

from assuring truthful and accurate information to the customer, the state should keep out of the credit-pricing process and leave it to the forces of the market. Some of their objections to state-set rates are quite persuasive. By what criteria will rates be set? Frequently, they are set on a cost-plus basis, thus encouraging continuing support even to inefficient and costly suppliers of this service. In addition, it is claimed, with a fair amount of evidence, that whatever ceiling is set automatically becomes a floor, if not the actual price, that the majority of lenders charge. Is the credit industry to be treated like a public utility? What theory of a fair price will govern the action of the state in setting rates? Interminable delays and problems are also involved when a legislature or an administrative board attempts to set rates.

On the other side of the argument, those who maintain that the state must set rates point to several considerations: (1) The borrowers in the market for consumer credit are often not in a financial position to shop around among competing sellers; (2) they frequently are not intellectually able to judge or digest the meaning of the information currently furnished them about rates and terms of credit;<sup>32</sup> and, (3) the supply side of the credit market is not sufficiently competitive to trust it to force rates down to a reasonable level.<sup>33</sup>

The evidence on this third point is voluminous but frequently contradictory. One writer, however, has summarized his study of banking concentration by saying:

Examining bank performance in 36 major metropolitan areas, we found that structural differences among these markets exert an important influence on bank performance. Market concentration, especially, was found to be significantly associated with the pricing, output, and profits of banks—high

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<sup>32</sup> Note the significant conclusion on this point from the Juster & Shay study. "Since the majority of consumers probably fall into the rationed category, there will be little rate response observable in the population as a whole under existing conditions . . . . [R]ationed consumers showed virtually no knowledge of rates." Juster & Shay, *Consumer Sensitivity to Finance Rates: An Empirical and Analytical Investigation* 2-3 (1964). "Rationed consumers are defined as those who, given the finance rate, desire more credit than the major or 'primary' credit sources . . . are willing to grant; unrationed consumers are those whose demand for credit is satisfied by their actual borrowing from primary credit sources." *Id.* at 1. See also the types and levels of ignorance discussed by the Malony Committee Report in the section on hire-purchase and the English consumer. Final Report of the Committee on Consumer Protection, *supra* note 28, at 168-71.

<sup>33</sup> Past efforts of lenders and vendors seem to have been directed to avoiding competition on price alone. Bartels, *op. cit.* *supra* note 6, at 36. "Clear distinction has not been made between the total charge and the charge for credit service; therefore the purchaser has not always been critical of price or aware of competitive practices." *Id.* at 471. To increase competition it is necessary to require suppliers of credit to state their charges in ways that facilitate price comparison. *Ibid.*