

SOUTH AFRICA

Retail Banking Diagnostic

Treating customers fairly in relation to
transactional accounts and fixed deposits

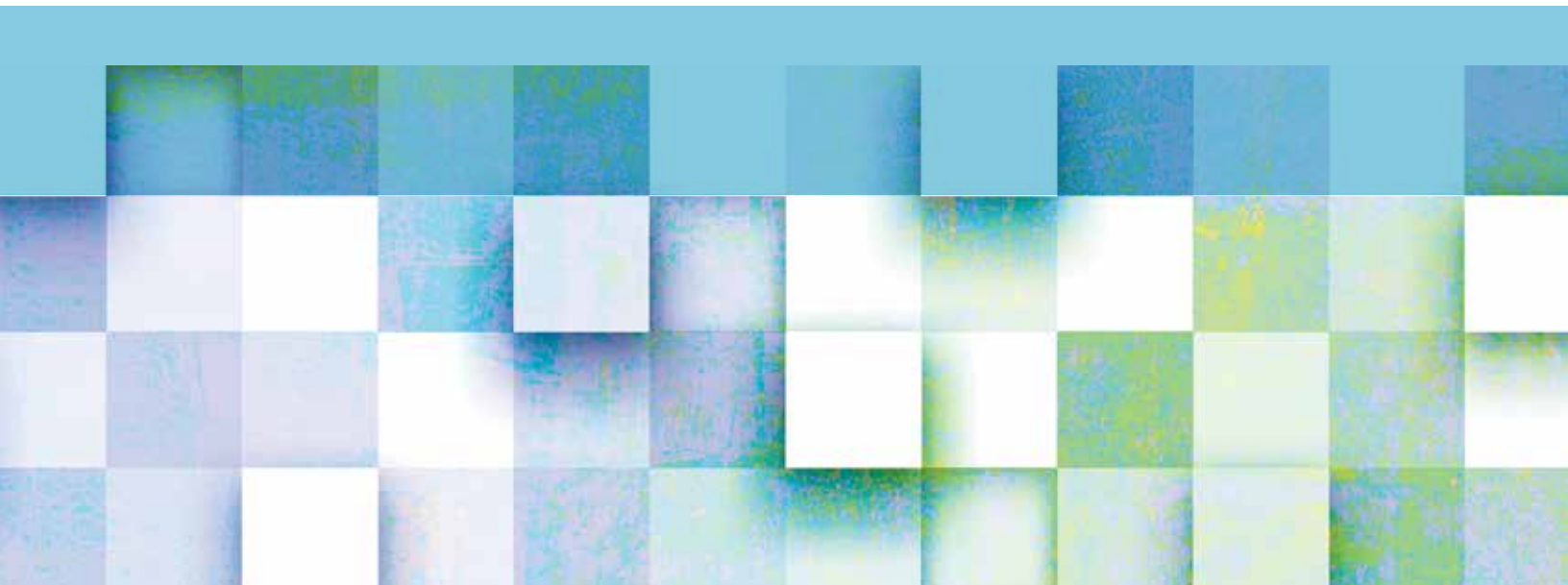
JUNE 2018

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ACKNOWLEDGMENTS

The technical assistance for this diagnostic has been provided as part of the South Africa Financial Sector Development and Reform Program (FSDRP) undertaken by the World Bank Group (WBG) and supported by the Swiss State Secretariat for Economic Affairs. The objective of the FSDRP is to assist the South African Government in strengthening financial stability and improving financial inclusion, through analytical and advisory services.

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The team appreciates the cooperation and collaboration of the South African authorities, including the National Treasury, the Financial Services Board/Financial Sector Conduct Authority, and the South African Reserve Bank. The team also thanks the government, industry, and civil society stakeholders with whom it met and corresponded for their assistance and support.

The team is grateful to the peer reviewers for the report—Gerhardus Coetzee (Customer and Provider Solutions Lead, Consultative Group to Assist the Poor) and Uzma Khalil (Senior Financial Sector Specialist, WBG)—for their feedback and comments.

The team thanks Charles Hagner for editorial inputs.



ABBREVIATIONS AND ACRONYMS

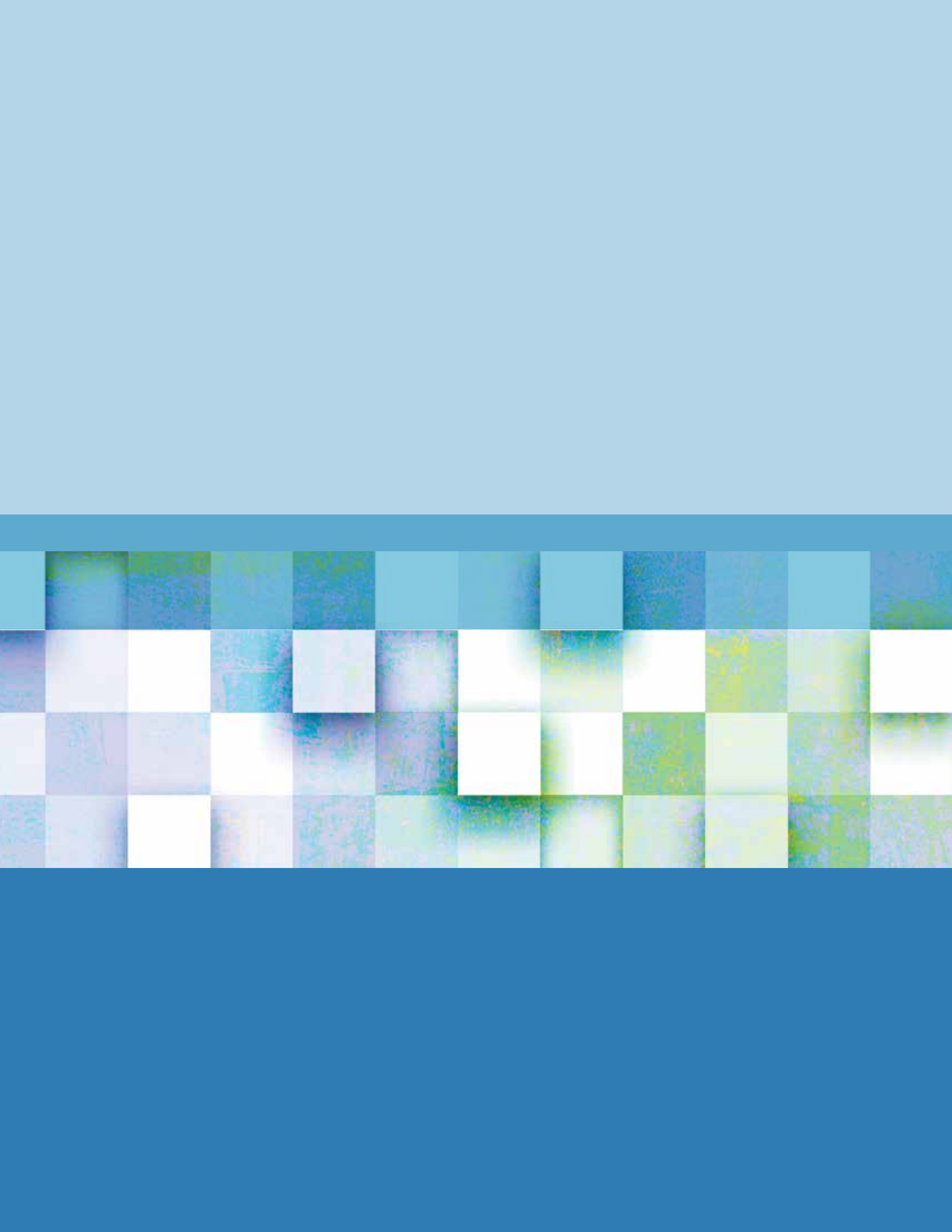
2016 WBG Report	WBG, 2016. "Achieving Effective Financial Inclusion in South Africa: A Payment Perspective."
ASA	Advertising Standards Authority of South Africa
ASIC	Australian Securities and Investments Commission
ATM	automated-teller machine
Banking Enquiry	Competition Commission of South Africa, 2008 "Banking Enquiry: Report to the Competition Commissioner by the Enquiry Panel"
Banks Act	Banks Act, 1990
Big Four	The four largest South African banks by market capitalization at the time of writing: ABSA, FNB, Nedbank, and Standard Bank ¹
CBP	Code of Banking Practice
COFI Bill	Conduct of Financial Institutions Bill
COFI/FSR Laws	The COFI Bill and FSR Act and subordinate legislation to be developed under them
CPA	Consumer Protection Act, 2008
EBA	European Banking Authority
FAIS Act	Financial Advisory and Intermediary Services Act, 2002
FAIS General Code	General Code of Conduct for Authorised Financial Services Providers and Representatives, 2004
FAIS Legislation	The FAIS Act and the FAIS General Code and FAIS Short-Term Deposits Code
FAIS Ombud	Office of the Ombud for Financial Services Providers
FAIS Short-Term Deposits Code	Specific Code of Conduct for Authorised Financial Services Providers and Representatives Conducting Short-term Deposit Business, 2004
FCA	Financial Conduct Authority (UK)

FS Code	Financial Sector Code for Black Economic Empowerment, 2012
FSA	Financial Services Authority (UK)
FSB	Financial Services Board
FSCA	Financial Sector Conduct Authority
FSP	financial services provider
FSR Act	Financial Sector Regulation Act, 2017
Good Practices	WBG, Good Practices for Financial Consumer Protection, 2008
KFS	key facts statement
National Credit Act	National Credit Act, 2005
National Credit Regulations	National Credit Act, 2006
NCC	National Consumer Commission
NCR	National Credit Regulator
OBS	Ombudsman for Banking Services
OECD	Organisation for Economic Co-operation and Development
PAYT	pay as you transact
PIN	personal identification number
POS	point of sale
SMS	Short Message Service
TCF	Treating Customers Fairly
WBG	World Bank Group

(For full citations to reference materials please see 'References' section of report)

NOTE

1. The term *Big Four* has been used in the report to refer to these four banks, as this is a familiar long-standing term used in South African media and commentary. Another term used in the report to refer to these banks is major banks. It is important to note, however, that on at least the measure of number of customers, another bank (Capitec) is larger than some of the Big Four. For example, BusinessTech 2017.





INTRODUCTION

At the request of the National Treasury of the Republic of South Africa, the World Bank Group (WBG) has provided technical assistance to undertake a Retail Banking Diagnostic focusing on the provision of consumer transactional accounts² and fixed deposits³ by retail banks in South Africa. The aim of the Retail Banking Diagnostic has been to identify potential deficiencies from a fair-treatment perspective in banks' provision of such accounts and deposits, and whether and how any identified major fair-treatment deficiencies could appropriately be addressed through market conduct regulation, having regard to international good practices and the South African market context.

A WBG team visited South Africa in April 2017 and undertook discussions to inform the diagnostic with regulators, a range of banks offering consumer transactional accounts and fixed deposits, relevant financial sector ombud schemes, and industry and consumer bodies. Further discussions and inquiries and desk-based research were undertaken following the visit. Except where stated otherwise, the report reflects research undertaken up to September 2017, and it does not cover developments after that time.

Practices identified by this process were analyzed having regard to international good practices, such as those identified in the latest edition of the WBG's *Good Practices for Financial Consumer Protection* (Good Practices)⁴ and in the various reports on "Effective Approaches" to support implementation of the G20/OECD "High-Level Principles on Financial Consumer Protection",⁵ and through research requested by the National Treasury undertaken specifically for the diagnostic, and taking into account the outcomes being targeted by the then Financial Services Board (FSB), now the Financial Sector Conduct Authority (FSCA), as part of its Treating Customers Fairly Program (TCF Outcomes). The outcomes are as follows: (1) Customers are confident that their fair treatment is central to the financial firm's culture; (2) consumer financial products and services are designed to meet the needs of identified customer groups;⁶ (3) customers receive clear information and are kept appropriately informed; (4) financial advice is suitable to the customer and takes into account the customer's circumstance; (5) retail financial products meet customers' expectations, and the associated services are acceptable and in line with what customers had

been led to expect; and (6) no unreasonable post-sale barriers apply when customers wish to change products, switch providers, submit claims, or make complaints.⁷

This report sets out the findings of the diagnostic and provides recommendations for regulatory improvements and related measures for consideration by the South African authorities. Where the report recommends legal measures to address an issue, it is envisaged that these would be implemented either through fair-treatment conduct standards made by the FSCA pursuant to section 106 of the recently passed Financial Sector Regulation Act 2017 (FSR Act) or, in due course, through the Conduct of Financial Institutions Bill (COFI Bill) being developed by the National Treasury, and subordinate legislation, such as Standards, to be developed under the resulting COFI Act (referred to collectively in the report as the “COFI/FSR Laws”).

Importantly, it is understood that since research for the report was completed, the South African authorities have continued work on various reforms, including releasing enhancements to existing legislation. Some of the findings and recommendations noted in the report may therefore be addressed before the COFI/FSR Laws are implemented (in which case relevant approaches should be appropriately transitioned to the COFI/FSR Laws in due course). Although the focus of the diagnostic was to identify potential regulatory interventions, it is important to note that such interventions may not necessarily be the most appropriate response to some of the issues identified. Where this is the case, some other suggestions (such as industry approaches) are given where feasible. Suggestions are also made for additional research where this seems necessary.

The Retail Banking Diagnostic is complementary to the report “Achieving Effective Financial Inclusion in South Africa: A Payment Perspective” prepared by the WBG in 2016 (2016 WBG Report). Among other things, the 2016 WBG Report analyzed and made corresponding recommendations regarding the drivers of access to and usage of transactional accounts and associated electronic payment instruments, including approaches to fostering access to new entrants and innovative offerings to assist inclusion. The Retail Banking Diagnostic therefore does not seek to cover issues already covered in the 2016 WBG Report but makes reference to that report where relevant. The diagnostic has also not comprised a market analysis (such as of banks’ current cost structures) of the kind undertaken by the Competition Commission’s 2006–2008 Banking Enquiry (Banking Enquiry) nor demand- or supply-side surveys. However, some suggestions are made for such further analysis to inform regulatory development.

Set out first is a high-level summary of key findings and recommendations. Detailed findings and recommendations then follow. The diagnostic considered the provision of transactional accounts and fixed deposits in terms of the main phases of the product life cycle, from product design, offer, and sale through operation, administration, and closure, and this report is structured correspondingly. The report is written as an exception report, identifying potential major gaps in bank conduct at each of these stages as identified during the diagnostic (rather than seeking to describe all identified conduct at each stage, including good practices not requiring intervention) and providing resulting recommendations.

NOTES

2. In summary, being transactional accounts used for depositing funds, undertaking payment transactions, and accessing credit (for example, through temporary overdrawn) but exclude credit cards, formal overdrafts, or similar credit accounts. The report's primary focus is on the treatment of individuals acquiring and using relevant products for personal purposes, although it has been recognized internationally that micro and small enterprises often face the same consumer protection issues as individuals and require the same basic protections. See WBG 2017, 4. The terms *consumer* and *customer*, therefore, are generally used interchangeably.
3. In summary, deposits for a specific period of time with a given fixed interest rate.
4. WBG 2017.
5. OECD 2014.
6. The National Treasury's expectation in this regard is that firms operating in low-income target markets are expected to target increased financial inclusion when designing financial products and services.
7. FSB 2011 (TCF Roadmap).

SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS

The following is a high-level summary of key findings and recommendations resulting from the Retail Banking Diagnostic.

NOTE: More detail (including important context and background) for each finding and recommendation summarized below is set out in the detailed findings and recommendations that follow.

FINDINGS	RECOMMENDATIONS	FOR FULL DETAILS SEE:
1. Product design		
<i>Transactional accounts for low-income customers</i> Transactional account offerings aimed at the low-income market largely offer transaction features equivalent to their counterparts targeted at higher-income customers. It also seems that, for customers who do not maintain a significant balance on which they can earn interest to offset costs, the pricing of the major banks' offerings is similar to that of their main commercial competitor in the lower-income bracket. Pricing bundles appear intended to drive customer behavior away from branch and ATM services to electronic channels. However, at this level of the market, there remains a great propensity to transact in cash. Relevant account offerings are likely to become much more expensive for low-income individuals if they make use of branch or ATM services. Charges for using such services are significant. (For low-income households, account costs can represent up to 10 percent of income.) Reluctance to use electronic channels may also be driven by other circumstances and by communications costs.	• The South African authorities should consider strengthening and simplifying the reporting parameters under the FS Code regarding transactional accounts to incentivize banks more clearly to ensure that pricing as well as features support accessibility. • The South African authorities should also consider introducing measures—such as those introduced through regulation in the European Union, for example, or through a coordinated industry agreement in Canada—promoting the provision of full-featured transactional account offerings that respond to the needs of low-income customers, including in terms of pricing. Consideration should be given to setting out minimum feature and pricing aspects to be met that providers could then enhance and build on, fostering accessibility while allowing for innovation. Importantly, the parameters of any such intervention should be based on comprehensive customer-focused research that examines in sufficient detail not only low-income individuals' current usage in South Africa but also broader financial transaction needs,	1.1

FINDINGS	RECOMMENDATIONS	FOR FULL DETAILS SEE:
1. Product design, <i>continued</i>		
<i>Transactional accounts for low-income customers continued</i> It is not clear that the product parameters contemplated under current access reporting requirements focus sufficiently on transactional accounts, and their complexity may also hinder clear reporting focusing specifically on such accounts. It is also not clear that product changes that can have a significant impact on low-income consumers are consistently subject to internal testing by banks.	behaviors, preferences, and related physical and technological accessibility (for example, drivers for continued demand for branch and ATM access and cash usage). Research should also examine potential market impact, including previous experience and concerns expressed with regard to Mzansi accounts. In addition, the general product-design obligations recommended below should apply to all levels of product offerings, including low-income products.	
<i>Middle-income transactional account offerings</i> Structural complexity and differences in the content of the major banks' bundles, and in each bank's individual transaction pricing, continue to make it difficult for a retail customer to undertake a meaningful comparison of each bank's offering. Even where banks had undertaken recent product reviews, they tended to retain complex pricing. Bundle pricing seems intended to encourage usage of digital channels and discourage usage of traditional channels. This also adds to pricing complexity. Several banks have implemented TCF Outcomes-style concepts in their written product-approval and other decision-making policies. However, the level of sophistication and granularity of such policies varies significantly. Banks have internal product-design and approval processes with varying levels of focus on customer research and testing and assessment rigor to ensure suitability for an identified target market. Overall pricing between the major banks' core bundles is relatively close and higher than some competitor offerings. It was not possible in the scope of the diagnostic to confirm the reasons for pricing similarity or to assess the level of bundle underutilization.	- The South African authorities should consider including in the COFI FSR Laws specific product-design obligations to ensure that financial institutions' processes for developing and making changes to transactional account (and fixed deposit) products include clear, concrete steps intended to drive TCF Outcomes. Examples of approaches are provided in the report. At least initially, such obligations should be principles-based, particularly assuming that they would not be confined to transactional accounts and fixed deposit products but would also be intended to apply to other financial products. Importantly, however, the FSCA should augment such principles-based obligations by issuing more detailed regulatory guidance, addressing product-specific practicalities and concerns (that can be updated over time reflecting its supervision outcomes). If industry does not meet relevant expectations sufficiently, then more prescriptive requirements could follow. - The South African authorities should, in addition, consider undertaking an updated Banking Enquiry-style pricing-versus-costs analysis and a complementary in-depth study of switching behavior and attitudes among middle-income customers.	1.2

FINDINGS	RECOMMENDATIONS	FOR FULL DETAILS SEE:
1. Product design, continued		
Fixed deposit design A wide range of rates is offered on fixed deposit offerings. There is also significant variation in product structuring for fixed deposits. The availability of a range of offerings of itself is not necessarily of concern, if it gives retail customers the ability to choose more suitable alternatives. However, the complexity involved in comparing individual aspects of current alternatives is likely to make it more difficult for retail customers to choose without assistance.	To assist in addressing these issues, the South African authorities should consider implementing the specific product-design obligations noted above to apply to fixed deposits, as well as the improvements to product disclosure referred to in 2 below.	1.3
Potentially unfair product terms A review of a sample of current bank terms and conditions, and discussions with banks, suggests varying degrees of effort across the industry to ensure that such terms do not contain unfair or excessively one-sided clauses. Clauses of concern include, for example, significant exclusions of liability and the placing of excessive responsibility on customers for some risks. (The report discusses a range of examples in more detail.)	A regime that would prohibit unfair terms in transactional account and fixed deposit standard form contracts should be implemented in the COFI/FSR Laws. The regime should provide both for enforcement by the FSCA and reliance by individual retail customers. The regime should contain appropriate adjustments for issues relating to financial products, such as regarding its application to pricing. The FSCA should issue up-front guidance on its expectations in this regard, which should include practical guidance focusing on the application of the regime to key aspects of financial products, such as unilateral rights of variation and exclusions of liability. Institutions should then be expected to undertake (for example, during a transition period) substantive reviews and, where necessary, amendments of terms and conditions to ensure consistency with the regime.	1.4
2. Product offer and sale		
Advertising and sales material There is a significant gap, as well as interpretative inconsistencies, in the applicability of the FAIS Legislation to transactional accounts. There has also been uncertainty regarding the application of the general consumer protection legislation to transactional account and fixed deposits. (This is discussed in more detail in the report.)	The COFI/FSR Laws should explicitly and comprehensively address advertising and marketing practices in relation to transactional accounts and fixed deposits as outlined in the report (including to address existing legal gaps).	2.1
Product disclosure The existing legal and regulatory framework for disclosure relating to transactional accounts and fixed deposits is fragmented and limited. There is wide variation in what, when, and how information about product features and pricing is disclosed to retail customers.	- The COFI/FSR Laws should do the following: - Establish a disclosure regime for transactional accounts and fixed deposits that covers key features, terms, pricing, and rights and recourse for transaction and fixed account deposit products, as well as the manner and timing of disclosure. Flexibility for key contractual disclosures to be made in electronic format should be included.	2.2

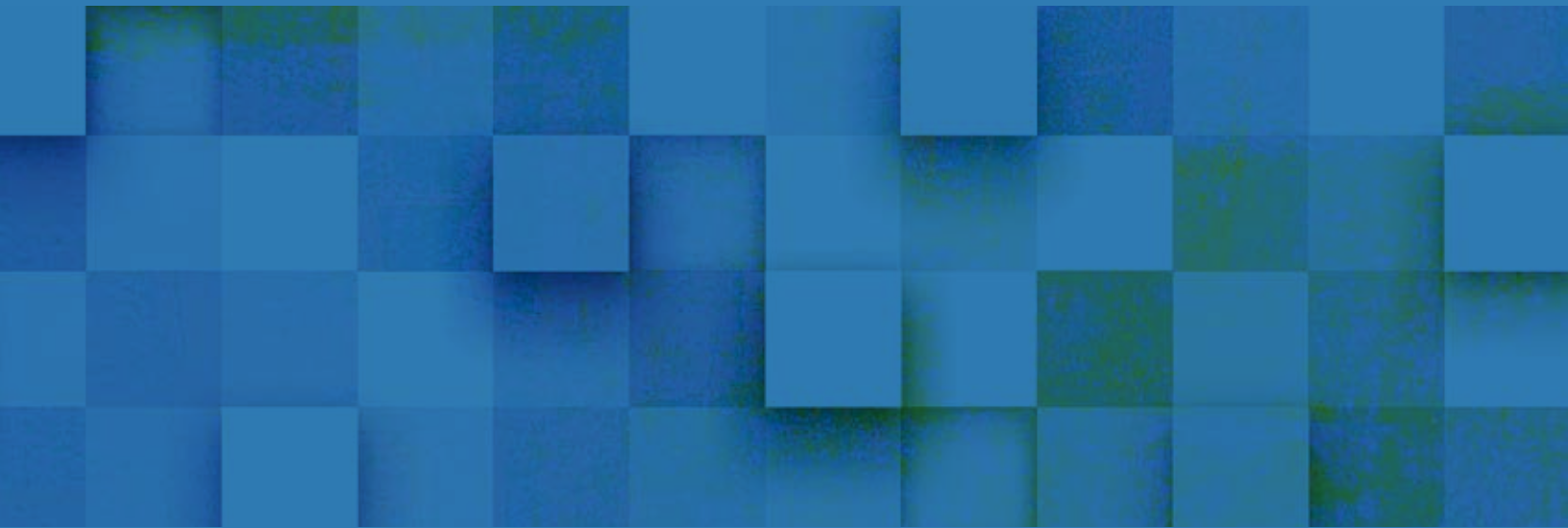
FINDINGS	RECOMMENDATIONS	FOR FULL DETAILS SEE:
2. Product offer and sale, continued		
<i>Product disclosure, continued</i> The CBP approach to alignment and standardization of product terminology has important gaps and has been implemented inconsistently. Despite some progress, the language used to articulate terms and conditions in customer agreements remains dense and laden with legal terms and jargon. There is wide variation in how banks describe interest rates on fixed deposits.	– Require provision of a standardized short-form disclosure document to summarize key product features, pricing, and terms and conditions of transaction and fixed deposit accounts. (The report discusses the content and provision of such documents in detail, including availability through all applicable channels and the need for verbal explanations in some circumstances.) • The South African authorities should establish standards for disclosing and explaining interest rates and calculation of interest on fixed deposits in a simplified manner. • The South African authorities should consider carefully whether it is feasible to include an overall cost indicator (based on standard or sample usage patterns) in short-form disclosure documents for transactional accounts or at least specially targeted categories.	2.2
Most customer-facing product documentation is available only in English and Afrikaans, despite the fact that 77 percent of adults speak another language as their main language at home. This has implications for customers' understanding of the features and pricing of transactional accounts and fixed deposits.	• The COFI/FSR Laws should mandate more comprehensive language requirements for key customer-facing documentation related to transactional accounts and fixed deposits reflecting approaches taken in and, importantly, lessons learned from the implementation of such requirements in the National Credit Act and, for the public sector, the Use of Official Languages Act.	2.2
Industry-led efforts to provide fee calculators to help customers compare products appear to have been largely ineffective.	• The authorities should establish or support the establishment of a centralized website and related tools that make it easy to compare features and prices of transactional accounts and fixed deposits.	2.2
<i>Advice and sales practices and incentives</i> Quantitative sales data remains a key component of compensation metrics for frontline sales staff, though several banks have recently introduced "quality" sales measures. Frontline sales staff often rely solely on income-based account eligibility criteria to guide consumers toward certain products. Although several banks use agents or intermediaries to facilitate customer acquisition and product usage, third-party retail agent models have not been fully leveraged to achieve financial inclusion policy objectives. There is a lack of clear rules governing the relationship between a customer, an agent or intermediary, and a bank with regard to transactional accounts and, to a certain extent, fixed deposits.	• Building on the approaches taken in the FAIS Legislation with respect to sales practices, the COFI/FSR Laws should appropriately strengthen governance of advice and sales related to transactional accounts and fixed deposits, including regarding – the compensation of frontline sales staff and agents to limit consumer risks, and – protective rules governing relationships between banks, third-party agents/intermediaries, and retail customers (leveraging work so far under the Retail Distribution Review). Importantly, the application of these rules should be proportional, and adaptable, to initiatives intended to promote effective access by low-income consumers to transaction and savings products.	2.3

FINDINGS	RECOMMENDATIONS	FOR FULL DETAILS SEE:
3. Product operation and administration		
Potentially unfair fees Transactional account and fixed deposit terms and conditions do not seem to have been effectively subjected under the general unfair-terms regime. (The report discusses the reasons for this in more detail.) Common law concepts of penalties and limited legislation seem to apply, but there does not seem to be a common understanding in the banking industry as to when a fee would be prohibited as a penalty. Some banks consider that disclosure can be sufficient to avoid a fee being a penalty. While there have been some improvements in fee-charging practices, some fees continue to be charged that could potentially be restricted penalties in the sense contemplated under existing legislation or, even if this is not the case, could nevertheless be viewed as unfair or unreasonable (for example, certain dishonor fees or fees associated with debit order disputes).	• The regime prohibiting unfair terms recommended above in 1 should apply to relevant fees. The fairness of such fees would then be tested against the restrictions in the regime to determine whether the fee is appropriate. • If necessary (depending on the implementation of the regime), the application of existing legislative and common law doctrines on penalties should be clarified for financial sector participants. • The disclosure improvements recommended above in 2 should also be pursued to address the potential lack of customer awareness regarding the application of relevant fees. Such fees should not be enforceable unless disclosed consistently with new disclosure requirements.	3.1
Dormant transactional accounts There do not currently appear to be regulatory or self-regulatory requirements, nor uniform industry practices, for dealing with dormant accounts. Fees may continue to be charged on an inactive or a dormant account for different periods, depending on the bank.	• South African authorities should issue specific regulatory requirements on transparency and fair conduct related to dormant accounts, including defining the time or circumstances when an account would be considered dormant, to ensure uniformity of customer treatment by banks, and parameters for (i) identification of dormant accounts, (ii) notification to consumers, and (iii) closure. Specific prohibitions of adverse practices should also be considered, such as continuing to charge maintenance fees on dormant accounts that have reached a zero or negative balance.	3.2
Temporary overdrafts or “shadow” credit limits Some banks allow selected customers to temporarily overdraw their transactional account without a prior agreed overdraft, while others charge for this service. It seems that customers would need to expressly opt out if they are not in fact interested in receiving this service. There are differing legal views between the banks regarding the application of the National Credit Act to such temporary overdrawing and thus to compliance. Indications are that, notwithstanding specific references in some terms and conditions, customers do not necessarily understand that they have been granted such credit nor how it operates.	• While recognizing that temporary overdrawing can serve a legitimate customer purpose, the South African authorities should consider how best to regulate it (for example, whether it is necessary to amend the National Credit Act or National Credit Regulations to extend them more clearly to such facilities, or impose requirements through the COFI/FSR Laws) to ensure that banks do not engage in unfair practices in relation to temporary overdrawing of transactional accounts. More specific product-design obligations of the kinds recommended above in 1 would also be relevant in ensuring that the inclusion of such features in transaction accounts is consistent with TCF Outcomes.	3.3

FINDINGS	RECOMMENDATIONS	FOR FULL DETAILS SEE:
3. Product operation and administration, <i>continued</i>		
<i>Temporary overdrafts or "shadow" credit limits, continued</i> Some of the consulted banks started implementing alternative ways to notify customers in case their transactional accounts may not have sufficient funds to cover future debits (to avoid overdrawing as well as dishonors).	• In the meantime, the NCR should also consider a targeted review of banks' current practices relating to temporary credit provided in connection with transactional accounts to ensure compliance with the National Credit Act and National Credit Regulations.	
<i>Changes to terms and conditions and fees and charges</i> In their account terms and conditions, banks retain extensive unilateral rights to make changes to fees and charges and other terms. Some banks' terms and conditions contain clauses indicating that a bank can change the fees and charges and other terms and conditions for an account without prior individual notice being given to the customer.	• The COFI/FSR Laws should mandate minimum notice periods and require individual customer notice of changes that will have a direct customer impact, considering the likelihood that a customer may not become aware of general public notices of relevant changes. • Unilateral variation rights included in terms and conditions should also be subject to an unfair-terms regime as recommended above in 1.	3.4
<i>Statements</i> Statement requirements for transactional accounts are not currently regulated by legislation. The CBP addresses the provision of statements for transactional accounts only to some extent. Banks indicated that they provide customers with a statement either on a regular basis or upon request. Practice in this regard seems to vary, and charging for paper statements seems a common practice. Consumer representatives indicated that access to bank account statements is one of the main challenges faced by account holders.	• The COFI/FSR Laws should specify requirements for the provision of periodic statements for transactional accounts. Regulatory requirements should address minimum content and format requirements, as well as frequency, timing, and manner of delivery (including making appropriate provision for easy access to statements and other transactional information through electronic channels).	3.5
<i>Information about external dispute resolution</i> Information regarding external dispute-resolution mechanisms does not seem to be consistently available across all channels.	• The disclosure requirements recommended in the report should require banks to disclose clearly the contact information and basic processes for internal and external complaints-handling mechanisms.	3.6

FINDINGS	RECOMMENDATIONS	FOR FULL DETAILS SEE:
4. Product closure and mobility		
<i>Potential barriers to account closure</i> Banks generally confirmed that account closure is at the customer's discretion but that some administrative steps would need to be undertaken. The OBS reports only a few complaints related to account closure, but there seems to be a lack of transparency or publicly available information regarding applicable procedures and varying degrees of facilitation by banks.	• See below.	4.1
<i>Account-switching processes</i> Banks tend to follow the CBP's provisions regarding switching processes, but these place some of the administrative onus on customers. Industry information regarding switching processes is unclear, and some banks are more facilitative than others. Some banks have developed debit order switching authorization forms as part of the initiatives to assist customers to switch in.	• The new disclosure requirements recommended above in 2 should cover inclusion of clear information regarding closure and switching rights and processes. • The authorities should work with the banking industry to achieve a common and facilitative industry approach to transferring bank accounts, including debit orders (before considering regulatory intervention).	4.2
<i>Early termination and rollover of fixed deposits</i> Customers may not understand fully the implications of restrictions on fixed deposit withdrawals. Automatic roll-overs of fixed-term deposits may sometimes also occur without customer understanding.	• The short-form disclosure documents that are recommended to be introduced in 2 should provide a brief, clear explanation of the consequences of early termination and of the implications at maturity if the customer does not withdraw the fixed deposit. • Potential inappropriateness or unfairness of terms governing early withdrawals should also be addressed through the product-design and unfair-terms measures referred to above in 1. • A coordinated industry approach should be considered for providing alerts ahead of the maturity date of fixed deposits.	4.3
5. Code of Banking Practice		
The report recommends in various instances addressing objectives reflected by the TCF Outcomes through legislative reforms, but the CBP also remains a key document governing and influencing bank practices in relation to transactional accounts and fixed deposits. Several banks suggested that the CBP should be reviewed and further updated in the light of TCF Outcomes, and the report notes some examples where it may currently have gaps or inconsistencies in this regard.	• The CBP should be reviewed to ensure that it fully reflects the latest public and regulatory expectations in the context of the TCF Outcomes. • Efforts should be made to enhance consumer awareness of the CBP.	5.1

DETAILED FINDINGS AND
RECOMMENDATIONS





1

PRODUCT DESIGN

This section of the report considers current product design, both in terms of features and pricing and product-design processes, for transactional accounts and fixed deposits. The discussion is undertaken particularly in the context of Treating Customers Fairly (TCF) Outcome 2, which contemplates that products and services marketed and sold in the retail market must be designed to meet the needs of identified customer groups and be targeted accordingly. With regard to transactional accounts, the discussion in section 1.1 considers accounts offered by the banks to low-income customers,⁸ including whether existing features and pricing seem conducive to accessibility for such customers. Section 1.2 then considers transactional accounts that are targeted by the banks at middle-income customers (retail customers at least one tier above low-income brackets). However, that discussion also covers some issues (such as regarding product-design processes) relevant to retail customers generally. Design issues relating to fixed deposits are then discussed in section 1.3. Finally, the discussion in section 1.4 considers potentially unfair terms identified in a sample of transactional account and fixed deposit terms and conditions.

1.1: TRANSACTIONAL ACCOUNTS FOR LOW-INCOME CUSTOMERS

a) Background

South African legislation does not currently impose prescriptive obligations on banks regarding product design. As discussed later, while banks are subject to requirements relating to certain broader accessibility targets, they are not subject to regulatory design obligations specific to bank accounts. Some efforts have been made in the past to implement minimum standards for banks offering accounts intended to meet the needs of low-income and unbanked customers in South Africa. The main example of such prior efforts, involving industry standards for both product design and pricing, related to the conception and implementation of Mzansi accounts. These accounts were intended to satisfy the transactional needs of individuals at Living Standards Measure levels 1–5 through functionality that, at a minimum, made it possible to send and receive payments electronically at little or no cost and to store

value safely. (The 2016 WBG Report described the introduction of and subsequent market developments for Mzansi accounts in some detail.)

Table 1.1 summarizes the functionality and pricing parameters that banks had to comply with in relation to their Mzansi account offerings.

