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-- SESSION II --

COMPETITION POLICY, ANTITRUST ENFORCEMENT AND BANKING: SOME RECENT DEVELOPMENTS

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1. Introduction

1. Banking regulation originates from microeconomic concerns over the ability of bank creditors (depositors) to monitor the risks originating on the lending side and from micro and macroeconomic concerns over the stability of the banking system in the case of a bank crisis. In addition to statutory and administrative regulatory provisions, the banking sector has been subject to widespread "informal" regulation, i.e., the government's use of its discretion, outside formalized legislation, to influence banking sector outcomes (for example, to bail out insolvent banks, decide on bank mergers or maintain significant State ownership).

2. In the early 70s financial systems world wide were characterized by significant regulatory restrictions, such as controls on interest rates and on the quantity of credit, restrictions on market access, and, in some cases, controls on the allocation of finance amongst alternative borrowers. These regulatory restrictions served a number of policy objectives. Direct controls were used in many countries to allocate finance to preferred industries in order to substantiate a national champion policy; restrictions on market access and competition were partly motivated by concerns over financial stability; controls on interest rates was meant to keep low the cost of credit, often leading to credit rationing.

3. A more market oriented approach to banking regulation started with the Basel Accord of July 1988. The Accord required major international banks in a group of 12 countries to attain an 8% ratio between capital and risk-weighted assets from the beginning of 1992. Subsequently, the increasing range and sophistication of financial instruments made the limitations of the probably too simple design of the 1988 capital-adequacy framework become apparent. Already in 1997 the Basel Committee on Banking Supervision, seeking to further enhance banking supervision in both G10 countries and a number of emerging economies, released a set of "Core Principles" which set out minimum requirements for banking supervision. The document also sets out an extensive list of recommended powers of banking supervisory authorities.

4. Finally, in June 2004 the Basel Committee on Banking Supervision issued a revised framework (Basel 2) for measuring capital adequacy and for identifying new minimum capital requirements for banks (Pillar 1). The new framework encourages banks to develop their own in-house risk-management systems to compute in a much more precise and sophisticated way their minimum capital requirements, with supervisory oversight present in the endorsement of the adequacy of the system. The proposals of the Committee, expected to be progressively implemented from the end of 2006, introduce also two additional pillars for banking regulation that are expected to become more and more important in complementing capital adequacy requirements. Pillar 2 introduces a continuous dialogue between banks and their supervisor in order to follow and accommodate changing and evolving business practices. Pillar 3 calls for

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improving the flow of information to the public on banks financial conditions, so that market discipline can exercise a greater role in reducing excessive risks in banking activities.

5. The capital requirements framework created in the context of the Basel committee paved the way to the development of stronger competition in banking. Market discipline and competition have now substituted the other much more interventionist and discretionary instruments of regulation. It is unquestionable that all over the world banks now face greater competition both from new entrants in the banking sector and from other financial companies.

6. The most important rationale for regulation in banking is to address concerns over the safety and stability of financial institutions, the financial sector as a whole, and the payments system. Mandatory deposit insurance schemes are introduced in order to avoid bank runs. Capital adequacy requirements make sure that banks do not become too much exposed. Lender of last resort interventions ease temporary illiquidity. The Basel 2 framework has not eliminated the need for regulation. Its objective is to adopt more market-oriented regulatory measures.

7. Until very recently competition authorities have not been much involved in the process of liberalization of banking. This attitude is now changing. In 2004 the ICN annual conference decided that the Antitrust Enforcement in Regulated Sectors working group concentrate on banking. In May 2005 at the ICN Bonn conference the AERS WG presented its report on competition and regulation in banking. As a result ten suggested best practices were formally approved by the ICN where the importance of antitrust enforcement in banking was explicitly recognized together with the need of reducing switching costs by depositors as a way to promote competition on the demand side. In June 2005 the European Commission launched a fact finding enquiry into financial services, specifically into retail banking and business insurance, having recognized the existence of entry barriers, market fragmentation and lack of effective choice on the demand side. The enquiry is still in progress. In 2006 at the Nice meeting of ECA, the association of European Competition Authorities, a report on banking was approved. The ECA report contains a number of suggestions to the European Commission with the objective of increasing competition in retail banking and speeding up the creation of a Euro wide payment area.

