7 October 2009: Borrower's insurance

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The *Autorité de la concurrence* is in favour of the separation of the housing loan offer and the insurance offer

It considers that it is necessary to guarantee the information provided to consumers and to control the refusal conditions of alternative insurance contracts by credit institutions

> Version française

After a referral by the *UFC-Que choisir* on the competitive functioning of the market for borrower's insurance, the *Autorité de la concurrence* has issued an opinion in favour of discontinuing the possibility for banks to impose their group insurance contracts when a housing loan is granted. This reform will serve to provide borrowers with greater freedom in choosing amongst the proposed contracts. The *Autorité* nevertheless considers that it must be accompanied by additional measures in order for this freedom to be truly exercised.

The request from the *UFC-Que choisir*

Considering that the current legislative framework allows credit institutions to compel their customers to sign up for the borrower's insurance contracts that they market, and that the banks often exert pressure in order to dissuade borrowers from availing themselves of the competition (total or partial failure of the credit institution in its duty to inform customers regarding the possibility of an insurance delegation, disproportionate charges for insurance delegations when accepted, pure and simple refusal of insurance delegations), the *UFC* asked the *Autorité* to express itself firstly on the effects of the legislation on competition, and secondly with regard to measures intended to remedy the

identified malfunctions.

A reform of the current legislation is desirable in order to strengthen competition on the market for borrower's insurance

The fact that a credit institution requires borrowers to sign up for its group insurance contract not only limits the borrower's freedom to enter into a contract on an individual basis, it also serves to restrict the access of other insurance companies to the market for borrower's insurance.

The *Autorité* is thus in favour of a modification of the legislation, which is already in progress given that Parliament is examining a government bill that calls for the separation between the loan offer and the borrower's insurance offer (1).

This reform could be accompanied by additional measures

Reinforcing the information for borrowers

As part of the discussions on the reform of borrower's insurance, credit institutions have undertaken to the French Minister for the economy, industry and employment (*Ministre de l'économie, de l'industrie et de l'emploi*) that they would provide future borrowers, as of 1st July 2009, with a standardized info sheet regarding borrower's insurance.

This brief document will be intended to improve the information provided to borrowers on insurance guarantees and costs, while allowing them to compare several offers. It must include the loan characteristics, the borrower's needs, the proposed guarantees, the monthly charges, advice and a quantified example of the costs associated with the proposed insurance solution.

The *Autorité* suggests that the distribution of this document should be made compulsory by the law. For example, it could be handed out together with the initial loan simulation, such as to ensure that borrowers are provided with the proper information in a timely manner.

Controlling the possibility for the credit institutions to refuse an individual insurance contract due to a lack of equivalent guarantees

Article 17 of the government bill allows credit institutions to require an insurance contract that contains guarantees that are at least equivalent with the ones contained in the group contract.

While this provision is in the interests of lenders and borrowers, the *Autorité* nevertheless considers that, firstly, it would be useful for a timeframe to be imposed during which the credit institution can refuse an insurance contract other than its own due to a lack of equivalent guarantees and that, secondly, this refusal must be accompanied by a precise and detailed explanation.

It also considers that it would be important to make sure that there can be no possible variation of the loan rate on the basis of the selected borrower's insurance. Finally, while leaving it to lawmakers to decide whether or not "delegation fees" should be prohibited, the *Autorité* points out that invitation to tender mechanisms, such as the ones already implemented by certain banking groups, should allow external insurance companies to have typical contracts referenced in advance by credit institutions, thereby avoiding a considerable part of the work needed to verify that guarantees of an equivalent level are being provided.

(1) In its first reading on 17 June 2009, the Senate adopted a government bill reforming consumer credit. Article 17 calls for an amendment to article L. 312-9 of the French Consumer Code (*Code de la consommation*) for the purpose of repealing the possibility for a credit establishment to impose the borrower's insurance of its choice. At the time of the drafting of the present opinion, the date for the examination of this bill by the French National Assembly (*Assemblée nationale*) has not yet been determined.