The offering of Mzansi accounts was not backed by direct legislative obligations on the banks. During the Banking Enquiry's hearings a decade ago, the idea was raised that banks should be obliged to

provide one or more basic banking products with similar content, capable of being simply and directly compared. This would enable customers, whose needs would be satisfied by such a particular product, to compare prices and choose their bank accordingly. That in turn would intensify price competition, and cut across the existing segmentation of the market at least to the extent that segmentation has been contrived by banks in order to maintain market power.⁹

However, referring to strong protests from the banks and arguments in the financial press, and concerns that there would be practical difficulties in implementing such a measure and that it may impair innovation, the Banking Enquiry ultimately recommended the following:

[T]he "basic banking product or products" idea should be put on hold. If, after two or three years, the other recommendations put forward in this chapter have not been implemented or (once implemented) have not had the desired effect of increasing price competition and bringing prices for PTAs [personal transaction accounts] and related services down significantly, then the Competition Commissioner should revisit the idea with a view to evaluating it further and securing its implementation if so advised, if necessary by legislation.¹⁰

At the time of writing, social security beneficiaries were being issued with accounts (SASSA accounts) and associated Mastercard debit cards subject to limitations on their design. A significant proportion of South Africans hold SASSA accounts. At the time of writing, these accounts were not offered market-wide but rather had to be held with only one bank (although it is understood that this was subject to change

TABLE 1.1: Mzansi Account Parameters

Card-based	The account had to have an associated debit card, with normal debit card functionality and operational in the fully interoperable South African payment environment.
No penalty for using other banks' infrastructure	Premium service fees that would normally apply for the use of the infrastructure of a bank other than the issuing bank, particularly automated-teller machines (ATMs), would be waived (and interbank fees were adjusted to reflect this agreement).
Affordable	There was an agreement that a defined basket of transactions would not exceed an agreed fee threshold that was deemed affordable by the target market. This upper limit was significantly lower than the cost for typical bank products. Each bank developed its own pricing based on the agreed principles.
No monthly or management fee	It was agreed that a Mzansi account would not attract this type of fee.
One free cash deposit	It was agreed that Mzansi account holders would have one free cash deposit transaction per month.
Use of Post Office branches	Mzansi account holders could withdraw funds and do basic inquiries at Post Office branches, irrespective of the bank involved in the issuing of the account.

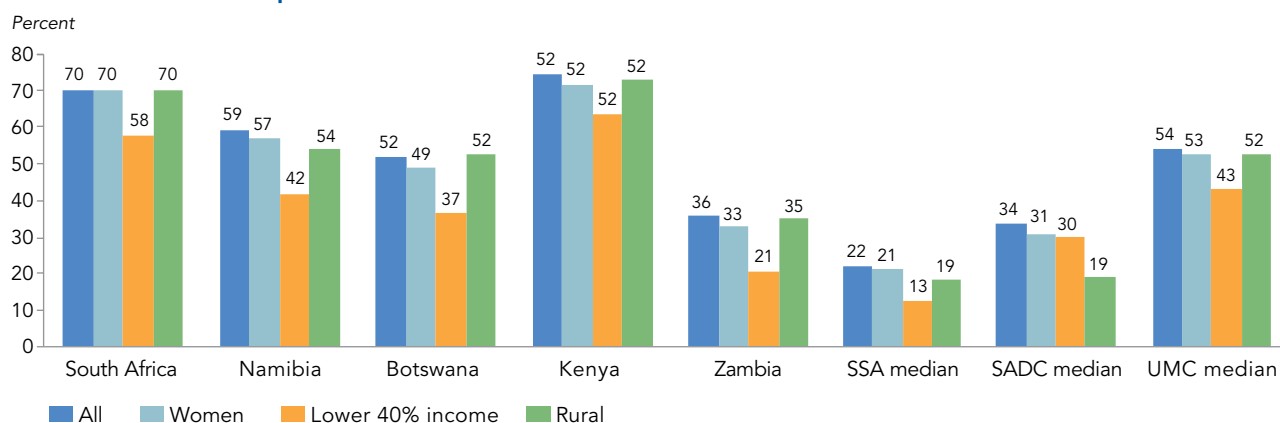
when the initial commercial arrangement ended). The 2016 WBG Report noted certain product restrictions and circumstances that limited their use as transactional accounts, including SASSA's practice of reassessing beneficiaries' eligibility for benefits if they retained a balance rather than quickly withdrawing or using their funds and restrictions on direct debits.

Leaving aside SASSA account-related arrangements, banks are not currently obliged to offer any specific transactional account type mandated by regulation. The Financial Sector Code made under the Broad-Based Black Economic Empowerment Act 2003 (FS Code) provides for various financial inclusion-related targets. These include "access targets" relating to individuals in Living Standards Measure levels 1–5, with corresponding reporting and monitoring. Some product parameters have been issued for the purposes of such targets, which are discussed below in the context of findings relating to current practices.

Finally, section 5 of the Code of Banking Practice (CBP) provides that a bank "will provide you with a basic banking account, if you meet our minimum requirements. . . . We will continuously strive to improve our basic banking services through product innovation." Basic banking account is not defined, although the definition of "basic banking services" refers to "transaction accounts," defined as "an account into which you can make or receive deposits and from which you can make third-party payments" (third-party payments in turn are defined as "[an] instruction given to your bank to make a payment to your nominated person that has or will be providing goods or services to you. The payment is made by the bank on your instruction and your bank account is debited with the amount paid").

According to the 2014 Global Findex survey, 70 percent of adults (ages 15 and older) in South Africa have an account at a formal financial institution (figure 1.1). Measured by this basic metric of financial inclusion, levels of financial inclusion in South Africa are higher than the median level among countries in Sub-Saharan Africa (22 percent), the Southern African Development Community (34 percent), and the upper middle-income category (54 percent). That said, approximately 30 percent of South African adults remain excluded from the formal financial sector. Rural residents are significantly less likely to report owning an account.

FIGURE 1.1: Ownership of Stored-Value Transactional Accounts in South Africa versus Other Countries



Source: Global Findex, 2014

Note: SSA = Sub-Saharan Africa. SADC = Southern African Development Community. UMC = upper-middle income economy.

b) Findings

i) Current Offerings

As the 2016 WBG Report notes, the Big Four banks have generally discontinued offering, or at least actively promoting, their Mzansi accounts in favor of alternative offerings. Postbank, with whom more than 50 percent of Mzansi accounts were originally opened, continues to offer them actively. Even though some other banks also still have Mzansi account offerings, the Big Four and most of their smaller competitors have been focusing on promoting their own basic bank accounts. In recent years, Capitec Bank Holdings Limited's (Capitec's) transactional account offering has been repeatedly referred to by media and commentators as the leading offering aimed at lower-income consumers. The Big Four banks have for some time been offering accounts seemingly intended to compete directly with Capitec's offering and, as the Solidarity Research Institute (Solidarity) notes, some appear to copy the Capitec offering closely.¹¹

The Big Four offer both pay-as-you-transact (PAYT) and bundled options for the low-income market. Table 1.2 shows examples of low-income PAYT offerings in terms of key features and associated pricing.

Solidarity's 2017 report shows the significantly higher costs that customers would incur with a bundled low-income account, based on the usage patterns used for comparison. Solidarity repeatedly points out that these do not represent good value as against the PAYT offerings.¹⁹

In terms of transactional features, the Big Four's full-service transaction offerings aimed at the low-income market largely offer equivalent key transaction features to their counterparts targeted at higher-income customers. A Big Four bank expressed the view in discussions that "Mzansi accounts were regulated so that the competitiveness was taken out of them" and that now it has better offerings for the lower-income sector of the market. As illustrated in table 1.2, full-featured low-income account offerings from the Big Four do allow access to a full range of transactional functionality. (It is a separate issue, discussed immediately below, whether pricing of those features results in effective access in practice.) What they tend to lack is features that, though potentially attractive to some customers, are less relevant to the issues being considered in this report, such as rewards programs and access to credit as part of a bundle.

Some banks also offer more limited product alternatives to full transactional accounts—such as prepaid debit cards—which may suit customers comfortable with being restricted from access to some transaction channels. Several such examples are sold directly by the relevant bank, and there is at least one example where such an offering is co-branded with and distributed through a retail store. Barclays Africa Group Limited, trading as ABSA, has offered a co-branded debit card through an arrangement with the retailer Pepkor. The card allows customers to deposit money at retail stores, receive their salary into their account, and use their funds through debit card transactions and by making transfers to other Pepkor co-branded debit card accounts or through mobile phones for collection by the recipient through ABSA ATMs or at retail stores. ABSA indicated that it is intended as a simple bank account for the entry-level market and that some specific customer research was undertaken as part of informing the development process.

TABLE 1.2: Examples of Low-Income PAYT Account Offerings¹²

Transaction	ABSA Transact Account ¹³	FNB Easy Account (Pay-as-you-use) ¹⁴	Nedbank Pay-as-you-use Account ¹⁵	Standard Bank Access Account ¹⁶	Capitec Transaction and Savings Account ¹⁷	Postbank ¹⁸ Flexi Debi Card Mzansi Card
Monthly fee	R4.95	R5.25	R5	R4.99	R5.50	R11
Minimum income for eligibility	No minimum	No minimum	No minimum	No minimum	No minimum	No minimum
Cash deposits at own ATM or affiliated POS	R3.95 + R1.35 per R100 or part thereof	R0.90 per R100 or part thereof	R4 + R1.40 per R100 or part thereof	R1.60 per R100 or part thereof	90c per R100 or part thereof	N/A
Cash deposits at branch	R8 + R1.55 per R100 or part thereof (minimum R30)	R60 + R1.90 per R100	R4 + R1.40 per R100 or part thereof	R8 + R1.60 per R100 or part thereof	R1.90 per R100 or part thereof	R2 up to R100, thereafter an additional R2 per R100 or part thereof
Cheque deposits at branch	R30	R45 + R5 per cheque	R20	R30	R30	free
Cheque deposits at ATM	Free	R45 + R5 per cheque	R20	R30	Not clear if possible to do	Not clear if possible to do
Cash with withdrawals at own ATM	R5	R1.85 per R100	R6.50	R1.60 per R100 or part thereof	R6	N/A
Debit card purchases and withdrawals or POS withdrawals	R1.15 Cash at till point: R1.40	Purchases: free	Purchase: free (at a till point and fuel purchase); R2 (Lotto purchase) Cash withdrawals: R2	R1.60	R1.50	Cashback only: R3.5 Cashback and purchase: free
Cash withdrawals at other ATMs (not including international ATMs)	R8.50	R8 + R1.85 per R100	R8 + R0.70 per R100 or part thereof	R6.70 + R1.60 per R100 or part thereof	R8.50	R8.15 below R100 thereafter an additional R1.65 per R100 and above. (Mzansi Saswitch fees are applicable only if the ATMs of the major banks are used—that is, ABSA, FNB, Nedbank, and Standard bank)
Cash withdrawals at branch	R55 + R1.60 per R100 or part thereof	R60 + R1.90 per R100	R1.40 per R100 or part thereof (minimum R40)	R35 + R1.60 per R100	R55 + R1.60 per R100	R12 (R40 for cheque withdrawals)
Electronic payments and funds transfers Funds transfers (nonbranch)	Fund transfers by ATM online, online, mobile telephone: free Account payments: R3.50 at ABSA ATM; R2 via online/mobile; R7.50 by telephone	R3.75	Fund transfers by SMS, cell phone, self-service terminal, Internet/app, ATM: free Payments: R3 (cell phone, Internet banking)	Electronic interaccount transfer, send money (cell-phone banking): free Electronic account payment: R1.50	Transfer to own account (app/Internet, phone, ATM): free Payment to other bank/ Capitec Bank account/Capi tec client with verified cell-phone number (app/Internet): R1.50	Not clear if possible to do

TABLE 1.2: continued

Transaction	ABSA Transact Account ¹³	FNB Easy Account (Pay-as-you-use) ¹⁴	Nedbank Pay-as-you-use Account ¹⁵	Capitec Standard Bank Access Account ¹⁶	Transaction and Savings Account ¹⁷	Postbank ¹⁸ Flexi Debi Card Mzansi Card
Branch and telephone staff-assisted funds transfers or payments	Branch: R55 for both account payments and fund transfers Telephone-assisted: R14.50 for account payments; R7 for funds transfers	Branch: R65 Telephone-assisted: R65 transfers; R30 for payments	Branch: R65 Telephone-assisted: R20 for fund	Interaccount transfer at branch: R50 Capitec Bank account (branch): R5	Transfer to own account (branch): free Payment to other bank/branch: free	Not clear if possible to do Not clear if possible to do
Prepaid purchases	Prepaid top-up at ABSA ATM, POS, online, mobile telephone (IVR): R1.15 Prepaid top-up at ABSA-supported ATM: R4.15 Prepaid top-up at other bank's ATM: R7.15	FNB Connect airtime purchases using electronic channels: free Prepaid airtime purchase: R0.60 per R5 (maximum R1.80) LOTTO™/Powerball, Pay TV prepaid, iTunes, electricity, traffic fines, transport: R1.95 At other banks' ATM: free	Cell-phone top-up at Nedbank ATM: free At other bank's ATM: R6	Standard Bank: R1.10 Other banks: R6.70 + R1.10	Airtime/data/SMS bundles and electricity (app/Internet, phone, card): free Airtime at other bank ATM: R1.50	Not clear if possible to do (POS purchases are free of additional charge) Not clear if possible to do
POS declined transaction for insufficient funds	R5.50	R8.50	R8.50	R7.90	Free	R7.50
ATM declined transaction for insufficient funds	ABSA ATM: free Other bank's ATM: free	FNB ATM: free Other bank's ATM: R8.50	Nedbank ATM: free Other bank's ATM: R8.50 R4.90	Standard Bank ATM: R2.60 Other bank's ATM: R4.50	Capitec ATM: free Other bank's ATM: R5 R4.50	Postbank ATM: N/A Other bank's ATM: R4.50
Electronic information inquiries and statements	Free	Full statement: free (statements up to three months old; statements older than three months charged R6.50 per statement) Cell-phone mini-statement: free	Free	Paperless balance inquiry/mini-statement at ATM: free	E-statements: free to do	Not clear if possible to do

TABLE 1.2: continued

Transaction	ABSA Transact Account ¹³	FNB Easy Account (Pay-as-you-use) ¹⁴	Nedbank Pay-as-you-use Account ¹⁵	Standard Bank Access Account ¹⁶	Capitec Transaction and Savings Account ¹⁷	Postbank ¹⁸ Flexi Debi Card Mzansi Card
Paper statements	Full statement: R25 Ministatement: R12.50 ABSA ATM full statement: R12.50 ABSA ATM ministatement: R6.25	Mailed statement: R16 Printing of statements: R3.50 per page (at ATM); R25 per statement (branch and telephone)	Full statement: free (one per billing cycle) Additional statement: R25 ATM statement: free (current statement, one per billing cycle); R25 (three-month statement)	Balance inquiry/ministatement at ATM: R1.50 (Standard Bank ATM); R5.50 (other bank's ATM) Provisional statements: R5 (at ATM); R20 (at branch)	R2.50 (at Capitec ATM); R5 (at branch)	Full statement: R13 Additional statement on request: R13 Ministatement: free
Electronic notifications	SMS/email balance inquiry: R0.55 Security notifications: free	Limit alert: R3.20 Scheduled payment alert: R3.20 Balance alert (fee per month): R1.10 for monthly alerts, R3.20 for weekly alerts, R16 for daily alerts	Third-party payment notifications: R1 (SMS); R0.80 (Email) No-funds alert: R10 (per SMS) ENote: R0.40 (per SMS)	Email or SMS payment confirmation: R1.10	Transactions and balances (email/ SMS): R0.40 Account details (email/ SMS): free	Balance inquiry by phone: R1 (charged by service provider)

Several banks expressed the view in discussions that there is very little of the South African population left that is actually “bankable” and still remains unbanked. However, this view may not take into account the fact that individuals considered to be “banked” hold only more limited access products that may not in fact provide effective inclusion from a banking perspective. For example, this could be the case for individuals who holding limited SASSA accounts. It is understood that some SASSA account holders acquired a more fully featured card-based account from the original issuer of such accounts, called an Easy-pay Everywhere Account, which came with a card, did not incur monthly account-keeping fees, and had transactional costs cheaper than costs if using a SASSA card transactionally (particularly with some ATM withdrawals and statements). It also came with funeral cover funded by account transaction fees. In the period of August 2015 to February 2017, 1.8 million such accounts were opened.²⁰ Though not possible to do for the purposes of this report, it would be important to determine what proportion of SASSA account holders hold a more fully featured account, whether with the same bank or with another bank and, importantly, the nature and level of their usage of such an account. In addition, from a behavioral perspective, it is also possible that the limitations faced by users of SASSA accounts could affect their perceptions of transactional accounts and banking more generally, limiting their propensity to seek out other products. One bank did say that its growth strategy encompasses targeting both current customers from other banks and unbanked individuals such as younger people, but it could not say what proportion of its customer base had been sourced from those previously unbanked as opposed to current or former customers of competitors. The Big Four banks also offer several more-limited transactional products.

Recent pricing analysis indicates that in certain circumstances some of the Big Four banks’ offerings match Capitec’s pricing in the low-income segment. Solidarity’s analysis in its 2017 report indicates that, for a customer undertaking a “basic banking” transaction mix of 12 transactions per month, several of the Big Four banks’ PAYT basic transactional account offerings are on par with, and some in fact could be slightly cheaper than, Capitec’s offering if that customers retain very little to no balance in their account to earn interest. Solidarity highlights, for example, that one of the Big Four offerings could save customers between R5 and R10 if they rarely hold more than R2,000 as a balance. This is assuming that they confine themselves to the usage pattern contemplated in the analysis. (More on this below.) Taking into account Capitec’s significant rate of interest on balances for its account (at the time of writing, 5.1 percent), some of those Big Four offerings would become more expensive if the customer retains a balance, for a sufficient portion of a month’s time, to earn sufficient interest to offset such charges in whole or part. A balance of R2,000 would seemingly make the Big Four’s offerings approximately R1 to R12 more expensive, which could be a material difference at this level of the market. The offering of higher interest rates on transaction accounts could of course encourage account holders to retain a balance and thus grow their savings. (See the discussion in this regard further below.) However, an industry participant noted that the expectation that low-income customers would retain a balance would be more relevant to individuals at Living Standards Measure levels 5 and 6 (that is, the upper range of low-income customers), rather than individuals at the lower tiers, Living Standards Measure levels 1 to 4 or 5. The latter would be less likely to be able to offset account costs with interest earned.

These accounts are likely to become significantly more expensive for low-income individuals if they use branch or ATM services. If a customer is eligible to use the full range of transacting capability by holding such an account but cannot afford it, then in practical terms he or she could be viewed as never-

theless lacking real access. Solidarity's report explains that its analysis is based on transaction profiles drawn up according to guidelines consistent with those provided by banks on their websites and promotional material. As a result, its basic banking-needs profile used to compare accounts for customers with low incomes and basic banking needs does not include any ATM or branch withdrawals. However, it does include two cash withdrawals at point of sale (POS), with fees for POS withdrawals being significantly cheaper than through ATMs or branches, and multiple scheduled payments and debit orders.

At this level of the market, there remains a great propensity to transact in cash, so the cost of branch and ATM services can affect account usage significantly. Both industry participants and a civil society organization noted in discussions that there remains a preference, and often a need, for low-income account holders to access cash from their transactional accounts. A study undertaken by Genesis Analytics on behalf of Mastercard found that despite an increase in banked adults in South Africa from 63 percent in 2011 to 77 percent in 2015, cash transactions still accounted for 52 percent of total value of consumer transactions.²¹ Factors such as the cost of withdrawals contribute to a propensity to make a single withdrawal of any available balance after receiving a payment. FinMark Trust found, for example, that although 77 percent of adults have bank accounts, 30 percent deal in cash for all their transactions, not necessarily using payment functionality available to them and treating their accounts as "mailbox" accounts (so called because all funds are withdrawn as soon as deposited).²² Placing additional restrictions on holding a balance, as has been done in connection with SASSA accounts, is likely to exacerbate this. An industry participant noted that barriers for low-income account holders to actively use their accounts include the fees account holders face in doing so as well as availability of access points. A civil society organization also noted that the cost of using ATMs, particularly out-of-network ATMs, tends to contribute to the propensity of low-income consumers to make a single withdrawal.

Charges under the Big Four's fee structures for their basic accounts levied for use of their own ATMs and branches could be significant for a low-income individual, as Table 1.3 shows.

Third-party ATM fees also remain high. An industry participant noted that the substantial level of "off-us penalty fees" charged by banks for use of another bank's ATM, with the aim of encouraging customers to make use of a bank's own ATM infrastructure, is one of the biggest complaints by consumers. The industry participant indicated that most customers regard such charges as punitive. Justifications for such fees given by banks in discussions included (i) trying to educate and incentivize customers to use the bank's own ATM network, and (ii) cost recovery due to interoperability rates that banks need to pay each other or to other independent ATM networks (for example, Saswitch). One Big Four bank appears to have reduced its Saswitch ATM withdrawal pricing, while others appear to have increased them. Capitec charges similar ATM fees (for example, R6 for withdrawals from its own ATM and R8.50

TABLE 1.3: Own Network Withdrawal Costs

TRANSACTION	ABSA ²³	FNB ²⁴	NEDBANK ²⁵	STANDARD BANK ²⁶
Own ATM withdrawal	R5	R1.85 per R100	R6.50	R1.60 per R100
Branch withdrawal	R55 + R1.60 per R100	R60 + R1.90 per R100	R1.40 per R100 (minimum R40)	R35 + R1.60 per R100

TABLE 1.4: “Off-Us” ATM Fees

“OFF-US” ATM FEES	ABSA (TRANSACTION) ²⁷	FNB ²⁸	NEDBANK ²⁹	STANDARD BANK ³⁰	POSTBANK (FLEXI DEBIT CARD/MZANSI CARD) ³¹	CAPITEC (TRANSACTION AND SAVINGS) ³²
Cash withdrawals(*)	R8.50	R8 + R1.85 per R100	R8 + R0.70 per R100	R6.70 + R1.60 per R100	R8.15 below R100, thereafter and additional R1.65 per R100.00 and above	R8.50
Balance inquiries	R6.25	R5.50	R5	R5.50	R4.30	R5
Prepaid services	R7.15	R12.50	R6	R6.70 + R1.10	Not clear if possible to do	R1.50 (Airtime)

*May vary depending on thresholds

for use of other banks’ ATMs), as does Postbank (for example, Saswitch ATM withdrawals at R8.15 below R100 and then an additional R1.65 per R100), although its branch withdrawal fee is significantly lower—R12. It is also worth contrasting fees charged for online or mobile-initiated payment transactions (for example, R2 to R3.75) with branch-assisted equivalents (for example, R14.50 to R65). Table 1.4 shows various relevant fees side by side. Solidarity has concluded that cash withdrawals at another bank’s ATM are not the type of transaction that is commonly bundled by the banks in South Africa. According to its report, so called “Saswitch withdrawals,” meaning cash withdrawals at another bank’s ATM, can significantly increase overall bank charges for a consumer.

As noted in the 2016 WBG Report, for over 80 percent of adults in South Africa, ATMs are the main method of withdrawal, and the Banking Enquiry criticized a lack of clarity on interchange rates determination. The South African Reserve Bank took the lead in implementing a cost-based interchange rate to provide greater interchange rate transparency. The Banking Enquiry also made some further recommendations on pricing and transparency, but, for example, banks argued that displaying the exact amount of a surcharge at an ATM display would not be feasible and instead introduced a generic disclaimer that additional charges may apply.

Imposing higher charges for branch payments, when compared to charges for electronic channel payments (or, for example, use of POS cash withdrawals), appears intended to drive customer behavior away from the former and toward the latter. However, particularly for customers unwilling or unable to make use of alternative channels, substantial flat fixed withdrawal charges could influence them to make a single withdrawal, rather than leaving funds in their account and deciding through the month the optimal way to using their account balance. More broadly, high flat or ad valorem charges may mean that customers are discouraged from expanding the use of their account (or, for SASSA recipients, taking up a full transactional account, including from a different institution to their SASSA account issuer).

For customers who do make use of such an account, it can represent a disproportionate financial cost in their monthly expenditure (a negative impact of what may otherwise appear to show greater “access” to transactional banking). Solidarity calculated the cost of using the low-income accounts iden-

tified in its 2017 report to undertake a basket of 12 transactions in a month ranged from R13.33 (representing somewhat of an outlier that assumed a balance of R5,000 being held during the month) to R88.70, with most accounts costing between R25.79 and R55.50 per month (that is, R309.48 to R666 per annum).³³ When compared to the lowest income quintile (R6,485),³⁴ account costs would represent between 4.8 percent and 10.3 percent of annual household income. When compared to the second-lowest income quintile (R13,818),³⁵ account costs would represent between 2.2 percent and 4.8 percent of annual household income, as table 1.5 shows.

Access to informational services is also significantly cheaper if undertaken electronically, although some relevant charges could still discourage account use by low-income consumers. Statements and transaction listings or similar information services incur significantly lower fees, and sometimes no fees, if undertaken electronically. However, it remains the case that some banks also charge for electronic information services that may be expected to be provided at little or no cost. For example, Solidarity notes the practice of charging for Short Message Service (SMS) notifications,³⁶ resulting in higher costs than advertised fixed monthly fees. See also the discussion in section 3.5 below with regard to statement fees. Notably, banks seem to charge separately for transaction declines. On one view, advising a decline of a transaction through an ATM does not constitute a substantive (or at least a significant) service. The marginal cost (effectively of providing the account lookup and notification regarding the decline) seems likely to be low. Such fees could further discourage a low-income customer from using a transactional account, given the risk of incurring additional charges when they have a low balance.

A reluctance to use electronic channels may also be driven by other personal circumstances and by related communications costs. For at least a portion of the population, and not necessarily as a result of having a low income, there is likely to be a strong preference for assisted transactions, whether due to a lack of understanding or lack of trust or comfort with electronic channels. (For example, due to a lack of skills or familiarity with technology, such customers may find using electronic channels to be a more complex endeavor.) This was a point repeatedly emphasized by a civil society organization in discussions. The organization noted, in addition, that some low-income consumers may be reluctant to use online or telephone banking, given the material cost they face in doing so, including the cost of data or airtime to access such electronic services. A major bank made a similar point regarding customers' transaction preferences, commenting that in South Africa a significant portion of retail customers would be "traditional" and prefer to continue using their accounts through branches and ATMs, another portion would be willing to try using other channels, and a third portion would already be digitally savvy. This issue is discussed in this section, but it is also relevant for retail customers at a higher income level, given the disproportionate impact that higher charges intended to drive behavior may have on them.

TABLE 1.5: Household Income versus Account Cost

HOUSEHOLD INCOME QUINTILE	ACCOUNT COST (LOWER THRESHOLD) AS PERCENTAGE OF HOUSEHOLD INCOME	ACCOUNT COST (UPPER THRESHOLD) AS PERCENTAGE OF HOUSEHOLD INCOME
Second quintile	2.2%	4.8%
Lowest quintile	4.8%	10.3%

Source: Statistics South Africa 2017 and Solidarity Research Institute 2017.

Note: Household income values reflect upper threshold of quintile range

Pricing tends to be significantly lower for POS or retailer-hosted transactions than for branch equivalents. As already discussed in the 2016 WBG Report, in terms of ensuring practical access, there are also key issues with regard to the availability of access points to make use of accounts. The report noted that South Africa has a reasonably well-developed network of access points but with room for improvement, particularly in rural areas. Such access points comprise both more traditional ATMs and branches and alternatives, such as POS devices or terminals with enhanced transactional capability, and with the latter incurring significantly lower fees. Customers' personal preferences for particular access-point options are likely to be highly relevant, with pricing that banks decide to charge customers for such accounts also determining whether they are accessible in practice. This presumably reflects the lower cost of such arrangements relative to the costs to a bank of operating their own branch and ATM infrastructure. However, such an alternative channel may not necessarily provide customers with the same experience and level of assistance as would be provided by bank staff in a branch.

Low-income customers who have cash-based income sources and wish to introduce that cash into the banking system potentially face additional barriers. In terms of deposit services, an industry participant noted in discussions that deposits in branches are expensive, and while ATM deposits are cheaper, funds deposited through ATMs are not immediately available. As with cash withdrawals, at the time of writing, charges under the Big Four's fee structures for their basic accounts that would be levied in relation to cash deposits are also significant for a low-income individual, although with some significant variation between the banks. (See table 1.6.)

Banks' approaches in this context seem to be driven largely by commercial imperatives, both in terms of reflecting costs and generating profitable revenue. For example, one bank stated that the cost of handling cash in South Africa is very high because of the security risk involved. The Payments Association of South Africa indicated in discussions that it is encouraging cash-deposit capability at retailers to address some of the costs associated with cash handling. The association suggested that deposit taking could be undertaken more cheaply for banks (and thus customers) at retailers, and that it would be a friendlier and more accessible service than, say, deposits through ATMs. However, there was an indication that at least some banks may have concerns regarding, for example, requirements for anti-money laundering or combating the financing of terrorism associated with deposits. Another bank suggested that rea-

TABLE 1.6: Cash Deposit Fees on PAYT Basic Accounts

TRANSACTION	ABSA TRANSACT ACCOUNT ³⁷	FNB EASY ACCOUNT (PAY-AS YOU-USE)	NEDBANK PAY-AS-YOU-USE ACCOUNT ³⁸	STANDARD BANK ACCESS ACCOUNT ³⁹
Cash deposits at own ATM	R3.95 + R1.35 per R100 or part thereof	R0.90 per R100	R4 + R1.40 per R100 or part thereof (regular ATM); R2 + R0.70 per R100 or part thereof (intelligent depositor ATM)	R1.60 per R100 or part thereof
Cash deposits at branch	R8 + R1.55 per R100 or part thereof (minimum R30)	R60 + R1.90 per R100	R4 + R1.40 per R100 or part thereof	R8 + R1.60 per R100 or part thereof
Other	Cardless cash deposit at cash acceptor: R6 + R1.55 per R100 or part thereof	—	Pick n Pay/Boxer Superstore: R1.40 per R100 or part thereof	—

sons why banks charge significantly for cash deposits include carriage costs (cash handling and security), compliance costs such as relating to cash transaction reporting, and interchange for use of others' ATMs. The various transaction fee examples above underscore not only the amounts being charged by banks for specific transaction services but also, more generally, the practice of charging a wide variety of fees for transaction services. Banks seem to rely heavily on account transaction fees not only for cost recovery but also for revenue generation.

Some stakeholders expressed the view that banks aim to make accounts profitable through PAYT transaction fees. One industry participant noted that for lower-income customers there is little in the way of deposited funds to allow a bank to earn a profit on that balance, so the bank will need to generate revenue from fees in order to make the account profitable. The participant explained that this is purely a commercial proposition and highlighted that there is a material initial cost for a bank in opening an account, and that even with transaction fees, a bank may not break even on an account for some time. A civil society organization made similar remarks in discussions. The organization said it was pessimistic that commercial banks, such as the Big Four, were interested in actively pursuing lower-income consumers for transactional accounts, given their profitability focus. Its view was that profit motives were the main reasons why Mzansi offerings were ultimately abandoned by such banks, rather than (for example) any consumer perception that such accounts were poor persons' accounts and thus not desirable. The organization was therefore also of the view that government intervention was probably necessary but noted this may possibly require a subsidy.

The Big Four banks pay low or no rates of interest on their core transactional accounts, although some accounts marketed with a savings focus, or separate linked savings accounts, are offered with higher interest rates. While this is clearly a commercial decision and a variety of factors, including costs of capital, are likely to affect it, paying a material level of interest (accepting that it may be at a lower rate than for higher-balance accounts) could also incentivize customers to retain a balance in their transactional account, rather than withdrawing their balance in full immediately. Having a linked interest-bearing savings account could have the same effect if used actively. However, some customers may not be in a position to move part of their balance into such a separate account, as it would result in that portion not being immediately available. For example, one Big Four bank alerts customers in its product information that funds transferred between their transactional account and their savings account can take up to two business days to be shown. Even if a transfer occurs more quickly, funds are not accessible until undertaking that interim step. In addition, at least some savings account offerings include requirements, such as a minimum balance, that could discourage or prevent investment by a lower-income consumer. Table 1.7 shows examples of interest rates paid on core PAYT basic accounts.

It is not clear that the product parameters contemplated under the FS Code focus sufficiently on transactional accounts, including on features in demand. It may be arguable that the FS Code at least indirectly incentivizes banks to achieve an appropriate pricing and feature mix for low-income transactional accounts through its Access Targets for access products. According to Guidance Note GN 801,⁴² the "Affordability Factor" is "a measure of how affordable an individual bank's qualifying products are in relation to the weighted average cost of all such qualifying products available to the target market across the industry," with banks accruing "Product Access points according to both their number of Active AQPs

TABLE 1.7: Interest Rates on PAYT Basic Accounts⁴⁰

ABSA TRANSACTION ACCOUNT (% P.A.) (PA)	FNB EASY ACCOUNT Y-AS YOU-USE) (% P.A.)	NEDBANK PAY-AS-YOU-USE ACCOUNT (% P.A.)	STANDARD BANK ACCESS ACCOUNT (% P.A.)	CAPITEC TRANSACTION AND SAVINGS ACCOUNT (% P.A.)	POSTBANK FLEXI DEBIT CARD / MZANSI CARD (% P.A.)
0%	0% (A rate of 5.25% per annum is offered to Easy Account holders who have linked their accounts to the FNB Linked Savings Account or Savings Pocket) ⁴¹	0% (Balances in Ned-bank's free, no-notice MyPocket account linked to an active transactional account are eligible for interest rates of 3.5%–5.25%)	0%	R0–R9999: 5.1% R10,000–R24,999: 5.1% R25,000–R99,999: 5.4% >R100,000: 5.65%	Mzansi Card: R0–R500: 0.15% >R500–R1000: 0.30% >R1000–R2000: 0.35% >R2000: 0.40%
					Flexi Debit Card: R0–R500: 0.10% >R500–R1000: 0.20% >R1000–R2000: 0.25% >R2000: 0.35%

[access-qualifying products] as well as how affordable they are in relation to the industry average, for transactional products and for savings products.”⁴³ However, the product standard criteria for the purposes of determining transactional accounts that would qualify in this regard are relatively broad and do not seek to address account characteristics at the same level of granularity as, for example, was the case for Mzansi account criteria. In terms of “appropriateness,” the criteria (in addition to matters relating to ease of account opening) refer to accounts having to be interoperable across institutions’ platforms, offering similar functionality to other individual transactional products and not containing any systematic transaction limitations other than those commonly found in other transactional products for individuals at the relevant institution. Notably, with regard to the latter, although the standard provides that a qualifying transactional account product should not apply restrictions on the number of transactions per month permitted on the product, it states that banks may use pricing strategies to encourage “appropriate” channel and product usage. This leaves significant discretion to pursue strategies that may be much more favorable to profitability than access for the customer segment, while still seemingly acting consistently with the standard. On “affordability and fair value,” the standard states that this is included in the calculation of each bank’s product access scores by comparing each bank’s average product costs with the overall industry product costs. Finally, with regard to “simplicity and understandability,” a qualifying transactional account must be simple to understand and transparently communicated, and specifically it must “comply with at least the minimum transparency and disclosure standards as defined in the CBP, as well as conform to the requirements of the Consumer Protection Act 2008 (CPA Act) as well as the requirements of the Treating Customers Fairly policy.”⁴⁴ However, as discussed further below, there seems to have been uncertainty since 2013 regarding the application of the CPA in this context, and banks are not always meeting the standards contemplated in the CBP. As a result, such references in the FS Code do not necessarily translate into concrete additional requirements driving suitable transactional account pricing and feature mixes. Notably, the reporting requirements set out in the FS Code on Access Targets for access products are complex, with the targets covering multiple products. Their complexity may also hinder clear reporting focusing specifically on transactional accounts.

ii) Internal Product-Development Processes

Lower-income customers make up a significant portion of most banks' retail customer account portfolios in terms of customer numbers, but product-development efforts seem focused primarily on offerings for middle- to higher-income customers. This appears to be reflected in more extensive efforts to analyze the needs and expectations of middle- to higher-income customers, as discussed in section 1.2 below. The focus on higher-income customers is understandable from a commercial perspective, given that they represent earning potential for banks. One Big Four bank's internal pricing review paper was clear and up-front about the benefit of focusing its efforts primarily on middle- to higher-income customers rather than low-income customers (while nevertheless accepting that the latter did represent a significant portion of its customer base that should not be disregarded).

This is not to say that the Big Four in particular ignore this significant portion of their market entirely in their internal product-development and pricing-review processes. For example, one Big Four bank explained that, as part of its annual fee review, it took into account TCF Outcomes and decided on some fee reductions and to keep some fees the same, including for its basic accounts, as a result of considering customer needs and current economic realities. It thus kept the number of fee line item increases to a minimum and maintained the same maintenance fees as in 2016. Another Big Four bank claimed that it has designed its account offerings based on historical data of what customers at different income levels use. That bank also noted that customers are saying that they want transactional flexibility; some want flexibility to access an account using multiple channel types, while others might not. As noted above, some banks offer products below full transactional account level (such as prepaid debit cards) that are intended to offer more limited functionality. One Big Four bank explained that it decided to offer an e-wallet that sits below its basic transactional account offering, allowing ATM access, transactions through grocery stores, and card swipes, but, for example, no debit orders.