8. This paper will briefly summarize the ICN and the ECA reports on banking and will then address the enforcement experience of antitrust authorities, with a particular emphasis on payment systems (debit and credit cards).

2. The ICN Report for an increasing role for competition in the regulation of banks

9. The Antitrust Enforcement in Regulated Sectors Working Group was established in 2003 at the ICN annual conference of Merida, Mexico. The mandate of the group was to study "the activity of antitrust authorities with respect to exclusionary and collusive practices in regulated sectors". Major topics to be analyzed were the limits and constraints facing antitrust authorities intervening in regulated sectors, the actual enforcement experience of antitrust authorities and the division of labor between antitrust authorities and regulators. A first report delivered at the ICN annual conference in Seoul analyzed the general question of jurisdiction, that is identifying the specific circumstances when antitrust enforcement has primacy over regulation. In Seoul it was decided that in its second year the group would concentrate on banking. The objective of

the Report on banking, delivered at the 2005 Bonn annual conference, was to show the benefits of competition both for a more efficient supply of credit to the economy and for providing better servicesto depositors.

10. On the credit side competition between banks has led to lower spreads and greater care in financing sound projects. However, in order to reduce the asymmetry of information between banks and potential borrowers it is necessary that "*banks are properly informed of the debt exposure of potential borrowers*"[1]. Indeed, an environment "where banks compete for customers and potential borrowers choose among alternative banks as suppliers of funds, can only develop if banks are fully informed on the total exposure of each customer. Otherwise, if information is privately held by each bank, the market for credit will be segmented and banks will only lend to customers they personally know". Furthermore when collaterals are required for opening a credit line, the taking possession of these collaterals should be made easy. Otherwise credit would be severely restricted. [2]

11. Finance and banking are necessary for growth and development. The experience of developing countries shows that the banking sector is generally responding well to the needs of the wealthy households and of established firms. The reason is that banking is effective when borrowers, both firms and individuals, are able to offer a collateral or have formal employment so as to provide some guarantee with respect to future income. While in developed countries those unable to offer real guarantees are relatively few, in developing countries they often are the majority. This implies that in developing countries banks tend to provide services only to the minority of the population, so that regulatory reform leading to stronger competition eliminates distortions, favoritism and high interest rate spreads, but provides advantages to the privileged few only. As an example, the Pakistani competition Authority in its submission to the OECD Global Forum on Competition in February 2005 writes: "The financial sector was deregulated and … with the economic liberalization, new banks, financial institutions, leasing companies, housing finance, investment companies and foreign banks have come up, which has created a competitive milieu"[3].

12. Regulatory reform in developing countries can become even more effective if it is able to expand the reach of banking to the underprivileged. Recently the growing importance of micro credit institutions has allowed credit to reach the poor at a large scale. While originally these micro-credit supplying institutions were State owned and loss making, they were progressively privatised and deregulated, increasing both their efficiency and their profitability. As the ICN Report argues, "considerable evidence shows that such unconventional lenders were able to lend to borrowers that no conventional borrower was willing to attract and nonetheless performed much better, in terms of financial self sufficiency and repayment rates, than would conventional banks in comparable loans. The reason of this success, that is not limited to the Grameen Bank in Bangladesh, is the use of unconventional methods of risk reduction: forming

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[1] The full best practice suggestion reads "Agencies in their competition advocacy functions should consider, as appropriate when competition concerns are raised, to advocate for an environment where banks are informed in a timely and complete manner on the debt exposure of potential borrowers (in integrated financial markets also on an international basis), making sure to identify ways and precautions such that information sharing does not lead to restrictions of competition"

[2] The full best practice suggestion reads "Agencies in their competition advocacy functions should consider, as appropriate when competition concerns are raised, to advocate for a legal environment where the taking possession of collateral is possible without delay".

[3] See OECD (2005)

groups of borrowers that are jointly responsible for each other's loans (joint liability) and intense monitoring of clients, relying heavily on the promise of repeating the loan." [4] These micro credit. institutions are also active on the deposit side, by helping the underprivileged build up their savings.

