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COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES  
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TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS  
SÚD PRVÉHO STUPŇA EURÓPSKÝCH SPOLOČENSTEV  
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

## Press and Information

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Judgment of the Court of First Instance in Joined Cases T-259/02 to T-264/02 and T-271/02

*Raiffeisen Zentralbank Österreich AG and Others v Commission of the European Communities*

### **THE COURT OF FIRST INSTANCE LARGELY UPHOLDS THE COMMISSION'S DECISION IMPOSING SANCTIONS ON A SERIES OF CARTEL AGREEMENTS ON THE AUSTRIAN BANKING MARKET (LOMBARD CLUB)**

*With the exception of the fine imposed on Österreichische Postsparkasse AG, which is reduced from EUR 7.59 million to EUR 3.795 million, the fines imposed by the Commission were justified and appropriate*

By decision of 11 June 2002,<sup>1</sup> the Commission found that eight banks were participating in a series of agreements and concerted practices on the banking market in Austria. It alleges that the banks in question set up what it describes as the ‘Lombard Club’, namely a group of regular meetings in which the banks at issue acted in concert as regards the key parameters of competition. The Commission imposed fines totalling EUR 124.26 million.

Those banks brought actions before the Court of First Instance. They do not deny their participation in the cartel, but request the annulment of the decision or a reduction of the fines, submitting that certain aspects of the assessment made by the Commission were incorrect.

#### **The Court largely upholds the Commission’s decision.**

#### *The applications for annulment of the decision*

The Court finds that, in the present case, it is not relevant to ascertain whether each of the regular meetings affects inter-State trade, but that the Commission could legitimately take into account **the cumulative potential effect of all the meetings**. As it is not contested that

<sup>1</sup> Commission Decision 2004/138/EC of 11 June 2002 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/36.571/D-1: Austrian banks – ‘Lombard Club’) (OJ 2004 L 56, p. 1).

this comprehensive cartel covered the whole of Austrian territory, there is, according to the Court, a strong presumption that that cartel had the effect of reinforcing the partitioning of the Austrian market, thus impeding intra-Community trade. The banks did not succeed in rebutting that presumption, in view of the fact that the concerted actions involved almost all the credit institutions in Austria and a very wide range of banking products and services.

*The applications seeking a reduction of the fines*

The Court points out that it is a matter for it, when reviewing the legality of the contested decision, to determine, firstly, whether the Commission exercised its discretion by following the ‘guidelines’<sup>2</sup> setting out the framework for the exercise of that discretion when setting the amounts of fines and, secondly, where there is a departure from those rules, to determine whether it is justified and properly reasoned. However, the Commission’s discretion and the guidelines do not predetermine the Court’s exercise of its unlimited jurisdiction.

First of all, the Court upholds the Commission’s classification of the cartel as ‘very serious’, given that price cartels are among the very serious infringements by their very nature and that the gravity of the infringement is accentuated, in the present case, by the importance of the banking sector for the whole economy and also by the scale of the concerted actions. Furthermore, it is lawful for the Commission to deduce from the implementation of the agreements that they had real effects on the market concerned because the concerted prices served as a basis for setting transaction prices, thus limiting the margin for negotiation on the part of end customers. Lastly, in the present case, the classification of the infringement as very serious cannot be affected by the limited size of the geographic market concerned.

**As regards the calculation** of the amounts of the fines imposed, **the Court largely upholds the Commission’s approach**, in particular the classification of the banks in categories, which it carried out by reference to the market shares of the banks in question, for the purpose of establishing the starting amounts as a basis for calculating the individual fines of the banks.

In particular, as regards the classification Raiffeisen Zentralbank Österreich AG, Erste Bank der oesterreichischen Sparkassen AG and Österreichische Volksbanken AG, the Court finds that the Commission was entitled to take into consideration the fact that those three banks carried out a central function (commonly called ‘the lead institutions’) for the decentralised banking groups of the Raiffeisen banks, the savings banks and banking cooperatives and, thus, to allocate to each of them the market share of the particular group. The Court holds that that approach was necessary to allow a correct evaluation of the lead institutions’ actual capacity to distort competition and the specific weight of their unlawful conduct.

Nevertheless, the Court holds that the starting amount set by the Commission is wrong as regards the Österreichische Postsparkasse AG, as the Commission based its findings with regard to that bank’s market share (which also included the market share of another bank with which it had merged in 1998 and for whose conduct it was held responsible) on

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<sup>2</sup> Information from the Commission - Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3)

insufficiently reliable documents. The data available in the course of the proceedings before the Court did not make it possible to establish that those institutions had, during the period of the infringement, a market share as high as that used by the Commission. **Consequently, the final amount of the fine imposed on the Österreichische Postsparkasse AG for its participation in the 'Lombard Club' is reduced to EUR 3.795 million.**

*The Commission's counterclaim*

In response to the action brought by Raiffeisen Zentralbank Österreich AG, the Commission requested the Court to increase the amount of the fine imposed on that company on the ground that it had denied the existence of a number of the agreements, in particular those relating to cross-border transactions, for the first time before the Court. The Court holds that an increase in the fine is not appropriate having regard to the minimal importance of the disputed issues both in the general scheme of the contested decision and as regards the preparation of the Commission's defence, which was in no way made more difficult by the bank's conduct. **Consequently, the Court also dismisses the Commission's counterclaim.**

**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: ES DE EL EN FR IT NL PL SL*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-259/02>*

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

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