It is not clear that product changes that may have a significant impact on low-income consumers are consistently subject to customer research and testing. It is not clear, for example, that pricing decisions to drive electronic channel use, and which impose significantly higher costs for use of transactional accounts through non-electronic channels, have been assessed extensively in customer research and testing involving low-income consumers. (See also the more detailed discussion in section 1.2 below regarding banks' internal product-development processes.)

It is also not clear that the requirements under the FS Code are front of mind as a factor influencing the design of transactional account offerings that would be more attractive to low-income retail customers. The FS Code requirements were raised with some banks, but none took the opportunity to explain specifically how this had played into their product and pricing decisions. One Big Four bank, as well as some other non-Big Fours, when asked about its recent reporting under the FS Code in relation to transactional accounts, could not provide detail of such reporting. Another Big Four bank, while it provided details of some reporting under the Code, did not provide details regarding reporting on transactional account affordability. In discussions with banks, the product criteria under the FS Code and Guidance Note GN 801 for transactional accounts discussed above were never referred to as a driving factor for transactional account design.

A civil society organization expressed the view in discussions that there is still a need for a low-income account model that offers a basic suite of services to very low-income consumers at little cost, including for face-to-face (for example, branch) and ATM services. It is notable, for example, that integral to Mzansi account parameters and basic pricing was the ability to withdraw funds and do basic inquiries at post office branches, irrespective of the bank involved in the issuing of the account. The civil society organization suggested that the government probably needs to assist in financing such an account. The organization also suggested that, functionally, such an account should exclude debit orders, given their complexity, such as with regard to authorization. (See sections 3.1 and 4.2 below for further discussion regarding debit order-related issues.)

c) Recommendations

The South African authorities should consider strengthening the parameters under the FS Code, both in terms of content and publication, for transactional accounts to more clearly incentivize banks through minimum performance criteria (that still allow product innovation and enhancements) to ensure that pricing as well as features support accessibility. Consideration should be given to specify more granular minimum product standards, specific to transactional accounts, that target availability and affordability of specific transactional and informational services, such as access to non-electronic, as well as electronic, channels. Consideration should also be given to publicizing the results of each bank's periodic performance specifically in relation to transactional accounts in a form that is easily understandable and accessible to retail customers for these specific products (for example, mandating display of this on bank website pages relating to transactional accounts, or on a central website to which banks would have to cross-refer on their own website).

The South African authorities should also consider introducing measures similar to those outlined in Box 1.2, introduced in a number of other jurisdictions, to ensure that low-income customers who remain effectively underbanked, or are unbanked, are offered transactional account options that respond to their needs, including in terms of pricing. Such measures can be in the form of regulation,

BOX 1.1

Example of Rules Requiring Banks to Publish Account Performance-Related Information

For example, the United Kingdom's (UK's) Financial Conduct Authority (FCA) has introduced rules requiring providers of current accounts to publish certain information relating to service quality in connection with such accounts, including metrics regarding account opening, debit card replacement, and major incidents. While the information required to be published focuses on matters that were identified as being of particular relevance in the UK, and having a different focus to the above, what is useful for the purposes of this discussion is the approach taken by the FCA in mandating such publication and requiring a uniform approach to its reporting by all account providers.

Sources: FCA 2017b and 2017c.

BOX 1.2**International Examples of Basic Account Requirements***European Union requirements (and the UK's implementation)*

The European Union's intervention in this context has been by way of a legally binding directive, in turn resulting in legislative obligations being applied by member states on financial institutions. The following is a summary of the key requirements under the directive and, as an example, observations regarding how the UK has implemented these requirements domestically.

The requirement to provide a basic account

European Directive 2014/92/EU ("on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features"—23 July 2014) (the "EU Payment Accounts Directive") seeks to address, among other things, the problem of insufficient access to payment accounts with basic features in the domestic market of member states. It requires that member states ensure that payment accounts with basic features are offered to consumers by all or a sufficient number of "credit institutions" (which, as defined, includes banks) or a sufficient number of credit institutions to guarantee access thereto for all consumers in their territory, and to prevent distortions of competition. Consumers are defined as natural persons acting for purposes outside of trade, business, craft or profession. The offering of payment accounts with basic features must not be limited to online providers.⁴⁶

The expectation under the directive is that each member state will ensure that the number of institutions offering accounts with required minimum features is sufficient to ensure all consumers are reached, to avoid any kind of discrimination against them and to prevent distortions of competition. In the UK, the Treasury was given the power to designate relevant financial institutions (broadly, banks and other deposit takers and electronic money issuers).⁴⁷ The Treasury initially designated the nine largest account providers.⁴⁸

Credit institutions may be permitted to refuse to provide such accounts to consumers who already hold an account with relevant functionality, unless the latter is being closed.⁴⁹ (Some other limited exclusions also apply.)

Minimum basic account features

An institution must include the following services with a relevant account, to the extent that the institution already offers such services to other account holders:

- a. Services enabling all the operations required for the opening, operating, and closing of an account
- b. Services enabling funds to be placed in an account
- c. Services enabling cash withdrawals from an account at the counter or at ATMs during or outside the credit institution's opening hours
- d. Execution of the following:
 - i) Direct debits
 - ii) Payment transactions through a payment card, including online payments
 - iii) Credit transfers, including standing orders, at, where available, terminals and counters and via the online facilities of the credit institution⁵⁰

BOX 1.2, continued

Member states must ensure that a relevant account allows consumers to execute an unlimited number of such transactions.⁵¹ Member states can require credit institutions to provide such an account with additional services that are considered essential for consumers based on common practice at national level.⁵²

The directive does not prevent member states from implementing additional consumer protections. For example, the UK's Payment Accounts Regulations added a prohibition on an institution providing an overdraft facility in relation to a payment account with basic features, and a requirement to take all reasonable steps to prevent consumers from carrying out any payment transaction using a payment account with basic features where executing that transaction would result in overrunning. A prohibition was also included on charging the consumer any fee or any interest where there has been overrunning on a payment account with basic features. The regulations also imposed a restriction on making the acquisition of additional services a prerequisite to acquiring such an account.⁵³

Mandated fee limitations

The overall requirement is for the services described above to be offered by institutions free of charge or for a "reasonable fee."⁵⁴ Specifically, for services referred to in items a, b, c, and d(ii) above (other than credit card transactions, which are not relevant to the discussion in this report), institutions must not charge more than reasonable fees, irrespective of the number of transactions undertaken.⁵⁵ For services referred to in d(i) and d(iii), member states can determine a minimum number of transactions for which credit institutions can charge only reasonable fees. Member states must ensure that such minimum number of transactions is sufficient to cover the personal use by the consumer, taking into account existing consumer behavior and common commercial practices. Fees charged for transactions above the minimum number must never be higher than those charged under the usual pricing policy of the credit institution.⁵⁶

Member states must ensure that for a fee to be reasonable it takes into account at least national income levels and average fees charged by institutions in the member state.⁵⁷ Importantly, member states can require credit institutions to implement various pricing schemes depending on the level of banking inclusion of consumers, allowing for more advantageous conditions for unbanked vulnerable consumers. Member states must ensure that such consumers are provided with guidance, as well as adequate information, on the available options.⁵⁸

In its implementation of the directive, the UK decided to impose a prohibition on charging any fees when services are provided in the domestic currency; such services must then be provided at no charge. Reasonable fees are permitted to be charged for services provided in a foreign currency.⁵⁹

It is also noteworthy that unlike, for example, Canada's initiative discussed below, under the UK's initiative, no mandated fee differential is defined by reference to vulnerability factors or categories.

Canada

The Canadian Government's intervention in this context has been by way of obtaining voluntary commitments with Canada's eight largest banking institutions in 2014.⁶⁰ Banks committed to implementing the voluntary guidelines (called the 2014 Low Cost Account Guidelines), representing the minimum

BOX 1.2, continued

service level for low-cost and no-cost banking services, by January 2015.⁶¹ The requirements under the guidelines have a broader application than the European Union's directive (making all Canadians eligible for a basic banking account) while similarly providing additional protections for vulnerable consumers with regard to costs to access such an account.

The stated objective of these arrangements is to ensure that Canadians generally have access to basic banking services at a nominal cost through a low-cost account, and that certain vulnerable groups, comprising youths and students and senior and disabled social security benefit recipients, have access to such services at no cost. Described below are the minimum features that must be made available through such an account (where available to other retail customers), the fees payable, and disclosure requirements.

Minimum features:

- At least 12 debit transactions per month, including at least two in-branch transactions where available (Notably, several Canadian institutions banks are including more than two in-branch transactions as part of the monthly fee or no-cost arrangement, with some providing 12. However, out-of-network ATM access is not included.)
- Cheques
- A debit card
- Unlimited deposits
- Monthly printed statements
- Ability to set up preauthorized payments

Fees:

- Not exceeding \$4 per month (Some banks are charging slightly less.)
- Youths, students, and relevant social security recipients eligible for such an account at no cost

Disclosure:

- Use of clear and simple language that adheres to clear-language guidelines and does not mislead consumers to identify the features and costs, such as services included and excluded from the monthly fee
- Display of information about the availability of such accounts in-branch and online
- Display of information in-branch and online informing consumers how to access the regulator's account comparison tool

India

The Reserve Bank of India issued a circular in 2012 mandating the provision of a basic bank account for unbanked individuals specifying minimum account features required to be provided at no charge to the customer.⁶²

The introductory commentary to the circular noted that "[w]ith a view to doing away with the stigma associated with the nomenclature 'no-frills' account and making the basic banking facilities available in a more uniform manner across the banking system, it has been decided to modify the guidelines on

BOX 1.2, continued

opening of basic banking ‘no-frills’ accounts.”

The circular specified that a “Basic Savings Bank Deposit Account” needed to provide the following services at no charge:

- Cash deposit and withdrawal services at bank branches as well as ATMs (unlimited deposits and up to four withdrawals per month)
- Receipt or credit of money through electronic payment channels or by means of deposit or collection of cheques drawn by central or state government agencies and departments
- An ATM card or debit card

It also could not include fees for non-operation or activation when inoperative, and it could not have any minimum balance requirements.

The circular contemplated that banks could include additional value-added services beyond the stipulated basic minimum services, provided that this was done on a reasonable and transparent basis and in a nondiscriminatory manner.

Customers would be or would become ineligible for such an account from a bank if they had another “savings bank deposit account” in that bank.

Brazil

In April 2008, the Brazilian National Monetary Council and the Central Bank of Brazil regulated fees and charges that financial services providers⁶³ (FSPs) can charge in relation to various financial products and services.⁶⁴

The relevant regulations classify financial services provided to natural persons into several categories, including:

- “Essential services” for which a fee could not be charged (four categories, including, among others, the first four withdrawals from an account each month, up to two statements a month, balance inquiries via online banking, and debit card issuance and replacement)
- “Priority services,” including funds transfers and services relating to deposit accounts (not covered by essential services), for which pricing was capped, descriptors were standardized, and circumstances of charging were prescribed

The regime also mandated disclosure of fees and charges, including a 30-day prior notice of increases, and allows FSPs to charge new fees if contemplated in the regulations and the charging is appropriately authorized by contract.

as introduced in the European Union, for example, or through a coordinated industry agreement, as implemented in Canada. Given previous efforts in South Africa, the latter approach may be preferred, at least in the first instance, if it can be monitored effectively. Consideration should be given to setting out minimum feature and pricing aspects to be met that providers could then enhance and build on, fostering accessibility while allowing for innovation. At least initially, a more targeted regulatory approach could also be feasible. For example, the 2016 WBG Report already recommended leveraging SASSA payments to encourage use of transactional accounts with greater functionality than existing SASSA accounts and associated debit cards.

Importantly, the parameters of any such interventions should be based on comprehensive customer-focused research that examines in sufficient detail not only low-income individuals' current account usage but also broader financial transaction needs, behaviors, and preferences and related accessibility issues (such as from a physical, education and technological perspective), as well as research modeling potential market impact. Matters that should be studied, with a sufficient sample of target individuals, include drivers for continued demand for branch and ATM access and cash usage,⁴⁵ particularly going beyond in-store transaction functionality, the potential wider cost to customers of accessing electronic and telephone banking, and whether interest paid on balances for such accounts would incentivize account uptake and usage. How to inform, educate, and encourage potential customers on electronic use of their accounts should also be studied further—and addressed not only in account parameters but also in the design of any required supporting documentation and campaign. Access to ATMs and counter services seem likely to be important for low-income account holders who may currently budget in cash and maintain accounts with low balances, even if the ultimate aim, over time, is to transition such customers to electronic transacting (such as by gradually encouraging use of debit cards rather than cash for purchases and payments). Account should be taken of previous experience and previously expressed industry concerns with regard to Mzansi accounts, and the research should model how best to allow flexibility for competing banks to improve on mandated minimum parameters if they so choose, without limiting access to the base account. Such flexibility will need to be balanced with appropriate comparability, such as through disclosure standards recommended in section 2.2 below. Notably, in the jurisdictions discussed below, the obligation on relevant banks to provide a basic but sufficiently featured account was effectively made a cost of doing business. However, each market can be affected differently by such regulatory intervention, and such matters as the potential size of the cohort that would take up such accounts and the costs faced by financial institutions in a market vary between jurisdictions. Therefore, careful analysis of the potential market impact would also have to be undertaken, including to ensure it does not result in market distortions and also to take into account base costs. (During consultations for this report, the potential was raised for the government to subsidize provision of such accounts, but subsidies can create significant market distortions, and no recommendation on these is made here.) Box 1.2 provides examples of regulatory interventions undertaken in several jurisdictions to mandate the provision of basic accounts to vulnerable consumers. Importantly, the drivers for such interventions were not necessarily limited to lack of access due to factors such as high costs; they included lack of access due to risk-related concerns.

1.2: MIDDLE-INCOME TRANSACTIONAL ACCOUNT OFFERINGS

The discussion below considers product design–related issues by reference to transactional accounts that the Big Four banks target at the middle-income market. These are generally intended for retail customers at least one tier above low-income brackets. Although some of these customers are likely to be less vulnerable than those in lower-income brackets, they nevertheless face potential vulnerabilities that may warrant intervention.

Importantly, however, some of the findings discussed in this section—including those concerning internal product-development and change processes and fairness of contractual terms—have broader relevance to retail customers generally, including low-income customers, as well as both transactional accounts and fixed deposits.

a) Background

i) Product Complexity

Product complexity can adversely affect a bank's ability to achieve several of the TCF Outcomes. For example, a lack of pricing transparency (whether intentional or incidental) can impair a bank's ability to provide retail customers with clear information about their transactional account during and following the time of contracting. Similarly, if a bank is in fact intentionally building complexity into product pricing to reduce comparability with competitors, this could be an indicator that the bank is not dealing as fairly as it could with potential and existing customers. Given the likely lack of sophistication of many ordinary retail customers, a basic core product such as a transactional account, if offered with an overly complex fee structure, could arguably also be said not to have been designed to fully meet the needs of intended account holders. For example, in the context of a recent thematic review relating to customer understanding of products from retail banks and building societies, the UK's FCA noted the relevance of product simplification, as well as simplification of product documentation, finding that firms were implementing systems and practices to assess customer understanding throughout the product life cycle.⁶⁵

The Banking Enquiry concluded a decade ago that South African banks avoided outright price competition where they could and used differentiated product offerings and complicated pricing structures (rather than actually colluding on pricing) to ensure profitability.⁶⁶ The Enquiry's report went on to say regarding price complexity that banks kept essentially homogeneous products differentiated in a way that meant their prices were not readily comparable. The Enquiry found that in banking practice much of what passed for product differentiation arose from different combinations of product features and different pricing structures and not from intrinsic differences in the product features themselves. The manner in which the same set of account-holding and transaction facilities were bundled, packaged, and priced varied from bank to bank, unnecessarily complicating choices for consumers and thus weakening price competition.⁶⁷ When the Enquiry sought to undertake a side-by-side comparison of product features and pricing between the Big Four banks,⁶⁸ it concluded that there was no uniformity in the manner in which the packaged offerings were structured and priced. As a result, the Enquiry found it impossible to make direct price comparisons and considered that consumers also could not do so.⁶⁹

The Banking Enquiry explained that major banks at the time had stressed in their submissions that they competed on the basis of a number of factors, of which price was not the most important. They competed to develop products that best matched the behavioral characteristics of customers: the closer the fit between the features of the product and the behavior and preferences of the customer, the more willing the customer would be to pay a higher price. However, the Enquiry's report emphasized that differentiation arose from different combinations of product features and different pricing structures and not from intrinsic differences in the product features themselves. "The full-service banks all offer the same set of transaction facilities. It is the manner in which these facilities are packaged and priced which varies from bank to bank."⁷⁰

ii) Pricing Competitiveness

The Banking Enquiry found in 2008 that, within established market segments, banks tended to set their fees within a sufficiently close range of each other so that none would be likely to impinge greatly on the market share of the other. The Enquiry undertook an analysis of pricing-versus-costs data at the time that indicated an absence of any identifiable relationship between the prices of transactional accounts and the costs to the banks of providing them. The Enquiry commented that this would not be expected in a market characterized by effective price competition.⁷¹ The Banking Enquiry also noted that although Capitec had managed to grow its low-income customer base by offering lower-priced transactional accounts, it was not yet posing a significant competitive threat to the Big Four banks in their traditional areas of dominance.⁷²

The most recent Finscope survey available at the time of writing indicates that pricing is front of mind for retail customers. Survey participants' reasons given for choosing their bank included that "[t]hey are cheaper" (32 percent) and "[t]hey provide value for money" (20 percent).⁷³ Further, 58 percent of participants agreed with the statement that "[b]anking fees are too expensive," and only 35 percent agreed with the statement, "I actively find out what I am paying in bank fees."⁷⁴

b) Findings

i) Product Complexity

It has been a decade since the Banking Enquiry, and while there has been some product rationalization, the Big Four banks continue to offer a variety of pricing bundles, with eligibility for such bundles continuing to be largely based on salary. This section considers the bundles offered by three of the Big Four to customers having a minimum salary that is considered a mid-level income (for ease, referred to as the "middle market") and the remaining Big Four bank's competing product. These focus on a significant portion of the transactional account market. Solidarity refers to these as banks' flagship accounts marketed to their core client base⁷⁵ (which, as discussed later in the report, is reflected in the banks' level of internal focus on such customers). Three of the Big Four banks offer as part of their core transactional account product suite three different pricing bundles. Eligibility for those bundles is based on level of salary, seemingly aimed at low-, middle-, and higher-income retail customers (although the salary-based criteria differ between them). The other Big Four bank previously structured all of its main account offerings around salary levels but noted that it no longer does so. In discussions, it explained that it is no longer using salary as an eligibility criterion because—although it may have examined income for the purposes of assessing

affordability and level of likely transacting—it does not want to use salary as a discriminatory factor. It said that its current philosophy is that someone with a lower income should not be prevented from having access to a more full-featured offering, and that if a customer is fully informed, with appropriate advice, he or she should ultimately be able to make a decision about which account is suitable. Instead, its bundles now are marketed to customers on the basis of the level of transacting. It was suggested by some industry participants in discussions that complexity manifested through market segmentation may in part be driven by complex internal structures and systems within banks, such as different divisions operating in a sense as businesses within businesses and targeting different customer segments.

Structural complexity and differences in the content of each Big Four bundle, and in each bank's individual transaction pricing, seem to continue to make it difficult for a retail customer to undertake a meaningful side-by-side comparison of each bank's offering. A meaningful comparison would require, at a minimum, a customer having a good understanding of his or her transactional patterns and the ability to undertake research through disclosure and comparison tools to overcome product complexity. Table 1.8 provides a side-by-side comparison of the Big Four's middle-market offerings.⁷⁶ While the discussion focuses on these bundles, it is true that similar observations can be made regarding various other bundle offerings by the Big Four. (The table includes Capitec's single product offering by way of contrast. This offering is further discussed in the next section, which considers price competitiveness.)

Notably, while the monthly fee for each bank's bundle is very similar to that of its competitors, a customer cannot simply place each bank's fee structure side by side to achieve a reasonably apparent comparison. Transaction and pricing combinations differ, but, in addition, each bank's fees schedules are arranged differently and use at times different terminology, creating an additional barrier to a customer's ability to compare. (See section 2.2 below for a more detailed discussion on transparency and disclosure.)

Some Big Four banks indicated that they had recently undertaken product reviews and rationalizations. However, following such processes, they all retained complex pricing bundles for account offerings to the middle market. One Big Four bank explained that it had previously rationalized a range of products, including transactional accounts, and simplified its pricing structure. Its aim was to make it easier for both staff and customers to understand product pricing. For example, the bank highlighted that it has now instituted the same individual transaction pricing across different products. However, like its competitors, it retains different bundles for different customer levels. It further noted that it has also undertaken a major exercise to place customers on the right pricing structure based on their behavior. The bank has been analyzing how specific customers have been transacting in order to put customers on the correct bundle. While some banks are organized internally across product or customer segments more strictly than others, which may influence customer segmentation, different bundles for different customer levels and, more importantly, complex fee structures within each bundle, seem to have been retained by all of the Big Four. Several banks confirmed that customers can opt for a lower-level account than what they are eligible for. Analyzing a customer's transaction patterns to assist him or her to choose a particular bundle can be helpful in preventing customers from paying more than they need to while they stay with the bank, but the need to do so is telling. For example, it can suggest that customers are having practical difficulty in determining by themselves which level of account suits their transacting habits. Importantly, given that such customers seem to lack understanding with regard to their current bank's bundle pricing, it seems even

TABLE 1.8: Examples of Middle-Income Account Offerings

TRANSACTION	ABSA GOLD VALUE BUNDLE ⁷⁷	FNB GOLD ACCOUNT ⁷⁸	NEDBANK SAVVY PLUS ⁷⁹	STANDARD BANK ELITE PLUS ⁸¹	CAPITEC GLOBAL ONE ⁸²
Monthly fee	R98	R105	R100	R100	R5.50
Minimum salary for eligibility	R10,000 p.m.	R84,000 p.a.	N/A	R5,000 p.m.	R0
Cash deposits at own ATM or affiliated POS	Five transactions included in bundle (Any ABSA ATM or cash acceptor) Transactions in excess of bundle: ABSA ATM: R3.95 + R1.35 per R100; cash acceptor: R6 + R1.55 for every R100 of deposit value	R5,000 per month, thereafter R0.90 per R100	Nedbank ATM: R11 + R1.40 per R100 or part thereof At a Nedbank intelligent-depositor ATM: R5.50 + R0.70 per R100 or part thereof At Pick n Pay/Boxer Superstore till point: R1.40 per R100 or part thereof	Three transactions included in bundle, then R1.80 per R100 and part thereof	90c per R100
Cash deposits at branch	R8 + 1.55 for every R100 of deposit value (minimum R30)	R60 + R1.90 per R100	R11 + R1.40 per R100 or part thereof	R8 + R1.80 per R100 part thereof	R1.90 per R100
Cheque deposits	R30 at branch, no charge at ABSA ATM	R45 + R5 per cheque at branch or ATM	R20 at Nedbank ATM or branch	R30 at Standard Bank ATM or branch	R30
Cash withdrawals at own ATM	Five transactions included in bundle (cash withdrawals AB-SA ATM, Barclays ATM) Transactions in excess of bundle: R3.95 + R1.35 per R100	A combination of R5,000 free per month (includes FNB ATM, Cardless and Slimline withdrawals and Cash@Till), after which R1.85 per R100; R1.40 for Cash@Till	Four free per billing cycle, thereafter R4.50 + R1.40 per R100 or part thereof	Four transactions included in bundle, then R1.80 per R100 and part thereof	R6 per transaction
Debit card purchases and POS withdrawals	Unlimited (any of: debit and cheque card purchases; POS cash withdrawal)	Card purchases: free See above for withdrawals	Purchase at a till point: free Withdrawal at a participating retailer's till point with or without purchase: free	Unlimited	R1.50 per transaction (PnP/Shoprite/Checkers/Boxer till point)
Cash withdrawals at other ATMs	ABSA-supported ATM: R6.95 + R1.35 per R100; Saswitch ATM: R9.95 + R1.35 per R100	R8 + R1.85 per R100	R11.50 + R1.40 per R100 or part thereof	R6.70 + R1.80 per 100 and part thereof	R8.50 per transaction

TABLE 1.8, continued

TRANSACTION	ABSA GOLD VALUE BUNDLE ⁷⁷	FNB GOLD ACCOUNT ⁷⁸	NEDBANK SAVVY PLUS ⁷⁹	STANDARD BANK ELITE PLUS ⁸¹	CAPITEC GLOBAL ONE ⁸²
Cash withdrawals at branch	R55 + R1.60 per R100	R60 + R1.90 per R100	R40 + R1.40 per R100 or part thereof	R35 + R1.80 per R100 and part thereof	Not clear if possible to do
Electronic payments and funds transfers (nonbranch)	Unlimited account payments via ABSA ATM, online, mobile, telephone (IVR); external debit orders Unlimited funds transfers via ABSA ATM, online, mobile, telephone (IVR); Internal debit orders; stop orders	Mobile and eChannel payments: free; internal and external debit orders: free	Electronic payments: free (by cell-phone banking WAP; at a self-service terminal; on NetBank (Internet banking); on Nedbank AppSuite; debit order (internal); debit order (external); stop order) Interaccount transfers: free (by SMS banking; by telephone banking; by cell-phone banking WAP; at a self-service terminal; on NetBank (Internet banking); on Nedbank AppSuite; auto-transfer processing fee)	Unlimited electronic interaccount transfers and electronic account payments	Payments by app/Internet/phone to other bank/Capitec account: R1.50 Transfers to own account: free
Branch and telephone staff assisted funds transfers/payments	Branch funds transfers: R55; account payments: R55 Telephone account payments: R14.50; Funds transfers: R7	Branch transfers: R65; branch payments: R65; scheduled payment (establishment and amendment): R16 Telephone funds transfer: R65; Telephone payments: R65	Branch interaccount transfers: R40 Branch payments: R65 Telephone interaccount transfers: R20 Telephone payments: R30	Branch interaccount transfers: R50	Branch transfer or payment to other bank/Capitec account: R5 Transfer to own account: free
Prepaid Purchases	Prepaid top-up at AB-SA ATM, POS, online, mobile, telephone (IVR) R1.15; Prepaid top-up at AB-SA-supported ATM R4.15; Prepaid top-up at Saswitch ATM R7.15	Prepaid airtime purchases: free Prepaid airtime purchases at other banks' ATMs R12.50	Cell-phone top-ups: free (On NetBank Internet banking, Nedbank AppSuite, Nedbank ATM) Cell-phone top-ups at another bank's ATM: R6	Prepaid recharges using Standard Bank ATM, cell-phone banking, Internet banking and mobile app: R1.10 Prepaid recharges using other bank's ATM R6.70 + R1.10	Airtime/data/SMS bundles and electricity (app/Internet, phone, card): free Airtime (other bank's ATM): R1.50

TABLE 1.8, continued

TRANSACTION	ABSA GOLD VALUE BUNDLE ⁷⁷	FNB GOLD ACCOUNT ⁷⁸	NEDBANK SAVVY PLUS ⁷⁹	STANDARD BANK ELITE PLUS ⁸¹	CAPITEC GLOBAL ONE ⁸²
ATM and POS declined transaction for insufficient funds	R5.50 (ABSA ATM; ABSA-supported ATM; Saswitch ATM; Post Office, overseas ATM and POS)	FNB ATM: free; POS scheduled payment, EDO and other banks' ATMs: R8.50	Nedbank ATM: free other bank's ATM R8.50 At POS: R8.50	Standard Bank ATM: R.60; another bank's ATM: 4.90 POS decline: R7.90	Capitec ATM: free; another bank's ATM: R5; card machine purchase: Free
Electronic information inquiries and statements	Statements: free (AB-SA ATM (mini), online and telephone) Balance inquiries: free (ABSA ATM, Barclays ATM, POS, online, mobile and telephone); R6.25 (Saswitch ATM and telephone adviser-assisted)	Emailed statement: free (current month) Cell-phone banking ministatement: free FNB ATM transaction list: R3 Balance inquiries: free (Mobile and eChannels); R5.50 (other banks' ATMs, international POS, branch or telephone-assisted banking)	Electronic statements: free Balance inquiries: free (at self-service terminal, SMS banking; cell-phone banking WAP, on NetBank Internet banking, Nedbank AppSuite, Nedbank ATM, Nedbank self-service device, till point) Balance inquiries: R5 (telephone banking agent-assisted; another bank's ATM; another bank's self-service device)	Internet and cell-phone banking statements view/download: free (if emailed, monthly charge of R33 if daily, R4.40 if weekly, R1.10 if monthly) Balance inquiries on mobile app, cell-phone, telephone, and Internet banking channels: free	Electronic statements (transaction/savings account, flexible savings account, fixed-term savings account, tax-free savings account): free Balance inquiries on app/Internet, phone: free
Paper statements	Mailed statement: R25 Branch counter: R25 (full statement); R12.50 (ministatement) ATM: R12.50 (full statement); R6.25 (ministatement)	Posted statement: R16 Printing of statements: R25 (branch and telephone banking); R3.50 per page (ATM with deposits)	Copy of A4 statement at branch: free, one per billing cycle, thereafter R25	Posted statement: R15 At branch: R20	Capitec ATM: R2.50 (for transaction/savings account, flexible savings account); free (for fixed-term savings account, tax-free savings account) At branch: R5 (for transaction/savings account, flexible savings account); free (for fixed-term savings account, tax-free savings account)

TABLE 1.8, continued

TRANSACTION	ABSA GOLD VALUE BUNDLE ⁷⁷	FNB GOLD ACCOUNT ⁷⁸	NEDBANK SAVVY PLUS ⁷⁹	STANDARD BANK ELITE PLUS ⁸¹	CAPITEC GLOBAL ONE ⁸²
Electronic Notifications	SMS or email: free Notice of payment or reminders (online, mobile, telephone) by SMS or email: R1	Online, cell-phone banking and inContact subscriptions: free inContact notifications: free Electronic subscriptions services (fee per month): My Limit Alert: R3.20; scheduled payment alert: R3.20 Balance alert (fee per month): Monthly: R1.10; Weekly: R3.20; Daily: R16 Payment notifications—Email: R0.85; SMS: R1.25 ENote: free	No-funds alert: R10 per SMS	MyUpdates (SMS/email Notifications): free	Account details (email/SMS): free Transactions and balances (email/SMS): R0.40
Transaction rollover	Unused transactions for the current month will be added to the next month's transaction limits	N/A	N/A	N/A	N/A

less likely that they could understand how the bundle pricing of competing banks (as outlined in table 1.8, for example) also works and compare it to their current account. One of the Big Four banks commented in discussions that, while comparison shopping has become easier in South Africa, it is not as easy as it could be and that customers who do not have a higher education would find it more difficult to undertake such comparisons. The bank expressed the view that although products are easy to understand individually, making comparisons between them is more difficult.

Complexity of different bundle offerings can also give rise to other practical difficulties in addition to hampering interbank product comparisons. For example, customers whose transaction habits or patterns change from time to time may not be served well by staying with a particular bundle and thus would continue to remain reliant on their bank reviewing their ongoing transaction behavior and suggesting ongoing switching. Further, a customer who does not have the minimum level of income to be eligible for a particular bundle cannot upgrade even if it suits his or her transactional behavior. As noted above, however, one of the Big Four banks confirmed that it no longer uses salary levels as eligibility criteria for their core accounts, preferring to rely on customer disclosure and advice to assist them to choose the most appropriate account.

In discussions the Big Four explained that they offer a wide range of packages and pricing bundles because these reflect their granular customer segmentation and analysis. In contrast, banks targeting, respectively, lower- and upper-market tiers opined that customers prefer product and pricing simplicity and that this was borne out by the results of their analysis of customer needs and expectations. However, it is not clear how the appropriateness of such pricing complexity by the Big Four was evidenced by their customer testing and customer preferences research. One Big Four bank explained in discussions that in formulating its current bundles over the last five years, it has been delving into its customer propositions, analyzing transaction data as well as competitor offerings and testing proposed offerings with customers. It also explained that it undertakes semiannual checks of bundles, reviewing customers' transaction behavior. Interestingly, the bank also noted that most of its transactional account product offerings have been the same for the last 10 years, with its last new core product offering being introduced four years prior. Thus, the overall pricing strategy and approach (for example, of segmented bundles with complex pricing) seems to have been retained, with changes being made at the level of individual components, inclusions, and exclusions. In particular, while the mid-level bundle offer by that bank appears to have simplified some individual items, overall it retains a pricing structure that seems likely to be complex for an ordinary retail customer to understand and, importantly, one that differs significantly from competitors, thus impairing comparability. Another Big Four bank claimed that it undertook an extensive product rationalization process (from 90 product offerings to single digits) and that it has focused heavily on customer research and interviews in the process of doing so. It had found that the complexity of its product suite was previously so great that it was preventing a proper conversation with customers.

Several banks have implemented TCF Outcomes-style concepts in their written product-approval and other decision-making policies. However, the level of sophistication and granularity of such policies varies significantly. Some banks have formulated detailed procedures intended to be reflective of TCF-related concepts, such as identifying needs and wants of a defined target market. For example, in addition to written internal product-approval policies for all products, one bank also has implemented a

detailed issues checklist intended to document that it is addressing all relevant aspects. However, some banks' policies seem to be drafted at a more general level, requiring participants in the product process to address very broad headings or topics that, while using "TCF-style" language, do not necessarily translate TCF concepts to more granular and practical product-specific issues. It is not clear to what extent this would mean that a bank could nevertheless undertake appropriately granular analysis and consider relevant customer-fairness issues in practice and to what extent such policies simply recharacterize existing processes. Even where a bank has in place an appropriately granular and focused internal product-approval process, obviously, a separate key question is whether this is being followed, and whether the way it is followed is in fact conducive to products and features that achieve TCF Outcomes. From discussions with some banks it seems that product-change outcomes so far have continued to be driven primarily by commercial strategy (for example, pricing intended to encourage customers not to use branches and ATMs). For example, a Big Four bank's assessment of key potential risks from a TCF Outcomes perspective for transactional accounts referred to providing incorrect product advice and excessive charging while an account is dormant or underused but did not seem to include issues relating to ordinary account operation. It is not possible to measure the specific impact of these TCF policies and approaches at this time, particularly for transactional accounts, given many of these processes were introduced by most banks only recently or were still in the process of being implemented at the time of writing. One Big Four bank indicated that while it felt comfortable that it was well progressed in implementing TCF Outcomes, it was aware that some of the other participants in the banking sector were not as well progressed and admitted that they were struggling to change their internal processes accordingly.

The banks have internal product-design and approval processes with varying levels of focus on customer research and testing and assessment rigor to ensure suitability for an identified target market.

One Big Four bank described a very extensive and sophisticated product-development process that it undertakes periodically, first involving several layers of customer segmentation using a variety of data sources to achieve granular segmentation (with part of the analysis also focused on potential profitability). The bank emphasized that it then focuses on learning about customer needs by understanding their daily behaviors and concerns, including through interactive sessions involving customers. In one such session, bank staff observed why customers were using cash to make payments (for example, to pay for taxis), rather than making use of a banking transaction option. Staff members found that, notwithstanding issues such as the security risk of handling cash, some customers continued to prefer cash due to a lack of trust in the banking system and perceived expenses they would occur, including in placing cash into the system in the first place. This anecdote is illustrative of the potential usefulness of integrating elements such as customer interviews and field studies into product-design and improvement processes. However, even if banks undertook such research, the resulting customer benefit would then obviously depend largely on whether and how a bank acted on the results of such research. This includes, for example, how such results would be weighed against pure profitability issues or the need to allocate resources for extensive product redesign. In the case of this bank, it is not clear whether the exercise resulted in changes to transactional accounts, such as improved pricing for cash-related transactions. The bank explained that if solutions are formulated to address the results of such research, it then needs to be decided whether they will be adopted (presumably considering other factors) as well as being subject to ongoing review. Although several banks discussed a range of customer testing undertaken in relation to product improvement, it is not clear that customer testing is embedded fully, or extensively, across the market, particularly with regard to

transactional account (or fixed deposit) design. Some banks indicated in discussions—and this seems to be borne out by some of their internal written procedures—that the decision on whether to undertake customer testing is somewhat ad hoc. One bank described several customer testing options available in its product processes and indicated that it would be a case-by-case decision whether and when any of these would be used in assessing particular product changes. Another bank explained that the extent of its customer testing depends on the complexity of the product and the sophistication of the market for which it is being developed. It will at times benchmark itself against competitors, and if similar products are in the market, it may do less testing. The main differentiation will often be on pricing. It sometimes conducts a pilot involving staff, and then it decides if it needs to test the product with other customers, too.