13. As for more traditional depositors, while banks benefited from the new opportunities originating from technical progress and from regulatory reform by offering new and improved financial services to customers, switching costs remain quite high, so that competition between banks does not increase as much as it could. There is now substantial evidence that the widening range of services offered by banks (card services, paying bills for depositors, consumer loans, mortgages, life insurance, financial consulting; management of investment funds; asset management etc.) has increased competition in the affected relevant markets, but at the same time has made switching more difficult, probably reducing the effect of liberalization on the market power of banks. The ICN Report summarizes the implicit costs a depositor faces when switching bank: "1) receive new credit cards (with a different number and expiry date) that would need to be communicated to any service provider, for example the cable TV company, should its bills being paid by credit card; 2) inform the new bank about all utilities whose bills were being paid by debiting the depositor checking account; 3) transfer the deposit of all purchased stocks or bonds to the new bank; 4) maintain the checking account of the old bank just to service the mortgage; 5) communicate to all correspondents the new banking coordinates." The Report then continues "The increase in switching costs tends to make steeper the residual demand curve each bank faces, so, even though competition may be increased in each of the markets where the bank expanded, the overall market power of each bank is increased, at least with respect to existing depositors. Or, to say it differently, in order for a bank to convince depositors of another bank to switch, the improvements in the quality of services it offers must be much larger than it would be the case in the absence of switching costs."

14. Given that the existence of switching costs raises the market power of each bank (only new entrants are penalized) it is highly unlikely that banks would engage autonomously in switching costs reduction activities. Pro-competitive rules and regulations and in particular mandatory information requirements may contribute to make switching easier, so as to ensure that all the benefits originating from greater competition actually reach consumers[5].

15. Besides reducing switching costs, the ICN Report suggest that regulatory reform should accompany technical progress in banking so as to expand markets according to technical capabilities. In particular, "with the advent of the internet, banking is no longer necessarily a local industry, not even for the smallest depositor, at least in countries with widespread internet literacy. …. This is particularly important in jurisdictions that use the same currency. For example, the introduction of the Euro in 2002 could have made depositors indifferent as to the nationality of the bank where they would deposit their savings, leading to a very significant

[4] The full best practice suggestion reads "Agencies in their competition advocacy functions should consider, as appropriate when competition concerns are raised, to advocate, especially in developing countries and consistent with maintaining a competitive market, for the creation of a legal environment where financial institutions can reduce their risk by joint liability lending".

[5] The full best practice suggestion reads "Agencies in their competition advocacy functions should consider, as appropriate when competition concerns are raised, to advocate for a reduction of switching costs by depositors, for example by asking for disclosure rules on the costs associated with the closing of an account or with paying off a mortgage".

enlargement of consumer choices and of competition." Notwithstanding the regulatory interventions in such directions, such as with regulation (EC) 2560/2001 on cross-border payments in the Euro area, the high costs traditionally associated with dealing with foreign banks have remained" [6].

16. Competition oriented regulatory reform is only one pillar of a competition policy in banking. Antitrust enforcement is a very important second pillar and, as the ICN Report acknowledges, "the full application of competition law in the banking sector by a national competition authority is desirable, and in no way incompatible with an effective regulatory framework". Very often it is argued that a sector be subject to its own particular set of competition rules on the grounds that the sector is unusually important or in some other sense 'special'. The argument is not very solid. Violations of competition rules fall within very general categories and are flexible enough to accommodate any sector specificities. Special competition rules are not only unnecessary, but they may also undermine enforcement. Indeed as the OECD argues, "(T)there is a danger that sector-specific enforcers may adopt an understanding of competition that is overly congenial to the industry's traditional mode of operation instead of promoting a competitive regime."[7] The ICN Report continues, "(S)sector-specific laws are more vulnerable to being changed and enforced in the interest of the regulated industry, rather than in the interest of the economy at large. General laws, on the other hand, tend to be more immune and therefore more robust and long-lived". [8]

3. The ECA Report on retail banking

17. In 2005, the ECA (European Competition Authorities) Directors-General meeting decided to create the ECA Financial Services Subgroup with the objective of "identifying common competition problems, focusing on consumer mobility, access to payment systems, and SEPA (Single European Payment Area)". The final Report and Recommendations were then presented to - and adopted by - the Directors-General meeting in Nice on 18-19 May 2006.

