

- breach of Articles 8, 12 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Disregard of general principles of law, such as non-discrimination and equal treatment, equal pay for men and women, respect for private and family life, the principle that the civil status of Community nationals is to be governed by the legislation of their Member State, proper administration, the protection of legitimate expectations.

Action brought on 30 August 2002 by Raiffeisen Zentralbank Österreich Aktiengesellschaft against the Commission of the European Communities

(Case T-259/02)

(2002/C 274/50)

(Language of the Case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 30 August 2002 by Raiffeisen Zentralbank Österreich Aktiengesellschaft, established in Vienna, represented by S. Völcker, Lawyer.

The applicant claims that the Court should:

- annul the Commission decision of 11 June 2002 (C(2002)2091 final) in so far as it relates to the applicant;
- in the alternative, reduce the fine of EUR 30 380 000 imposed on the applicant in the defendant's decision;
- order the defendant to pay the costs.

Pleas in law and main arguments

The proceeding conducted by the defendant was directed against regular meetings of banks in Austria ('Bankenrunden'). By the contested decision the Commission found that the applicant — together with seven other Austrian banking institutions — had infringed Article 81 EC by participating in agreements and concerted practices concerning prices, charges and advertising measures, designed to restrict competition on the Austrian banking market from 1 January 1995 until 24 June 1998. The Commission imposed fines on the banks concerned.

The applicant submits first of all that the defendant wrongly assumed that the arrangements in the present case could affect trade between States. The Austrian banks' arrangements were restricted exclusively to Austria. Nor were they liable, given the nature of the service in question, to partition the Austrian market. There is therefore no infringement of Article 81 EC. Furthermore, there is no basis for the Commission's requirement to cease the infringement in the future. The Commission itself found that the applicant had brought the arrangements to an end on 24 June 1998.

The applicant also contests the classification of the infringement as 'very serious' for the purposes of the guidelines on the calculation of fines. When assessing the gravity of the infringement, the Commission disregarded in particular the fact that the Bankenrunden were not established by the banks expressly to interfere with competition but, on the contrary, took place over 50 years in accordance with Austrian law and — to the end — with the cooperation of State authorities.

Furthermore, the applicant contests the calculation of the fine imposed on it. In disregard of the links in the rural cooperative sector and inconsistently with settled case-law, the Commission attributed to the applicant market shares of undertakings in which it had no stake and whose market conduct it could not determine. In addition, the Commission rejected all mitigating grounds put forward without considering them sufficiently. Finally, the Commission misapplied the Leniency Notice ⁽¹⁾.

⁽¹⁾ Commission Notice on the non-imposition or reduction of fines in cartel cases (OJ C 207 of 18.7.1996, p. 4).

Action brought on 2 September 2002 by Bank Austria Creditanstalt AG against the Commission of the European Communities

(Case T-260/02)

(2002/C 274/51)

(Language of the Case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 September 2002 by Bank Austria Creditanstalt AG, established in Vienna, represented by C. Zschocke and J. Beninca, Lawyers.