PRICE FIXING (BANKING): THE AUSTRIAN BANKS CASE

Subject: Price fixing
Fines

Industry: Banking
(Some implications for other industries)

Parties: (See list in text)

Source: Commission Statement IP/02/844, dated 11 June 2002

(Note. This is a classic cartel case, with interesting documentation on the methods used by the participating banks to conduct the price fixing operations. The Commissioner's comments are perhaps slightly exaggerated, particularly in view of the cooperation which the banks in question afforded to the Commission's investigation and which earned them a reduction in their fines. He was, however, fully justified in pointing out that banks were as much a part of the competition system as any other industry.)

Fines imposed for cartel infringement

On 11th June, 2002, the Commission imposed fines totalling €124.26 million on eight Austrian banks for their participation in a wide-ranging price cartel. In a highly institutionalised price-fixing scheme, the CEOs of the banks met every month, except August, as the "Lombard Club", a cartel which covered the entire Austrian territory "down to the smallest village", as one bank put it, with a view to fixing deposit, lending and other rates to the detriment of businesses and consumers in Austria. The cartel started well before the accession of Austria to the European Economic Area in 1994. But in this case, the Commission can levy fines only for the period starting with membership of the European Union (1995) until June 1998, when it carried out surprise inspections at the banks' premises, putting an end to the infringement.

Competition Commissioner Mario Monti said that the institutionalised set-up of this cartel and its comprehensiveness, both in terms of the banking services covered and geographical scope, made it one of the most shocking cartels ever discovered by the Commission. "Banks should be in no doubt that they are subject to the competition rules of the European Communities just like any other sector. In fact, maintaining competition in the banking sector is particularly crucial, considering the importance of the banking sector for consumers, businesses and the efficient allocation of resources in the economy as a whole".

The breakdown of the fines by bank is as follows (€ million):

Erste Bank der österreichischen Sparkassen AG (Erste)	37.69
Bank Austria Aktiengesellschaft: (BA)	30.38
Raiffeisen Zentralbank Österreich AG: (RZB)	30.38

Bank für Arbeit und Wirtschaft Aktiengesellschaft (BAWAG)	7.59
Österreichische Postsparkasse Aktiengesellschaft (PSK)	7.59
Österreichische Volksbanken AG (ÖVAG)	7.59
NÖ Landesbank-Hypothekenbank AG (NÖ Hypo)	1.52
Raiffeisenlandesbank Niederösterreich-Wien reg Gen mbH (RLB)	1.52

Overwhelming evidence

Following reports in the Austrian press, the Commission, accompanied by officials from the Austrian Ministry for Economic Affairs, conducted simultaneous surprise inspections at a number of Austrian banks in June 1998. The hundreds of documents found - minutes of meetings, memoranda, records of telephone conversations, correspondence, and so on, - unearthed a network of cartel committees which covered the whole of Austria and all banking products and services as well as advertising or, rather, the lack of it. The cartel members fixed interest rates for loans and savings for private/household and for commercial customers as well as the fees consumers had to pay for certain services. The cartel also extended to money transfers and export financing.

The object of the Lombard cartel is expressed succinctly by the "host" of one of the illicit meetings in February 1995 when he welcomed the other participants with the following words: "The exchange of experience between banks in relation to interest rates has repeatedly proved to be a useful means of avoiding uncontrolled price competition. In this vein, today's meeting [...] should likewise ensure a focused and reasonable approach of all banks with regard to pricing. The way in which interest rates are currently being set shows very clearly that it is again necessary for us to sit down together and counteract problematic price developments [...] [I] hope, in the interests of your institutions, that constructive solutions will be found". (All quotes are taken from documents seized at the banks' premises.) The documents seized showed that the banks were aware of the anti-trust implications of their behaviour. For example, one participant at a cartel meeting suggested that, as a precaution, in future "no more minutes should be kept of such meetings". The legal department of one bank was also consulted on the matter and recommended: "Destruction of all existing records".

The Commission considers that the Austrian banks' behaviour amounts to a "very serious infringement" of the competition rules laid down in Article 81 of the EC Treaty.

"Down to the smallest village"

The cartel network was comprehensive as regards its contents, highly institutionalised and closely interconnected, and covered the entire country – "down to the smallest village", as one bank put it. For every banking product there was a separate committee on which the competent employee at the second or third level of management sat. Each month, except August, the Chief Executive Officers of the largest Austrian banks came together as the top-level body dubbed "Lombard Club". One level down were the product-based specialist committees. The most important ones were the Lending Rates Committees, the

Deposit Rates Committees and a pan-Austrian committee called Federal Lending and Deposit Rates Committee in which bank representatives from Vienna met their opposite numbers from the provinces. A constant flow of information took place between the various committees as well as between them and the top-level Lombard Club. In controversial cases, the Lombard Club's guidance was awaited, while in the case of less important decisions, confirmation "by the CEOs at the next Lombard" was "considered unnecessary". Between January 1994 and the end of June 1998, in Vienna alone at least 300 meetings took place.

What often triggered the convening of a committee meeting was a change in the key lending rates by the Austrian Central Bank, whereupon the banks promptly met "for the joint reflection of measures to be taken ". On these occasions, each participant would start by re-stating the rates applied at that particular moment and what reaction (that is, interest rate reduction or increase by a certain amount) each bank would consider appropriate. Most Austrian banks participated in the cartel, but a careful analysis of the cartel meetings showed that the eight banks fined played a key role.

Background

To calculate fines in cartel behaviour, the Commission takes account of the gravity of the infringement, its duration and the existence of any aggravating or mitigating circumstances. It also takes account of a company's ability to harm competition on a given market. Where there is considerable disparity in the size of the parties, the Commission places them in different groups so that parties with roughly similar market shares pay similar fines.The calculation of the fines is, therefore, not made solely with reference to a company's turnover although, under Regulation 17/62, the fine can never exceed 10% of a company's total annual turnover. The Commission reduced the fines calculated to take into account the co-operation afforded by the companies to the Commission while it was conducting its investigation (under the so-called "Leniency Notice" of 1996). As the banks did not contest the facts set out in the statement of objections, a reduction of 10% was granted. The companies have three months to pay the fines, which will go into the general budget of the European Union. Since the EU budget is financed by Member States' contributions the fines will ultimately benefit the European taxpayer. ■

The BBC Case

The Commission has decided that the funding of the BBC's nine new digital television and radio channels through the UK television licence fee does not involve state aid. This is because the new channels will be subject to public service obligations and the state financing is not disproportionate to the net costs of running the services.

Source: Commission Statement IP/02/737, dated 22 May 2002