18. The report originates from the observation that the creation of the Euro did not lead to the full integration of domestic banking markets of the countries of the Euro area. Regulatory reform still under way will soon lead to a Single European Payment Area. As national markets become more integrated, there is a growing desire for a consistent European view on competition issues in payments markets.

19. Customers mobility is quite low in Europe. The reason is, first, that because population is relatively stable. More importantly the lack of transparency of the conditions offered by competing banks does not allow customers to easily compare services effectively. Additionally, banks make it difficult, costly and often a lengthy process for customers to switch. In order to

[6] The full best practice suggestion reads "Agencies in their competition advocacy functions should consider, as appropriate when competition concerns are raised, to advocate, in countries with a common currency, for a reduction of transaction costs on cross border payments, including the creation of larger than national payment systems, so as to favor the development of larger markets and greater choices for consumers".

[7] OECD (1997), p256.

[8] The full best practice suggestion reads, "Agencies should apply in enforcement the usual tools of antitrust analysis, including market definition, market power/dominance, remedies".

stimulate customer mobility in their national markets, the ECA Working Group recommends national competition authorities to promote " lower switching costs in retail banking markets; the introduction of a consistent set of transparency rules that make it possible for consumers and SMEs to compare retail banking products, and the implementation of retail banking switching facilities (e.g. objective and up-to-date comparison sites, comparison statistics, switching services)."

20. Payment systems are often organized around a scheme-setting body, which in many cases is also responsible for setting and enforcing access rules with regard to clearing and processing. The access conditions to these bodies (how to receive a licence, adherence to technical standards, paying a fee) are sometimes overly restrictive of competition. In order to create more open national payment markets the ECA Report recommends the promotion of "transparent, open payment standards and objective membership criteria to payment schemes (i.e. non-discriminatory access rules); if workable, a clear legal (and practical) separation between management and ownership of access rules for payment schemes; unbundling in the supply of payment services (e.g. branding and processing) where other, less potentially anti-competitive, solutions are available; and the introduction of stakeholder-involvement (within the normal provisions of competition law) to ensure the consultation of stakeholders (customers) on access rules."

21. The creation of SEPA will clearly benefit consumers, even if in the short run prices for payment services may temporarily increase because of the huge investments necessary for building the new Euro wide platforms. The degree by which end users will benefit from these development depends on the degree of competition within domestic banking markets. In particular the ECA Report supports a "market-based approach for SEPA migration; separation of scheme and infrastructure; and non-exclusion of non-bank payment service providers from governance".

22. In the creation of SEPA customer mobility should also be favored. In this respect the introduction of European account numbers and 'number portability' could – in the long run – be the best way forward. An alternative would be to introduce a European switching facility, or at least the harmonisation of national switching facilities.

4. Antitrust enforcement in banking and in cards

23. In almost all jurisdictions Ministries of Finance or Central Banks have the duty to control bank mergers for stability reasons and for ensuring the safety and soundness of the institution and its managerial competency, while competition authorities control them on competition grounds. In recent years a number of jurisdictions, including Germany, France, Canada and recently also Italy, have recognized that functional separation is the best approach for an efficient and effective institutional structure and the antitrust authority has been made fully responsible for antitrust enforcement in banking. Only in very few jurisdictions are competition and stability concerns are still pursued by the same institution:

- In Brasil the Central Bank has full responsibility over bank mergers (both for stability and for competition considerations).
- In South Africa, the Minister of Finance for "public interest" objectives can exclude the competition authorities' jurisdiction over bank mergers.

- In the US, under section 18(c) of the Bank Merger Act of 1966, the Comptroller of the Currency (OCC) for national banks, the FDIC for federally-insured, state-chartered banks that are not members of the Federal Reserve System and the Board of Governors of the Federal Reserve System for state-chartered banks that are system members, must conduct their own competitive analysis of bank mergers. However in most transactions only DOJ and a single bank regulatory agency actually are involved and obtain a competitive factors reports from the Attorney General of the United States before approving a bank merger.
- In Korea, the Financial Supervisory Commission, when considering an approval of a merger or an acquisition, has to have prior consultation with the Korea Fair Trade Commission on the effect of the operation on competition.

