

Concertation between consumer associations and the banking profession : the Conseil de la concurrence issues its opinion

Published on October 18, 2001

Following a request for opinion by the *Union Fédérale des Consommateurs* (Federal Union of Consumers), the *Conseil de la concurrence* specified the conditions in which there may be possible concertation between consumer associations and representatives of a professional sector, in this case the banking sector. It handed down an opinion under its consultative function regarding general issues that do not concern the conditions of specific negotiations.

The *Union Fédérale des Consommateurs* asked the *Conseil de la concurrence* the following questions :

- 1) Can consumer associations and companies from the banking sector take part in concertation meetings, as part of a consultation on banking services requested by the public administration ?
 - 2) What attitude must participants in these meetings adopt regarding the issue of the composition and price of banking services and the possibility of exchanging information prior to communicating and fixing the price of these services ?
1. The possibility for consumer associations of concerting with the banking profession

According to the principles defined by French and EC competition law, there is no reason why consumer associations may not concert with the banking

profession.

However, consumer associations could potentially be penalised as parties to an agreement, and must take care to ensure that any such concertation is not of an anticompetitive nature.

In the interests of those they represent, they must take particular care to avoid situations whereby, under cover of concertation between consumer associations and the banking sector, competing banks enter into agreement to raise their prices or lower the quantity or quality of the services they offer, to the detriment of consumers.

2. The conditions in which the dialogue must take place and the nature of the information that may be exchanged without risk of damaging competition

The nature of information exchanged

The consumer associations must not, by way of the concertation, allow banks to gain knowledge of their respective costs. When statistics or studies are produced, exchanges of information must be restricted to providing anonymous data.

The possibility of defining minimum services

In the banking field, the services offered often take the form of an invitation to sign up for a standard service, leaving the consumer with little room for negotiation. It is therefore quite legitimate that consumer associations should seek to conduct global negotiations, with the aim of eliminating or improving practices which may be detrimental to the interests of the consumer.

However, each bank must retain the option of individualising and improving its commercial offer in relation to a minimum service content, and consumers must be able to gain awareness of all the various offers and choose between them.

The issue of the price of services

The concertation must in no way concern the fixing of sales prices to consumers.

In some cases, the protection of consumers, the defence of the most underprivileged sections of the population and the progress of safety or the environment must involve restricting commercial freedoms and therefore competition. Wherever this is the case, the *Conseil* emphasises that it seems most advisable for the decision to be prepared and adopted by the public administration, rather than negotiated or implemented as part of an agreement between competing entities, even under the auspices of consumer associations.

In the same way, during litigious proceedings, the *Conseil* could be led to take account of the economic progress that would result from the creation of universal minimum services intended for the underprivileged. In this case, it could authorise an agreement restricting competition, despite its belief that the pursuit of such objectives falls more under the remit of the public administration and the law.

[See the opinion \(01-A-13\)](#)