All of the banks consistently indicated (albeit with varying levels of emphasis) a focus toward encouraging customers to use digital channels as opposed to branches and ATM services. However, it was not clear that customer testing in fact showed that this reflected customers' transaction preferences, rather than simply being lower cost and thus priced more cheaply for customers. One Big Four bank explained that as part of its most recent pricing review, it implemented a range of pricing increases in fees for branch transactions and ATM transactions as part of a strategy to migrate customers to electronic channels. Similarly, it was said in discussions that pricing was intended to support a channel-adoption strategy to encourage customers to make use of more efficient channels through which they transact. One review recognized, for example, that for customers depositing smaller amounts, the bank's branch deposit fee would be likely to have a material effect. The bank's professed aim is to alert customers performing transactions at branches that they can reduce their fees by banking better through electronic channels (and similarly by considering undertaking electronic payments rather than using ATMs to make payments in cash). Pricing decisions were variously characterized as focusing on a need to help customers make better choices, and at least some appeared to involve relatively extensive deliberations. Nevertheless, key outcomes seem to have been driven to a significant extent by profitability and operational cost drivers, which is of course unsurprising, given the commercial imperatives faced by the banks. For example, it is not clear to what extent banks undertook any assessment involving live customers transacting through branches, including to what extent significant changes in transactional behavior would be realistic and in what circumstances.

This digital channel-driven pricing focus at the middle market follows largely the same philosophy employed for PAYT pricing for lower-income accounts discussed above. Therefore, comments similar to those made previously also apply to middle-income customers, who may not be able or willing to use their transactional accounts primarily through such channels.

Complexity of pricing structures is also contributed to by pricing bundles giving preference to certain channels and excluding a range of other standard transaction services. A retail customer who takes up one of the bundles described above is not in fact provided with a single comprehensive price for use of his or her account in the form of a monthly fee, given the range of additional fees that the customer needs to take into account if he or she engages in usage outside of the bundle. Both an industry participant and a civil society organization noted that even some pricier bundles that may be perceived as "unlimited" or as a "single-fee" offering would be unlimited only for some transactions, while others would continue to be charged on a per-transaction basis.

ii) Pricing Competitiveness

The Office of the Ombud for Financial Services Providers (FAIS Ombud) commented in discussions that South African consumers do not tend to shop around or compare transactional accounts and that there is a common view that there is no point in shopping around because banks price their products so similarly as well as offering similar features. While this comment may have been based only on anecdotal evidence, it appears to be borne out by the most recent pricing comparison undertaken by Solidarity.

Overall pricing between the Big Four banks' core bundles is relatively close. Solidarity's report compares, among others, the four middle-market bundles discussed above on the basis of both a "sophisticated banking needs" user profile (comprising a mix of 25 transactions) and also using an average across the user profiles used for the purpose of other comparison in the report (ranging from a mix of 12 transactions to one of 30 transactions).⁸² The former comparison showed that the overall cost to the account holder of these bundles differed by, at most, R11.25 per month between the lowest and the highest cost bundle, with the cost of a Big Four bank's bundle differing as little as R3 per month from that of a competitor (although, interestingly, the gap between institutions seems to have widened slightly from that reported in Solidarity's previous report).⁸³ Current pricing similarities at this level of the market may indicate that the Banking Enquiry's conclusion that banks tended to set their fees within a close range of each other to minimize impinging significantly on each other's market share continues to hold. None of the Big Four banks were able to provide an example of recent major pricing changes or reductions in fees as a result of competition, even though more than one remarked that they monitor competitor pricing. It may also be arguable that pricing similarities suggest the Big Four banks have all reached an optimal pricing level as a result of competitive factors and thus it would not be realistic for any of them to offer significantly lower pricing in competition to their fellow majors.

Capitec's pricing for its single product remains significantly lower than that of the Big Four's middle-market bundles. Solidarity's comparison of Capitec's single account offering, in contrast with the Big Four account offerings based on market segmentation, shows that it would cost significantly less than the Big Four bundles for a customer operating it consistently with the referenced 25-transaction user profile. It was suggested that a cost element that may contribute to making the Big Four more expensive is the maintenance of, for example, a much larger branch network.

It is not possible to determine the drivers for the Big Four banks' pricing similarity in the absence of data regarding individual bank costs. While this was not within the ambit of the review undertaken for this report, the pricing-versus-costs analysis undertaken by the Banking Enquiry (which found a lack of identifiable relationship between the prices of transactional accounts and the costs to the banks of providing them) could be refreshed by South African authorities to assess whether pricing continues to be affected by a lack of competitive pressure or is in fact a reasonable result of pressures faced by all Big Four. Such analysis should be complemented by an in-depth customer study of why, for example, middle-income customers are not switching from a Big Four bundle to a competitor offering even if there is a potentially significant monthly cost difference. Anecdotally, it was suggested in some discussions that one concern customers may have when choosing a bank is the footprint of its branch or ATM network, as alternative channels would not be sufficiently attractive to drive switching. If borne out in a broader

study, this would also highlight that the more general push to electronic channels by recent pricing strategies is not necessarily in step with transacting preferences.

It is not possible to assess for the purposes of this report the level of underutilization by retail customers who hold pricing bundles, and whether it differs between banks, nor to determine to what extent the retention goal is a common element of internal pricing strategy discussions. An industry participant suggested that at least some banks have bundling strategies that bundle items and transaction types that they expect may not be used at all by at least some customers or will be used only to a limited extent. The aim of such a strategy, the industry participant suggested, is to promote retention of a portion of the bundle price that may not be utilized. If correct, it is not clear that such a pricing approach would be consistent with the spirit of customer-centric product design. However, it could be useful to study this further in due course as TCF Outcomes-driven requirements are implemented, particularly given that there seems to be a trend by major banks to offer and emphasize bundles in their marketing. This could also assist in assessing any implications for how related bank activities are undertaken, such as how marketing approaches are shaped and targeted.

c) Recommendations

The COFI/FSR Laws should include specific product-design obligations to ensure that financial institutions' processes for developing, and making changes to, transactional account and fixed deposit products include clear, concrete steps intended to drive TCF Outcomes. It is suggested that, at least initially, such obligations be legislated through a principles-based approach, particularly assuming that they would not be confined to transactional accounts and fixed deposit products but would also be intended to apply to other financial products. While some product-specific design practices that seem inconsistent with TCF Outcomes could be targeted with prescriptive regulation—such as by mandating minimum product features or restricting fee amounts and structures—at this stage, such an intervention is suggested only in the context of accounts for low-income consumers as outlined above, given the apparent immediate need to ensure effective rather than merely nominal access. Importantly, however, the FSCA should augment such principles-based obligations by issuing more detailed regulatory guidance, addressing product-specific practicalities and concerns (that can be updated over time reflecting its supervision outcomes). Such guidance could refer to examples of industry good practices, providing practical guidance on the FSCA's ongoing expectations. If industry does not meet relevant expectations sufficiently, then more prescriptive requirements could follow. The following are examples of general product-design requirements and regulatory guidance that have been implemented in several other jurisdictions. Some of these requirements exclude ordinary bank accounts from their application because it was thought in the relevant jurisdiction that, given their relative simplicity, it would be too onerous to require institutions to comply. Others apply to all financial products but allow tailoring of the strength of the obligations depending on product complexity and risk. Given the complexity associated with aspects of transactional accounts in South Africa as discussed above, it is recommended that the latter approach be pursued in implementing relevant obligations under the COFI/FSR Laws.

This recommendation focuses on achieving improvements from a customer fair-treatment perspective in product design through changes in market conduct/consumer protection regulation. Such a focus

BOX 1.3**International Examples of Product-Design Requirements***Australia: Proposal for new general product-design obligation*

The Australian Government is proposing to introduce new product-design (as well as distribution) requirements that will apply to most financial products.⁸⁴ The government's stated object in introducing the new regime is to "promote the provision of suitable financial products to consumers of those products."⁸⁵

The Australian Government's proposal results from its acceptance of a recommendation made by the Financial System Inquiry, a wide-ranging inquiry into the Australian financial system, that the government amend the law to introduce a principles-based product-design and distribution obligation.⁸⁶ The Financial System Inquiry highlighted that to fulfil the financial system's role in meeting the financial needs of individual Australians, consumers should be treated fairly, and that financial products and services should perform as consumers expect or are led to believe that they will.⁸⁷ It concluded that, in seeking to align commercial incentives with consumer outcomes, the Australian regulatory framework was focused on point of sale, but recent examples of poor conduct suggested the alignment needed to start at the point of product design. The government subsequently noted that, although licensed FSPs in Australia are subject to a general obligation to operate efficiently, honestly, and fairly, there is a gap in the regulatory framework because there is currently no obligation to ensure the product meets the needs of a target market of consumers.⁸⁸ The government's objective in introducing the new regime is to "promote the provision of suitable financial products to consumers of those products."⁸⁹

The design-related obligations for a financial product under the proposed regime will comprise the following:

- Having to make a target market determination in relation to the financial product (which must be appropriate for the product—in the sense that it must be reasonable to conclude that, if the product is issued in the target market in accordance with its distribution conditions, the product would generally meet the likely objectives, financial situations, and needs of the persons in the target market—and include the class of persons who form the target market for the product and any conditions and restrictions on dealings in, or providing financial product advice in relation to, the product)
- Reviewing the target market determination as required to ensure it remains appropriate
- Keeping records of the FSP's decisions in relation to the new regime
- Notifying the regulator (ASIC) of any significant dealings in a product that are not consistent with the product's target market determination

The Financial System Inquiry had noted that such obligations should be scalable depending on the nature of the product and says that compliance with this obligation should be straightforward for simple products that are likely to be suitable for most consumers. It thus said that, as an example, "simple, low-risk products such as basic banking products" would not require extensive consideration and may be treated as a class, with a standard approach to their design and distribution.⁹⁰ It is nevertheless noteworthy that the Australian Government proposes for the obligations to apply to products such as transactional accounts and fixed deposits and it has not sought to exclude any of these as being inherently too

BOX 1.3, continued

simple or low risk to warrant application of the new requirements. In fact, it proposes to expressly include “basic deposit products,” which are the simplest such products.⁹¹ While the concept of “reasonableness” in the new requirements would allow for scalability, it would also require FSPs to take into account the risk and complexity of the specific product involved.⁹²

Sources: Commonwealth of Australia 2017a; Commonwealth of Australia, 2017b; Commonwealth of Australia 2016; and Commonwealth of Australia 2014.

European Union: Binding product-design guidelines

National competent authorities (and financial institutions) are required under European law to make every effort to comply with guidelines⁹³ recently issued by the European Banking Authority (EBA) that deal with product-design matters for all financial products. Highly relevant to the discussion here, when developing the guidelines, the EBA explained that the focus is on fairness to consumers, noting that “[p]roduct oversight and governance is intended to involve manufacturers in a fair designing of products, taking into account end-consumers.”⁹⁴

The guidelines encompass transaction and deposit accounts, and the definition of product in the guidelines includes, for example, deposits and payment accounts.⁹⁵ The guidelines contemplate that they would apply to products for individuals acquiring them for personal purposes. However, they also note that national authorities may wish to consider extending the same protections to micro, small, and medium enterprises.⁹⁶

The guidelines cover a number of key product-design matters, including (among others) the following:

- Establishment, proportionality, review, and documentation of product oversight and governance arrangements
- Integration of product oversight and governance arrangements into governance, risk-management, and internal control frameworks
- Target market identification (at a sufficiently granular level) and development of products that have only features, charges, and risks consistent with target market factors. In “good practices” examples provided to manufacturers to assist their compliance with the guidelines, the EBA notes that, in the case of deposits, an assessment could take account of the various competing product features, such as accessibility, yield, and security, and whether the combination of these met said interests, objectives, and characteristics.⁹⁷ The EBA also refers to demographic factors as one of the factors that product manufacturers could consider more generally when designing financial products.⁹⁸
- Product testing
- Product monitoring
- Remedial action

The guidelines are intended to apply proportionally to the level of complexity and risk of a financial product. (This proportionality was also in answer to criticism that the guidelines would potentially reduce the number of products available and slow down innovation, as, for example, the costs of applying the guidelines to simple products would outweigh the benefits.)⁹⁹ Guideline 1.5 specifies, for example, that

BOX 1.3, continued

product oversight and governance arrangements should be proportionate to the nature, scale, and complexity of the manufacturer's business, and that their implementation and application should have regard to the level of potential risk for the consumer and complexity of the product. In the case of transactional accounts and deposits, this will presumably depend not only on the core nature of the product (which is arguably relatively simple) but also the complexity of its feature and pricing structure.

UK: Regulatory guidance on general obligations

The FCA has issued guidance on how it expects financial product manufacturers to meet their general obligations. While applicable to a range of products regulated by the FCA (including investment products, insurance products, and credit contracts), bank transactional accounts and fixed deposits are excluded.

Expectations discussed in the guidance include the following:

- Identifying the target market for a financial product—that is, which types of customers the product is likely to be suitable or unsuitable for
- Stress-testing a financial product to identify how it might perform in a range of market environments and how customers could be affected
- Having in place systems and controls to manage adequately the risks posed by financial product design

Although the guidance is not of itself legally binding, it indicates how the FCA is likely to interpret and enforce the application of relevant legally binding requirements (as set out in its handbook).

The FCA has also issued updates to institutions describing examples of industry practices that it had identified as being consistent with Treating Customers Fairly principles. A recent example is discussed below.¹⁰⁰

For example, in July 2017, the FCA carried out a thematic review of customer understanding relating to several banking products, including cash savings account transactions.¹⁰¹ It identified some financial institutions that embedded, or were developing, systems and practices to assess customer understanding of particular products throughout the life cycle of a product. the FCA explained that by sharing such examples, it hoped to help other financial institutions to develop their approaches in this area.¹⁰²

Notable practices relevant in particular to product design and ongoing improvement included the following:¹⁰³

- Financial institutions nominating individuals to be accountable for customer understanding. This indicated that customer understanding of transactions was an important consideration when distributing products or services. In some firms, the nominated individuals held one or more of the functions specified under the "Senior Managers' Regime" administered by the FCA, providing clear accountability within the business for customer understanding.
- A financial institution considering the key risks of each product to customers at the design and testing phases of product development. This information was then used to develop questions for staff

BOX 1.3, continued

members to use to explore and enhance customer understanding through the sales process. In addition, identified issues relating to customer understanding through the firm's sales reviews led to continuous improvements to product delivery.

A financial institution's product and sales process development including testing customer understanding prior to the launch of the product. This was done initially with staff and then with a sample of existing customers. The firm then considered whether any changes were needed to improve customer understanding.

should also assist effective competition between banks by encouraging competition based on product quality and suitability while reducing potential barriers to consumers comparing and assessing products, such as due to product complexity. (As noted previously, the 2016 WBG Report also made recommendations from other perspectives, including with regard to payment systems regulation, intended to assist with facilitating new entrants and innovation to support financial inclusion in South Africa, and that should also be helpful to competition.)

The South African authorities should, in addition, consider undertaking a new Banking Enquiry-style pricing-versus-costs review, which also studies switching behavior drivers. As discussed above, it is suggested that the South African authorities consider refreshing the pricing-versus-costs analysis undertaken by the Banking Enquiry and undertaking a complementary in-depth customer study of switching behavior and attitudes among middle-income customers.

1.3: FIXED DEPOSIT DESIGN

a) Findings

Banks indicated that there is significant competition between them with regard to attracting customers to their fixed deposits. A Big Four bank said in discussions that in the fixed deposit space competition between the banks is based on rate. A significant portion of the retail customer base for such deposits is older (55 and over), and such customers are particularly sensitive to returns and are generally not loyal to any particular fixed deposit "brand." The bank commented that such customers are always seeking the best deal, so the banks' approach is to compete on rate, such as through special rate offers. Another Big Four bank noted that its fixed deposit price competitiveness is continually reviewed and re-priced as the market changes. Echoing its competitor, it commented that the market is extremely competitive and that the bank needs to respond quickly with revised pricing structures. This approach is necessary to ensure that it can continue to gain market share.

A review of rates offered by the Big Four banks on a sample of fixed deposit products shows a wide range of rates being offered. This is both between products within each bank and between the banks, depending on factors comprising not only the term and amount of the initial deposit but also on whether

a customer chooses a fixed rate or a different reference rate (prime-linked rate) and whether a customer has the right, in the absence of hardship-related circumstances, to withdraw part of their deposit early. Additional factors may apply depending on product variations, such as whether a customer chooses to receive interest up front. Table 1.9 shows the rates and certain key features offered on a sample of Big Four fixed deposit products.¹⁰⁴

There is significant variation in product structuring for fixed deposits. The comparison focuses on “simpler” fixed product variations, comprising rates that are fixed up front and that do not provide up-front prepayment of interest. Without qualification, such a comparison may give the impression that for an ordinary retail customer, fixed product offerings are relatively simple and comparable across the market, but this is not necessarily the case. Some of the products noted in table 1.9 include several variations (for example, different rate schedules depending on whether the customer opened the fixed deposit online, whether he or she is aged 55 years or older, and whether the customer has certain other product holdings and arrangements with the bank). It was also notable that, in addition to their simpler fixed deposit offerings, the Big Four banks in particular offered a range of more complex deposit products, with differing deposit and withdrawal options (at call or with notice), and rates or returns calculated by reference to other variable factors, such as a prime rate or inflation or other indexes. Early withdrawal restrictions and associated fees—as discussed at section 4.3 below—can also increase complexity and affect the suitability to customers of relevant offerings.

The availability of a range of fixed deposit offerings, as well as other savings products, of itself is not necessarily of concern, if it gives retail customers the ability to choose more suitable alternatives for their needs and objectives. Several banks noted that they had been developing product alternatives and

TABLE 1.9: Fixed Deposit Examples¹⁰⁵

FIXED DEPOSIT PRODUCT	ABSA DYNAMIC FIXED	FNB FIXED DEPOSIT	NEDBANK FIXED DEPOSIT (FOR UNDER 55s)	STANDARD BANK FIXED DEPOSIT	CAPITEC FIXED TERM SAVINGS ACCOUNT (SINGLE DEPOSIT OPTION)
Rates for balances below R1 million	Published rates range from 6.45% to 8.60% depending on factors below	Published rates range from 5.85% to 8.25% depending on factors below	Published rates range from 6.60% to 8.43% depending on factors below	Published rates range from 6.55% to 8.55% depending on factors below	Published rates range from 7% to 10.05% depending on factors below
Available terms affecting rates Balance levels (below R1 million) affecting rates	8 days to 60 months R1,000–R100,000; R100,001–R999,999;	7 days to 60 months R10,000–R249,999.99; R250,000–R499,999.99; R500,000–R999,999.99	1–17 months Minimum deposit of R1,000, but rate is the same regardless of balance (depends only on term)	33 days to 60 months R1,000–R10,000; R10,000–R99,999 (rates for R100,000 and above specified to be “on application”)	6–60 months R10,000–R24,999; R25,000–R99,999; R100,00+
Deposit portion available for early withdrawal as of right	10%, 20%, 30%, 40%, 50%	N/A, but bank offers other alternatives (for example, Flexi Fixed allowing two withdrawals of up to 15%)	N/A, but bank offers other alternatives (for example, Easy-Access Deposit allows two withdrawals of up to 50%)	N/A, but bank offers other alternatives (for example, Notice Deposit, Flexi Advantage allow early withdrawal up to 40%)	

variations in this space to provide flexibility. They referred to, for example, deposit product offerings that allow early withdrawal of a portion of the balance and offerings that allow periodic additional deposits. One bank noted that the main differentiator for such deposits is pricing and that for some features it may have done less testing and benchmarked itself to the market. This seems consistent with all majors offering a version of key variations such as those mentioned, with differentiation occurring on the parameters of those variations (for example, the amount permitted to be withdrawn early or the rate payable on such an alternative). Most banks did not seem to be able to point to extensive customer testing specifically focused on such variations.

However, the complexity involved in comparing individual aspects of current alternatives is likely to make it more difficult for retail customers, who may then tend to rely more heavily on advice from banks. To make effective comparison decisions between institutions, such customers are more likely to need unbiased, readily available comparison tools and assistance unless they are confident in their financial skills.

The FAIS Ombud commented that drivers of complaints and queries relating to fixed deposits included a lack of understanding regarding interest calculations and the amount paid at maturity being lower than expected. The FAIS Ombud explained that this was not necessarily driven by dissatisfaction with the level of interest rates but with frustration and lack of understanding regarding the elements of the interest-rate calculation. The FAIS Ombud noted that a lack of customer financial literacy regarding such issues would be a contributing factor. Other potentially adverse product characteristics identified in relation to fixed deposits are discussed in section 4.3 below in the context of fixed deposit closure.

b) Recommendations

See the recommendations related to the product-design process in section 1.3 above (and the recommendations for improving product disclosure made in section 2.2 below), which also apply with regard to fixed deposits. The recommended approaches are intended to assist in improving retail customers' understanding of and ability to compare fixed deposit features, such as returns and product operation, and to foster competition based on product quality and suitability for the target market, as well as more transparent product features.

1.4: POTENTIALLY UNFAIR PRODUCT TERMS

a) Background

The inclusion of unfair terms in terms and conditions for transactional accounts and fixed deposits would be inconsistent with several TCF Outcomes. For example, a bank that includes such provisions in its terms and conditions could not be said to have as central to its culture the fair treatment of consumers as contemplated in TCF Outcome 1, nor could relevant products be said to be designed to meet the needs of relevant customers (as it would not be suitable for any customer to be subject to such terms).

Part G of the CPA sets out a regime prohibiting a supplier of goods or services from entering into an agreement with a consumer including terms that are unfair, unreasonable, or unjust, but there seems to have been uncertainty since 2013 regarding how the regime applies to transactional accounts and fixed deposits. (Recent legislative changes appear to make the position clearer.) The provisions in Part G deem a term to be unfair, unreasonable, or unjust if, among other things, it is excessively one-sided in favor of any person other than the consumer or is so adverse to the consumer as to be inequitable. The regulations made under the CPA¹⁰⁶ specify various types of contractual terms that are presumed to be unfair. Sometimes these are referred to as “gray-listed” terms. While such terms may not in fact ultimately be found to be unfair once analyzed in their context, such gray-listing is likely to subject them to additional scrutiny. Therefore, noted below are examples of terms in bank terms and conditions that (absent the current uncertainty regarding the application of Part G in this context, also discussed below) would potentially be gray-listed. Part G also imposes specific notice requirements for contractual terms that limit in any way the risk or liability of the supplier or any other person, constitute an assumption of risk or liability by the consumer, impose an obligation on the consumer to indemnify the supplier or any other person for any cause, or are an acknowledgement of any fact by the consumer. Importantly, the provisions in Part G recognize that, even where the notice requirements are met, such a term could nevertheless be unfair, unreasonable, unjust, or unconscionable in substance. However, there seems to have been uncertainty since 2013 regarding whether and, if so, how Part G applies to terms and conditions governing banks’ provision of transactional accounts and fixed deposits. The National Consumer Commission (NCC) indicated in discussions that while Part G initially applied to banks’ terms and conditions governing the provision of transactional accounts and fixed deposits, it no longer applied following reforms in 2013, and that unfairness in terms and conditions for such products would need to be addressed through financial sector legislation. As discussed further below, the NCC has also indicated that it has not been enforcing the CPA in this context in relation to banks since 2013. The FSCA noted in discussions, however, that the exemption from the CPA would be confined only to advisory and intermediary services subject to the Financial Advisory and Intermediary Services Act 2002 (FAIS Act) and Codes made under it (collectively referred to in this report as the FAIS Legislation),¹⁰⁷ but that the products themselves should still be subject to the CPA. In particular, since the introduction of the CPA, the definition of service in the CPA included “any banking services, or related or similar financial services . . . except to the extent that any such service . . . (i) constitutes advice or intermediary services that is subject to regulation in terms of the Financial Advisory and Intermediary Services Act, 2002.” However, the Financial Services Laws General Amendment Act 2013 amended the Financial Services Board Act 1990 to provide that the CPA does not apply to “any function, act, transaction, goods or services that is or are subject to Financial Services Board legislation,” which included the FAIS Legislation. The National Credit Act 2005 (National Credit Act) and National Credit Regulations 2006 (National Credit Regulations) prohibit certain exclusions of liability and responsibility under credit agreements, and the National Credit Regulator (NCR) noted in discussions that it has had to take enforcement action with regard to some of these. However, such prohibitions do not apply to a transaction agreement (except to the extent it deals with credit in a way that would make it constitute a credit agreement). More recently, section 10(1)(a) of the FSR Act provides that the CPA “does not apply to, or in relation to . . . a function, act, transaction, financial product or financial service that is subject to the National Payment System Act or a financial sector law, and which is regulated by the Financial Sector Conduct Authority in terms of a financial sector law.” A financial sector law is defined as including, among other laws, the FSR Act and the FAIS Legislation. This seems to make clearer

that the CPA would not apply going forward (the intention being, presumably, that financial sector legislation, including the COFI/FSR Laws, would address relevant issues).

A limited obligation on providers to ensure fairness of terms exists in relation to short-term deposits. Section 7 of the Specific Code of Conduct for Authorised Financial Services Providers and Representatives Conducting Short-Term Deposit Business 2004 (FAIS Short-Term Deposits Code) states that a provider of term deposits not exceeding 12 months “must . . . ensure that contractual terms and conditions are fair in substance.” However, it does not go on to further define fairness in this context or provide a more comprehensive regime of the kind set out in the CPA as described above, and, importantly, the provision does not apply to transactional accounts. Importantly, given the FAIS Legislation is expressed to apply only to advice or intermediary services, presumably the fairness requirement would apply only to terms and conditions relating to the provision of those services, rather than the provision of a product more broadly.

Paragraph 6.5.1 of the CBP, though not a legislative provision, does provide that the banks will ensure, among other things, that their terms and conditions are “fair.” However, as discussed below, it is not clear that banks generally undertake comprehensive reviews to avoid substantive unfairness in their transactional account (and fixed deposit) terms and conditions.

b) Findings

In the initial period following the introduction of the CPA, the NCC did not undertake a systematic review of banking terms for consistency with Part G. As discussed above, the NCC confirmed that at least for the initial period following the CPA’s introduction, it considered that Part G of the Act would have applied to agreements relating to transactional accounts (and fixed deposits). At the time, the NCC did not undertake a review campaign focusing on the financial sector, but it noted that some banks approached it to seek its views on certain amendments that they had made to existing product terms and conditions for the purposes of Part G (although it was not clear to what extent these related specifically to terms and conditions for accounts).

Legalistic or higher-risk approaches to applying terms and conditions observed during the diagnostic make the importance of preventing unfair terms more essential. From discussions with the Ombudsman for Banking Services (OBS) and some industry participants, it seems that the OBS as well as some banks may at times have taken relatively legalistic, or strict, approaches when interpreting consumers’ legal positions. To the extent this is the case, it becomes even more important to ensure that the terms and conditions on the basis of which consumers are provided with transactional accounts (or fixed deposits) are not inherently unfair or inappropriately unbalanced. One Big Four bank said that some banking participants, when considering unfairness issues in their terms and conditions, seemed to consider only the strict law, rather than taking a more holistic approach reflecting principles such as the TCF Outcomes. The bank noted that it had taken a low-risk approach in its recent reviews of terms and conditions, addressing anything that was not “consumer appropriate.” However, its perception was that some competitors may be willing to accept more risk with regard to potential unfairness of their terms, perhaps retaining more onerous clauses and being willing to defend them in legal challenges to their appropriateness.

A review of a sample of current bank terms and conditions for the purposes of this report, and discussions with banks, suggest varying degrees of effort across the industry to ensure that these do not contain unfair or excessively one-sided clauses. Some terms and conditions reviewed for the diagnostic contained clauses that could be at real risk of being unfair, unjust, or unreasonable. Several banks also indicated that they had not undertaken a review of their terms and conditions specifically with a TCF Outcomes focus. Consistently with our review, a civil society organization expressed the view that account terms and conditions tended to contain some clauses significantly in favor of the bank, sometimes excessively so.

Several banks appear to have undertaken relatively recent reviews of their terms and conditions, but not all appeared to focus on reducing substantive contractual unfairness. A Big Four bank that had undertaken a very recent review and professed to be advanced in implementing TCF-focused initiatives within the organization seemed to have transactional account terms and conditions that contained fewer problematic clauses. Another Big Four bank seemed to have focused on highlighting clauses that limited its liability and responsibility to the customer. Paragraph 6.5.1 of the CBP provides that, before a consumer enters into an agreement with a bank, the bank will draw to the consumer's attention any limitation of liability, exclusion, indemnity, or assumption of risk in the terms and conditions. Nevertheless, the drafting approach taken by that bank remains quite legalistic in style (although paragraph 6.5.1 of the CBP also obliges banks to write their terms and conditions in plain and understandable language) and seems at times apparently intended to transfer or exclude risk. It is also noteworthy that some banks' terms and conditions, even when subject to recent review, remain printed in very small font and are laid out in a way unlikely to be conducive to ease of reading and access by retail customers. (See also the discussion in section 2.2 below regarding transparency of terms and conditions.) The approach taken by some banks, both substantively and in terms of drafting style and layout, may suggest reluctance in making compromises on risk allocation and legal protections, even where the current contractual position is significantly one-sided.

Some bank terms and conditions contain significant exclusions of liability and responsibility. This seems to be the case even where a relevant bank is in a better position to mitigate at least some of that risk. (Regulation 44 of the CPA Regulations gray-lists several kinds of liability exclusions and terms that seek to change ordinary rules on the allocation of risk.) Several banks' terms and conditions contain broad exclusions from liability in relation to matters including their processes, systems, or data breaches. In one Big Four bank's case, the exception was the bank's willful misconduct or gross negligence. This potentially sets quite a high bar for liability. Such an exclusion shifts more of the risk onto the customer in circumstances where he or she would be significantly less well placed to mitigate it. Importantly, it would also seem unfair for a customer to be expected to do so where the risk flows from a bank's own conduct, even if that conduct does not reach the level of willful misconduct or gross negligence. One Big Four bank has, in addition, specified that even in the event of its willful misconduct or gross negligence, liability would be limited to direct damages. Even if a bank genuinely does not intend to rely on an exclusion to its full extent, the wording may still discourage a retail customer from seeking recourse in the first place and impair him or her then when making a complaint, such as to the OBS.

One bank limited its exclusion of liability arguably more reasonably to matters outside its direct or indirect control, while another bank limited the exclusion to circumstances beyond its reasonable

control. This is more consistent with paragraph 7.8 of the CBP, which states: “Please note . . . that we will not be liable for any losses caused by circumstances that are beyond our reasonable control.” Then it provides examples. There is of course still a question of appropriate and fair risk allocation in circumstances where something may not be within a bank’s control but is also outside of the customer’s.

At least one Big Four bank has included in one of its terms and conditions a very broad indemnity from the customer, some aspects of which are significantly adverse. For example, the customer is said to indemnify the bank for losses resulting from delay or failure by the bank to act on the customer’s instructions, as well as a range of circumstances seemingly outside of the customer’s control. (Certain indemnities are gray-listed in regulation 44 of the CPA Regulations.) As another example, one Big Four bank’s terms and conditions contain a more specific exclusion from liability for loss resulting from a customer’s use of an ATM or similar terminal, regardless of whether it is the bank’s (and thus at least some risks are potentially within its control) or a third party’s ATM or terminal.

When dealing with security of debit cards and personal identification numbers (PINs), several banks’ terms and conditions are also written in a way that skews liability for unauthorized transactions significantly toward the customer. They suggest that a customer, rather than a bank, is liable for unauthorized transactions regardless of whether he or she knew or reasonably ought to have known of the loss, theft, or unauthorized use of a PIN or card, until the customer has notified the bank of such loss or theft. At least in one instance, terms and conditions state that the bank is not liable following such notification and possibly until they have an opportunity to do something about it. Although one Big Four bank had recently redrafted its terms and conditions to be clearer to customers, including with regard to these issues, clauses dealing with such issues nevertheless still contained language potentially suggesting that customers remain responsible for all unauthorized transactions on their accounts through their cards or an electronic channel until they notify the bank that their accounts are at risk, regardless of whether they are or should be aware this is the case.

The wording of some banks’ terms and conditions appears to go beyond what is in the CBP. The CBP seems to make clear that a customer is generally liable for fraudulent transactions involving, for example, his or her debit card and PIN if the customer has been fraudulent or careless or failed to notify the bank as soon as practicable after becoming aware of losing a card or their PIN becoming compromised (but not otherwise). Paragraph 7.7 of the CBP provides the following:

It is critical that you tell us as soon as possible if you suspect or discover that . . . your cheque book, savings account book, cards and/or electronic purse have been lost or stolen; . . . someone else knows your PIN, password, information about your accounts or personal information or your other unique means of personal identification; or . . . there are transactions on your accounts, which you have not authorised.

Paragraph 7.8 provides that

[y]ou will be liable for all losses, if you acted fraudulently. You may also be liable for losses, if you acted negligently or without reasonable care and this has caused or contributed to losses. This may apply if you fail to follow the safeguards set out in paragraph 7.7 above.

However, the wording of some banks’ terms and conditions dealing with these issues would suggest to a retail customer that in fact he or she remains liable beyond such circumstances.

Excessive exclusions of liability may not only be unfair in substance but also have the potential to discourage trust in the use of electronic channels, particularly by less sophisticated customers. Such shifting of liability onto the customer is not always limited to transactions carried out through electronic channels. For example, one Big Four bank's terms and conditions specify that the bank is authorized to pay all cheques purporting to be drawn on the customer's behalf, without reference to the bank's own obligations under its mandate from the customer.

One Big Four bank's terms and conditions seem to go significantly further than other banks' in placing responsibility on customers. For example, they forbid the customer from ever writing down their PIN (rather than the usual approach of restricting them from keeping a written record near a card) or from disclosing their PINs to bank employees, thereby potentially avoiding liability if their employees, for example, ask for a PIN fraudulently or otherwise. (Terms limiting, or having the effect of limiting, a supplier's vicarious liability for its agents, are gray-listed in regulation 44 of the CPA regulations.)

Some banks' terms and conditions contain strong wording regarding a customer's lack of right, or a bank's lack of responsibility, to stop payment transactions. This is potentially done without sufficient qualification having regard to, for example, card scheme rules or a bank's own ability to take at least reasonable steps to seek to stop or change a transaction.

One example of clauses that a civil society organization was particularly concerned with were broad clauses deeming an account holder to have read and accepted all terms and conditions, regardless of the circumstances. Terms providing that a consumer is deemed to have made a statement or acknowledgment to their detriment are gray-listed as being presumed to be unfair by regulation 44 of the CPA Regulations unless a customer is given a suitable period to consider them and their attention has been drawn to what it means if they undertake conduct that indicates they agree to them. One Big Four bank's terms and conditions, for example, deem a customer to have accepted all terms and conditions by keeping or using a card, and this statement is found deep in those terms and conditions, without being given any prominence. Similarly, the terms and conditions state, later in the document and again without any particular prominence, that a customer is entitled to obtain the bank's fees information leaflet at a branch and that the customer confirms they have done so and have read and understood it. They also state that the customer has understood all of the risks, costs, rights, and obligations under their agreement. It is also notable that the CBP contains language that could be viewed as seeking to minimize corresponding obligations on banks in relation to ensuring clarity of terms and conditions. Paragraph 3.2 tells customers that "[a]ll products and services offered by us are governed by a set of general and specific Terms and Conditions. Although we will take all reasonable steps to advise and inform you of these Terms and Conditions, it is your responsibility to read and understand the Terms and Conditions."

Multiple banks' terms and conditions contain clauses giving them the right to determine evidentiary matters in the case of a dispute or deeming certain documents they provided to have evidentiary weight. For example, one Big Four bank's terms and conditions purport to give it the right to issue a binding evidentiary certificate regarding the customer's indebtedness to the bank—for example, possibly on overdrawing (which could restrict the customer from challenging the validity of such indebtedness, or at

least discourage them from doing so). Terms restricting evidence available to a consumer or increasing their burden of proof are gray-listed in regulation 44 of the CPA Regulations.

Clauses in some terms and conditions purport to provide consent from the customer to the bank without bringing such issues sufficiently to the customer's attention, including given the positioning and wording of such consents. Whether adequate consent is obtained will of course depend also on how such matters are brought to the customer's attention through other documentation and means, such as application forms. To the extent that reliance is being placed on terms and conditions to do so, however, they are likely to need improvement.

Fixed deposit terms and conditions can give banks potentially wide rights to charge break fees on early withdrawal. For example, one bank's terms and conditions specify a formula for calculating an "early-withdrawal penalty fee" in the event of early withdrawal of a fixed deposit. The formula includes a minimum amount to be paid and includes an acknowledgment by the customer that the fee constitutes a reasonable cancellation penalty. The terms and conditions then also provide that the bank reserves a right to charge a reasonable minimum fee. More detailed findings regarding such break fees or early-withdrawal penalties are discussed in more detail in section 4.3 below.

