PRICE-FIXING (BANKING): THE BANK CARTEL CASES

Subject: Price-fixing

Industry: Banking

Parties: Various Dutch, Belgian and other Banks (see reports)

Sources: Commission Statements IP/01/554, dated 11 April 2001; IP/01/635, dated 3 May 2001; IP/01/634, dated 3 May 2001; IP/01/650, dated 7 May 2001

(Note. In view of the Commission's commitment to making a success of the Euro, it has understandably cracked down on banks seeking to make an artificial charge for converting currencies from and into Euros. As we have reported in previous issues, the Commission has initiated proceedings against a number of banks forming what it calls the bank cartel; but, in the cases reported below, the proceedings have been abandoned, following a satisfactory outcome. The cases are broadly similar; they are, however, separate from the German bank case reported on page 111 of this issue.)

SNS Bank

The Commission has decided to end cartel proceedings against the Dutch bank SNS, belonging to banking/insurance group SNS Reaal, regarding conversion charges for euro-zone currency notes. This decision comes after SNS Bank decided to abolish its minimum fee of over seven guilders (around €3.2) from the 1st of May and to provide the service free of charge for its accountholders as from next October. In doing this, SNS will set prices independently from a group of Dutch banks, which stand accused of fixing cash conversion tariffs, and provides a cheaper, competitive service for customers ahead of the summer holiday period.

Commenting on this decision, Competition Commissioner Mario Monti said: "This should create no misunderstanding about the Commission's determination to stamp cartels out of the European economy. In the Commission's view SNS's decision to drop the minimum fee will end its suspicious collusive behaviour and will translate into immediate benefits for consumers who will be able to enjoy competitive and, therefore, lower charges. In taking this decision, I also bore in mind the need to come to rapid results for the European consumer due to the imminent introduction of euro notes and coins and the ensuing withdrawal of the participating national currencies which will automatically put an end to the alledged infringement".

The Commission last year started proceedings against banks in seven countries, including the Netherlands, after it gathered evidence that the national groups of banks concerned had colluded to maintain conversion charges at certain levels to minimise losses caused by the introduction of the European single currency, the

euro, on January 1, 1999. Creation of the euro irrevocably fixed the exchange rate of the 12 EU currencies that are part of the single currency, therefore eliminating the buying and selling foreign exchange spread. Price-fixing is one of the cardinal sins of EU antitrust law, irrespective of whether it is aimed at keeping prices artificially high or to minimise a drop in prices because it equally harms the consumer which is deprived of real choice.

With a view to settling the antitrust proceedings with the Commission, SNS decided as from May 1st 2001 that it would no longer charge a minimum fee of 7.50 guilders per transaction which it is accused of having agreed with other Dutch banks. Instead it will apply only a percentage fee of 2.5% on all transactions. The abandonment of the minimum charge means that for the majority of transactions, namely those below 300 guilders, SNS fees will decrease. Furthermore, in anticipation of the arrival of the Euro on 1 January 2002, SNS will offer the service free for its accountholders for the last three months of 2001 for the exchange of amounts up to 3,000 guilders.

In August 2000, the Commission issued a so-called Statement of Objections to the main banking groups in the Netherlands as well as to SNS Bank for an infringement of the competition rules. The banks in the Netherlands were stated to have collectively fixed the tariff structure - a percentage combined with a minimum fee as well as the percentage level for the service of the cash exchange of euro-zone currencies at the counter. In coming to this decision, the Commission took into account the unique and imminent circumstance of the introduction of euro notes and coins. From next January, this market will cease to exist and consumers will no longer need to exchange euro-zone bank notes. SNS's change of behaviour will allow consumers in the Netherlands to benefit from lower tariffs for the exchange of bank notes until the end of the year. The Commission remains determined to pursue all and every anti-competitive practices in the financial sector, including after the introduction of the euro, with particular attention to cross-border money transfers.

Ulster Bank

The Commission has decided to end cartel proceedings against Irish bank Ulster Bank Ltd regarding charges for the exchange of euro-zone bank notes. This decision comes after Ulster Bank decided to abolish its minimum fee of two pounds (around €2.5) and decrease its percentage charge from 2,25% to 1% for all customers as from the 16th May. From October, Ulster Bank will provide the service free of charge for its accountholders for all euro-zone banknotes. Ulster Bank will thus set prices independently from a group of Irish banks which stand accused of fixing cash exchange tariffs and provide a cheaper, competitive service for customers ahead of the summer holiday period.

Ulster Bank is part of a number of banks being investigated in Ireland for suspected cartel involvement in relation to cash exchange charges for euro-zone currencies. Ulster Bank and Bayerische Landesbank Girozentrale are the second and third banks to have announced to the Commission their intention to modify unilaterally their exchange fee structure to break with suspected cartel behaviour.