24. The reason why antitrust authorities are better placed for antitrust enforcement in banking is that in assessing the likely effect of a bank merger on competition the analysis is not different from any other one: one should consider whether the merger could create or facilitate the exercise of market power, where market power is defined as the ability of firms to increase price or reduce quality from pre-merger levels. A merger could have anticompetitive effects by making it profitable for a leading firm to exercise market power unilaterally, or by increasing the likelihood that firms in a market could successfully maintain a collusive outcome. In banking the analysis may be complicated by the fact that the relevant geographic market differs according to the characteristics of the buyer of bank services (for small businesses the service of proximity is much more important than for big business) or of depositors (internet literacy enlarges the relevant market quite substantially). Furthermore, the existence of high switching costs reduces the importance of competition on the supply side and may be a very important element in the assessment of market power.

25. Contrary to other sectors, agreements among competitors are often necessary for the existence of efficient payment systems. For example in order to guarantee the interoperability across banks of automated teller machines, banks have to agree on how to share the cost of transactions. In debit and credit cards associations of banks have to agree on how to share the costs between issuers and acquirers. These agreements may be anticompetitive. Furthermore card markets are characterized by provisions, like the honor all cards or the no discrimination rules that have been characterized as anticompetitive by a number of antitrust authorities worldwide.

26. According to Evans and Schmalensee (2005) “payment systems have much in common with auction houses, exchanges, shopping malls and video games consoles”, in the sense that two separate sets sides need to be present in order for these markets to succeed. For example men and women have both to be present in a disco for it to be a success and not necessarily both pay. As a consequence all that matters is not how much each gender pays, but how much they pay together. The reason is that an optimal pricing structure, for example that only men pay, cannot be achieved by private negotiations between the two sides. In particular, since men would not be able to identify before hand the women that are interested in coming to the disco, they would not be able to voluntarily pay for them if the admission ticket was gender neutral. However card markets are different from discos. Merchants could identify customers by type of cards and have them pay accordingly to the (private) cost and benefits of the payment instruments they choose to use, irrespective of the original sharing of the cost among the two parties.

27. There is an additional peculiarity in the case of cards: the cost of card transaction is translated to all final consumers, since merchants may increase the prices of their products as the merchant fee or any other cost associated with the acceptance of the card is increased, of course only in so far as they are able to translate forward these extra costs (i.e. according to the demand elasticity they face). The identity of the two sides depends then on the share of consumers paying with cards and on the elasticity of demand merchants face: if the share of consumers paying with cards is high and the merchants elasticity of demand is low (high), users (merchants) pay for the most part; if the share of consumers paying with cards is low and the merchants elasticity of demand is low (high), final consumers (merchants) pay for the most part. Certainly final consumers, and in particular cash paying final consumers, are not the "other side".

28. Payment instruments have different costs: cash, checks, debit cards, credit cards. Since the choice is made by the user, in principle each user could be charged differently according to the cost of the instrument he chooses, so as to internalize their different costs. The fact that card users do not pay the cost of their choice, can indeed distort the market of payment instruments. Vickers (2005) mentions that "the Governor of the Reserve Bank of Australia has recently drawn parallels between circumstances with high interchange fees and Gresham's Law that bad money drives good money out of circulation. Just as our 16th century forbears would rather pay with a coin that had lost 1 per cent of its gold than a full one, so in the 21st century some of us may be tempted to pay by means that yield 1 per cent rewards at the expense of the retailer than by ways that do not." The reference to Gresham's law is of course not fully appropriate and in fact Vickers (2005) continues: "Without pushing the analogy too far, the common point is that the high-cost means of payment (for the retailer) can tend to gain at the expense of the low-cost means - irrespective of any underlying efficiency advantage."

29. Indeed in a world where the consumer that makes the choice also pays the cost of his choice (for example by paying a different price for his purchases if so asked), companies supplying payment systems would compete to reduce costs to merchants, knowing that otherwise their payment system would not be chosen by the customer (since the merchant might surcharge). This is particularly important for proprietary card systems that usually charge a much higher merchant fee than associations.