Other examples of potentially unfair terms relating to account and fixed deposit operation and closure—such as broad rights to make unilateral changes to terms and conditions and rights relating to some fees and charges—were also identified. These are also discussed further in section 4.3 below.

c) Recommendations

A regime prohibiting unfair terms similar to that set out in Part G of the CPA but appropriately tailored to financial product terms should be implemented through the COFI/FSR Laws to apply to transactional account and fixed deposit standard-form contracts. The regime should provide for enforcement by the FSCA and reliance by individual retail customers. The FSCA should issue up-front guidance on its expectations in this regard, which should include practical guidance focusing on the application of the regime to key aspects of financial products, such as unilateral rights of variation, exclusions of liability, or penalty fees. The regime should also highlight how the unfairness of particular terms will be determined, including having regard to matters such as appropriate balancing of risk allocation between banks and customers, and the nature of the product involved (including whether it is intended to be a product for more vulnerable customers). Institutions should then be expected to undertake (for example, during a transition period) substantive reviews and, where necessary, amendments of terms and conditions to ensure consistency with the regime.

NOTES

8. While different banks appear to define their target markets or market tiers somewhat differently internally, this is generally referring to accounts marketed to individuals with incomes at Living Standards Measure levels 1–5 and without availability depending on any minimum income requirements. The Living Standards Measure, developed by the South African Advertising Research Foundation, segments the population into 10 deciles based on individuals' relative means. Guidance Note GN 801 refers to these as "individuals who earn less than R5000 per month."
9. Competition Commission of South Africa 2008, 86.
10. Competition Commission of South Africa 2008, 87.
11. Solidarity Research Institute 2017, 7.
12. Fees and features are shown at the time of writing (August 2017). Not all fee types have been included in the table. The focus has been on fees that seemed more likely to be relevant to most customers' ordinary day-to-day use. The table uses certain language from each bank but with some adjustment to facilitate side-by-side-comparison.
13. Based on pricing information provided by ABSA in June 2017.
14. Based on information in the document titled "Easy Account: Pricing Guide 1 July 2017–30 June 2018," as accessed via website in August 2017.
15. Based on information in the document titled "Schedule of Fees: Nedbank Pay-As-You-Use-Account (Effective January 1, 2017)," as accessed via website in August 2017.
16. Based on information in the document titled "2017 Pricing Guide: Access Account," as accessed via website in August 2017.
17. Based on information in the document titled "Transact 2017 Fees (Effective 1 March 2017)" provided by Capitec in June 2017 and fee information as accessed via website in August 2017.
18. Based on fee information on Postbank's website as accessed in August 2017.
19. FinMark Trust 2016, 9–10.
20. Full details for comparison with other accounts, and a consideration of transaction fees including with regard to funding of funeral benefits, were not available for this report.
21. Mastercard International 2017.
22. FinMark Trust 2017.
23. Based on pricing information provided by ABSA in June 2017.
24. Based on information in the document titled "Easy Account: Pricing Guide 1 July 2017–30 June 2018," as accessed via website in August 2017.
25. Based on information in the document titled "Schedule of Fees: Nedbank Pay-As-You-Use-Account (Effective January 1, 2017)," as accessed via website in August 2017.
26. Based on information in the document titled "2017 Pricing Guide: Access Account," as accessed via website in August 2017.
27. Based on pricing information provided by ABSA in June 2017.
28. Based on information in the document titled "Easy Account: Pricing Guide 1 July 2017–30 June 2018," as accessed via website in August 2017.
29. Based on information in the document titled "Schedule of Fees: Nedbank Pay-As-You-Use-Account (Effective January 1, 2017)," as accessed via website in August 2017.
30. Based on information in the document titled "2017 Pricing Guide: Access Account," as accessed via website in August 2017.
31. Based on fee information for 2017 available on Postbank's website, as of June 2017.
32. Based on fee information for 2017 available on Capitec's website, as of June 2017.
33. Solidarity Research Institute 2017, 8.
34. Statistics South Africa 2017, 21.
35. Solidarity Research Institute 2017, 8.
36. Solidarity Research Institute 2017, 11.
37. Based on pricing information provided by ABSA in June 2017.
38. Based on information in the document titled "Schedule of Fees: Nedbank Pay-As-You-Use-Account (Effective January 1, 2017)," as accessed via website in August 2017.
39. Based on information in the document titled "2017 Pricing Guide: Access Account," as accessed via website in August 2017.
40. Based on information available on the websites of the banks (as of August 2017).
41. FNB Savings Accounts, www.fnb.co.za/invest/linked-savings-account.html (as of August 2017).
42. Financial Sector Charter Council, "The Measurement of the Access to Financial Services Element of Broad-Based Black Economic Empowerment as It Relates to Banks," 7.1.
43. Access-qualifying products are transactional products, savings products, and hybrid transactional and savings products that qualify for the purposes of banks meeting their product access targets under the FS Code.
44. Financial Sector Charter Council, "The Measurement of the Access," paragraph 9(e).
45. See, for example, Bester et al. 2016.
46. European Union, Directive No. 2014/92/EU, Article 16(1).

47. UK, Payment Accounts Regulations 2015, regulation 21.
48. FCA 2016.
49. European Union, Directive No. 2014/92/EU, Article 16(5).
50. European Union, Directive No. 2014/92/EU, Article 17(1).
51. European Union, Directive No. 2014/92/EU, Article 17(4).
52. European Union, Directive No. 2014/92/EU, Article 17(2).
53. UK, Payment Accounts Regulations 2015, regulations 19 and 20.
54. European Union, Directive No. 2014/92/EU, Article 18(1).
55. European Union, Directive No. 2014/92/EU, Article 17(5).
56. European Union, Directive No. 2014/92/EU, Article 17(6).
57. European Union, Directive No. 2014/92/EU, Article 18(3).
58. European Union, Directive No. 2014/92/EU, Article 18(4).
59. UK, Payment Accounts Regulations 2015, regulation 20.
60. Canada, Department of Finance, 2014a.
61. Canada, Department of Finance, 2014b, and Government of Canada 2018 (last updated February 15, 2018).
62. Reserve Bank of India 2012.
63. Although in the FAIS Legislation, the term financial services provider refers only to a provider of certain limited kinds of financial services (advice or intermediation), unless the context indicates otherwise, the term is used in this report to refer to providers of financial services more generally.
64. Resolution 3.517, 2008, subsequently replaced by Resolution 3.919, 2010.
65. FCA 2017a, 4 and 7.
66. Competition Commission of South Africa 2008, 28.
67. Competition Commission of South Africa 2008, 31.
68. The Banking Enquiry also noted that “[a]n added difficulty for the customer would be to factor in different interest rates, if any, on credit balances and their ultimate net effect on the likely real fee. We have not found it feasible to perform such an exercise.”
69. Competition Commission of South Africa 2008, 67–69.
70. Competition Commission of South Africa 2008, 63–64.
71. Competition Commission of South Africa 2008, 33–34.
72. Competition Commission of South Africa 2008, 51–52.
73. FinMark Trust 2016.
74. FinMark Trust 2016.
75. Solidarity Research Institute 2017, 11.
76. Fees and features are shown at the time of writing (August 2017). Not all fee types have been included in the table. The focus has been on fees that seemed more likely to be relevant to most customers’ ordinary day-to-day use, so, for example, overseas card transaction fees have not been included. The table is not intended to be an exact price comparison but to illustrate the complexity of each fee structure and the extent of the differences in their makeup. It uses primarily the descriptive language of each bank, with some amendment to facilitate side-by-side-comparison.
77. Based on pricing information provided by ABSA in June 2017.
78. Based on information in the document titled “Gold Account and Gold Credit Card: Pricing Guide 1 July 2017–30 June 2018,” as accessed via website in August 2017.
79. Based on information in the document titled “Schedule of Fees: Nedbank Savvy Plus Account (Effective January 1, 2017),” as accessed via website in August 2017.
80. Based on information in the document titled “2017 Pricing Guide: Elite Banking,” as accessed via website in August 2017.
81. Based on information in the document titled “Transact 2017 Fees (Effective 1 March 2017),” provided by Capitec in June 2017, and fee information as accessed via website in August 2017.
82. Solidarity Research Institute 2017, 5 and 20.
83. Solidarity Research Institute 2016, 10.
84. See Commonwealth of Australia 2017b.
85. Commonwealth of Australia 2017a, paragraph 1.10.
86. Commonwealth of Australia 2014.
87. See, for example, Commonwealth of Australia 2014, xv and xx.
88. Australian Government 2016, 7.
89. Commonwealth of Australia 2017b, paragraph 1.10.
90. Commonwealth of Australia 2014, 199.
91. Commonwealth of Australia 2017a, paragraphs 1.14 and 1.29.

- 92. See, for example, Commonwealth of Australia 2017a, paragraphs 1.66, 3.18 and 3.19.
- 93. EBA 2016.
- 94. EBA 2015, 70.
- 95. EBA 2016, paragraph 15.
- 96. EBA 2016, paragraph 8.
- 97. EBA 2015, 73.
- 98. EBA 2015, 73.
- 99. EBA 2015, 31.
- 100. See also the guidance issued by the FCA's predecessor: FSA 2007.
- 101. FCA 2017a.
- 102. FCA 2017a, 4.
- 103. FCA 2017a, 7–8.
- 104. As of August 2017.
- 105. Based on information available on the websites of the banks (as of August 2017).
- 106. Regulation 44.
- 107. The FAIS General Code and FAIS Short-Term Deposits Code.



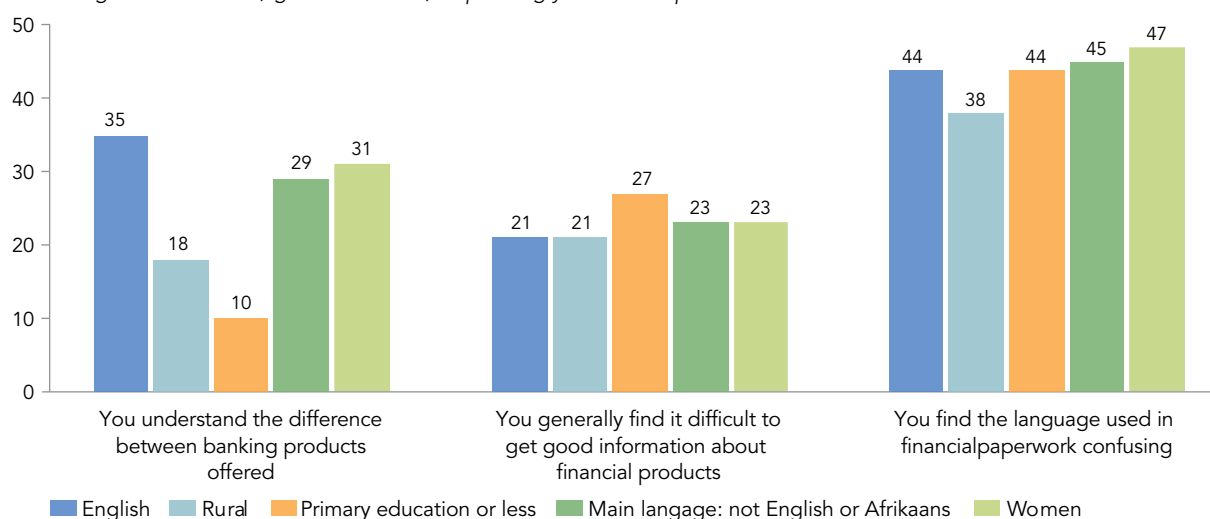
2

PRODUCT OFFER AND SALE

TCF Outcomes 3 and 4 recognize the importance of clear information and suitable advice in enabling customers to select appropriate financial products and services. TCF Outcome 3 sets the expectation that customers are to be given clear information and are to be kept appropriately informed before, during, and after the time of contracting. TCF Outcome 4 contemplates that, where customers receive advice, the advice must be suitable and must take account of their circumstances. These TCF Outcomes are consistent with the conclusions of the Banking Enquiry, including the finding that “the greatest obstacle faced by consumers in the search process lies in the difficulty of making meaningful comparison across the product offerings of the banks.”¹⁰⁸ This conclusion reflects both the long-standing complexity of product design and pricing in the South African market (as discussed in section 1 above) and the gaps in the existing disclosure regime.

Empirical data indicates that significant work remains to be done in achieving TCF Outcomes 3 and 4 (see figure 2.1). As of 2016, just 35 percent of adults indicate that they understand the differences between banking products offered. Among rural residents, the value falls to 18 percent. For individuals with a primary education or less, the value drops further, to 10 percent. Forty-four percent of individuals note that they at least sometimes find the language used in financial paperwork confusing. Finally, one in five South Africans reports finding it difficult to get good information about financial products.

A cross-cutting theme throughout this section is the interpretative uncertainties and gaps in the applicability of the FAIS Legislation to transactional accounts. The General Code of Conduct for Authorised Financial Services Providers and Representatives issued under the Financial Advisory and Intermediary Service Act 2002 (FAIS General Code) applies only to “financial services” as defined in the FAIS Act, which are confined to the provision of advice relating to a financial product as defined in the Act and to the rendering of an intermediary service in relation to a financial product. It does not apply to the actual issuing or provision of financial products more generally. In addition, the FAIS General Code applies to a financial service if it relates to a “financial product” as defined in the Act. While this

FIGURE 2.1: Consumer Understanding of Banking Providers and Products*Percentage of individuals (age 16 and older) responding yes to each question*

Source: FinMark Trust 2016.

is defined to include a deposit as defined in the Banks Act 1990 (Banks Act), in discussions, several banks expressed the view that legally this does not cover transactional accounts of themselves, although some noted that it may cover individual deposits made into such accounts. (For example, one bank made a distinction in terms of the application of the FAIS Act between a newly opened transactional account and the first deposit subsequently made into it.) The FAIS Ombud also expressed similar views. The FSB previously issued guidance that where a transactional account is in credit or has a positive balance (and any credit facility such as an overdraft is not in use or has been repaid), amounts received into the account will be seen as a deposit within the meaning of the FAIS Act, and any advice or intermediary services provided in terms of these products would be regulated by the FAIS Legislation. However, the FSB also noted for the purposes of this diagnostic that, where a transactional account is sold directly by the product supplier (the bank) without intermediation or the benefit of advice, there is an argument that the FAIS Act is not applicable to their conduct. The FSB explained that the bank or the product itself would then not be regulated by the FSB, but by the Registrar of Banks. This is a recognized regulatory gap to be addressed through consequential amendments to the FAIS Act (effected by the FSR Act) that will apply the FAIS Act to direct sales by any product supplier (including sales of deposits by a bank). Discussions of the FAIS Legislation in this section should therefore be considered in the context of such apparent differing views, particularly within industry—potentially affecting their compliance—but also potentially as between the regulator and recourse bodies (as well as existing acknowledged gaps in the legislation). For completeness, as noted above, the FAIS Short-Term Deposits Code applies to fixed deposits with a term of up to 12 months but also does not apply to transactional accounts.

This section discusses the offer and sale of transaction and fixed deposit accounts. Section 2.1 covers advertising and sales material; section 2.2 covers disclosure during the shopping, precontractual, and contractual stages; section part 2.3 covers advice and sales practices and incentives.

2.1: ADVERTISING AND SALES MATERIAL

a) Background

For many consumers, decisions about which financial products to purchase are significantly influenced by information conveyed in advertising and marketing material. Consumers who rely on misleading or incomplete advertisements can be more likely to select an unsuitable product. Even if they ultimately do not select a product as a result of such marketing (for example, because they receive clarification in a branch), they may nevertheless suffer inconvenience and lost opportunities by having been attracted to approach a particular bank based on an incorrect understanding. Consumers with little experience interacting with FSPs—including youth and previously unserved individuals—are particularly vulnerable. As noted in the Good Practices,¹⁰⁹ FSPs should be required to ensure not only that their advertising and sales materials do not contain misleading or false information but also that the materials do not omit information that is important to a consumer's decision-making process when considering the purchase of any of their financial products or services. FSPs should also be legally responsible for all statements made in advertising and sales materials, and consumers and the regulators should have adequate recourse for failures to meet applicable requirements.

Various legislation and codes in South Africa deal with the content and quality of advertising material.¹¹⁰ For example, section 14 of the FAIS General Code provides that “an advertisement by any provider must not contain any statement, promise, or forecast which is fraudulent, untrue or misleading” and specifies a range of requirements pertaining to performance data, forecasts, and direct marketing.

Section 10 of the FAIS Short-Term Deposits Code contains equivalent provisions applicable specifically to fixed deposits of up to 12 months. The CPA contemplates a “right to fair and responsible marketing” and specifies a number of requirements addressing general standards for marketing of goods and services, as well as specific rules on practices such as direct marketing, promotional competitions, and referral selling. However, as discussed earlier in the report, the CPA does not apply to advice and intermediation services, and since 2013 there seems to have been a lack of clarity regarding its application to transaction and fixed deposit account products more generally (for example, with the NCC indicating it took the view that it was no longer applicable). Recent legislative changes seem to make this clearer. The Code of Advertising Practice (Advertising Code) administered by the Advertising Standards Authority of South Africa (ASA) specifies general requirements for commercial advertising. Section III of the Advertising Code contains requirements specific to financial advertising, stating that advertisements addressed to the general public for financial products and services or financial information should take care to ensure that members of the public are fully aware of the nature of any commitment into which they may enter as a result of responding to the advertisement. Banks comply with the Advertising Code and the rulings of the ASA on a voluntary basis. Finally, paragraph 6.3.1 of the CBP notes that banks will “ensure that all advertising and promotional material is clear, fair, reasonable, and not misleading” and also address matters relating to direct marketing.

b) Findings

Banks use a wide range of channels and strategies to market transaction and fixed deposit account products. Channels used by banks include traditional marketing via newspapers, billboards, retail stores, television, radio, and branches, as well as more technology-driven approaches such as social media, SMS,

online video platforms, and so forth. Banks vary in the languages they use in their marketing. One bank reported using marketing materials in all languages, another reported using nine languages, while still another reported using “the language(s) most predominantly spoken in that region.” Some banks focus on brand-based marketing, while others focus more on product-specific marketing. Other banks use targeted campaigns to encourage switching, such as Capitec’s “Join Us” campaign.

The ASA has upheld more than 60 complaints of misleading, dishonest, or false advertising made against banks since 2001. An analysis of the ASA complaints database reveals more than 100 complaints against banks for misleading, dishonest, or false advertising since 2001. (See table 2.1.) Approximately 58 percent of these complaints were upheld against the bank or resulted in voluntary action by the bank. The complaints cover a range of products and services, including those related to transaction and fixed deposit accounts (which make up approximately 20 percent of the total). Over 80 percent of complaints were made by consumers, with the remainder submitted by competitors or other industry stakeholders.

Of the ASA complaints relevant to transaction and/or fixed deposit accounts, most relate to misleading claims about product features, pricing, and availability. In one instance, the ASA upheld a 2010 consumer complaint concerning a bank’s marketing statement that ATM cash deposits were free, although in reality many of the bank’s ATMs charged 0.65 percent of the deposited funds at the time. The ASA also upheld a 2011 consumer complaint that a bank had omitted references to the customer’s liability for a “lost-card administration fee” in its marketing (which instead suggested that such fees were covered in the monthly fee). In another instance, the ASA upheld a 2012 consumer complaint that the marketing for a fixed deposit account had been misleading in stating that a customer can withdraw up to 30 percent of the invested amount at one time; in reality, the limit was 15 percent.

Several banks describe certain accounts or product features as “unlimited” without clearly specifying that per-transaction charges can be incurred. A review of bank marketing materials for transaction and fixed deposit accounts reveals that some banks use the words unlimited and free to describe features that would in fact incur per-transaction charges. One bank has marketed an “Unlimited Pricing Option” on several of its accounts even though many product features of these accounts (for example, other bank’s ATM withdrawals) come with per-transaction charges. The marketing notes several features that are “qualifying transactions” for the “unlimited” account option, but the overall description of the account option as “unlimited pricing” is potentially misleading. Another bank describes an account as allowing “free,

TABLE 2.1: Complaints against Banks for Misleading, Dishonest, or False Advertising, 2001–17

	TOTAL COMPLAINTS	COMPLAINTS RESULTING IN VOLUNTARY ACTION	COMPLAINTS UPHELD AGAINST BANK (FULLY OR PARTIALLY)	COMPLAINTS DISMISSED IN FAVOR OF BANK ¹¹¹
ABSA	23	10	7	6
Capitec	4	1	2	1
FNB	34	9	12	13
Nedbank	22	6	3	13
Standard bank	29	10	7	12

Source: Advertising Standards Authority of South Africa.

unlimited transactions, including purchases, debit orders, electronic account payments and electronic inter-account transfers” despite the fact that debit orders, electronic account payments, and interaccount transfers incur charges (at R16, R5.50, and R4 per transaction, respectively) under the “pay as you transact bundle.” The statement is given greater prominence on the relevant website page than information that refers to a pay-as-you-transact variation, requiring the customer to be alert to the variation.

Several banks use the word *free* to describe features that are paid for via a monthly management fee under a bundle package. For example, under one Big Four bank’s bundle, consumers are offered “2 free ATM deposits,” “2 free . . . withdrawals” from its own ATMs and “2 free” funds transfer transactions, but the monthly fee for the account is R59. Under another Big Four bank’s account, which has an R100 monthly fee, customers are offered four free withdrawals per month from its own ATMs and free SMS banking. Account products are sometimes bundled with other financial products—such as funeral insurance—that are purported to be “free” (and with potential lack of clarity regarding their interaction with the account product). For example, it is understood that SASSA account holders were sought to be incentivized to take up a full-featured account by the offer of “free” funeral insurance, although the cost of the insurance was in fact built into the account transaction fees (and it has been suggested that continued coverage may have been dependent on continued use of the account). As the Banking Enquiry noted, “A service which appears free may convey misleading information to the consumer about the true cost of the service.” Terms such as *free* can exploit consumer biases and lead to a misunderstanding of the price structure of certain products, particularly those that are part of a bundle. Further, as discussed in section 1.2 above, it may actually be the case that a customer does not make full use of the transactions bundled into a single fee, and the account represents poorer value for the customer.

Misleading product comparisons in bank marketing appear to be relatively uncommon but do occur in the market. In one 2012 case, one Big Four bank lodged a complaint with the ASA against another Big Four bank claiming that it was the only bank that offered certain features, including free online and mobile banking. The latter lodged a countercomplaint against the advertising materials of the former with respect to its offer of free online and mobile banking. The ASA ruled that both banks had employed misleading advertising. Banks also appear to undertake more subtle product or brand comparisons in their marketing (for example, by using the color scheme associated with a competitor bank). Some industry participants observed that restrictions on comparative marketing appear to have been relaxed in recent years.

The ASA’s enforcement of the Advertising Code is reactive, and the ASA itself faces considerable organizational challenges. The ASA described itself as an “entirely reactive organization” that relies on complaints lodged by consumers or other banks.¹¹² The ASA is also confronting a series of organizational challenges that may limit its capacity. While the NCC has broad powers to enforce the fair and responsible marketing provisions of the CPA, as discussed, since 2013 there seems to have been uncertainty regarding the application of the CPA to (and the NCC’s jurisdiction over) banks.

c) Recommendations

The COFI/FSR Laws should explicitly address advertising and marketing practices for all financial products (including transactional accounts), building on the relevant provisions in the FAIS Legislation and addressing any potential gaps as to their coverage as noted above. The COFI/FSR Laws

should set minimum disclosure standards for all advertising and marketing materials and reflect and build on relevant provisions in the FAIS Legislation and the CPA dealing with matters such as direct marketing, comparative advertising, and other marketing approaches that can adversely affect retail customers for transactional accounts and fixed deposits. There should be clear liability and responsibility for product providers' statements made in advertising and sales materials. Content requirements should also be prescribed to address potential gaps in the awareness of retail customers. These should include, for example, details of the regulator (the FSCA) that will supervise compliance with requirements relating to transaction and fixed deposit accounts. It should also include language advising retail customers to consider the required disclosure documents for the relevant transactional account or fixed deposit product before deciding whether to acquire it.

The supervisory activities undertaken by the FSCA pursuant to the COFI/FSR Laws should address the use of potentially misleading terms or other marketing techniques. Terms such as *free*, *unlimited*, and *zero costs* should be restricted in cases where the product or feature in question comes at direct or indirect cost to the consumer. The FSCA should issue regulatory guidance that lays down clear parameters as to how the obligations under the COFI/FSR Laws are expected to be complied with in practice, including in an electronic environment. (See box 2.1.) Following some initial monitoring of compliance with such guidance, the FSCA (and the National Treasury) should then consider whether restrictions should be mandated by way of regulations.

BOX 2.1

International Examples of Rules and Guidance on Marketing of Financial Products

Several jurisdictions have put in place restrictions on the use of potentially misleading terms in marketing materials for financial products and services. Under section 7 of Malaysia's Financial Services Act 2013, FSPs are prohibited from engaging in conduct that is deemed to be inherently unfair to consumers, including "describing a financial service or product as 'free' or 'at no cost' when there are charges or conditions imposed during the term of the account or contract."

Regulations under the Truth in Savings Act in the United States prohibits advertisements from referring to or describing an account as "free" or "no cost" (or similar term) if any maintenance or activity fee may be imposed on the account [section 1030.8]. According to the Official Staff Commentary, these charges include (i) monthly services fees; (ii) transaction and service fees that consumers reasonably expect to be imposed on a regular basis; (iii) fees imposed to deposit, withdraw, or transfer funds; (iv) fees for exceeding transaction limitations; and (v) fees for failing to maintain a minimum balance.

More broadly, ASIC released its *Advertising Financial Products and Services (Including Credit): Good Practice Guidance* (Regulatory Guide 234) in 2012. The objective of the guidance is to help FSPs comply with their legal obligations not to make false or misleading statements or engage in misleading or deceptive conduct. The document covers a range of issues, including guidance related to advertising fees and costs, past performance and forecasts, and consistency with disclosure documents, as well as media-specific guidance (for example, Internet advertising).

Sources: Bank Negara Malaysia 2014 and ASIC 2012b.

2.2: PRODUCT DISCLOSURE

a) Background

TCF Outcome 3 reflects an expectation that retail customers are to be given clear information and kept appropriately informed before, during, and after the time of contracting. As a consumer shops for a financial product, the manner and format in which information about that product is provided (as well as its content) can have a significant impact on whether he or she fully understands the product, can effectively compare it with similar products, and ultimately purchases a suitable product. Consumers have a limited time and capacity to make effective decisions about which financial products to use and how to use them. It is therefore critical that efforts be made to ensure that information is conveyed in a clear, concise, comparable, and accurate manner that is useful to the consumer. Financial consumers who do not receive complete information and/or do not understand the features and pricing structure of a product they are considering are unlikely to be able to compare similar products or make an informed purchase decision. Empirical evidence from a recent large-scale study in Mexico, Peru, and Ghana confirms that FSPs typically offer incomplete pricing information to potential customers for transactional accounts and rarely offer customers the cheapest product.¹¹³

The FSB's 2011 document *Treating Customers Fairly: The Roadmap* (TCF Roadmap) states that, over the product life cycle, this outcome requires that FSPs provide clear and fair information to enable customers to make informed decisions. Further, product risks, commitments, limitations, and charges must be transparent. For bundled products, in particular, disclosure must enable customers to understand the different components of the bundle.

Effective disclosure can also improve market competition. In theory, comparison shopping enabled by effective disclosure can exert downward pressure on prices and improve the quality of products offered. By leveling the playing field and reducing information asymmetries between providers and consumers, effective disclosure means that FSPs are less able to compete on "obfuscation" and must instead compete on price and product quality.

The effectiveness of disclosure of a financial product is closely linked to the design of the product itself. If a product has been designed to be complex, clearly disclosing the terms, conditions, and pricing structure of the product will be difficult. Indeed, the Banking Enquiry found that "there is no uniformity in the manner in which the packaged offerings are structured and priced. It is therefore impossible to make direct price comparisons between the offerings without having to input detailed information about the transactional behavior of the prospective customer and then perform fairly lengthy calculations based on the different pricing formulas of the banks."¹¹⁴ The role of product design in facilitating customer comprehension and comparison shopping is discussed in section 1.2 above. As discussed, pricing structures for transactional accounts in South Africa, particularly as offered by the Big Four, remain complex.

The format and manner of disclosure of financial products has received considerable international attention by financial sector authorities and regulatory stakeholders in recent years, and several areas of consensus have emerged. As discussed in the Good Practices,¹¹⁵ the aim should be for disclosures by an FSP to an existing or potential customer to be objective, in plain and understandable terms,

not misleading, and executed in at least the language that is prevalent in the geographic area in question. Disclosures should give prominence to key features, and written disclosures should use a font size, spacing, and placement of content that makes the communication easy to read for the average person. A country's regulatory framework for financial consumer protection should establish the timing of key disclosures to the consumer, particularly during the sales or shopping and the pre-contract formation periods.

The Banking Enquiry highlighted the implications of unclear and inconsistent information on the ability of consumers to compare and make informed decisions about accounts. It noted the following:

[T]here are considerable information asymmetries in the market for PTAs [personal transactional accounts] and related services which tend to benefit the banks but are detrimental to consumers. These asymmetries arise not only from the complexity already described, but also from inadequate transparency and disclosure in respect of the features and pricing of transactional banking products. Further, each bank uses its own terminology and nomenclature to describe its products and related product features and fees. This makes it very difficult for consumers to understand and assess the different offerings of the banks.¹¹⁶

As a customer enters the contractual stage, he or she is often at a significant disadvantage in understanding the legal terms and conditions in the customer agreement. Unless terms and conditions are drafted in a plain, nonlegalistic manner, there is a high likelihood that retail customers who lack legal or financial sector experience will not fully comprehend product contracts. A lack of clear disclosure and customer comprehension of product terms and conditions increases the likelihood that the customer will not make an informed purchase decision and may not purchase a product suitable to his or her needs. It can also result in customers incurring unforeseen fees and charges, as well as in increased complaints and/or disputes with the bank throughout the life of the product.

Even comprehensive terms and conditions written concisely and in plain language can be daunting for consumers with limited education or literacy. Thus, in order to ensure that customers truly understand the terms and conditions in a contract, oral communication is often most effective. Therefore, in such circumstances, it could be appropriate or necessary to require providers to take reasonable steps to explain key terms and conditions orally to a consumer exhibiting particular vulnerability prior to entering into the agreement. (This could be assisted by the provision of a summary document or key facts statement (KFS), as discussed further below, with the obligation being to explain key aspects as set out in that statement.)

Various efforts have been undertaken to improve disclosure in South Africa's financial sector in recent years. Parts II and VI of the FAIS General Code enumerate a range of requirements relating to information provided by FSPs about financial services. These provisions require FSPs to "make full and frank disclosure of any information that would reasonably be expected to enable the customer to make an informed decision." The provisions also specify a range of more specific obligations, including that a provider must furnish information to consumers that is factually correct, provided in plain language, provided in a timely manner, and in clear and readable print size, spacing, and format. However, as noted above, there appear to be interpretative uncertainties, particularly within industry, and coverage gaps, in relation to the FAIS Act's application to transactional accounts. Section 7 of the FAIS Short-Term Deposits Code requires providers of deposits with a term up to 12 months (Short-Term Deposits) to provide consumers, at the earliest possible opportunity, with "full and appropriate information" about a range of specified matters, including

key features, operation of the account, applicable fees and charges, and the manner in which funds may be dealt with at maturity. Current provisions do not mandate a particular format for such disclosure, although section 6 mandates that information must be in plain language, avoid uncertainty or confusion, and not be misleading. Section 6 of the CBP also covers disclosure, albeit only provided on request, noting that “we will provide you or a potential customer, when requested, with information concerning our banking products and services, including clear and appropriate information on the different types of products and accounts available from us and key features, to assist you to make an informed choice appropriate to your needs.”

b) Findings

Finding accessible and clear product information on transaction and fixed deposit accounts remains a significant challenge for financial consumers in South Africa. Many South African consumers report that they actively comparison shop when purchasing a financial product or service. Approximately 44 percent of banked individuals report that they get alternative quotes from other providers at least sometimes before buying a financial product or service.¹¹⁷ It is not clear whether such shopping around relates to transactional accounts or fixed deposits. Even if this is the case, according to this figure a majority of consumers would still not tend to shop around. Finding clear, concise, and comparable information on transaction and fixed deposit accounts is not a straightforward exercise for consumers, and difficulties in doing so may be one reason why more consumers do not undertake comparison shopping. Approximately one in five South Africans reports that they find it difficult to get good information on financial products.¹¹⁸ Some banks have various product brochures available in their branches, others rely on their staff to orally convey this information to consumers or potential customers, and others refer their customers to information available on their websites. (Internet-based disclosure has limited reach; only around 40 percent of South Africans access the Internet.)¹¹⁹ The result is an ad hoc process for customers, potentially resulting in them receiving incomplete information.

The existing legal and regulatory framework for disclosure relating to transactional accounts and fixed deposits is fragmented and limited. The FAIS Legislation addresses disclosure to some degree, but, as noted above, banks’ views regarding its application to transactional accounts is inconsistent across banks. Further, and crucially, the FAIS Legislation’s provisions do not go far enough to enumerate the specific content, format, and timing of disclosures that should be provided to assist retail customers in considering and comparing transaction or fixed deposit accounts.

At the shopping stage, most banks use income-based metrics to guide consumers toward certain products, thus limiting the range of information available to them. Discussions with banks as well as anecdotal evidence from an informal mystery shopping exercise reveal that customers are often not provided with information on the full suite of accounts and are quickly guided toward one or two specific accounts based largely on their reported income level. The onus is on the customer to ask for information on transactional accounts that may have simpler or more suitable features or (particularly given the product complexity discussed in section 1.2 above) that would come with a less expensive fee structure or overall cost based on transactional behavior. Evidence suggests that ordinary customers do not tend to ask and remain unaware of product alternatives that may be more suitable to their needs.

Once a potential customer has found information regarding transaction or fixed deposit accounts from various banks, he or she is likely to find that the content of disclosed information regarding the product features, fee structures, and terms and conditions varies significantly, rendering accurate product comparisons very difficult. Given that the FAIS Legislation is inconsistently applied to transactional accounts across banks, and also given the generality of the requirements that it contains, there are limited to no regulatory requirements for banks to provide customers with specific types of information (for example, fees, penalties, product features) regarding transactional account products.¹²⁰ The result seems to be wide variation in the scope and detail of product disclosure, and limited customer understanding of product terms and conditions. A review of sample product information materials from various banks suggests that key pricing and product feature details are often not clearly or consistently disclosed. Many details are enumerated in complex pricing tables that are not prominently featured in brochures, branches, or websites.

Variation in formats and tools used by bank staff to disclose product features, fee structures, and terms and conditions further compounds the difficulty faced by customers in comparison shopping. There are no regulatory requirements for financial institutions to use a document with a standardized format (for example, a KFS or key information document) for transaction or fixed deposit account products. As a result, banks employ a wide range of formats and tools to communicate key product information to customers. A South African consumer shopping for a transactional account would encounter wide variation in the availability, format, and content of information about potential products from the main providers in the market. At the shopping stage, for example, this consumer would not receive any sort of standard or comparable product information from a set of potential providers. At one bank, the potential customer may be offered a detailed product brochure; at another bank, a sales representative may offer the potential customer information verbally on a subset of transactional accounts deemed suitable for the customer; while at another bank, the potential customer may simply be directed to the bank's website. The effect is that customers wishing to compare products across banks have no standardized tools with which to do so.

Efforts to provide fee calculators to help customers compare products have largely been ineffective. The Banking Enquiry recommended the establishment of a centralized banking-fee calculator service. In response to this recommendation, it is understood that the National Treasury and industry agreed that, instead of a centralized fee calculator, each bank would have its own fee calculator accessible by more than 90 percent of customers. It was identified that some banks had put in place individual fee calculators on their websites and also that fee calculators had been set up by independent providers, such as Think-Money and JustMoney. There currently do not appear to be any further efforts planned by the authorities in this regard. However, a review of existing online calculators revealed the following:

- No online calculator for transactional account fees was observed on the websites of multiple Big Four banks. In one case, a hyperlink to an "Internet pricing calculator" led to a page with a list of tools and calculators, none of which contains or leads to an actual calculator for account fees.
- Not all calculators provide a breakdown of the drivers of the total monthly account costs (only the total cost), limiting customers' ability to understand how their behavior drives their monthly charges.

- The fee calculator on the ThinkMoney website is not readily available or linked to on its homepage but is available if sought out via a search browser. However, the calculator returned error messages on several attempts at the time of writing with a variety of usage scenarios. The ThinkMoney site also requires membership to view certain pages, including “South Africa’s Cheapest Bank Accounts.” Finally, the site appears to give prominent positioning to accounts or banks that have an option to apply for the account online, while further clicking is required to see the full suite of accounts or banks.
- While the JustMoney website does facilitate side-by-side comparisons of transactional account features and fees, there is no comprehensive fee calculator.
- The clearest publicly available price comparison appears to be Solidarity’s annual report, which compares features and prices of transactional accounts of the largest five banks, using a set of customer profiles. However, the report appears to be directed primarily toward industry stakeholders and analysts, rather than directly toward consumers, and there do not appear to be any significant efforts to promote its findings among consumers (including by doing so through channels and communications means that could be understood easily by consumers) other than as may be reported by media outlets. In addition, as discussed in section 1.1 above, the comparisons in Solidarity’s report are static and based on particular usage patterns and so would not assist a customer who did not fit within such a pattern.

