



Austrian Supreme Court gives green light for cross-guarantee scheme and business combination

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The Austrian Supreme Court, as the appeals court in Cartel Court matters, last night published its verdict on the Republic of Austria's legal database (RIS), rejecting all appeals in relation to the clarification of cartel and competition issues relating to the cross-guarantee scheme between Erste Bank and the Austrian savings banks.

The verdicts relate to the Bank Austria-Creditanstalt's allegation of "prohibitive practices" (aiming to prohibit Erste Bank and the savings banks from the further implementation of the cross-guarantee system) as well as the appeal by the competition authorities against the decision of the Cartel Court whereby the conclusion of an additional agreement between Wiener Neustädter Sparkasse (serving as a role model) with Erste Bank meets all antitrust criteria for a business combination.

This means that the mutual responsibility and thereby implied safeguarding of customer deposits, such as that in Erste Bank's and the Wiener Neustädter savings bank's 'business combination', has been granted approval beyond the legal minimum by the highest legal authority.

"Through this verdict, the successful cooperation between Erste Bank and the savings banks has been placed on an airtight platform with regard to competition law", declared Michael Ikrath, Secretary General of the Austrian Savings Banks Association.

"In addition to the final resolution of a year-long legal dispute, we are pleased with the Supreme Court's statement that our customers are beneficiaries of our cooperation", continued Ikrath. The Supreme Court wrote in its verdict, "[...] that the legally-based cross-guarantee scheme has a positive effect on safety, and thereby on customer trust. The Supreme Court at the same time pointed out in this context that the cross-guarantee scheme endeavours above all to prevent defaults through intra-scheme recapitalisation and participation measures; thereby also without doubt resulting in appropriate benefits to customers."

On the basis of EU Law, the Supreme Court also rejected that the cooperation in the savings bank sector could have a negative effect on competition: "[...] as far as these contracts create a production, marketing, advertising, specialisation and guarantee/secure alliance, the advantages will accrue not only to customers who will benefit from a wider range of modern services, which smaller savings banks in particular could not finance, but also result in wider technological advancement. The brand competition between different credit institutions of other sectors will ensure that the cost benefits are passed on to customers, with no concern that competition will be eliminated. In the same context, the Supreme Court also referred to efficiency gains, which smaller members of the scheme will reap through joint IT platforms and applications, joint product development, product marketing and publicity campaigns."

The Supreme Court also saw advantages of sector cooperation in connection with Basel II: "The unified risk classification following the introduction of the IRB standard is positive for the economy as a result of improved customer selection. The established competition with other credit services sectors will ensure that members of the cross-guarantee scheme pass on a fair amount of benefits of their cooperation to customers."

The ruling of the Supreme Court opens up the opportunity for Erste Bank and the savings banks to further develop their relationship. "It creates a safe legal basis for continued co-operation for the benefit of customers, maintains the competitiveness of the sector and secures long-term independence of the savings banks", Ikrath concluded. "To that effect the savings banks will swiftly proceed with analysing the ruling and will take the appropriate decisions."