PRICING POLICY (BANKING): THE GERMAN BANK CARTEL CASE

Subject: Pricing policy

Industry: Banking
(Implications for other industries)

Parties: Five German banks listed in text

Source: Commission Statement IP/01/1796, dated 11 December 2001

(Note. Whether the euro system is a success or not, consumers in the "euro-zone" have the satisfaction of knowing that they will no longer be robbed by the banks and money changes when they cross the borders between the participating states. Banks charged for buying currencies, for selling currencies and often, by way of additional commission, for exchanging currencies at all. They will have lost a great deal of revenue from the cessation of this lucrative trade; and the fact that some of them colluded to substitute a special minimum charge for euro-zone transactions compounded the enormity of the practice. The Commission took firm action in relation to other banks, in Germany and elsewhere, and has rightly imposed sanctions on the rump of banks still failing to allow competitive rates.)

The Commission has decided to fine five German banks a total of €100.8m for fixing the charges for the exchange of euro-zone currencies. In a clear violation of European antitrust rules, the banks in 1997 colluded to charge a minimum of 3% for the exchange of euro-zone banknotes to compensate for the abolition of the buying and selling arrangements at the beginning of 1999 when the euro was launched. According to the Commission, this behaviour "was illegal, caused direct and irreparable damage to consumers and dealt a blow to people's confidence in the European single currency". Other banks in Germany and in other Member States had reduced their charges.

The following banks were found to have infringed Article 81 of the EC Treaty and were fined accordingly:

Commerzbank AG:	€28.0m
Dresdner Bank AG:	€28.0m
Bayerische Hypo- und Vereinsbank AG:	€28.0m
Deutsche Verkehrsbank AG:	€14.0m
Vereins- und Westbank AG:	€-2.8m

The Commission's cartel investigation revealed that, in late 1997, several German and Dutch banks concluded an agreement on a commission of about 3% for the buying and selling of euro-zone banknotes during the three-year period which preceeded the final arrival of euro notes and coins set for January 1, 2002.

On January 1, 1999, the bilateral exchange rates for currencies of the European Union countries which created the euro zone were irrevocably locked, putting an

end to the lucrative selling and buying fees charged by banks and *bureaux de changes* to exchange those euro-zone currencies. The purpose of the agreement concluded by the group of German and Dutch banks was to recover about 90% of the "exchange margin" income after the abolition of the fees. Most banks reduced their charges to the benefit of consumers

The Commission's investigations started shortly after the beginning of 1999 and concerned banks in seven countries which subsequently received Statements of Objections: Belgium, Portugal, Ireland, Finland, Germany, Netherlands and, eventually, Austria. However, between April and the summer of 2001, one by one, starting with SNS of the Netherlands and including German banks other than those concerned by the present decision, the great majority of the banks proposed to reduce charges substantially and drop them in total for account holders as from 1 October 2001. The banks thereby abandoned their collusive behaviour and recovered their freedom to set prices individually. After that the Commission agreed to end proceedings against the banks as it took the view that it would be in the consumer interest for it to secure an immediate and substantial reduction in the charges.

The Commission's unusual attitude was justified by the exceptional circumstances of the present case. Euro notes and coins were to be introduced in January 2002, replacing the national currencies of the participating euro-zone countries and, therefore, putting an automatic end to the cartel behaviour. In the Commission's view, the reduction of charges and the banks' termination of their collusive behaviour not only produced immediate benefits for consumers but would also contribute to a smooth change-over to the euro.

The Commission considered that the cartel entered into by the German banks represented a serious infringement of the rules on competition and justified heavy fines. However, the effect of the cartel was limited to Germany and the Dutch border regions. The difference in the final fines is in direct correlation with the size of the banks concerned. Commerzbank, Dresdner Bank and Hypo- und Vereinsbank are large banks and, therefore, it was necessary to set the fine at a level which ensured that it would have a sufficiently deterrent effect. ■

The Commission has adopted a new Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the EC Treaty. The new Notice replaces the previous Notice of 1997. The revision of the de minimis rules is part of the Commission's review of the competition rules in general. By defining when agreements between companies are not prohibited by the Treaty, the Notice will reduce the compliance burden for companies, especially smaller companies. At the same time, the Commission will be better able to avoid examining cases which have no interest from a competition policy point of view and will thus be able to concentrate on more problematic agreements. In the next issue of the newsletter there will be a report on the changes made under the terms of the new Notice.