It is therefore difficult to conclude that the Banking Enquiry’s recommendation in this regard has been implemented effectively.

The CBP promotes the alignment and standardization of product terminology. Section 13 of the CBP states that “your bank will use a number of standard terms in order to assist you in comparing the prices of the core features of Transaction Accounts. . . . All product and pricing documentation in relation to Transaction Accounts will use the standard terminology below.” The section lists 20 terms with associated definitions, including, for example, *service fee*, *debit order fee*, *cash deposit fee*, and *card transaction fee*.

In practice, however, the CBP approach seems to have been implemented inconsistently. A review of product brochures and standard customer agreements suggests an inconsistent implementation of the CBP approach. To take one example, the CBP list of standardized terminology includes *unpaid debit order fee*, but one bank refers to this fee as “dishonoured payment due to insufficient funds” and another bank refers to it as “rejected/disputed debit order.” The CBP also defines a *service fee* to refer to routine servicing of an account, but banks appear to use the terms *account maintenance fee* or *monthly fee* to describe a similar charge. The CBP stipulates that “[w]here other terms are used for the same type of transactions your bank will create an effective link back to the standard terminology, to enable customers to compare products and pricing effectively.” While some banks have made such efforts, the effect is a confusing chain of references that does not benefit customers’ understanding of key fees and charges.

The CBP list of standard terminology does not cover many common fees and charges. While the CBP defines approximately 20 terms, most pricing tables contain significantly more than 20 fee categories. One pricing table for an access-type account contains 49 enumerated fees and charges. Customers would therefore seem to remain at a distinct disadvantage when attempting to compare product features and costs due to variation in terminology.

The lack of standardization and clarity on product terminology is particularly acute with respect to how banks calculate and describe interest rates on fixed deposit products. Existing requirements do not specify the manner in which banks should describe interest rates on fixed deposit products and their application. The CBP list of standardized terminology also does not cover interest-bearing accounts. As a result, a consumer shopping for a fixed deposit account would observe a wide range of terminology used to describe interest rates, ranging from simply “%” to “interest rate (%)” to “% per annum” to “nominal rates” to “% on an annual gross P.A. (AER) basis” to “% on a monthly gross PA basis.” While the most common representation of the interest rate on a fixed deposit account is “% per annum,” there is typically little additional information on how the rate is calculated (for example, whether it compounds) or whether it includes or accounts for any fees or taxes.

There is wide variation in the disclosure of key terms and conditions and rights in agreements between banks and customers, particularly in relation to transactional accounts. While, as noted above, the FAIS Legislation mandates some content requirements, there are differing industry views as to its application to transactional accounts, and the legislation generally does not mandate format of disclosure, such as with regard to prominence. There are no specific requirements regarding minimum disclosure of key terms and conditions in contracts between banks and customers, particularly in relation to transactional accounts. (The FAIS General Code contains some general requirements.) For example, not all of the customer agreements for access-type products specify the definition and consequences of dormant or inactive accounts. Several banks do not seem to provide prominent contact information for relevant alternative dispute-resolution mechanisms (that is, the OBS and FAIS Ombud). Further, while several banks usefully define key terms on the first page of the customer agreement, there is significant variation in scope, application, and definition of key terms, making it difficult for consumers to understand differences between customer agreements from potential providers.

While there have been efforts by some banks to simplify the language of their terms and conditions, wording of such documents frequently remains dense and filled with legal terms. One bank’s general terms and conditions, while only three pages long, contain 1,961 words on a single page. Another bank’s product agreement for an access-type account had 2,615 words on a single page. Such documents would not, for example, be aligned with the expectations in the FAIS General Code (if it were to apply) that “[information] provided in writing or by means of standard forms or format, [must] be in clear and readable print size, spacing, and format.” The language used is frequently legalistic in terms of concepts and style, and several customer agreements reviewed include very specific technical legal terms that a bank could not reasonably expect a typical consumer to understand, such as *severally liable* (tellingly, one bank included an explanation of this concept, while another did not) and *co-principal debtor*. (See also the discussion in section 1.4 above regarding the inclusion of various potentially unfair terms at times using legalistic drafting.)

Banks do not seem to consistently provide customers with a printed or electronic copy of the product terms and conditions before the customer enters into a contract. Paragraph 6.5.1 of the CBP provides that “our Terms and Conditions are provided at the time of, or before, a contract for an ongoing banking service is concluded, except where it is impracticable to do so, in which case they will be provided as soon as practicable afterwards.” It is not clear what circumstances would be envisaged as making it impracticable

to provide the terms and conditions before contract formation or, legally, whether and how it may be envisaged that a valid contract would nevertheless be formed ahead of such provision. The significant practical risk is that a customer who is not provided with a copy of the customer agreement prior to entering into the contract may be even less likely to read (much less understand) the product terms and conditions prior to acquiring their product.

There are no consistent requirements for banks to explain transactional account terms and conditions verbally to the customer, particularly in circumstances of vulnerability. While some banks do so (for example, depending on their view regarding the application of the FAIS General Code), in practice many such efforts appear to take place after the contract is purportedly completed. While many banks emphasized efforts taken to ensure customer understanding of key product features and terms and conditions, several also noted that efforts to change the culture and practices of frontline staff have been slower than expected. Several banks also emphasized post-sale communication practices to ensure that the customer understands the product features, price structure, and terms and conditions. One bank with such an approach noted that the in-branch customer-acquisition process focuses on main features and benefits, while the post-contract follow-up call focuses on “the more detailed or complicated features and benefits.” However, deferring explanation of product features until after the contract has been finalized does not aid the customer to make an informed initial purchase decision.

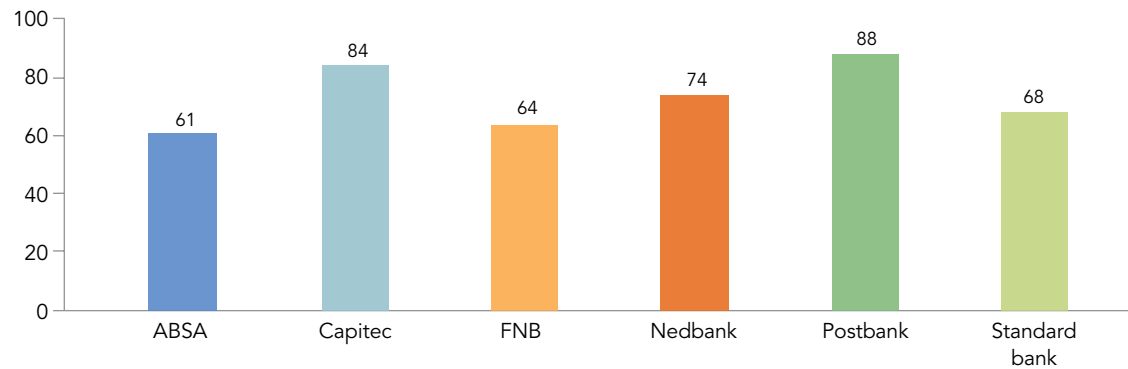
Even after signing a contract, some banks require customers to opt in to receive a physical copy of the contract. Two banks report that customers receive electronic versions of their contract but can request paper versions. While this may be sensible where a customer has elected up front to take up an account electronically, it is not necessarily conducive to awareness of terms and conditions where they are taking up a product through a branch, or one that is not generally confined to electronic transacting.

Most customer-facing product documentation for transactional and fixed deposit accounts is available only in English and Afrikaans. Discussions and a review of language policies reveal that key customer-facing documentation for transactional and fixed deposit accounts such as customer agreements and product brochures are typically available only in English and Afrikaans. One bank’s language policy states that it currently provides customer-facing documentation in English and Afrikaans. Three banks’ language policies note that the following transactional and communication channels will be available in English and/or Afrikaans only: website, banking app, mobile banking, and SMS updates. Two banks note that ATM communications will be in English only. Several banks note that translations can be provided on request for certain other languages, though it is not clear the degree to which customers are aware that such a service may be requested or the timeliness of such translations.

The vast majority of individuals do not speak English or Afrikaans as their main language at home; this mismatch has implications for consumers’ understanding of the features and pricing of transactional and fixed deposit accounts. According to the 2016 FinScope Survey, 77 percent of adults speak a language other than English or Afrikaans as their main language at home; the same is true for more than 60 percent of customers at each of the Big Four banks, as well as Capitec and PostBank. (See figure 2.2.) According to the 2016 FinScope Survey, individuals that speak a language other than English or Afrikaans as their main language at home are six percentage points less likely to report that they understand the

FIGURE 2.2: Prevalence of Languages Spoken at Home Other Than English or Afrikaans

Percentage of individuals (age 16 or older) that report their main language spoken at home is not English or Afrikaans, by bank at which they receive their salary, wage, grant, income, or other sources of money



Source: FinMark Trust 2016.

difference between banking products offered. From a strict legal perspective, it is also important for both parties to a contract to have sufficient understanding of what it is that they are agreeing to in order to validly form that contract. A significant or complete lack of understanding by a customer of the applicable language could hamper that result. Further, transparency of contractual terms can also affect their fairness under a regime, as contemplated in Part G of the CPA and discussed in section 1.4 above.

Legislative efforts to expand the use of local languages for key customer-facing documentation seem to have had limited impact in expanding language-related accessibility. For example, section 63 of the National Credit Act provides that “a consumer has a right to receive any document that is required in terms of this Act in an official language that the consumer reads or understands, to the extent that it is reasonable” and requires credit providers to “make a submission to the National Credit Regulator proposing to make such documents available in at least two official languages.” Several banks have opted to use English and Afrikaans. Some banks do make some customer-facing documentation available in languages other than English and Afrikaans, though in a limited fashion. For example, one bank’s language policy lists three documents that will “available, in a simplified form, in English, Afrikaans, Sotho, Xhosa and Zulu for information purposes only”; there are three listed documents, all of which concern credit products. Section 22 of the CPA also speaks to the provision of information in an appropriate language. (The Use of Official Languages Act 2012 provides requirements to promote use of South Africa’s 11 official languages in the public sector.)¹²¹

The limited use of local languages in customer-facing documentation and transactional channels seems to be in contrast to the common use of local languages in advertising and marketing. While most banks report using only English or Afrikaans for customer-facing documentation and transactional channels, the same banks generally report undertaking advertising and marketing in a much wider range of languages. The same bank that states that it currently provides customer-interfacing documentation in English and Afrikaans also notes that its marketing campaigns and promotions, and the related communication elements, targeted at specific regions within the country are conducted in the language most predominantly spoken in that region. While some limitations do exist with respect to translating

legal terminology, the gap observed between communications meant to sell products versus those meant to disclose key product features and pricing suggests that regulatory interventions may be required to ensure consumers are receiving information in a language that enables them to select and use suitable products.

Some banks point to the CBP as a successful mechanism to encourage better disclosure, but it is not clear that, as currently drafted, the CBP is adequate in this regard and, if read strictly, can place a disproportionate onus on the customer. First, in several cases, the CBP places the onus on the customer to request critical product information. For example, paragraph 6.5.2 notes that “we will provide you or a potential customer, when requested, with information concerning our banking products and services, including: clear and appropriate information on the different types of products and accounts available from us and their key features, to assist you to make an informed choice appropriate to your needs.” It is notable that the CBP requires banks to provide such information only “when requested” by the customer. Finally, paragraph 7.1 notes several rights and obligations that the bank will communicate to the customer “before or at the time you open an account.” However, the list does not include a full description of all product features and fees and is vague on when the customer will be informed of this information. Overall, there is a significant need to revise and strengthen the CBP’s approach to disclosure. Even if the banks do not limit themselves strictly to the wording of these clauses, they are nevertheless suggestive of a conservative, less proactive attitude by industry to effective retail customer disclosure than should ideally be the case.

Efforts to generate awareness of the CBP could be improved. In the course of an informal mystery shopping exercise, no references to the CBP were observed in bank branch premises (whether in terms of posters, CBP-specific brochures, and so forth). Several banks do include a reference to the CBP in their customer agreements. Of the Big Four banks, the complete CPB was located on the “legal” or “regulatory” pages of the websites of three banks, while a summary was found on the website of another. No information on the CPB could be found on the website of some other banks. Several banks confirmed that they do not actively undertake any efforts to promote awareness of the CPB to customers.

c) Recommendations

The COFI/FSR Laws should establish a comprehensive disclosure regime for transactional accounts and fixed deposits that covers key features, terms, pricing, and rights and recourse for transaction and fixed account deposit products. The disclosure regime should provide clear and sufficiently detailed rules to allow for consistent application and comparability across providers. As further detailed below, the disclosure regime should enumerate what, how, and when banks must disclose information to potential or existing consumers, including in precontractual product documentation and in the product terms and conditions provided to retail customers. In particular, the disclosure regime should include specific requirements for elements where lack of standardization could hamper the purpose of mandated disclosure in the first place—for example, for presenting interest rates and fees amounts and formulas and, for fixed deposits, interest calculations on early withdrawal. Clear and sufficiently detailed disclosure rules will facilitate provider compliance as well as the ability of regulators to monitor and enforce compliance. A key element of this regime should be standardized short-form disclosure documents, which are discussed separately in

more detail. Efforts should also be made to follow an activity-based approach that aligns disclosure requirements across similar products offered by various types of FSPs (that is, including nonbanks where relevant) and assists with understanding and comparability of product variations (for example, accounts that have only a transactional focus versus accounts that also provide savings incentives).

The COFI/FSR Laws should clearly enumerate the product features and pricing elements of a transactional account and fixed deposit that should be disclosed during the shopping and pre-contractual or contract-formation stages. For transactional accounts, aspects covered by such disclosure should include, for example, (i) account opening fees and minimum balances; (ii) account maintenance fees (typically monthly fees); (iii) key transaction fees and types and amounts of transactions allowed at no charge, if any; (iv) any limitations on the account functionality and associated charges; (v) the ability to access information such as checking balances; (vi) whether overdrawing (particularly informal arrangements not already regulated) is allowed and the resultant costs; (vii) fees for dishonors/rejections due to lack of funds; (viii) prior to contract formation particularly, a clear summary of responsibilities for the consumer to keep certain information confidential (for example, the PIN) and also rights and procedures in the event of errors or unauthorized transactions; (ix) procedures to countermand or stop a payment; (x) procedures and associated charges for a consumer to close or switch an account; and (xi) what constitutes an inactive account and associated consequences. For a fixed deposit, features should include (i) the annual rate of interest using a standard methodology for calculation and description; (ii) the methodology used for calculating the annual rate of interest; (iii) the effect of fees on the earnings of the account; (iv) the dates on which the investment period for the specified product begins and ends, and the date when interest is paid; (v) the minimum balance to obtain the annual rate of interest and the minimum deposit required to open the account; (vi) the terms of early withdrawal and associated penalties; and (vii) the conditions under which a new deposit may be issued (that is, the existing deposit “rolled over”) without a further agreement after the current deposit matures. It should also be considered what additional mandated disclosure elements will be necessary to ensure that other potential key features and variations are covered in a clear and comparable form (for example, the operation of multiple permitted deposits and partial withdrawals). While the report does not consider other products, in developing relevant requirements, consideration may also be given to whether and how disclosure requirements could be appropriately aligned with those that are to apply to any other bank and nonbank potential product alternatives, to assist comparability across competing product options.

Product terms and conditions should disclose in clear, accessible language key contractual matters and related rights. These include (i) the rights and responsibilities of the consumer, including the conditions that may lead to termination of the agreement; (ii) the rights and responsibilities of the FSP; (iii) all interest rates, costs, fees, and charges (including from third parties) that flow or may flow from the agreement, when they can be applied, and how they are calculated; (iv) how and when the terms and conditions may be altered unilaterally by the FSP; (v) if, when, and how the consumer will be warned about alterations to the agreement; (vi) the penalties and any other remedies the FSP may seek to impose in the event of a perceived breach of agreement by the consumer; (vii) the regulatory status of the FSP; (viii) the contact information for the provider’s customer service; and (ix) how disputes with the FSP can be resolved and the contact information of the internal and external third-party complaints-handling mechanisms. (Substantively, such terms and conditions should also be drafted consistently with restrictions on unfair terms as discussed in 1.4 above.)

The COFI/FSR Laws should also establish key parameters for the manner in which information on transactional accounts and fixed deposits is disclosed. Building on the FAIS General Code, and in line with international good practices, the COFI/FSR Laws should require all forms of communication and disclosure relating to transactional accounts and fixed deposits to be accurate, objective, written in plain and easily understandable terms, and not misleading and to use the language that is prevalent in the geographic area in question. Further, any written communication (including those transmitted electronically) should use a font size, spacing, and placement of content that makes the communication easy to read for the average person. Consideration should also be given to a principles-based approach that would also require providers to communicate key product features to their customers orally prior to entry into a contract, such as highlighting more onerous or complex aspects. Disclosure rules should apply in a similar manner across different distribution arrangements but take into account relevant medium limitations. Subject to this proviso, the same disclosure standards should apply to both direct sales by product providers and sales through intermediaries. There should also be basic requirements for availability of information at customer touch points (for example, branch displays).¹²² This is in addition to mandating actual provision of disclosures, such as recommended further below.

The COFI/FSR Laws should also define when banks are required to provide their customers with key information, and how disclosure requirements may vary across stages of the product life cycle. The timing of disclosure is critical for informed decision making by consumers. Complete information on transactional accounts and fixed deposit accounts should be given in time for the consumer to make an informed decision as to whether to acquire the account before it is actually acquired. For example, the EU Payment Accounts Directive notes that “in good time before entering into a contract for a payment account with a consumer, payment service providers [must] provide the consumer with a fee information document.”¹²³ Account providers should be required to provide consumers with a copy of a standard customer agreement containing at least key terms and conditions prior to entry into a contract.

Requiring account providers to post standard customer agreements prominently on their websites and notifying the FSCA when revisions are made should also be considered. This will allow the FSCA to monitor and enforce adherence to minimum content requirements, the adequacy of the manner in which the minimum content is disclosed, and the inclusion of any unfair terms and conditions. Similar approaches are taken by regulators in, for example, Bolivia, Malaysia, Mexico, Pakistan, Peru, and the Philippines.

The COFI/FSR Laws should allow for key contractual disclosures to be made in electronic format. Although no bank currently reports that more than 10 percent of new accounts are opening remotely via electronic channels (in part possibly due to requirements of the Financial Intelligence Centre Act 2001), this is likely to change in the future. Thus, disclosure requirements outlined in COFI/FSR Laws should be adaptable to electronic channels, without compromising the scope and quality of disclosure.

Consistently with the approach of South African authorities in relation to other financial products and with international good practices, the COFI/FSR Laws should require provision of a standardized short-form disclosure document to summarize key product features, pricing, and terms and conditions of transaction and fixed deposit accounts discussed above. While the discussion here refers to such a document as a KFS, it can also be known as a key information document or statement or a pre-

greement statement, and whichever is the preferred terminology should be adopted (including for consistency with regulatory approaches for other products). These tools summarize the main product features and pricing structure of a financial product to help consumers understand the product and compare it with similar products offered by other providers. This is intended to assist consumer fair treatment at the sale stage and to foster competition by encouraging banks to compete based on more transparent and comparable product pricing and features. After purchasing the product, a KFS also provides a useful summary for reference during the life of the financial product or service. KFS-type documents are of course not uncommon in South Africa; the National Credit Act requires credit providers to provide a consumer with a preagreement statement containing terms and conditions of the intended credit agreement, prior to entering into a credit agreement.¹²⁴ An effort is also currently underway to test key information documents for certain other financial products, such as short-term insurance. According to results of the WBG's 2017 Global Financial Inclusion and Consumer Protection Survey, 84 jurisdictions (68 percent) have at least some requirements in place for FSPs to provide a KFS.

The KFSs for transactional accounts and fixed deposit accounts should (i) be based on a standard template to be used by all providers offering such products, (ii) include standardized content, (iii) be concise (one or two pages long), (iv) be written in plain, easy-to-understand language, and (v) use standard formulas for interest rates. The KFS should summarize transaction types or services that are most commonly used by consumers and that generate the highest cost for consumers, as well as corresponding fees and charges. Electronic versions of the KFS should also be developed to facilitate paperless customer-acquisition processes and remote account opening via digital channels. It should be compulsory for KFSs to be made available through all distribution channels, whether physical (for example, all branches, including those of agents or intermediaries distributing relevant products) or electronic (for example, on websites). The development of such a digital approach will require innovative thinking and rigorous testing, including with respect to presenting, sequencing, and layering information in ways that are appropriate for a given platform (for example, an SMS-based approach). Providers should be required to maintain appropriate records of having provided customers with the KFS.

The regulator should develop the KFSs through in-depth consumer behavioral research and consultation with industry stakeholders. In developing KFSs for transaction and fixed deposit accounts, the authorities should leverage a range of consumer research methodologies to test consumers' abilities to read, understand, and act on information disclosed by FSPs. In particular, consumer group discussions and individual in-depth interviews should be used to inform and test draft KFSs. The authorities should also consult and work with industry to address issues with compliance costs and build familiarity with relevant formats and formulas. The authorities should also draw on lessons learned in the development and implementation of preagreement statements under the National Credit Act, as well as related, ongoing efforts in South Africa for other financial products.¹²⁵

Verbal communication should be mandated in some circumstances, particularly for customers with limited education or literacy. In such circumstances, it could be appropriate/necessary to require banks to take reasonable steps to explain orally, using the KFS as an aid, key terms to a consumer exhibiting particular vulnerability prior to acquiring a product or requesting such an explanation.

Given the complexity of pricing bundles for transactional accounts in South Africa, the authorities should give consideration to the feasibility of including in KFSs an overall cost indicator based on standard or sample usage patterns. Given the complexity of, and variety in, pricing bundles as discussed in section 1.2 above, it may be difficult, even when using a short-form disclosure document, for retail customers to compare such accounts against their likely usage patterns and preferences. A consumer could be assisted in this endeavor if, at the shopping stage, a KFS provides him or her with a total monthly cost for each account based on specified typical monthly usage patterns or scenarios. This is similar to the methodology used in Solidarity's report, which establishes several use cases for a transactional account and then evaluates account costs across these use cases. However, it would be important to undertake research assessing whether the identification and updating of such profiles is feasible. The use cases should be based on detailed, and periodically updated, consumer research and described in the KFSs in clear, simple terms. (Consideration should also be given to including an overall return indicator for fixed deposits to address comparison difficulties as product complexity increases.)

South African authorities should consider establishing standards for disclosing or explaining interest rates and calculations on fixed deposit accounts in a simplified manner. While financial sector

BOX 2.2

International Examples of Standardized Disclosures for Transactional Accounts

Since 2015, the Bank of Uganda has required all financial institutions under its supervisory mandate to provide a key facts document (KFD) to consumers before they purchase a deposit product. The document is available in eight languages. According to guidance issued by the bank, "the objective of the Key Facts Document is to present the most important information/features of a product that a customer needs to know in a concise, accessible, and comprehensible manner . . . so that customers can, if they wish, compare similar products from different institutions." The key facts document covers key product features and pricing, including (i) the minimum amount required for the account to be opened; (ii) the minimum balance; (iii) the number of free withdrawals before a fee applies; (iv) withdrawal fees for over-the-counter and ATM withdrawals; (v) the number of statements provided free of charge; (vi) fees for system alerts, SMS alerts, and balance inquiries; (vii) the account closure fee; (viii) options for a customer to deposit and withdraw money; and (ix) recourse channels. The guidance issued by the Bank of Uganda further states that "the last KFD issued to the customer will form part of the contractual agreement between the customer and the [financial institution]. This version must be signed by both the Relationship Officer and the Client."

In Australia, there is a legal requirement that a "Product Disclosure Statement" for a financial product must be "clear, concise and effective" and contain prescribed details about the product. The regulator, ASIC, has issued the following guidance with regard to how the complexity of a product may affect the complexity of disclosure: "Complexity of the product: Even where product issuers present information in plain language, the complexity of what is being described may create a barrier to consumers' understanding. . . . A product issuer may also need to provide a greater level of disclosure if the product is not generally understood by consumers (e.g., if it is new or complex). . . . In some extreme instances, a product issuer may need to consider simplifying the item or system being described, as well as how

BOX 2.2, continued

information about it is disclosed. For example, some fee arrangements may be so complex that they are difficult to describe in a manner that is clear, concise and effective.”¹²⁶ The Australian legislation provides exemptions from Product Disclosure Statement requirements for “basic deposit products,” but these must adhere to strict parameters.

In May 2017, the EBA published final draft “Technical Standards” establishing standardized formats for a precontractual “Fee Information Document” and a post-contractual “Statement of Fees” as well as standardized terminology for services linked to payment accounts. The EBA notes that “standardised terminology, coupled with targeted fee information presented in a consistent format covering the most representative services linked to payment accounts, may help consumers to understand and compare fees.” The standards set forth eight standardized terms for services linked to payment account, including (i) maintaining the account, (ii) providing a debit card, (iii) providing a credit card, (iv) overdraft, (v) credit transfer, (vi) standing order, (vii) direct debit, and (viii) cash withdrawal. Member states are able to require key indicators, such as a comprehensive cost indicator, to be provided with the fee information document. Payment service providers are required to provide customers with a Fee Information Document “in good time before entering into a contract for a payment account with a consumer.” The publication of the standards followed two and a half years of policy-development work, consumer testing, and a three-month public consultation.

In line with the EBA’s technical standards, the Bank of Italy has developed a comprehensive cost indicator based on seven distinct user profiles (similar to what is used in the annual report produced by Solidarity). Customers select the user profile that most closely describes them, and the provider calculates the expected monthly cost of a given account for that customer. Providers are required to provide the comprehensive cost indicator value as part of the Fee Information Document, which then allows customers to compare the expected monthly cost of an account across various accounts and providers using a standardized usage profile.

Sources: Bank of Uganda n.d., EBA 2017, and ASIC 2011.

participants may generally understand that various methods can be used to describe interest rates and calculate interest on an investment, many financial consumers are unlikely to be aware of such nuances.

Language requirements should apply for key customer-facing documentation related to transaction and fixed deposit accounts. The authorities should draw from the NCR’s experience to understand the effectiveness and limitations of its approach to language policies relating to credit. A stricter standard seems likely to be necessary to require that transaction and fixed deposit account information in key customer-facing documentation and transactional channels is made available in languages that reach a sufficient proportion (for example, at least 90 percent) of the population. Such customer-facing documentation should include, for example, KFSs, terms and conditions documents, and information provided through ATM displays, mobile banking, and SMS communications. Approximately 63 percent of jurisdictions have some form of local language requirements in place as part of a broader disclosure regime, according to the 2017 Global Financial Inclusion and Consumer Protection Survey.

BOX 2.3**International Examples of Requirements for Interest-Related Disclosures**

In Canada, the 1991 Bank Act provides that “no person shall authorize the publication, issue or appearance of any advertisement in Canada that indicates the rate of interest offered by a bank on an interest-bearing deposit or a debt obligation unless the advertisement discloses, in accordance with the regulations, how the amount of interest is to be calculated” (section 442). The relevant regulation further states that the advertisement should clearly disclose the manner in which the balance of a deposit account will affect the rate of interest and any other circumstance that will affect the rate of interest.

Regulations under the Truth in Savings Act in the United States also regulate the use of rates in advertisements (section 1030.8). The regulations require the use of the term “annual percentage yield” if an advertisement states the rate of return. No other term can be used except for “interest rate,” provided it is stated in conjunction with the annual percentage yield. The regulations further require the following additional disclosures to be made clearly and conspicuously:

- Variable rates: for variable-rate accounts, a statement that the rate may change after the account is opened
- Time annual percentage yield is offered: the period of time the annual percentage yield will be offered or a statement that the annual percentage yield is accurate as of the specified date
- Minimum balance: the minimum balance required to obtain the advertised annual percentage yield
- Minimum opening deposit: the minimum deposit required to open the account, if it is greater than the minimum balance necessary to obtain the advertised annual percentage yield
- Effect of fees: a statement that fees could reduce the earnings on the account
- Features of time accounts:
 - Time requirements: the term of the account
 - Early withdrawal penalties: a statement that a penalty will or may be imposed for early withdrawal
 - Required interest payouts: for non-compounding time accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis and that require interest payouts at least annually, a statement that interest cannot remain on deposit and that payout of interest is mandatory

Some countries such as Peru have also required that information brochures must include explanatory examples of how a particular interest rate would apply to a sample transaction.

Given the apparent lack of success in implementing effective and accessible product-comparison tools, the authorities should consider establishing or supporting the establishment of a centralized website and related tools that facilitate easier product comparison on comparable features, prices, and terms of transaction and fixed deposit accounts. A centralized product-comparison website could make it easier for consumers to search for and compare product offerings in the market. Such tools can also generate competitive pressures among providers to lower prices and improve product features.¹²⁷ The product-comparison website could be developed and maintained by the regulator itself or in coordination with another public or private entity. Methodology of the kind used in Solidarity's report—which establishes several use cases for a transactional account and then evaluates account costs across these use cases—would be a useful starting point for such a resource. The website can then be developed incrementally over time to include a wider scope of information and higher degree of user interaction. A more advanced option would allow a consumer to enter or filter information on anticipated use of key product features (for example, the number of over-the-counter withdrawals per month) and then evaluate the total monthly costs of similar products across different providers. The website could be further adapted to include service quality measures (including data on complaints), an approach currently being pursued by the UK's FCA.¹²⁸ The information presented on the comparator website and related tools should be closely aligned with the information disclosed on KFSs, so that a consumer may use these tools in conjunction. As with the recommendation above relating to inclusion of cost indicators in KFSs based on use cases, the use cases displayed on the website should be based on detailed and periodically updated consumer research and described in clear, simple terms. A "less is more" approach should be pursued to determine which product features are highlighted; an excessive volume of comparative data can overwhelm users and decrease the utility of comparison tools. While many consumers lack Internet access, the availability of the information in an Internet-based user-friendly form would facilitate dissemination of the information through the media, financial commentators, and consumer organizations. Language considerations similar to those discussed above with regard to disclosure will also be relevant for the content and presentation of any such website (including considering, as feasible, presenting at least some key information in multiple official languages).

The experience of other countries in establishing product-comparison websites provides useful guidance. Results from the 2017 Global Financial Inclusion and Consumer Protection Survey show that financial sector authorities in 55 jurisdictions report collecting data from FSPs on rates and fees. A number of financial sector regulators have established product-comparison websites, including in Canada, Hungary, Ireland, Malaysia, Mexico, Peru, Norway, and the UK. (See box 2.4 for more details.) Lessons from the experiences of several of these countries are summarized in a 2013 World Bank study. The study suggests that, to the degree that existing legal powers are insufficient, the COFI/FSR Laws may need to include a provision that requires banks to provide relevant information to the website operator. Banks can also be given access to individual logins or back-end management systems to facilitate direct uploading of information and updates. Given that a central objective of the website is to serve as a resource to consumers, the website should be designed to be interactive, easy to navigate, and visually appealing, and it should take into account local language considerations. As with KFSs, the comparator website and related tools should be extensively tested with consumers and reflect input from industry; such consultation efforts should be undertaken on an ongoing basis to ensure the website remains useful and relevant as the market evolves. The 2013 study found that initial establishment costs for product-comparison websites range from \$260,000 to \$1.7 million, though ongoing staff resources are typically minimal.

BOX 2.4**International Examples of Requirements for Interest-Related Disclosures**

Regulators in Peru are required by law to supervise the dissemination of pricing information so that customers can compare rates. The Superintendence of Banks, Insurance and Pension Fund Administrators publishes information on its website on current fees, commissions, and interest rates using a format that facilitates easy comparison of standard characteristics of similar products and services offered by different FSPs. The Superintendence hosts on its website a price-comparison tool called RETASAS that includes the most commonly used financial services. During the onsite inspections, supervisors check if the prices effectively charged are consistent with the prices advertised online by financial institutions and the prices reported for online publication.

A 2013 World Bank study highlights the varying levels of sophistication in product-comparison websites across seven countries, as summarized below:

	BASIC	MEDIUM	HIGH
Main characteristics	– Focus on price comparison – Comparative tables with basic user-friendly specified filters and limited functionality	– Combination of price comparison and product selection – Advice and complementary tools not well integrated	– Focus on product selection – Highly interactive with tailored results – Intuitive navigation and clean design – Embedded advice – Advanced complementary tools
Example	Malaysia	Hungary, Mexico	Canada, Ireland, Norway, UK countries

As noted in box 1.1 above, the UK's FCA has introduced rules requiring providers of current accounts to publish certain information relating to service quality in connection with such accounts, including metrics regarding account opening, debit card replacement, and major incidents. In the UK, the intention is that relevant information would be made available in due course by account providers in a way that also facilitates its inclusion on comparison websites, recognized as a key channel through which customers may access the information.¹²⁹ The South African authorities could also consider implementing the inclusion of such service-quality metrics on a centralized product-comparison website and similar tools. Notably, the FCA explained that its initiative sought to promote effective competition by enabling customers to make effective comparisons between account providers and by incentivizing providers to improve service and performance.¹³⁰

Sources: Chien 2012; Superintendence of Banks, Insurance and Pension Fund Administrators n.d.; Chien 2013; and FCA 2017b and 2017c.

The CBP should be revised to reduce the onus on customers to request key information, remove unnecessary and ambiguous caveats, and include disclosure of dispute-resolute mechanisms. The CBP should be revised to require banks to provide information to any customer or potential customer concerning the key product features and pricing structure of its banking products and services as a matter of course and not simply when requested to do so. The CBP should also define or remove qualifiers that may excuse banks from certain disclosure responsibilities, such as “in compliance with applicable legislation” (which could excuse banks from compliance if no such applicable law exists), “reasonable” (which is potentially vague and may leave too much discretion to a bank, unless clarified by further parameters or guidance), and “if compelled to do so by international best practice” (which is not knowable to a consumer and would not in and of itself compel a bank to take any particular course of action). The CBP should further require banks to provide a customer, at the shopping or precontractual stage, (i) a summary of the bank’s complaints procedures, (ii) information on the existence, contact information, and respective mandates of the various ombuds, and (iii) the CBP itself.

Efforts should be undertaken to raise awareness among consumers of the CBP. At a minimum, copies of the CPB should be prominently displayed in all bank branches and posted on each bank’s website (preferably not subsumed in a “legal” subpage). Copies of the CPB (or a summary of key rights) could also be given bank customers during the onboarding process or included in annual statements

2.3: ADVICE AND SALES PRACTICES AND INCENTIVES

a) Background

Evidence suggests that consumers can place a significant level of trust in the bank staff members with whom they are interacting, as well as on information emphasized by such persons. The relationship and communications between the frontline staff and the consumer can resonate more than written disclosure information. In this respect, frontline staff are in a powerful position. Aggressive, high-pressure sales tactics, or even subtle de-emphasizing of key product features and prices, can have a significant impact on a consumer’s understanding of a product and his or her ultimate purchase decision.

International good practice indicates that FSPs should be required to have and comply with formal sales policies and procedures. Such procedures could either be a stand-alone document or form part of a broader policies and procedures manual. These sales policies and procedures should clearly prohibit misselling, misrepresentations, aggressive high-pressure sales, or discrimination, and compliance with these policies and procedures should be actively monitored and enforced. FSPs should be required to ensure that all relevant staff members and third parties acting on behalf of the FSP meet competency requirements, are familiar with the products and services sold to customers, and are adequately trained and qualified on financial consumer protection and fair treatment of customers. Prior to the provision of advice or the sale of a product or service that will result in a commission to the staff member or agent, the existence of the commission and its amount should be disclosed to the consumer. Staff remuneration and incentives (including possible clawback of incentives) should be based on meaningful balanced scorecards.¹³¹

TCF Outcome 4 contemplates that, where customers receive advice, the advice must be suitable and must take account of their circumstances. This is taken to mean that FSPs “must ensure that advisers are fully equipped to provide advice that is suitable to the needs of the customer concerned, balancing the commercial objective of increasing sales with the objectives of TCF and avoiding conflicts of interest.”¹³²

The FAIS Legislation addresses certain aspects of sales practices. The FAIS Legislation requires providers, for example, (i) to act honestly, fairly, with due skill, care, and diligence, and in the interests of the clients and integrity of the financial services industry; (ii) to provide the client with pertinent disclosures about the financial product, financial provider, and the product supplier; and (iii) to ensure that appropriate advice is provided and, where advice is provided, that the advice must enable the client to select a product that is suitable for the client’s needs.

b) Findings

As already noted above, there are interpretative inconsistencies within industry, as well as coverage gaps, in the application of the FAIS Legislation to transactional accounts. This is discussed in more detail above, but in an advice context this means that some banks maintain that transactional accounts are not covered by the FAIS Legislation and are therefore exempt from any obligations concerning advice. Other banks consider transactional accounts to be subject to the FAIS Legislation and therefore, for example, consider that they are obliged to undertake a needs analysis and maintain a record of advice if they actually provide advice. However, some noted that they sell accounts without actually providing advice, so that they do not have to comply with advice-related requirements. The net effect is that the FAIS Legislation (or at least how it is currently being applied) does not seem to provide consistent consumer protections to individuals shopping for or using transactional accounts and therefore does not currently provide a uniform regulatory approach toward achieving TCF Outcome 4.