30. For example, the Reserve Bank of Australia eliminated the no-surcharge rule for four-party card schemes in 2003 and obtained American Express and Diners Club's agreement to remove their no-discrimination rules as well. There is evidence that very few merchants actually decided to surcharge or discount. As a consequence, Chang, Evans and Garcia Swartz (2005) argues, the elimination of the no discrimination rule has been irrelevant for consumers. On the other hand the elimination of the no discrimination rule widens the negotiation space for merchants because they might also decide to discriminate besides refusing to accept the card, raising the uncertainty of the card payment provider. As a result, allowing merchants to impose surcharges or grant discounts may give them greater negotiation power and lead them to obtain lower merchant fees.

31. Rochet and Tirole (2003) argue that the interchange fee rebalances the revenue streams between issuers and acquirers, setting up the right incentives for issuers to promote the purchase of card services and for acquirers to look for new merchants to associate. Because of the interchange fee, issuer banks revenues increase with the use of cards: the user of credit cards makes the choice of the payment instrument, issuer banks receive a revenue as a

consequence. The higher the competition among issuers, the more revenues are given back to users, usually in the form of prizes and rebates.

32. On the other hand, if switching cost in retail banking are high and competition is low, then rebates and prizes would not be so common (this is by the way the situation in many countries, including Italy), because issuer banks, not fearing that their customers would substitute their card away, are not transferring to their customers some of the interchange fee revenues. The purpose of the interchange fee might then be to increase issuer banks profits.

33. Interchange fees could be set bilaterally by each bank with respect to every other one. However in order to reduce transaction costs and impede opportunistic behavior associated with the respect of the honor all cards rule, it is efficient that interchange fees are set uniformly by the association (that negotiates a fee taking into consideration the interests of issuers and acquirers). Independently of the objective the association pursues, the interchange fee becomes a common floor on the merchant fees acquirers would charge and may be used strategically to artificially increase issuer profits. Interchange fees are at the same time a welfare enhancing device able to achieve the efficient results of rebalancing the two sides of the market and a collusive devise among banks, since the equilibrium to be identified in the course of a negotiation is completely uncertain.

34. The problem is that the degree of competition in any market strictly depends on the rules of the games. It might well be that the elimination of the interchange fee (being substituted by any other way to recover issuing costs, including the possibility of a variable charge to users) may lead issuers to compete more fiercely among themselves by reducing prices to customers, instead of by offering them prizes or miles in frequent flyer programs of an unknown value. The welfare of consumers might increase. At the same time competition among providers of different payment instruments would also increase because, since consumers would pay for their choice, the risk that customers would choose a different payment instrument would increase.

35. Antitrust authorities have looked at interchange fees, making sure that extraneous costs are not added on to the interchange fee. However also the "appropriate" costs are difficult to identify (and also to attribute to each card transaction). In its recent decision on MasterCard the Office of Fair Trading (2005) considers as "appropriate" the cost of providing a payment guarantee (fraud losses incurred by issuers and issuer costs of authorization and risk control), and the cost of processing incoming transaction. Since not every issuer incurs these costs in the same proportion and uses the same technology, the calculation of these "appropriate" costs requires the sharing of confidential information among issuers and it involves some free riding. More generally however it is very difficult to identify the appropriate nature of these costs (i.e. whether they really belong to issuers and not to acquirers), since the relationship between issuers and acquirers is not fully vertical, but two-sided.

36. Even though it may not be set at the optimal level, reducing the interchange fee to a minimum, if even to zero, opens the possibility for more flexible pricing strategies both by issuers and by acquirers. In its recent Statement of Objections against MasterCards the European Commission takes the view that interchange fees agreements may be a collusive device among issuer banks in order to keep high the revenue stream they receive from acquirers.

37. A final remark is merited on a very interesting experience by the Italian Competition Authority which in January 2006 opened a fact finding enquiry (not an enforcement action) on the costs depositors face when they close a checking account. This action, which was publicly announced, led many banks to immediately change current practices and eliminate the charges for closing an account. The fact that newspapers wrote extensively about the unjustified charges banks were asking to depositors was the major reason why these banks decided to change their current practices. Firms value very much their reputation, especially in industries that deliver their product/services to the general public. There were no immediate threats of an enforcement action, but banks did not want to appear to exploit "the little guys".