The first initiative came from Dutch bank SNS, which last month also announced it was dropping its fixed fee and ending fees altogether from October for its accountholders.

Bayerische Landesbank Girozentrale

The Commission has decided to end cartel proceedings against the German bank Bayerische Landesbank Girozentrale regarding charges for the exchange of euro-zone bank notes. This decision comes after Bayerische decided to abolish its minimum charge of €2 (around 4 marks) and decrease its percentage charge from 3,0% to 2,0% for all customers as from 1st May. From the same date, the service will be free for its account holders insofar as the buying of euro-zone bank notes is concerned. Both buying and selling of bank notes will be free for account holders from the 1st of October. In doing this, Bayerische Landesbank will set prices independently from a group of German banks, which stand accused of fixing cash exchange tariffs, and will provide a cheaper, competitive service for customers ahead of the summer holiday period.

Other Dutch and Belgian Banks

The Commission has decided to end cartel proceedings regarding conversion charges for euro-zone currency notes, against Dutch banks ABN AMRO, Fortis Bank Nederland, GWK, ING Bank and Postbank, as well as Belgian banks ABN AMRO Belgium, BBL (Banque Bruxelles Lambert) and Caisse Privée Banque, the latter two belonging to ING Group. This decision comes after these banks individually decided to considerably lower their fees for the general public and to provide the service free of charge later this year. In doing this, the banks are setting prices independently from other banks in the Netherlands and Belgium which the Commission suspects of fixing cash conversion tariffs. More importantly, this will provide a cheaper, competitive service for customers ahead of the summer holiday period. This move by the Dutch and Belgian banks follows on similar steps by other financial institutions (SNS Bank, Netherlands, Ulster Bank, Ireland and Bayerische Landesbank Girozentrale, Germany).

Netherlands

ABN AMRO will offer the service free for all private customers exchanging an amount of maximum €1000 a day. This applies to accountholders and other customers from mid October onward. Furthermore, as from May 15th they will no longer charge a minimum fee of 7.50 guilders (€ 3.4) per transaction. Instead they will apply the existing percentage fee of 2.75% to all transactions, with a new minimum of 3.50 guilders. The lowering of the minimum charge means that for transactions below some 273 guilders (around €124), charges will be reduced. An exception is made to these new conditions for a limited number of offices of ABN AMRO that offer bureau de change services in the restricted passenger area at Schiphol, where the new conditions will apply from 15th October onward.

For Fortis Bank Nederland, the essential features of the new tariffs are that Fortis will in the short term abolish its minimum fee (applying only its percentage fee),

and will offer a free of charge exchange service for its accountholders as from October 1st 2001. GWK Bank , a subsidiary of Fortis Bank Nederland that operates bureaux de change, will lower its fixed fee to 2.50 guilders instead of the current 5 guilders, for transactions up to 750 guilders. The fixed charge will be waived totally for buying and selling of euro-zone currencies as from 1st October 2001. The current percentage fee will continue to apply.

ING Bank and Postbank will reduce, starting May 21st, their minimum charge from 7.50 to 3.50 guilders. The percentage charge of 2.75% and 2% respectively will remain in place. Also, they will, from 1st October 2001, accept euro-zone currencies free of charge from their accountholders, but for the selling of euro-zone currencies to accountholders the above-mentioned percentage fee will still be applied.

Belgium

BBL and Caisse Privée Banque (both belonging to the ING Group), will reduce their minimum fee ,as of Mai 21st, to 45 BEF (€1.1) instead of the current 100 BEF, but the current percentage charge will remain in place. Furthermore, from October, BBL will buy euro-zone currencies free of charge from their accountholders, but for the selling of euro-zone currencies to accountholders the existing percentage fee will still be applied.

ABN AMRO (Belgium) will abolish from 1st June 2001 all fees for its accountholders for the exchange of euro-zone currencies. ■

IATA cargo tariff consultations

In a statement of objections sent to the International Air Transport Association (IATA), the Commission has taken the preliminary view that the IATA cargo tariff consultations restrict competition and are no longer indispensable to provide customers with efficient interlining services within the EEA. IATA has been given two months to respond in writing to the Commission, and it has also the right to request an oral hearing. Until June 1997 cargo tariff consultations benefited from a block exemption under Commission Regulation No 1617/93, which in effect enabled European airlines to agree on tariffs for the carriage of freight. Following the withdrawal of the block exemption by the Commission, IATA notified its cargo tariff consultation system under Council Regulation 3975/87 and applied for an individual exemption. The Commission accepts that cargo tariff conferences facilitate the provision of a comprehensive system of interlining within the EEA but considers that until now IATA has not succeeded in demonstrating that this restrictive system is indispensable to provide customers with efficient interlining services within the EEA. In particular, the tariff conference system is 55 years old and dates from the time air transport markets were strictly regulated. Source: Commission Statement IP/01/694, dated 15 May 2001.