Several banks reported undertaking internal reviews following the recent Wells Fargo account-opening scandal in the United States.¹³³ These internal reviews were undertaken to determine whether such practices were present in their own institutions or whether there may be factors that could allow such practices to develop. The banks that discussed this topic noted that the outcomes of these reviews were positive and indicated that no such practices were observed, though some potential loopholes were identified and addressed.

Quantitative sales data remains a key component of compensation metrics for frontline sales staff at most banks, though several banks report that “quality” sales measures have been introduced in recent years, including in line with the FAIS General Code, where applicable. Monetary incentives for frontline sales staff (most often in the form of quarterly or annual bonuses) reflect quantitative sales in most banks. That said, several banks noted recent shifts in their compensation regimes toward the inclusion of “quality” sales measures that encourage the sale of appropriate products, as well as reduced weighting on purely quantitative sales measures. For example, one bank now uses six measures in their scorecards for frontline sales staff. The measures are evenly split between quantitative sales measures and “quality” measures aligned with product suitability, including client engagement and satisfaction. Following the introduction of this approach, the bank reports that “unactivated” transactional accounts have halved in a

three-year period. Another bank has incorporated measures reflecting the resolution of complaints and the number of unactivated accounts.

As noted earlier in this section, frontline staff often rely solely on income-based account eligibility criteria to guide consumers toward certain products. Reliance on such criteria would not necessarily result in the sale of products suitable to the specific customer's anticipated transactional needs.

Customers are frequently guided directly toward one or two specific accounts based solely on their reported income level. As the Solidarity Report notes, in motivating their product-comparison methodology, "almost no fees, except cash withdrawals and deposits at some of the banks, vary according to the amount involved . . . therefore, it is more appropriate to use the number of transactions rather than income of the account holder as the main guide." If this approach facilitates the most robust product comparison in a study, it stands to reason that customers interacting with frontline sales staff should also be guided toward suitable products based on their anticipated financial behavior and use of the account, rather than their income level.

Several banks use third-party retailers as agents to facilitate customer acquisition and product usage, including for sale of more limited transactional products. Several banks have used retail stores (for example, Shoprite, Pep, Pick n Pay) to facilitate transactions. Services provided by these retailers consist essentially of domestic money transfers, cash back from bank accounts (including social grant payouts), third-party bill payments, and the sale of co-branded access-type accounts. These services are offered on the basis of commercial arrangements between individual banks and retailers. As noted above, ABSA has offered a co-branded debit card through retailer Pepkor.

Third-party agent models have not been sufficiently leveraged to reach the last mile and improve access for financial consumers in South Africa. While data gaps and limitations do not allow for a robust comparison of agent networks across countries, it appears that South African banks have not fully leveraged the potential of third-party agent models to reduce transaction costs by using existing infrastructure to reach financial consumers. Many of the financial inclusion successes in other countries—including Brazil, Kenya, and China—have been enabled by the use of third-party agents. Agents can be effectively deployed by a range of FSPs, including commercial banks (as is the case in Brazil and China) and nonbank e-money issuers (as is the case in Kenya). Agents are used both to expand the physical footprint of a provider to underserved areas and to reduce congestion in branches.

There is a lack of clear rules governing the relationship between a customer, an agent or intermediary service, and a bank with regard to transactional accounts and, to a certain extent, fixed deposit accounts. Industry stakeholders have flagged regulatory uncertainty as a constraint on the further use of third-party retail agent networks. The FAIS Act specifies some responsibility in relation to representatives. (See section 13 and also sections 14 and 17.) While the Act does not use the word agent, it refers to persons providing financial services on behalf of FSPs, covering representatives engaging in intermediary services (for example, product sales, administration). The requirements in the FAIS General Code that apply to a product provider also apply to their representatives. However, as noted in the FSB's Retail Distribution Review 2014 (Retail Distribution Review),¹³⁴ while the FAIS Act places various obligations on intermediaries, significantly less responsibility is imposed on product suppliers to be accountable for cus-

customer outcomes achieved through a third-party distribution channel as opposed to a distribution channel comprising product suppliers' own representatives.

c) Recommendations

The COFI/FSR Laws should build on and extend the approach taken in the FAIS Legislation with respect to sales practices. In particular, the relevant provisions should require FSPs to act honestly and fairly and ensure that appropriate advice is provided so the client is able to select a product suitable for his or her needs. FSPs should be required to have and comply with formal sales policies and procedures. Such policies should clearly define and prohibit misselling, misrepresentations, aggressive high-pressure sales, and discriminatory sales practices. Such policies should cover disclosure and advice and ensure that customers seeking transactional accounts are not steered toward certain products based solely on income metrics, particularly when more affordable products are on offer. The reforms proposed under the Retail Distribution Review—including recognizing sales execution as a regulated activity—are a positive step in this regard to the degree that they will extend to transactional accounts.

Building on current FAIS Legislation requirements, the COFI/FSR Laws should establish principles for compensation of frontline sales staff and agents to limit consumer risks. Compensation for sales staff (whether employees of the product manufacturer or a distributor) should extend beyond sales volume to also reflect factors such as consumer satisfaction, product retention, fair treatment of customers, compliance with regulatory requirements or internal policies and codes of conduct, and the results of complaint investigations. Broadly speaking, compensation should reflect long-term performance, not only short-term sales targets. The regulator should also issue guidance to FSPs on effective approaches to limit consumer protection risks associated with incentive-based compensation. The COFI/FSR Laws should require banks to collect information and maintain records on the structure of incentives, which will be available to regulators upon request to facilitate monitoring of alignment with TCF outcomes. Again, the reforms proposed under the Retail Distribution Review are relevant to the degree that they will extend to transactional accounts. Given the limited scope of data on compensation practices made available under this diagnostic and the relevance of compensation practices for the sale of products, the regulator should also consider a targeted assessment on compensation practices covering common retail banking products.

The ongoing efforts under the Retail Distribution Review to establish an activity-based approach to intermediary services should establish clear, proportional rules governing relationships between banks, third-party agents or intermediaries, and consumers with respect to transaction and fixed deposit accounts. From a consumer protection standpoint, such rules should, at a minimum, hold banks liable for the actions or omissions of their agents. The industry uncertainty regarding the application of the FAIS Legislation to transactional accounts should be addressed. The rules should also address monitoring obligations, transaction limits, disclosure practices, and training. Proposals such as D and E under the 2014 Retail Distribution Review should be pursued for banking products and considered in light of existing models used for the sale and use of transactional accounts. Indeed, as the 2014 Retail Distribution Review report notes, "a clear understanding of what constitutes . . . intermediary services . . . will facilitate compliance and support a level playing field and product offerings. Customers will also be in a better position to assess and select the types of services available to them, and the cost and value of those services."¹³⁵

Importantly, these rules should be proportional, and adaptable, to initiatives intended to promote effective access by low-income consumers to transaction and savings products, such as the sale of low-income accounts meeting the kinds of parameters recommended in section 1.1 above. The South African authorities should consider developing proportional requirements for such arrangements, as a subset of requirements of general application, to ensure that industry does not incur unnecessary compliance costs while maintaining an appropriate level of consumer protection. Such proportional requirements could be premised on banks ensuring that, for example, the product in relation to which advice is provided meets certain simplicity parameters (for example, such as the approach to advice-related training requirements adopted by ASIC in Australia, which imposes lighter-touch requirements for “basic deposit products”).¹³⁶

NOTES

108. While different banks appear to define their target markets or market tiers somewhat Competition Commission of South Africa 2008, 32.
109. See WBG 2017, 23–26.
110. It is understood that the South African authorities are in the process of strengthening the advertising provisions of the FAIS Legislation, with amendments to be implemented after the time of writing.
111. Includes complaints over which the committee ruled that it had no jurisdiction.
112. Clark 2012.
113. Giné and Mazer 2016.
114. Competition Commission of South Africa 2008, 32.
115. See WBG 2017, 23–26.
116. Competition Commission of South Africa 2008, 32.
117. FinMark Trust 2016.
118. FinMark Trust 2016.
119. World Wide Worx 2017.
120. As noted above, Part VI of the FAIS General Code covers “Information about Financial Service” and requires providers, among other things, to “provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract or transaction to a client, and generally make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision.” Section 7 of the FAIS Short-Term Deposits Code requires providers of short-term deposits to provide consumers, at the earliest possible opportunity, “full and appropriate information” about a range of specified matters, including key features, operation of the account, applicable fees and charges, and the manner in which funds may be dealt with at maturity. However, neither code currently mandates a particular format for such disclosure.
121. The approach taken in implementing this act in the public sector—for example, as shown in the FSCA’s own language policy, which requires use of at least three official languages and specifies how they will be used to communicate effectively with the public—may also be a useful reference point.
122. In the Philippines, for example, banks are required to post all information that would be contained in disclosure statements in a conspicuous place in their branches.
123. European Union, Directive No. 2014/92/EU, Article 4(1).
124. Generally, the preagreement statement must include the principal debt, the interest rate, the total amount payable under the agreement, the installments, and all fees, charges, and interest. The National Credit Act and National Credit Regulations include the following disclosure format requirements: NCR Form 20, “Pre-Agreement Statement and Quotation for Small Agreement”; NCR Form 20.1, “Quotation for Intermediate and Large Agreements”; and NCR Form 20.2, “Small Agreements.”
125. Collins, Jentsch, and Mazer 2011.
126. ASIC 2011, 168.75–168.78.
127. As noted in Chien (2012), publishing such information also provides regulators with the opportunity to use moral suasion to influence provider behavior. In one instance, the Superintendence of Banks, Insurance and Pension Fund Administrators in Peru prepared a table comparing effective interest rates to be paid on deposits, which revealed one bank would be paying a negative rate. Before publication, the regulator called the bank to inform it what the publication would show; shortly thereafter, the bank changed its pricing terms for that product.
128. A 2016 Competition and Market Authority report recommended the publication of service quality data, an initiative that is now being pursued jointly with the FCA. The service quality data is expected to include both subjective customer ratings (for example, the percentage of customers who would recommend a product to their family and friends) and objective measures (for example, relating how quickly an account is opened, the time taken to resolve issues, service availability, and major incidents).

- 129. FCA 2017b, paragraphs 4.23–4.25.
- 130. FCA 2017b, paragraph 1.1.
- 131. See, for example, Group of Thirty 2015, 13 and 49–50.
- 132. FSB 2011, 8.
- 133. The scandal involved the revelation that Wells Fargo Bank N.A. created millions of fraudulent savings and checking accounts on behalf of customers without their consent. Various regulatory bodies, including the U.S. Consumer Financial Protection Bureau, fined the bank a combined \$185 million as a result of its illegal activities. See, for example, Corkery 2016 and Cowley 2017.
- 134. See FSB 2014, paragraph 3.3.1.
- 135. See FSB 2014, 2.
- 136. See ASIC 2012a, paragraph 146.9. It is noted that, since the initial time of writing, the South African authorities have been working to implement tiered product fit and proper requirements under FAIS Legislation, and tiering could also be extended to other relevant requirements.

PRODUCT OPERATION AND ADMINISTRATION

3.1: POTENTIALLY UNFAIR FEES

a) Background

The Banking Enquiry concluded that “the market power of the major banks is particularly manifest in their charging of penalty fees” and “penalty fees are said to be a necessary means of protecting banks.”¹³⁷ The Banking Enquiry’s analysis was confined to the fees charged by banks to individual retail customers when their payment orders (usually debit orders) were refused, typically for lack of funds, known as “dishonour fees.” The Banking Enquiry concluded that, in this area, clear signs of abuse had been identified, as the dishonor fees became the bulk of penalty fees still levied by the banks, primarily for insufficient funds. The main conclusions reached were the following: (i) It was evident that no relationship existed between costs incurred by the major banks and the dishonor fees which they charged. (ii) There were huge disparities in the penalty fees charged by different banks for the same transaction. (iii) It was clear that rejected debit orders made up the vast majority of the dishonored transactions and that there had been an exponential increase in penalty fee revenue, becoming a core source of income for the banks. And (iv) both the level and volume of the fees charged for rejected debit orders by the major banks provided grounds for grave disquiet, and, in general, the vulnerability of the ordinary customer to exploitation and abuse through penalty fees was considerable.

Penalty or unfair fees are inconsistent with several of the TCF Outcomes. Penalty or unfair fees may mean that a fee inherently represents unfair treatment of customers (outcome 1), that a customer has not received sufficiently clear information about a fee’s application (outcome 3) or that the financial product is not in fact meeting the customer’s expectations or in line with what customers have been led to expect about the product (outcome 5).

Although the Banking Enquiry indicated significant concern about penalty fees, it did not point to any existing legal regime that could be relied on to address them to any extent. It noted the following:

Penalty fees are difficult to define and banks ascribe different meanings to the term. For example the higher per transaction fee that may be charged to a customer who uses more than the permissible

number of transactions in a particular bundle may or may not be specified as a penalty. There is no magic in the label. We have not considered it necessary to analyse such fees separately from our general treatment of costing and pricing in the previous chapter. The same applies to fees charged for rejected ATM transactions—even though, technically, they could be included among dishonour fees.¹³⁸

2016 FinScope data indicates an ongoing perception that bank fees and charges are expensive. Fifty-eight percent of participants agreed with the statement that “[b]anking fees are too expensive.”¹³⁹

The regime under Part G of the CPA could address some potential concerns relating to unfair or unjust fees, but as noted above, there seems to be uncertainty regarding its application to transactional accounts and fixed deposits. The application of a regime such as under Part G of the CPA could potentially address the imposition of some unfair or unjust fees, including penalties, in relation to such products. It would also place an onus on a bank to review fees it is seeking to charge under an agreement with a consumer to ensure they do not fall afoul of such prohibitions. Notably, terms requiring consumers who fail to fulfil their obligations to pay damages that significantly exceed the harm suffered by the supplier are gray-listed in regulation 44 of the CPA Regulations.

The Conventional Penalties Act 1962 does not appear to have had much practical relevance to penalty fees in a retail banking context. The Act seeks to regulate penalties imposed by one contracting party on another for breach of contract. Under the Act, if a court considers such a penalty to be out of proportion to the prejudice suffered from the breach by the other party, it may reduce the penalty to such an extent as it may consider equitable in the circumstances. However, it is not clear that the Act has had significant practical application in a retail banking context. First, a penalty stipulation is defined relatively narrowly to include, in summary, a term that makes a party under a contract liable to pay an amount of money as a penalty or as liquidated damages for breaching a contractual obligation. A term that imposes a fee but does not operate in the way described may not be subject to the Act in the first place. Further, it seems that the onus is on the breaching party to prove that a penalty provided for under a contract agreement is excessive in the sense contemplated in the act. The Act does not seem to place an onus on the party imposing the penalty to show it is proportionate to the financial loss the party suffered as a result of the breach (in the same way as, for example, Part G of the CPA imposes an obligation on a supplier to ensure it is not entering into an agreement with a consumer that contains an unfair, unjust, or unreasonable term). In discussions, the NCC indicated that it was not aware of the Conventional Penalties Act having been relied on in a financial consumer context.

The OBS’s jurisdiction excludes consideration of banks’ fees and charges (except in certain limited circumstances). Clause 3.2(d) of the OBS’s terms of reference provides the following:

In respect of matters not falling within NCA or other legislation, the OBS may not consider a complaint or dispute that relates to a bank’s general interest rate policy or fees and charges policy, unless it relates to a fee or charge being incorrectly applied by the bank having regard to any scale of charges generally applied by that bank or maladministration which involves an act or omission contrary to or not in accordance with a duty owed at law or pursuant to the terms (express or implied) of the contract between the bank and the complainant.¹⁴⁰

Possibly as a result of this limited jurisdiction, the OBS does not appear to have considered issues relating to potential unfairness of fees. However, if unfair-terms restrictions clearly applied to banks’ imposition of fees and charges in relation to accounts, such as to restrict unfair penalties, then presumably these should come within the OBS’s jurisdiction to consider maladministration of the kind referred to in the extract above.

b) Findings

i) Current Concepts and Perceptions in the Market

There does not seem to be a common understanding in the banking industry in South Africa as to when a fee would constitute a penalty that could not be charged. The banks consulted during the diagnostic were generally careful not to refer to fees that penalized certain conduct under the contract (and described variously as administration fees, decline fees, and so forth) as “penalty fees,” but there sometimes also seemed to be significantly different views about when a fee would in fact constitute a penalty.

Some banks seem to consider that disclosure can be sufficient to avoid a fee being a penalty in a strict legal sense or unfair more generally. Industry representatives expressed the view in discussions that if a fee is disclosed up front to a customer, then it would never be a penalty, but rather an administrative fee. It is not clear how this could be correct, given that it does not take into account the nature of the fee. The same representatives also said that the variation in penalty fees between banks is because of commercial decisions, as part of the decision around fee structures and fee mixes, and that a bank may use this as a competitive advantage. Again, if by its nature a fee is a penalty, as this is understood in common law jurisdictions, then such fees should be tested according to a standard (for example, cost recovery, a reasonable estimate of cost, and so forth), and then the question becomes whether a bank charges inconsistently with that standard.

The OBS indicated in discussions that it has received a substantial number of complaints on penalty fees, such as those charged in connection with debit orders. The OBS’s view in discussions was that there is currently no real legal restriction on the charging of penalty or unfair fees by banks in South Africa, such that they need to be limited to the cost or loss to the bank from the occurrence that triggers the penalty. Over time, the OBS has also seen significant variation in penalty fee amounts charged between the banks. However, it was not confident that the banking industry had generally complied with the Banking Enquiry’s recommendations to cap or limit penalty fees to the level recommended by the enquiry. As noted above, consideration of fees and charges is largely excluded from the OBS’s jurisdiction, although they can be considered in the context of maladministration.

The NCC confirmed that it had not previously reviewed bank transactional account or fixed deposit fees in the context of Part G of the CPA (that is, with regard to fairness) when it was initially applied to banks. The NCC also noted that it had not previously had to consider the application of the Conventional Penalties Act to such fees.

ii) Fees That Could Potentially Be Viewed as Penalties or as Unfair

While there have been improvements in fee-charging practices, some fees continue to be charged that could potentially be penalties in a strict sense or, even if this is not the case, may nevertheless be viewed as unfair. This is borne out by a review of current bank fees for the purposes of this report and Solidarity’s review. Such fees are sometimes referred to in the general terms and conditions documents for accounts. At other times, they are listed in fees and charges schedules, and they vary from flat amounts to fees calculated by reference to a particular factor. Table 3.1 lists a range of fees charged in connection with transaction dishonors, declines, or similar actions. Fees charged in such circumstance are often more prone to constituting penalties or being considered unfair. By way of further illustration,

TABLE 3.1: Examples of Dishonor, Decline, Return, and Dispute Fees¹⁴¹

TYPE OF FEE	ABSA ¹⁴²	FNB ¹⁴³	NEDBANK ¹⁴⁴	STANDARD BANK ¹⁴⁵	INVESTEC ¹⁴⁶	CAPITEC ¹⁴⁷	POSTBANK ¹⁴⁸
Returned cheque fee	R150	(All cheque payments attract a fee of R110)		R25 (Access account)	R130	R120	R77
Dishonor fee	Basic account: no charge; pay as you transact: R50, increases to R150 per transaction from fourth occurrence in 12 months		R10 (capped at four dishonored payments per month)	R100 (for current account); R25 (for Access Account); R55 (for savings accounts); R35 for failed Internet payments (Access Account)	R140 (on returned APO)		
Returned or rejected debit order	Basic account: no charge; pay as you transact: R50, increases to R150 per transaction from fourth occurrence in 12 months			R210		R5	
Declined card machine purchase—insufficient funds	R8.50 (additional service fee charged for each payment honored in spite of insufficient balance)	R8.50 (under basic account), R7.50 (under pay-as-you-use account)	R7.90		Free	R7.50 (Flexi Debit Card)	
Disputed Transactions					R205 (only unsuccessful ones)	Disputed debit order: last 40 days (app): R15; last 40 days (branch): R35; after 40 days (branch): R50; late recall of transfer to Capitec account: R5; late recall of transfer to other bank account: R120	

two fee examples are discussed in more detail below—one of a fee type that could potentially be viewed as a traditional penalty, the other of a fee that can result in an unfair impact on customers even if it does not necessarily fit within a classic concept of penalties.

Dishonor Fees

Dishonor fees remain one of the most significant examples of fees applied by the banks that, including depending on their amount, could be viewed as punitive. As shown in table 3.1, at least three of the Big Four banks and their competitors apply dishonor fees in cases where a transaction is not allowed to proceed due to insufficient funds, and these can be significant.

One of the most commonly charged dishonor fees is related to unsuccessful debit orders. Solidarity's report¹⁴⁹ highlights that unsuccessful debit orders administered by banks have been a controversial issue for many years in South Africa. The report notes that one of the explanations for the exorbitant "dishonour fees" charged by the banks on these unsuccessful transactions is the revenue that these fees bring to the Big Four banks. The report also emphasizes that "[i]t cannot be the case that unsuccessful debit orders cause operational costs that are significantly higher than the operational costs of a successful debit order. The notion that these fees are a type of 'penalty' for the risk the bank is exposed to due to breach of contract by the client does not hold true either."¹⁵⁰ The Solidarity Report does identify that the Big Four began lowering these fees on accounts for low-income customers for some years, and one bank does not charge a fee at all.¹⁵¹ More generally, however, the direct debit dishonor fees charged by the Big Four banks as of July 2017 range from no charge to R150, depending on the type of account and number of events in a defined cycle.

There have been some initiatives by the banks to address the triggers for such fees. One of these initiatives is the introduction of a paid alert service to notify clients electronically when they are unlikely to have sufficient funds in their accounts to cover debit orders due to be processed. Another initiative is a new system for authenticating debit orders that aims to curb debit order frauds and thus cut down on unsuccessful transactions as a result of such frauds (although the charging of a dishonor fee for a fraudulent debit order would in any case ultimately not seem appropriate).

Fees for Disputing Debit Orders

Paragraph 9.4.4 of the CBP advises customers to report any disputes relating to their debit orders to their banks. A range of circumstances in which customers should raise a dispute are described, including when the third party seeking to claim a debit order (i) has withdrawn an amount before the date specified in the customer's instruction, (ii) continues to collect a debit order that the customer has cancelled or is subject to a stop-payment instruction, (iii) debits the customer's account for an incorrect amount, (iv) has collected a debit order that the customer did not authorize or in a manner the customer did not authorize (for example, split the collection amount or consolidated several debit orders), or (v) has collected a debit order that is not consistent with the customer's instruction.

Despite seemingly recognizing the importance of customers being able to raise debit order disputes, at least two of the consulted banks apply "disputed debit order fees." From banks' account terms and

conditions and from fee schedules, tables of fees, and charges of the banks, the following examples could be identified:

- Capitec applies “disputed debit order fees” that vary in amount depending on the channel used and the length of time between the disputed debit order and the claim being made, as summarized in table 3.2. The bank noted in discussions that it was not proud to have to introduce such a fee but decided to do so as it found that most of the disputes it was receiving were related to customers disputing debit orders as a cash-management technique, rather than being related to unauthorized or fraudulent debit orders. The intention was to decrease the number of irregular disputes.
- One of the Big Four banks also contemplates in their terms and conditions that it “may charge the following fees: . . . a dispute fee, if you raise a dispute against a supplier for any purchase/transaction, and the purchase/transaction is proved to be correct.” However, it was not possible to identify, in the schedule of fees of the bank, the amount of any fee(s) that may be applied in such cases.

Such disputed debit order fees can potentially be unfair and discourage legitimate disputes. They require customers who need to submit legitimate disputes to bear the initial financial burden of the fee up front, even if it is subsequently refunded when the veracity of the claim is confirmed. More generally, the fees can act as a disincentive for customers seeking to enforce their rights and to avail themselves of internal dispute-resolution processes. Even if such a fee may not be a penalty in a strict legal sense, its application and administration can result in substantive unfairness to customers.

c) Recommendations

The regime prohibiting unfair terms recommended in section 1.4 above should apply to fees of the kinds discussed above. The fairness of such fees would then be tested against the restrictions in the regime to determine whether the fee is appropriate.

If necessary, the application of existing legislative and common law doctrines on penalties should be clarified for financial sector participants. This could be done by the FSCA through regulatory guidance that takes into account existing legal provisions and doctrine. (However, it may be found that the implementation of the unfair-terms regime renders this unnecessary.)

The disclosure improvements recommended in section 2.2 above should also be pursued to address the potential lack of customer awareness of the application of such fees. Even where such fees are consistent with new recommended restrictions, they would nevertheless not be enforceable unless clearly disclosed consistently with new disclosure requirements.

TABLE 3.2: Capitec Disputed Transaction Fees¹⁵²

DISPUTED TRANSACTIONS	CHANNEL	PERIOD	TRANSACTION FEES (R)
Disputed debit order: last 40 days (app)	App	Last 40 days	15
Disputed debit order: last 40 days (branch ²)	Branch	Last 40 days	35
Disputed debit order: after 40 days (branch ²)	Branch	After 40 days	50

3.2: DORMANT TRANSACTIONAL ACCOUNTS

a) Findings

There are currently no regulatory or self-regulatory requirements, nor uniform industry practices, for dealing with dormant transactional accounts, which can potentially lead to unfair outcomes from a TCF perspective, such as not meeting legitimate customer expectations or not providing clarity relating to account operation. There do not currently appear to be requirements or uniform approaches relating to matters such as (i) when accounts would be considered dormant or inactive, (ii) customer notifications when this is the case, (iii) procedures for dealing with such accounts, and (iv) limits and conditions under which fees and charges may be applied to such accounts. For example, practice relating to when an account will be considered dormant varies among the banks, with parameters ranging from 3 to 12 months. Although some of the consulted banks noted that they notify customers when dormant or inactive accounts are identified, industry practice also varies from apparently not providing prior notification to systematic notification practices. Section 7 of the CBP states that banks will inform customers about the implications of dormant accounts but does not go further in specifying any common standards relating to such implications. It also does not establish parameters for periods within which an account should be considered dormant, with section 12 defining dormant accounts simply as “accounts on which no customer initiated activity has occurred for a period predetermined by the bank in accordance with the rules relating to the specific type of account and which contain monies that have not been claimed.” Paragraph 7.3 also states that banks reserve the right to close an account without notice if “you have not used your account for a significant period of time.” This leaves such parameters entirely within the discretion of each bank. One Big Four bank’s transactional account terms and conditions state that the bank can close an account that a customer does not use for more than one year or if the account balance is less than the amount as advised by the bank from time to time, and that the customer will not be notified beforehand. Another of the Big Four banks requires that a regular monthly deposit (for example, the customer’s salary) be made into an account so that it remains functional and active (although this excludes some types of accounts). It is understood that the South African authorities have identified the lack of a standard regime for dealing with dormant accounts as a regulatory gap warranting further focus.

Fees may continue to be charged on an inactive account for different periods, depending on the bank, and in some cases, specific fees are charged for a dormant account. Each bank determines the period until which a transactional account will be considered dormant and thus during which periodic fees may continue to be charged. In some instances, banks have decided to charge a fee resulting from dormancy. Some banks noted that it was necessary to start applying a fee in these cases, given the costs involved to keep an account open and as a way to educate customers to keep track of their accounts, preventing dishonor fees. For example, a Big Four bank charges an “administration fee (inactive fee)” in the amount of R10 for a prepaid card transaction product when not used for a 12-month period.

b) Recommendations

The South African authorities should consider issuing specific regulatory requirements on transparency and fair conduct related to dormant accounts. FSPs should be required to notify their consumers in case their transactional accounts have become dormant, and convey the related consequences, includ-

ing applicable charges during dormancy. Such requirements should define the time or circumstances when an account would be considered dormant, to ensure uniformity of customer treatment by banks. The requirements should also include parameters for (i) identification of dormant accounts; (ii) notification to consumers, including the means, period, and information to be provided; and (iii) closure. Specific prohibitions of adverse practices should also be considered, such as continuing to charge maintenance fees on dormant accounts that have reached a zero or negative balance.

3.3: TEMPORARY OVERDRAFTS OR “SHADOW” CREDIT LIMITS

a) Background

The National Credit Act regulates consumer credit in South Africa, but only some aspects of the Act apply to “incidental credit agreements.” An incidental credit agreement is defined in section 1 of the Act as an agreement, irrespective of its form, by which an account was tendered for goods or services that have been provided to the consumer, or goods or services that are to be provided to a consumer over a period of time and either or both (a) a fee, charge, or interest became payable when payment of an amount charged in terms of that account was not made on or before a determined period or date, or/and (b) two prices were quoted for settlement of the account, the lower price being applicable if the account is paid on or before a determined date, and the higher price being applicable due to the account not having been paid by that date. Section 5 of the National Credit Act specifies the aspects of the Act that apply to incidental credit agreements that, for example, include some general consumer rights and rights to receive statements but not form and content requirements for credit agreements nor affordability assessments to avoid reckless credit that would be required for an ordinary regulated credit agreement.

Regulation 42 of the National Credit Regulations limit banks to charging interest on incidental credit agreements of up to two percent per month and prohibit the charging of an initiation fee on such agreements. This effectively prohibits honoring fees when a bank permits a customer to overdraw their account in order to honor a transaction such as a debit order or a cheque.

b) Findings

Some banks will allow selected customers to temporarily overdraw their transactional account without a prearranged overdraft or credit line. These banks indicated in discussions that they generally consider that such “shadow limits” or “incidental credit lines” (there does not appear to be common terminology used in the market) are intended as beneficial account features for selected customers, allowing them to have debits, such as cheques or direct debits, honored rather than declined, notwithstanding that the customers do not have an overdraft facility with the bank (or may have exceeded such a facility). These temporary credit limits tend to be approved and processed by bank systems automatically, and it is not clear that customers have a clear understanding of how such temporary credit facilities operate. Customers may not have a proper awareness of the costs involved, such as fees or interest rates that may be applied and to which they may be alerted only following the overdrawing.

It seems that customers would need to expressly opt out if they are not in fact interested in receiving such temporary credit. Banks tend to proceed on the basis that customers have implicitly requested, or accepted, receipt of such temporary credit in relevant circumstances. Some of the consulted banks noted that they include references to such temporary credit in their terms and conditions. In some cases, they noted that customers would need to notify their bank after acquiring their transactional account in the event they do not wish to take future advantage of such credit (that is, to be allowed to temporarily overdraw). This seems potentially inconsistent with paragraph 6.3.1.3 of the CBP, which provides that banks will not “make any offer of credit to you, including an offer to increase your overdraft or credit facility, on the basis that the offer will automatically come into existence unless you decline the offer.”

Indications are that, notwithstanding specific references in some terms and conditions, customers do not necessarily understand that they have been granted such credit or how it operates. The OBS commented that customers do not necessarily understand that they have an informal overdraft or shadow limit on their account. In discussions, the OBS indicated that interest charges and other fees and charges applied to account overdrawing are a frequent subject of complaints lodged, due to a lack of understanding of the features and conditions of such credit, indicating a potential lack of transparency and clarity. Some customers apparently complain that their account has been permitted to be overdrawn by their bank and query why they are in debt. In terms of disclosure, in addition to the limited disclosure requirements under the National Credit Act that would apply if such credit constitutes an incidental credit agreement, paragraph 6.7 of the CBP does provide that a bank will give customers information on interest rates that apply to their accounts, in accordance with applicable legislation, including when interest will be deducted from the account. Section 5 of the National Credit Act contemplates restrictions on charging amounts associated with an incidental credit agreement in the absence of disclosure and acceptance. Although some of the consulted banks disclose amounts to be charged in case temporary credit is granted, the type and clarity of information provided varies significantly and can lack clarity or prominence.

There are differing legal views between the banks regarding the application of the National Credit Act to temporary overdrawn. Several banks, including some Big Fours, said that in their view such an overdrawn would not be regulated so no affordability assessment would be legally required. (However, as discussed above, even if it constituted an incidental credit agreement, provisions under the National Credit Act would not apply.) One Big Four bank noted that it nevertheless undertakes an assessment of affordability based on account turnover. Another Big Four bank said that it uses behavioral scoring to assess eligibility and that it charges a flat fee on temporary overdraws (which, it is understood, would not be permitted under the National Credit Act if the financial accommodation provided does in fact constitute an incidental credit agreement) and that it decided not to charge interest for consistency with TCF Outcomes. The bank indicated that such credit is offered only for the purposes of very temporary mistiming of debits, and not charging interest is also viewed as a means to ensure internal discipline to assess eligibility properly and without it being intended as a long-term position.

It seems that fees are charged in addition to interest on temporary overdrawn despite existing restrictions. Despite apparent restrictions on charging fees for the provision of credit through temporary overdrawn in addition to interest, multiple banks’ terms and conditions indicate that a customer

may be charged a fee each time one of his or her payment instructions causes an account to be overdrawn. Another bank's terms and conditions refer to the possible charging of fees more generally (in addition to interest). Table 3.3 presents examples of charges for temporary credit on transactional accounts.

Some of the consulted banks started implementing alternative ways to notify customers in case their transactional accounts may not have sufficient funds to cover future debits. As an example, one of the Big Four banks noted that there are certain product-specific notifications, via SMS, that will be sent to clients when their balances drop below a certain threshold. System validations will trigger these messages, for which there are no additional fees, except the normal monthly fee based on the type of transactional account held by the customer. Examples of SMS alerts sent to customers in these circumstances include the following: "<Title Surname>, to ensure you have sufficient funds to meet your upcoming debit orders, we advise that you make a deposit within 48 hours to cover your expenses"; "<Title Surname>, to ensure you have sufficient funds to meet your upcoming debit orders, consider transferring available funds from one of your other accounts online, via an ATM or a branch, within 48 hours to cover your expenses. T&C apply"; "<Title Surname>, to ensure you have sufficient funds to meet your upcoming debit orders, please contact us to discuss the options available to you. Reply 1 & we'll call you now. Reply 2 for a call later. Reply 8 to opt out. T&C apply"; or "<Title Surname>, you recently received a low-balance alert to help you manage your account. Please give us your feedback. Reply 1: You want the service to continue. 2: You are neutral about it continuing. 3: You don't want it to continue. Thank you."

TABLE 3.3: Examples of Charges for Temporary Credit on Transactional Accounts

TEMPORARY OR INCIDENTAL OVERDRAWING	ABSA	FNB	STANDARD BANK
Terms and conditions	Personal Client Agreement (clause 1.4): ¹⁵³ "You agree to pay interest and/or fees on any debit balance that arises as specified in the Pricing Guides. Interest is charged on a debit balance daily at midnight and is debited to your Account, with any fees, monthly in arrears."	Transactional Bank Accounts Terms and Conditions (clause 1): ¹⁵⁴ "FNB will not carry out payment instructions if there is no available balance in the transactional account. However, at FNB's discretion it can carry out your payment instructions even if there is no available balance in the transactional account. If this happens FNB will charge you a fee for each payment instruction."	Terms and conditions for personal transaction accounts (clause 6): ¹⁵⁵ "6.2 If you do not pay us the overdrawn amount immediately you will be in default and we will charge you: 6.2.1 interest on such overdrawn amount from the due date for payment at the maximum interest rate allowed for incidental credit agreements under the Act; and 6.2.2 the fees and charges as set out in the full list of fees and charges that apply to your account, on our website www.standardbank.co.za or in our pricing brochures, as amended by us from time to time."
Fees charged	Not identified	Not identified	Monthly service fee on unauthorized overdrafts: R68.40 ¹⁵⁶

c) Recommendations

While recognizing that temporary overdrawing can serve a legitimate customer purpose, the South African authorities should consider how best to regulate these occurrences to ensure that banks do not engage in unfair practices in relation to temporary overdrawing of transactional accounts (for example, whether it is necessary to amend the National Credit Act or Regulations to extend it more clearly to such facilities, or to impose requirements through the COFI/FSR Laws). Matters to be addressed to the extent they may not already be sufficiently covered in relation to such temporary credit include the following:

- Clear requirements for precontractual information at the time of acquiring the transactional account relating to the maximum amount of permitted temporary overdrawing, the circumstances in which it is permitted, associated charges, and how a customer can opt out (that is, not allow the account to be overdrawn)
- Specific prohibitions on practices such as imposing fees and charges related to unsolicited (not preapproved or properly preagreed) automatic overdraft facilities

Importantly, more specific product-design obligations of the kinds recommended in section 1.2 above would also be relevant in ensuring that the inclusion of such features in transaction accounts is consistent with TCF Outcomes.