5. Conclusions

38. This paper has reviewed recent initiatives by antitrust authorities in banking and payment systems. It started off by summarizing the ICN Report on "An Increasing Role for Competition in the Regulation of Banks". The Report raises the question of what, exactly, is the problem (i.e., the market failure) that (prudential) regulation of banks is designed to address. In particular, while there are some areas that need a regulatory intervention (protection of smallest depositors, proper regulation of banks settlements, mandatory information disclosures, risk adjusted stability concerns), for the rest the sector can be efficiently disciplined by market mechanisms and by antitrust law. Furthermore the Report addresses the importance of switching costs for increasing market power of each bank, suggesting some solutions to reduce their importance. The ICN Report ends with a number of best practice suggestions. Two of these suggestions are directed to jurisdictions[9], two others to agencies in their enforcement capacity[10] and six to agencies in their competition advocacy functions.[11].

39. The ECA Report on competition issues in retail banking and payment systems in the EU addresses three areas that are particularly important for creating an integrated European market for financial services: consumer mobility, access to payment systems, and SEPA (Single European Payment Area). The ECA report suggests that a reduction of switching costs can be

[9] 1) promote an open, competitive, banking environment without unjustified restrictions on entry, ownership or exit, resulting either from the rules to be applied or from enforcement practices; 2) ensure that there is a proper separation between the enforcement of prudential regulation and of the general competition rules

[10] 3) whatever the institutional setting, (agencies should) build good working relationships with the regulatory agencies and coordinate their efforts in reviewing particular matters; 4) (agencies should) apply in enforcement the usual tools of antitrust analysis, including market definition, market power/dominance, remedies.

[11] Agencies in their competition advocacy functions should consider, as appropriate when competition concerns are raised, to advocate for: 5) the elimination of exclusions from competition law for financial institutions; 6) an environment where banks are informed in a timely and complete manner on the debt exposure of potential borrowers (in integrated financial markets also on an international basis), making sure to identify ways and precautions such that information sharing does not lead to restrictions of competition; 7) a reduction of switching costs by depositors, for example by asking for disclosure rules, for example on the costs associated with the closing of an account or paying off a mortgage; 8) in countries with a common currency, a reduction of transaction costs on cross border payments, including the creation of larger than national payment systems, so as to favor the development of larger markets and greater choices for consumers; 9) a legal environment where the taking possession of collateral is possible without delay; 10) especially in developing countries and consistent with maintaining a competitive market., the creation of a legal environment where financial institutions can reduce their risk by joint liability lending.

achieved by greater customers information. Furthermore introducing some sort of number portability may reduce the implicit costs associated with a decision to change bank. Access to payment system platforms has to be transparent and non- discriminatory, while allowing for stakeholders involvement in the definition of access rules. As for SEPA migration, the ECA report favors the identification of market base solutions.

40. As for antitrust enforcement, banking does not need special rules nor special institutional settings. Bank mergers are suitable to be evaluated with the general tools of mergers analysis. The only specificity with banks is that the extent of the geographic market may differ according to the product/service considered and the technology available.

41. Agreements among competitors are a common feature of many payment services associated with the use of cards. Antitrust authorities and regulators have recently intervened with respect to these agreements: In Australia the Reserve Bank has eliminated the no discrimination rule and significantly reduced the interchange fee. There are mixed assessments on the results of the Australian experiment, but certainly it cannot be concluded that consumers suffered as a result. In the United Kingdom the OFT has considered anticompetitive the interchange fee agreement of MasterCard because it included the costs of services far in excess of what was considered appropriate by the vertical acquirer/issuer relationship. More recently the European Commission has issued a statement of objection against MasterCard for very similar practices.

42. The elimination of the no discrimination rule reduces the possibility of free riding by users of credit cards with respect to users of other payment systems or by high users of credit cards with respect to low users. It would also increase the negotiating power of merchants with respect to three party systems, expanding the number of options available (not just accept/not accept the card, but also surcharge/no surcharge). Finally the reduction of the interchange fee, and, at the limit, also the elimination of the interchange fee, enhances market transparency, increasing competition both on the acquirer and on the issuer sides of the market.

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