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Press and Information

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Judgment of the Court of First Instance in Cases T-213/01 and T-214/01

*Österreichische Postsparkasse AG v Commission of the European Communities
Bank für Arbeit und Wirtschaft AG v Commission of the European Communities*

THE COURT OF FIRST INSTANCE RULES ON QUESTIONS RELATING TO THE PARTICIPATION OF COMPLAINANTS IN PROCEEDINGS RELATING TO INFRINGEMENTS OF THE COMPETITION RULES

The applicants, Österreichische Postsparkasse AG (Case T-213/01) and Bank für Arbeit und Wirtschaft AG (Case T-214/01), are Austrian credit institutions.

In 1997 the Commission became aware of a document entitled “Lombard 8.5” and, in the light of that document and acting on its own initiative, initiated proceedings for infringement of the competition rules against the applicants and six other Austrian banks. Two months later an Austrian political party, the Freiheitliche Partei Österreichs (“the FPÖ”), sent the Lombard 8.5 document to the Commission and asked it to initiate an investigation with a view to making a finding that such an infringement had taken place.

In September 1999 the Commission sent the applicants a statement of objections, in which it alleged that they had concluded anticompetitive agreements with other Austrian banks relating to the fees and conditions applicable to their customers. In November 2000 the Commission notified to the applicants a supplementary statement of objections in which it alleged that they had concluded agreements relating to bank fees for national currency/euro exchange transactions.

During the administrative procedure, the FPÖ requested the Commission to send it those statements of objections. The FPÖ maintained that it was a customer of the banks under investigation and that it had suffered economic harm as a result of the impugned practices.

Following that request, the Commission informed the applicants that it intended to forward the non-confidential versions of the statements of objections in question to the FPÖ, in accordance with Regulation No 2842/98.¹ The applicants objected to the

¹ Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles [81] and [82] of the EC Treaty (OJ 1998 L 354, p. 18).

statements of objections being sent to the FPÖ because, in their contention, the FPÖ could not be regarded as a complainant with a “legitimate interest” within the meaning of Article 3(2) of Regulation No 17.² In the alternative, the applicants requested the Commission to remove certain information from the non-confidential versions of the statements of objections.

In July and August 2001 the hearing officer conducting the proceedings adopted two decisions closing the procedures relating to the transmission of the non-confidential versions of the statements of objections to the FPÖ and settling the applicants’ requests concerning the information to be removed from them.

In September 2001 the applicants brought two actions before the Court of First Instance for annulment of those two decisions of the hearing officer and also two applications for interim relief in the form of suspension of operation of the decisions. The applications for interim relief were dismissed and in January 2002 the Commission sent the FPÖ the non-confidential versions of the statements of objections. The contents of the statements of objections were then disclosed to the press by the Governor of the Land of Carinthia, Mr J. Haider.

In the present cases, the applicants claim, in substance, that the hearing officer’s decisions to forward the statements of objections to the FPÖ were adopted in breach of Regulations No 17 and No 2842/98 and also of the principles of procedural economy and legitimate expectations and of the rights of the defence. They also maintain that the statements of objections sent to the FPÖ contained business secrets and other confidential information.

The Court of First Instance rejects all the pleas in law raised by the applicants. The judgment of the Court concerns, in particular, important aspects connected with the participation in competition proceedings of natural or legal persons other than the undertakings in respect of whom the Commission has adopted objections.

The Court thus observes that the Community legislature has established a scale according to which the degree of participation in such proceedings is determined by the intensity of the harm caused to the interests of the person concerned, a distinction being drawn between an “applicant or complainant who has shown a legitimate interest”, a “third party showing sufficient interest” and “other third parties”. The Court notes that any applicant or complainant who has shown a legitimate interest is entitled to receive a non-confidential version of the statement of objections.

The Court considers that a final customer who shows that he has sustained or is likely to sustain harm to his economic interests owing to the restriction of competition in question has a legitimate interest for the purposes of Article 3 of Regulation No 17 in lodging an application or a complaint with the aim of securing a finding by the Commission that there has been an infringement of Articles 81 EC and 82 EC. As the ultimate purpose of the rules which seek to ensure that competition is not distorted in the internal market is to enhance the welfare of consumers, the recognition that such final customers who purchase goods or services have a legitimate interest in securing a finding by the

² Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-62, p. 87).

Commission that there has been an infringement of Articles 81 EC and 82 EC helps to achieve the objectives of competition law.

The Court concludes, moreover, that natural or legal persons who show a legitimate interest in securing a finding by the Commission of an infringement of the competition rules may submit a request or a complaint to that effect even after the initial investigation stage of the infringement proceedings has been opened, either upon the Commission's own initiative or upon application by another person.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: FR, EN, DE

*The full text of the judgment may be found on the Court's internet site
<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-213/01> and [T-214/01](http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-214/01)*

It can usually be consulted after midday (CET) on the day judgment is delivered.

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