In the meantime, the NCR should also consider a targeted review of banks' current practices relating to temporary credit provided in connection with transactional accounts to ensure compliance with the National Credit Act and Regulations. Given the apparently differing views in the banking sector relating to the application of the Act to such temporary credit, and differing approaches to charging for such credit, in addition to ensuring compliance, such a review could also assist with ensuring that banks receive uniform regulatory guidance on these matters.

3.4: CHANGES TO TERMS AND CONDITIONS AND FEES AND CHARGES

a) Background

Consistently with TCF Outcome 3 and Outcome 5 (that customers receive clear information and are kept appropriately informed, and that they receive financial products that meet their expectations and acceptable associated services in line with what they had been led to expect, respectively), it is important that banks not only give customers clear and comprehensive up-front disclosure of account terms and conditions but also clear and timely disclosure of unilateral changes to such terms and conditions. The parameters for such unilateral changes, including the circumstances in which they can be made, should also be appropriately disclosed and defined.

The National Credit Act regulates notification of unilateral changes to interest, credit fees, and charges under consumer credit agreements and seems to restrict other unilateral changes.¹⁵⁷ The Act provides that a credit provider must give at least five business days' written notice to the consumer setting out particulars of a change relating to interest rates, the amount of a credit fee or charge, or a change in the frequency or time for payment of a credit fee or charge. The Act also restricts certain unilateral changes.

Unilateral changes to transactional account (or fixed deposit) terms and conditions are not currently regulated by legislation, although they are sought to be addressed by the CBP. According to sections 3 and 4 of the CBP, banks must inform their customers of any changes to terms and conditions and fees and charges. The CBP states that unless longer periods are specified by applicable regulation, customers will be informed 20 business days (or five business days for credit agreements) before any such changes. Paragraph 6.6.6 of the CBP also requires that banks notify their customers before any changes to fees and charges by using the two or more of the following methods that are most appropriate: (i) letter, statement messages, or other personal notices; (ii) notices or leaflets in branches or outlets; (iii) ATM or electronic banking system messages; (iv) telephonic announcements, emails, or SMS messages; (v) announcements on the bank's website; (vi) media advertisements; or (vii) any other communication channel available.

b) Findings

In their account terms and conditions, banks retain extensive unilateral rights to make changes to fees and charges and other terms. Such rights are to some extent necessary in the context of open-ended agreements, such as with regard to an ongoing transactional account, to allow a bank to reflect legitimate business changes. However, the rights specified in several banks' terms and conditions are described in very general and unfettered terms, with few limitations. For example, one bank's terms and conditions simply state that it may change the terms at any time. Two banks' terms and conditions state that they are entitled to change fees, costs, interest rates, and charges at their discretion. Two other banks state in their terms and conditions that they may, from time to time, change fees or introduce new fees, and that this will form part of the agreement. Broad unilateral rights to change an agreement can potentially expose customers to detriment. This is consistent with the fact that terms enabling a supplier to unilaterally alter the terms of the agreement with a consumer are gray-listed in regulation 44 of the CPA Regulations.

Some banks' terms and conditions contain clauses indicating that a bank can change the fees and charges and other terms and conditions for an account without prior individual notice being given to the customer. They contemplate notices being displayed in branches, or being reflected in their latest brochures, meaning that a customer may be unlikely to receive constructive, let alone actual, notice, of such a change. A Big Four bank that had recently reviewed its terms and condition included clauses that it would provide at least 20 business days' written notice to the customer of changes to fees and charges, seemingly suggesting individual notice, but that it would provide reasonable written notice to the customer of changes to the agreement more generally, not making clear to the customer how notice of such other changes would be provided. It is not clear that all the banks have aligned their terms and conditions to the standard specified in the CBP discussed above, which states that a customer will be informed at least 20 business days before any changes are implemented to their terms and conditions and fees and charges. However, as discussed, even the CBP contemplates that a bank, in determining the most appropriate methods of notice, is not required to ensure that individual notice is provided, with options including notices or leaflets in branches or outlets, website announcements, and media advertisements.

c) Recommendations

The COFI/FSR Laws should mandate minimum notice periods and require individual customer notice of changes that will have a direct customer impact (and having regard to the likelihood that a customer may not become aware of general public notices of relevant changes). Internationally, there is no broadly accepted minimum notice period for communicating changes in contract terms and conditions to consumers, but the 20-business-day period in the CBP with which banks are already familiar seems a good starting point in South Africa. The key will be to ensure that appropriate notice methods, including targeted notices, are also mandated. This can include appropriate flexibility. For instance, the notice of a change in an ATM withdrawal fee could be given in a non-personalized, general fashion, such as a message on the screen of the ATM, which a consumer should be required to acknowledge before the withdrawal is conducted. How and the extent to which terms and conditions may be changed should also be required to be clearly articulated in the terms and conditions (and changes that do not comply with what is contractually stipulated must not bind the customer).

Unilateral variation rights included in terms and conditions should also be subject to an unfair-terms regime as recommended in section 1.4 above. The FSCA will then, as part of its supervision, be able to test the appropriateness of contractual terms giving a bank unilateral variation rights (also having regard to notice requirements and a customer's ability to exit their account product if unhappy with a change).

3.5: STATEMENTS

a) Background

Statement requirements for transactional accounts are not currently regulated by legislation. Currently, there are no regulatory requirements in South Africa relating to the minimum content, format and frequency, and manner of provision of statements of account for transactional accounts (in contrast to short-term deposits and consumer credit accounts, as discussed below). The mandated provision of statements that are sufficiently comprehensive and clear to make it easy for a customer to understand the operation of his or her account over the applicable period is recognized internationally as a key aspect of good ongoing consumer disclosure to keep customers informed about their product's operation following initial contracting. (The provision of such statements would also be an important contributor to TCF Outcome 3.)

The CBP addresses the provision of statements but mandates only some aspects for transactional accounts. Paragraph 7.4 of the CBP states that, to assist a customer to manage their account and verify entries on it, the bank will provide him or her with regular account statements. While this seems worded as a positive obligation, the paragraph then specifies few firm requirements with regard to statements for transactional accounts. It states that the frequency of statements will vary by the type of account, and that customers should check with their bank as to whether it is possible to have account statements provided more frequently than normally available, but then it provides specific statement periods only for mortgages, overdrafts, and credit cards (such periods replicating the requirements under the National Credit Act). Methods of provision for statements are not mandated. A reference to the provision of statements includes electronic banking terminals or other means of electronic or telephone banking if a

customer has registered for such facilities without making it clear, for example, whether the customer has a choice to receive paper statements. Paragraph 7.4 does specify some content requirements relevant to transactional accounts, including the amount and date of each transaction; the cheque numbers of any cheques paid out; for card transactions, automatic payments, direct credits, direct debits and other payments, a reference to the party who is making or receiving the payment, if such information is available to the bank; any fees and charges relating to the operation of the account; the same opening balance for each successive statement as the closing balance on the previous statement; the contact details for making inquiries or reporting errors; and a summary and breakdown of charges and interest (both debit and credit) on every account.

The FAIS Short-Term Deposits Code mandates the provision of a statement of accounts for short-term deposits, but on request rather than automatically. Section 8 of the Code requires a provider to provide a client with a statement of account on request and to inform him or her of various statement-related matters, including any applicable charges and procedures to be followed in the event of statement errors.

The National Credit Act obliges credit providers to deliver to each customer statements of account for credit agreements at a prescribed frequency.¹⁵⁸ Such requirements would apply to a transactional account only to the extent that it comprises the provision of credit, including through an incidental credit agreement. The mandated maximum statement period is one month except for installment agreements, lease or secured loans (two months), and mortgage agreements (six months). However, a consumer and credit provider can agree to reduce the frequency of statements for the first two categories, up to a three-month statement period. The National Credit Act also provides for form and content requirements of the statements of account. The Act also provides that a statement must meet form and content requirements mandated by regulations and related guidelines from the NCR.¹⁵⁹

b) Findings

A civil society organization stated in discussions that access to bank account statements is one of the main challenges faced by account holders in South Africa. The organization said that banks do not provide statements on a regular basis to lower-income account holders and that, in some cases, customers need to travel to gain access to channels to obtain a statement, which is often not a viable option.

Most of the consulted banks noted that they provide consumers with a statement either on a regular basis or upon request, but practice in this regard seems to vary, and charging for paper statements seems a common practice. In the absence of credit being provided under the account (where the National Credit Act's statement requirements would apply to the account), some banks' terms and conditions specify that paper statements are available on request from branches or by mail, but that additional charges may apply. Sometimes paper statements are described as an alternative to receiving electronic statements and, again, that the former may incur a fee. Sometimes charges are also imposed for paper ministatements from ATMs. At other times, electronic statements are specified as the default method of providing statements. These approaches, and the charging of fees for paper statements generally (rather than, for example, only for duplicate copies), seems consistent with the commercial strategies discussed in section 1.1 above to drive customers to electronic channels through pricing. See figure 1.2 for statement fees imposed in connection with basic PAYT bank accounts.

c) Recommendations

The COFI/FSR Laws should specify requirements for the provision of periodic statements for transactional accounts. Regulatory requirements should address minimum content and format requirements, as well as frequency, timing, and manner of delivery. The method of delivery of statements should be at the customer's choice unless, for example, the nature of the product is such that a particular default method is more appropriate (for example, electronic statements for accounts that are largely or solely electronic in nature). Considering potential difficulties with delivering physical mail to some customers, banks could also be required, depending on the customer's choice, to alternatively provide statements using at least the channel through which the product was sold. In such cases, banks may be required to make paper-based statements available for collection by the consumer at their branches or other outlets, on demand, or substitute paper-based statements for free electronic versions, free of charge. In such circumstances, in lieu of statements, customers should also have the option of easy, fee-free, electronic access to account information such as account balances and transaction history. It is recommended that customer account usage research of the kind discussed in section 1.1 above also test the proposed approach in this regard. Content requirements should cover (i) opening and closing balances, (ii) listing of all transactions in the period, (iii) references to the counterparts for each transaction (for example, the merchant where the card purchase was made), (iv) details on the interest rate(s) applied to the account, (v) details on the fees, any exchange rates, and other charges incurred by the customer in each transaction, and (iv) indications of any changes applied to the interest rates or fees. In case abbreviations are used, they should be easy to relate to a specific service (also see the discussion in section 2.2 above) regarding use of uniform terminology in disclosure. Statements should also refer to contact details for the provider's internal complaints-handling mechanism and external dispute-resolution mechanism. A monthly statement frequency is suggested.

BOX 3.1

International Examples of Regulation on Transactional Account Statements

In the United States, Regulation DD, issued by the Bureau of Consumer Financial Protection under the Truth in Savings Act 1991, requires periodic statement disclosures (§ 1030.6) that shall include the annual percentage yield earned, the amount of interest, fees imposed, the length of the period, the aggregate fee, and special rules for the average daily balance method.

In Australia, the issuer of a deposit product (which would cover both transactional accounts and fixed deposits) is obliged to provide periodic statements for the product to the customer in a manner he or she agrees to, which can include, for example, providing physical or electronic copies. The Australian legislation prescribes the content of such statements, including opening and closing balances, returns on an account, changes to the product that have not been previously notified, and details of transactions undertaken during the period.

Sources: Regulation DD and section 1017D of the Corporations Act 2001 and related regulations and Class Orders.

3.6: DISCLOSURE OF DISPUTE MECHANISMS

a) Background

Effective consumer redress through internal and external dispute-resolution mechanisms is an essential element of an effective financial consumer protection framework. Such systems should be transparent, accessible, and, ideally, free to the consumer. Effective redress assists in ensuring that substantive consumer protection measures are themselves effective (such as by resulting in mitigation and in compensation where appropriate and by bringing about changes in behavior and industry practice).

The CBP requires provision of information on the OBS to customers. Section 10 of the CBP requires that banks provide customers with information about lodging a complaint and of the OBS's details in case customers are not satisfied with the internal resolution of a dispute, or with the outcome of an internal dispute-handling process.

The FAIS Legislation specifies requirements to inform customers regarding the FAIS Ombud. Part XI of the FAIS General Code and Part V of the FAIS Short-Term Deposits Code specify detailed obligations relating to complaints handling, including a range of requirements relating to a provider's internal complaint-resolution system and procedures and obligations to inform customers regarding particulars of internal complaints-handling mechanisms and of the FAIS Ombud.

b) Findings

Most of the consulted banks noted that they disclose their contact information for receiving complaints, but information about external dispute resolution does not seem to be consistently available.

It was not possible to find the information easily available in most of the Big Four banks' branches visited during the diagnostic. Information available in the terms and conditions of the Big Four banks varies from none to full disclosure of a contact telephone number for complaints and banking inquiries, reporting stolen cards, card cancellations, bank's website, a brief description on how to file a complaint, and contact details of the ombud schemes and other regulators. It was possible to find the contact details of the OBS in one of the Big Four banks' brochure, although the publication covered other types of products under the jurisdiction of other ombud schemes in South Africa, such as the FAIS Ombud (for investment products).

The information about the existence of relevant ombudsmen is equally inconsistent. Banks, including the Big Four banks, vary in the way they disclose the contact details and in which cases complaints should be filed with each relevant ombudsman.

c) Recommendations

In addition to specifying which product features and pricing elements should be disclosed to customers, the disclosure requirements recommended in section 2.2 above should reinforce banks' obligations to disclose the contact information and basic processes for internal and external complaints-handling mechanisms clearly and prominently. Banks should be required to publicize widely clear and detailed information on how to submit a complaint and the channels made available for that

purpose, including on mandated disclosure documents of the kinds discussed below, on their website, marketing and sales materials, customer agreements, and locations where their products and services are sold. Banks should also publicize and inform consumers of the existence of such alternative dispute-resolution mechanisms as the Banking Ombud and the FAIS Ombud, as well as their respective contact details, and basic information relating to their procedures. Disclosure of alternative dispute-resolution mechanisms should accompany the notice of any complaint that has been finalized by a provider's internal complaints procedure.

NOTES

137. Competition Commission of South Africa 2008, 132.
138. Competition Commission of South Africa 2008, 123.
139. FinMark Trust 2016.
140. OBS 2018, 7.
141. All fees in the same row do not necessarily have exactly the same transaction coverage. Where a fee has been left blank, this does not necessarily indicate that a fee is not payable; it may indicate that a different descriptor has been used for an equivalent fee or that information was not available.
142. Based on pricing information provided by ABSA in June 2017.
143. Based on information available on FNB's website (as of August 2017).
144. Based on information available on Nedbank's website (as of August 2017).
145. Based on information available on Standard Bank's website (as of August 2017).
146. Based on information available on Investec's website (as of August 2017).
147. Based on information in the document titled "Transact 2017 Fees (Effective 1 March 2017)," as shared by Capitec in June 2017.
148. Based on information available on Postbank's website (as of August 2017).
149. Solidarity Research Institute 2017, 25.
150. Solidarity Research Institute 2017, 25.
151. Solidarity Research Institute 2017, 25.
152. Based on information in the document titled "Transact 2017 Fees (Effective 1 March 2017)," provided by Capitec in June 2017.
153. As provided by ABSA.
154. As provided by FNB.
155. As provided by Standard Bank.
156. Standard Bank: Elite Banking, 2017 Pricing Guide.
157. Republic of South Africa, National Credit Act, 2005, section 104. Also see Chapter 5, part E.
158. Republic of South Africa, National Credit Act, 2005, section 108.
159. Republic of South Africa, National Credit Act, 2005, section 109.



4

PRODUCT CLOSURE AND MOBILITY

4.1: POTENTIAL BARRIERS TO ACCOUNT CLOSURE

a) Background

Regulation does not deal with account closures by customers, and the CBP says little about it. Paragraph 7.3 of the CBP states that banks will assist customers who want to close an account they no longer require but does not specify any further requirements in relation to this process.

Internationally, good financial consumer protection includes ensuring that FSPs do not unduly limit a customer's ability to cancel products or transfer to another provider. This expectation is also consistent with TCF Outcome 6 (that no unreasonable post-sale barriers apply when customers wish to change products and switch providers). Unfair practices in this regard can include (i) the imposition of contractual hurdles that impede consumers' cancellation of a product or switch to another provider, and (ii) the adoption of burdensome processes for a customer to achieve this (such as requiring that consumers go to a branch to complete extensive forms or provide acceptable justification for the closure).

b) Findings

In discussions, banks generally confirmed that account closure is at the customer's discretion but stated that various administrative steps would need to be undertaken. These include the following:

- That the customer needs to inform the bank of his or her intention to close the account, either in writing or verbally. However, several banks indicated this would need to be done at a branch.
- This will usually involve a discussion with the customer to understand the basis of his or her decision to close the account. This step also aims to verify if there are any measures a bank can undertake to resolve any issues that the customer might have had and try to convince the customer to retain the account.
- This will usually require customers to fill out and sign specific forms to proceed with the decision to close the account.

- The customer must settle all outstanding amounts owed in relation to the account before it can be closed, and all active debit and credit instructions (that is, debit orders, salary crediting, and so forth) must be cancelled before the account can be closed.
- In relevant cases, cards and chequebooks linked to the account must be destroyed (if applicable).
- After the account closure is completed, the bank notifies the customer to confirm this has been done, usually in writing.

The OBS reports¹⁶⁰ only a few complaints related to account closure, but there seems to be a lack of transparency or publicly available information regarding those procedures and varying degrees of facilitation by banks. Some of the Big Four banks have written internal policies on account closure, but they do not seem to make clear, simple information on procedures to be followed to close accounts available up front, and customers can not find the policies easily unless they ask. The channels through which customers can close accounts vary, and some banks restrict customers to using only certain channels to close accounts. For example, some of the banks noted in discussions that they allow customers to commence the closure process using remote channels, such as through Internet banking or by telephone, while others indicated that they allow closure only at branches, which can present a burden to some customers, especially those without easy and economical access to a branch. Procedures that customers must follow to be able to close their accounts also vary, and terms and conditions in general do not provide customers with the necessary information on how to do so. For example, a sample of terms and conditions revealed the following:

- Most banks' terms acknowledge customers' rights to close an account. One bank expressly refers to the need to attend a branch with proof of identify and comply with requirements of the Financial Intelligence Centre Act 2001.
- Several banks' terms expressly require customers to settle outstanding amounts. Two banks also reserve the right to retain sufficient funds in an account to cover amounts that may become due to the bank after termination, and one of the banks states that a customer is not allowed to withdraw funds from their account until the bank has processed all outstanding transactions.

Customers who live abroad may face potential barriers in case they need to close their accounts. Procedures for account closure are usually different, and tend to be more complex and expensive, for customers who live outside South Africa. There is also a lack of clarity related to the procedures to be followed by these customers. Many banks require different types of forms to be filled out by the customer, as well as significant fees and charges in these cases.

Most banks do not charge any direct fee for account closure. One bank charges a fee specifically for account closure. It is important to note, however, that other transaction and information fees indirectly related to the account closure, such as for funds transfers, balance inquiries, or withdrawals, may apply.

See section 4.3 below.

4.2: ACCOUNT-SWITCHING PROCESSES

a) Background

A decade ago, the Banking Enquiry highlighted practical and cost difficulties faced by customers wishing to switch accounts. According to the Banking Enquiry, “the cost and trouble involved in switching banks further weakens the competitive effect of price differences where those can be identified by customers, and allows supra-competitive pricing to be maintained.”¹⁶¹ The Banking Enquiry identified that the costs to customers of switching banks (including the search costs in finding an alternative) were generally enough to create a significant degree of customer captivity and so conferred on banks an appreciable degree of market power. They also concluded the following:

[O]n the basis of these switching costs alone, the market power of each bank is appreciable, as each bank is in a position to impose a small but significant non-transitory increase in price without losing its customers. Customers would have to find an alternative bank which is substantially cheaper than their own and likely to remain so, in order to justify the expenditure of time and money in switching.¹⁶²

The Banking Enquiry concluded that “easier product and price comparison will not help consumers much if it remains too expensive or troublesome to switch banks. Measures to reduce switching costs and assist bank customers in switching are therefore of crucial importance.”¹⁶³

TCF Outcome 6 contemplates that no unreasonable post-sale barriers be applied when customers wish to change products, switch providers, submit claims, or make complaints. This appears to be a real concern for a portion of the customer population in South Africa. According to the 2016 FinScope data for South Africa, 27 percent of the respondents agree with the statement, “You find it stressful to switch financial products,” and only 4 percent report having switched banks in the past year.¹⁶⁴

The CBP describes the procedures to be followed by customers and banks for switching. According to the CBP, banks are committed to making switching banks as seamless and easy as possible, as well as reasonable for all personal transactional account customers. The document contains details on the procedures that banks and customers must follow for switching.

b) Findings

Banks tend to follow the CBP with regard to switching processes, placing some of the administrative onus on customers. According to paragraph 7.2 of the CBP, banks are committed to making switching banks as seamless and easy as possible, as well as reasonable for all personal transactional account customers. Nevertheless, the CBP advises customers, when opening a new account, that they may request a “switching guide” from the new bank and to arrange new stop orders and, if relevant, load their payment beneficiaries. Customers also need to have account details changed with each party to transfer debit orders.

There is a general perception that there is no switching in South Africa. As noted by one of the consulted banks, “there is no switching in South Africa; customers tend to close or leave old accounts dormant in the old bank and open accounts in the new bank.” The same bank also said that “in South Africa, the barriers to exit an account are so high that customers are prepared to put up with terrible service from their

current bank rather than switching. It is quite difficult to switch account in South Africa.” In this context, there is currently no common switching process or arrangement.

Industry information regarding switching processes is unclear. According to paragraph 7.2.1 of the CBP, customers may request a “switching guide” from the new bank, which will provide them with all necessary information needed to switch. Nevertheless, when asked, banks were not aware of the document and generally advised that a switching guide has not been developed. There was also a lack of awareness or clarity regarding any interbank arrangements relating to switching. Some participants suggested there were arrangements in place, while others were not aware in this regard.

Some banks are more facilitative than others. It is possible to find references on some bank websites to campaigns to incentivize customers to switch to them with corresponding assistance to do so. Some banks facilitate the “switch-in” process of debit orders, for which there is usually a “debit order switch authorization form” to be filled out by customers. To facilitate the switching-in process, some banks do not charge monthly fees for the period in which customers keep an old bank account open with the old bank to allow full transition (for example, the six weeks recommended by the CBP).

Debit orders present significant concerns for the banking industry in South Africa, with issues ranging from poor conduct from debit order service providers to irresponsible behavior from customers. Banks indicated that over the last few years there has been a significant increase in debit orders processed to bank accounts without customers’ authorization, as well as inappropriate customer behavior, where bank customers are disputing validly authorized debit orders to delay payment.

An industry project aiming to enhance and eventually replace certain types of debit orders and thereby contribute to the safety and efficiency of debit orders, was commenced in 2013.¹⁶⁵ The project aims to deliver a new type of debit order system, called DebiCheck. Through the new debit order system, a debit order will be processed to a consumer’s account only if the mandate for such a debit order has been electronically confirmed by the consumer. The industry foresees that the number of invalid debit orders being processed as well as the number of consumer disputes where valid mandates are in place will decline.

DebiCheck is being implemented using a phased approach. At the beginning, DebiCheck is being used for early debit orders,¹⁶⁶ but in time, it may be used for other debit orders as well.

Although DebiCheck aims to optimize debit order processing, one of the consulted banks noted that the new process implemented with the system might be challenging to customers. For DebiCheck debit orders, consumers are being required to confirm, electronically and on a once-off basis, their debit order information with their bank. To support this new electronic confirmation process, banks have developed a number of ways in which they will obtain such confirmation, such as through USSD messaging to cell phones, banking applications, and by utilizing traditional channels, such as on-line banking, ATMs, or branches. Given the low level of financial literacy of the population in South Africa, customers may not understand or become confused with the process of authentication of the debit order.

BOX 4.1**International Examples of Regulation and Industry Arrangements for Account Switching**

The EU Payment Accounts Directive on payment accounts states that member states must make sure that payments service providers allow for a switching service between payment accounts held in the same currency to any consumer who opens or holds a payment account with another payments service provider within the same member state. The directive further provides details on how the switching service should function (for example, payments should be processed upon receipt of the authorization) and what information should be provided to consumers in relation to switching services.

In the UK, the Payment Accounts Regulations 2015 have made provision for switching services and establishes that a payment service provider must offer a switching service between payment accounts. Schedule 3 of the regulation defines how the switching should occur and establishes that the receiving service provider (new bank) must perform the switching service upon receipt of an authorization from the consumer with specific consent to the transferring service provider (old bank) and the receiving service provider). Examples of procedures to be followed according to the regulation are the following: The receiving service provider must request, within two business days from receipt of the authorization, that the transferring service provider transmit a list of the existing standing orders for credit transfers and available information on direct debit mandates that are being switched and, to the consumer, available information about recurring incoming credit transfers and creditor-driven direct debits executed on the consumer's payment account during the previous 13 months. Besides the procedures that each party must follow in the switching process, the regulation also has provisions on fees connected with the switching service and information about the switching service, requiring that transferring and receiving service providers must provide the consumer with access free of charge to details of any standing orders and direct debits applicable to the accounts the consumer holds with them.

Also in the UK, the Current Account Switch Service was launched in September 2013 as a voluntary scheme set up as part of an industry-wide program by the Payments Council and owned and operated by Bacs Payment Schemes Ltd., to make switching current accounts simpler and quicker for customers. Information from the Payments Council suggests that the service operates well, since once started, 99 percent of switches have been completed on time and 89 percent of switches have been completed without any errors. In addition, research found that satisfaction with the service is high. Eighty-five percent of personal current account customers and 91 percent of the small and medium-sized enterprises that used CASS were satisfied with their experience. Nevertheless, research also shows that the main barrier to switching is inertia, meaning that consumers do not even consider switching—for example, because of the lack of a trigger to consider switching. Account opening and switching processes (which are seen by consumers as one and the same process) are typically cited as the second most important barrier.

In October 2010, the Central Bank of Ireland introduced its *Code of Conduct on the Switching of Current Accounts with Credit Institutions*, built on the voluntary code that was drafted and operated by the Banking and Payments Federation Ireland. The Code applies when a consumer wants to switch his or her current account. It sets out the steps that each credit institution must take, within a defined time frame. It has statutory force under the Central Bank Act 1989 and must be complied with by credit institutions (banks and building societies) providing current accounts in Ireland.

BOX 4.1, continued

In Australia since July 2012, switching procedures have been easier. The first step is to find and open a new transactional account. The new financial institution (receiving provider) helps a customer switch all of his or her regular direct debits and credits from the old account by (i) asking the customer whether he or she has any direct debits or credits set up on the old account and if direct debits should be cancelled, (ii) arranging to get a list of all of the customer's regular direct debits and credits from the old financial institution, (iii) requesting that the customer sign a form so the new financial institution can switch his or her direct debits and credits, and (iv) notifying the customer's billers and payers of the new account details and asking them to let the customer know when they have made the necessary changes.

Sources: UK, Payment Accounts Regulation 2015; FCA 2015; BPFI n.d.; ASIC 2018; and APCA 2018.

Some banks have developed debit order switching authorization forms as part of the initiatives to assist customers to switch in. The bank is appointed to be the customer's agent to contact the beneficiaries listed on the authority and inform them to change their debit order instructions. Customers are also advised to have sufficient funds available in their old bank account as well as their new bank account, until the bank is able to ascertain that the debit orders have in fact been processed against the new account.

c) Recommendations for Closure and Switching

The new disclosure requirements recommended in section 2.2 above should cover inclusion of clear information regarding switching rights and processes. While such matters would not necessarily be covered in detail in precontractual disclosure, they should be clearly described in contractual disclosure. Awareness of switching-related services should also be ensured through appropriate information available in branches and other distribution channels.

The authorities should work with the banking industry to achieve a common and facilitative industry approach to transferring bank accounts, including debit orders (before considering regulatory intervention). Matters for coverage would include, for example, switching information exchange processes and time frames. The CBP provisions on switching should also be revised to reflect a more facilitative approach from a customer perspective.

4.3: EARLY TERMINATION AND ROLLOVER OF FIXED DEPOSITS

a) Background

As discussed in section 1.4 above, the CPA contains an unfair-terms regime, but there seems to have been uncertainty regarding its application to fixed deposits and transactional accounts. The FAIS General Code specifies certain general disclosure requirements in part VI, "Information about Financial Service," and closure requirements in part XII, "Termination of Agreement or Business."

b) Findings

Customers may not fully understand the implications of restrictions on fixed deposit withdrawals.

Terms and conditions for fixed deposits usually provide that customers are not permitted to withdraw the deposit (unless structured otherwise) before the maturity date. However, as shown by some of the examples in table 3.4, descriptions of a bank's discretion on whether to allow early withdrawal often do not reveal the grounds on which it may be exercised. Where detail is provided about cost-related consequences, the information can be complex for customers to understand.

Automatic rollovers of fixed-term deposits may sometimes also occur without customer understanding. In some cases, banks indicated that customers do not follow up at maturity of their fixed deposits. This could result in funds no longer earning the same or any return depending on their treatment. However, some banks may roll over the deposits, resulting in the funds not being available again for a period. For example, one bank states the following in its terms and conditions:

If you have chosen that we transfer the funds to your Nominated Bank Account, and this transfer is returned for any reason, we will contact you. Should we not be able to reach you, we will reinvest the full amount, including interest earned, for a period equal to the Investment Term. . . . Should your funds be reinvested in accordance with [this] clause, . . . the terms and conditions applicable to fixed deposits at that time will apply. However, we will not charge you a penalty for any early withdrawal.

Another bank states the following:

You must tell us how to handle your funds on maturity. If we don't receive any instructions from you, we will automatically reinvest your funds at the prevailing interest rate for the same time period as the matured investment. In the case of automatic re-investments, you have a 14-day grace period from the renewal date to change the investment instructions.

In order to raise awareness of customers, one of the consulted banks implemented SMS alerts to be sent to customers regarding key account-related events, including upcoming maturity of deposits.

c) Recommendations

The KFSs that are recommended to be introduced in section 2.2 above should address both early withdrawal and rollover. Given that there are already requirements relating to disclosure that would apply to fixed deposits, it is not recommended that more detailed disclosure requirements be developed. Rather, it is recommended that certain aspects of fixed deposits that might be unclear to customers be highlighted through the KFSs. In particular, a KFS should provide a brief, clear explanation of the consequences of early termination and the implications at maturity if the customer does not withdraw the fixed deposit.

Issues of potential inappropriateness or substantive unfairness of terms governing early withdrawals should also be addressed through the product-design requirements discussed in sections 1.2 and 1.3 above and the unfair-terms regime discussed in section 1.4 above. The application of these requirements (through FSCA guidance, enforcement, and so on) should take into account both customer impact and any legitimate business reasons for relevant restrictions, depending on the nature and extent of those restrictions, such as prudential requirements.

TABLE 4.1: Examples of Early Withdrawal Clauses

EXAMPLE 1	EXAMPLE 2	EXAMPLE 3	EXAMPLE 4	EXAMPLE 5												
A: Early withdrawals are permitted at the bank's discretion or as required by law. The penalty fee is to be determined as follows: 5% X (Capital Amount Invested/365) X Remaining Term The minimum penalty fee is as per the table below: <table><tr><th>Capital Amount Invested</th><th>Minimum Penalty Fee</th></tr><tr><td>R0–R200</td><td>R50</td></tr><tr><td>R201–R1,000</td><td>R100</td></tr><tr><td>R1,001–R10,000</td><td>R250</td></tr><tr><td>R10,001–R50,000</td><td>R750</td></tr><tr><td>R50,001 and more</td><td>R1000</td></tr></table> B: "Early withdrawal of funds is not allowed. You may only withdraw money from this account at the end of the fixed period. In extreme circumstances we may at our discretion allow an early withdrawal. However, an early withdrawal will attract penalty fees as determined by us from time to time. These penalty fees may reduce your capital amount."	Capital Amount Invested	Minimum Penalty Fee	R0–R200	R50	R201–R1,000	R100	R1,001–R10,000	R250	R10,001–R50,000	R750	R50,001 and more	R1000	"The early-withdrawal penalty fee will be calculated by using the applicable formula below: – in the case of notice deposit accounts: 1/10 of the interest rate (with a minimum one percent) X capital X (full notice period in days/365); or – in the case of fixed-term accounts: 1/10 of the interest rate (with a minimum one percent) X capital X unexpired term to redemption. The bank will deduct the early-withdrawal penalty fee from the capital before such capital is paid out to the client. The bank reserves the right to charge a reasonable minimum fee in the event of an early withdrawal."	"If you request for your funds to be paid out before Maturity you will be charged a penalty, which will be deducted from your investment amount before the funds are paid to you."	Early withdrawal of funds or the termination of an account attracts a minimum fee of R300. Such a penalty is calculated as follows: Capital balance of the withdrawal multiplied, over the remaining time to maturity, by the difference of the interest rate applicable to the investment period of the original fixed deposit and one which is entered into on the date of withdrawal, with the same maturity date as the original fixed deposit.	Early withdrawal is not allowed. The early withdrawal of funds and/or the termination of an account are at the bank's sole discretion and only under extreme circumstances. An early withdrawal will attract penalty fees and/or breakage costs, which may reduce the capital account. A fee in respect to any early withdrawal from or termination of the account of an amount equal to 1% per annum of the sum withdrawn over the remainder of the notice period is applicable. This is subject to a minimum fee of R750.
Capital Amount Invested	Minimum Penalty Fee															
R0–R200	R50															
R201–R1,000	R100															
R1,001–R10,000	R250															
R10,001–R50,000	R750															
R50,001 and more	R1000															

A coordinated industry approach should also be considered for providing alerts ahead of the maturity date of fixed deposits. As noted above, some banks have been sending customers SMS alerts regarding the forthcoming maturity of their fixed deposits. If necessary, however, advance notice could be mandated by regulation.

NOTES

160. OBS 2015 and 2016.

161. Competition Commission of South Africa 2008, 28.

162. Competition Commission of South Africa 2008, 32.

163. Competition Commission of South Africa 2008, 86.

164. See FinMark Trust 2016.

165. Payments Association of South Africa website as of June 2017, www.pasa.org.za/home/2017/06/29/news.

166. As explained by the Payments Association of South Africa, "Early Debit Orders (EDOs) are essentially an enhancement and variation of a basic debit order, allowing these 'special' debit orders to be processed much earlier in the day than would be the case with other debit orders. They, in turn, consist of two basic types, namely Authenticated (AEDO) and Non-authenticated (NAEDO)." See www.pasa.org.za/about-us/structure/forums.

CODE OF BANKING PRACTICE

This report recommends in various instances addressing objectives reflected by the TCF Outcomes through legislative reforms. While this is important to ensure that there is a supervisory mandate for, and legal enforceability of, relevant obligations on banks, it is also the case that the CBP remains a key instrument affecting banks' dealings with consumers in relation to the products discussed in the report. As such, this report includes specific recommendations to strengthen the CBP. For example, section 2.2 includes a recommendation to revise the CBP to reduce the onus on customers to request information, as well as to remove unnecessary and ambiguous caveats that might excuse banks from certain provisions. The need for greater efforts to raise awareness of the CBP among consumers is also highlighted. Section 4.2 includes a recommendation to revise CBP provisions on account switching to reflect a more facilitative approach from a customer perspective. More broadly, it is important that the CBP be comprehensively reviewed to ensure that it fully reflects up-to-date public and regulatory expectations in the context of the TCF Outcomes. (The report notes some instances where this may not be the case.)

Although one industry representative opined in discussions for the purposes of this Retail Banking Diagnostic that there were no gaps in the CBP and that it personified treating customers fairly, several banks, including some Big Four banks, suggested that the CBP should be reviewed and further updated in light of TCF Outcomes. For example, one bank, after stating that the CBP clearly needed updating, explained that some banks had already moved on from it, with better service levels or approaches than it reflected, and that aligning the CBP with TCF Outcomes would be a good step forward. Another bank said that TCF Outcomes were advancing client-centricity significantly beyond the CBP.



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LIST OF CONSULTED INSTITUTIONS

Government

Advertising Standards Authority of South Africa
Financial Services Board/Financial Sector Conduct Authority
National Consumer Commission
National Credit Regulator
National Treasury
South African Reserve Bank

Industry

Barclays Africa Group Ltd., trading as ABSA
Banking Association South Africa
Capitec Bank Holdings Ltd.
FirstRand Bank Ltd., trading as FNB
Investec Bank Ltd.
Nedbank Ltd.
Payments Association of South Africa
Postbank
Standard Bank of South Africa Ltd.
Commonwealth Bank of South Africa Ltd., trading as TYMEDigital

Civil society organizations

Black Sash
Financial Sector Community Coalition

Ombud schemes

Office of the Ombud for Financial Services Providers
Ombudsman for Banking Services

