

Vienna, 06 July 2006

## **Anti-trust proceedings re cross-guarantee system: interim ruling is success for the savings banks**

The ruling of the Cartel Court announced yesterday in the matter of the “cross-guarantee system” greenlights the cross-guarantee system and hence up to 100% customer deposit security at the savings banks. The criticism in the ruling of the joint marketing and business policy does not in principle call the long-standing cooperation in the savings bank group into question. There were concerns in terms of competition law, which refer primarily to the flow of competition sensitive information from the savings banks to Erste Bank, however no measures or injunctions such as those sought by the complainants were ordered.

The subject matter of the action was an application by Bank Austria and the Federal Cartel Authority petitioning the Cartel Court to prohibit Erste Bank and the savings banks from the further implementation of the agreement in principle on the cross-guarantee system and the associated supplementary agreement which regulated the cooperation in detail. In commercial terms, the application comprised three components:

- 1.) Erste Bank and the savings banks should be prohibited from implementing a joint marketing and business policy as described in the cross-guarantee system agreement.
- 2.) Further implementation of the voluntary early warning and deposit guarantee system should be prohibited.
- 3.) Finally, all measures required for the consolidation of the savings banks under banking law at Erste Bank should be prohibited; this refers in particular to the information provided by the savings banks to Erste Bank for the purposes of consolidation.

The Cartel Court was of the opinion that although the joint marketing and business policy did restrict competition between the savings banks, ultimately it is to be viewed positively. The cooperation between the savings banks and with the central institution strengthens the competitive ability of the smaller and medium-sized savings banks, in particular in competing with other institutions and supports the nationwide dissemination of modern banking services in Austria. However, the cooperation must not lead to core restrictions of competition, especially not to a common pricing policy by Erste Bank and the savings banks. The Court qualified the online loan calculator on the websites of the savings banks as such a core restriction. Overall, the cooperation within the savings banks sector was therefore clearly endorsed. However, the Court also made it clear that in the event of an intensification of the cooperation, Erste Bank and the savings banks must be very careful not to violate the core restrictions in their ongoing project business.

The early warning system within the cross-guarantee and the enhanced deposit guarantee systems were welcomed by the Cartel Court from a competition law perspective. The resulting strengthening of trust in the financial services sector, specifically in the savings banks sector, was seen as an important benefit for customers. The Court recognised that cross-guarantees are only possible when there is a certain degree of control (i.e. efficient risk management within the cross-guarantee system).

By contrast, the fact that there is a direct information flow concerning competition sensitive data from the savings banks to Erste Bank for the purposes of consolidation was seen as

anticompetitive. For the time being the Cartel Court has not ordered any concrete measures how to counter these concerns. It is therefore the responsibility of Erste Bank and the savings banks to submit their own proposals regarding these points.

## **No impact on the financial results of Erste Bank**

The decision will not affect the equity consolidation of the savings banks in the cross-guarantee system as part of the Erste Bank balance sheet. A corresponding complaint by BACA was dismissed by the Austrian Financial Market Supervisory Authority more than a year ago. Similarly, the EU Commission did not file any objections.

## **Judgement in the declaratory proceedings still outstanding**

In conjunction with the ruling now announced by the Court, the savings banks filed a petition for a declaratory judgement with the Cartel Court in December 2004, which would qualify the cooperation of the savings banks as part of the cross-guarantee system under certain circumstances as a business combination. This refers to the possibility of concluding an additional agreement between the 49 savings banks in the cross-guarantee system with Erste Bank that meets all antitrust criteria for a business combination. If the judgement is favourable, the successful cooperation of the savings banks can continue without restrictions and can be further intensified.

## **Further legal action under consideration**

The concerns of the Cartel court with regard to ensuring effective risk management in the cross-guarantee system and the required information flow from the savings banks to Erste Bank must be taken seriously. Erste Bank and the savings banks will now examine the 270 page ruling in detail and draw the appropriate conclusions, and if necessary, restructure the information flow so that it fully complies with the requirements of the competition law. Lawyers are currently considering whether Erste Bank and the savings banks will appeal and whether further action through the courts is necessary.

### **For more information, please contact:**

Erste Bank, Investor Relations

Graben 21, 1010 Vienna, Austria, Fax: ++43 (0) 5 0100 Ext. 13112

Gabriele Werzer, Tel. +43 (0) 5 0100 Ext. 11286, E-mail: [gabriele.werzer@erstebank.at](mailto:gabriele.werzer@erstebank.at)

Thomas Sommerauer, Tel. +43 (0) 5 0100 Ext. 17326, E-mail: [thomas.sommerauer@erstebank.at](mailto:thomas.sommerauer@erstebank.at)

Josef Kerekes, Tel. +43 (0) 5 0100 Ext. 16878, E-mail: [josef.kerekes@erstebank.at](mailto:josef.kerekes@erstebank.at)

This release is also available on our website at <http://www.erstebank.com/IR> in the Download Centre.