

interim ruling - successful result for the savings banks

Ikrath: "Market-related cooperation between Erste Bank and the savings banks offers particular advantages for consumers and customers"

"The interim ruling served on the parties on 5 July 2006 by the Cartel Court in the case initiated by competitor BA-CA against the cross-guarantee system (Haftungsverbund) of the savings banks is to be seen as a statement of principles, which reflect the findings of the court - the court has made known its concerns in terms of competition law but has not issued any measures or remedy orders", stated Michael Ikrath, Secretary General of the Austrian Savings Banks Association, in a first statement on the ruling by the Cartel Court in Vienna. As a result, explained Ikrath, the BA-CA complaint did not achieve its objective, which was apparently aiming at obtaining a ruling to prohibit the Haftungsverbund. Quite to the contrary, the cooperation between the savings banks and Erste Bank within the cross-guarantee system, the subject matter of BA-CA's complaint, was deemed perfectly legitimate by the Cartel Court. The "credit calculator" on the websites of Erste Bank and the savings banks, which had led to criticism and was held by the Court to violate EU cartel provisions, had already been removed at the start of the proceedings.

Market-related cooperation offers particular advantages to consumers and customers

"We are extremely satisfied that the Court confirms our view that there are specific advantages for consumers, and hence for our customers, in the market-related cooperation between Erste Bank and the savings banks and that BA-CA has therefore failed in its attempt to prevent this in future. Of course we are aware that this cooperation must be strictly within the parameters of the cross-guarantee system and must not go beyond this, which could pose a handicap to the future competitiveness of the savings banks", commented Ikrath.

The subject matter of the lawsuit was an application by BA-CA and by the Federal Competition 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 regulates certain features of 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 system and of the deposit guarantee system should be prohibited.
- 3.) Finally, all measures required under banking law for the consolidation of the savings banks at Erste Bank should be prohibited; this refers in particular to the information required provided by the savings banks to Erste Bank for the purposes of consolidation.

The Cartel Court now came to the conclusion that although the joint marketing and business policy did restrict competition between the savings banks, ultimately (in light of the legal exception under Article 81 (3) of the EC Treaty (EGV)) it is to be viewed as having overall positive effects. It held that the cooperation between the savings banks among themselves and with the central institution does strengthen the competitive ability of the smaller and medium-sized savings banks, in particular, in competition with other institutions, and supports the nationwide dissemination of modern banking services in Austria. However, the level of cooperation must not lead to restrictions of core elements of competition, especially not to uniform pricing by Erste Bank and the savings banks. The so-called credit calculator (Kreditrechner) which had been on the websites of the savings banks, for example, was held to qualify as such a specific restriction. Overall, the cooperation established within the savings banks sector was clearly endorsed. However, the Court also made it clear that in the event of an intensifying of the levels of their cooperation, Erste Bank and the savings banks in its current business must be very cautious not to cross the threshold defined by core restrictions.

The early warning system within the cross-guarantee system and extended deposit guarantee system were welcomed

by the Cartel Court from a competition law perspective. The ensuing strengthening of trust in the credit services sector, specifically the savings banks sector, was seen as an important benefit for customers. It was recognized that cross-guarantees are only possible when there is a certain degree of control (i.e. an 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. This information flow was deemed capable of distorting competition between Erste Bank and the savings banks beyond the extent required for the cross-guarantee system. The desire to create a credit institute group in accordance with Section 30 (2a) of the Austrian Banking Act may not take priority over the limits set by cartel law. For this reason, the entire supplementary agreement and in addition individual elements of the information flow within the cross-guarantee system were criticised in detail. For the time being the Cartel Court has not ordered any specific measures as to how to implement or remedy these concerns. Erste Bank and the savings banks shall submit their own proposals to the court regarding these points.

No impact on the financial results of Erste Bank

The interim ruling 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 BA-CA was dismissed by the Austrian Financial Market Supervisory Authority more than a year ago. No opinions to the contrary were notified by the EU Commission.

Judgement in the declaratory proceedings still outstanding

In December 2004, Erste Bank, together with some other members of the Haftungsverbund, filed an application with the Cartel Court for a declaratory decision that the Haftungsverbund qualifies as a "Zusammenschluss" (merger) within the meaning of the Austrian Cartel Act.

This refers to the possible option of drawing up an additional agreement, which could be agreed by the savings banks in the cross-guarantee system with Erste Bank. "If the Cartel Court finds that the agreements constituting the cross-guarantee system are in fact a merger, the rules regarding co-operation agreements would not be applicable - the successful cooperation of the savings banks may then go on without restriction and could be further intensified," explained Ikrath.

Further legal action under consideration

There is a clear understanding that the concerns raised by the Cartel court on the present system of information flow from the savings banks to Erste Bank in connection with the efforts to ensure effective risk management in the cross-guarantee system (which is judged positive) required information flow must be taken seriously. It is now the task of Erste Bank and the savings banks to examine the 270 page ruling in detail and to draw the right conclusions and if necessary restructure the information flow so that it fully complies with the requirements of competition law. Lawyers are currently considering whether Erste Bank and the savings banks will appeal and whether further action through the courts is necessary.