to investment products.

We also broadly support guideline 5, but there should be some distinction between complex and non-complex products in relation to both of these guidelines.

As already stated in relation to guideline 1, in the case of credit protection insurance there are no administration fees, transaction costs or early exit/penalty charges. This is clearly the case for investment products and makes sense for complex products. Likewise, the underlying risks that are covered by credit protection insurance are always well known throughout the lifecycle of the policy, and no future events could incur additional expenses or risks.

However, in one country, Poland, the process is exactly the reverse: The customer does not need to be informed about the risk when purchasing the package, but needs to be told about the risk if he/she cancels, for example, the credit protection insurance at a later stage. Furthermore, in some Member States it is already mandatory to inform the client that the cancellation of the policy due to cancellation of the loan in single premium policies gives the client the right to be paid back the premium on a pro rata basis (for the remaining term of the loan).

6. **Question 6: Please comment on the proposed guidelines 2, 3, 4 and 6 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

   There is nothing in these guidelines that isn't already required under national and EU insurance contract law, insurance mediation law, marketing law or distance selling and consumer credit regulations. As already stated in our response under Question 3, these rules apply irrespective of whether customers buy standalone or packaged products.

   Paragraph 16 and illustrative example 2 underneath guideline 3: However, clarification is needed about whether or not telemarketing is included under the obligation to display costs and prices in the context of sales "without a sales person directly involved" . On the face of it this would exclude telemarketing, but this needs to be clarified.

   Paragraph 18 and illustrative example underneath guideline 4: The example under guideline 4 is odd, because most people don't buy credit protection insurance without a corresponding loan , and the insurance premium for the credit protection insurance policy is typically expressed as a percentage of the related loan. In some markets it is also expressed as a total amount, but either way the fact remains that the ancillary insurance product is relatively cheaper compared with the primary product, and the information is not presented in this way in order to 'entice' the customer by obscuring the real cost.

Paragraph 17: Regarding guideline 3, we agree that the font size used to communicate price and cost information for each component must be exactly the same.

7. **Question 7: Please comment on the proposed guideline 7 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

   Paragraphs 22,23 and illustrative example 2: We agree with guideline 7, particularly with the illustrative case according to which the default option for online sales of packages should be set to 'no'. This will ensure that the consumer makes a conscious purchasing decision through an 'opt-in' mechanism. Besides, it is correct that this particular guideline allows for conditionality (i.e. the need to take out an ancillary product in order to obtain the primary product) where this is allowed for under sectoral legislation, and for the customer to be told whether individual components can purchased separately. We repeat, however, that this must exclude multi-risk policies which constitute one product.

8. **Question 8: Please comment on the proposed guideline 8 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

   Paragraph 25: We agree with guideline 8. This is now standard practice for credit protection insurance sales across Europe, even where no specifically tailored 'advice' is provided to the customer. Every time this cover is sold, sales staff carry out at least a basic eligibility test to make sure the product is suitable for the customer. This is also in line with the latest version of IMD II/IDD.

9. **Question 9: Please comment on the proposed guidelines 9 and 10 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

Paragraph 26: We support guideline 9, as we believe that a high level of staff training is essential for achieving fair sales practices and for the distribution of financial products that are useful to the customer.
Paragraph 27: We also broadly support guideline 10, although it is a bit vague in describing which remuneration models shall be banned. Furthermore, we really need to await the outcome of IMD II (now called Insurance Distribution Directive) so that we know what is contained in the corresponding primary legislation in the context of remuneration disclosure.

However, we do believe sales staff should have an obligation to check that products meet customers' needs, that the product features are clearly disclosed, and that they could make a claim on their policy. Any remuneration of sales staff must respect these principles. This is not only contained in the draft revised Insurance Mediation Directive, but also in Genworth's internal company guidelines. It is also aligned with the draft EIOPA guidelines on product governance and oversight.

10. **Question 10: Please comment on the proposed guideline 11 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.**

    Paragraphs 28 and 29: We also support guideline 11. This is already required under various pieces of EU and national legislation and adds nothing new over and above what insurance companies are required to do already.