

The applicant submits that the decision must be set aside if only because it infringes the obligation to state reasons under Article 253 EC. Furthermore, the defendant infringed Article 81 EC by assessing incorrectly in law the nature of the rounds of meetings which were investigated. On an objective assessment of the facts, the defendant should have recognised that there was predominantly disagreement between the banks in question. The incorrect assessment of the facts leaves its mark on the whole of the contested decision and must therefore result in its complete annulment. The decision also infringes Article 81 EC because the rounds of meetings investigated were not capable of affecting trade between Member States.

The applicant further contends that Article 3 of the contested decision must be annulled in the absence of fault, a precondition under Article 15(2) of Regulation No 17/62. Given the purely national nature of the rounds of meetings and the fact that they were rooted in a specifically Austrian context — with the participation of Austrian State authorities — the applicant was unable to discern their unlawful content and their purported ability to affect trade between Member States.

Furthermore the defendant, in breach of Article 15(2) of Regulation No 17/62, infringed essential principles governing the calculation of fines and in particular misapplied on many counts its own guidelines on the method for setting fines. First of all, it is wrong to accept that there was a 'very serious infringement', and the defendant failed to take account of numerous mitigating circumstances. Finally, the fine must be substantially reduced for the further reason that the defendant, by misapplying the notice on the non-imposition of fines in cartel cases, had no regard at all to the applicant's extensive cooperation.

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**Action brought on 30 August 2002 by Raiffeisenlandesbank Niederösterreich-Wien AG against the Commission of the European Communities**

(Case T-262/02)

(2002/C 274/53)

(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 Raiffeisenlandesbank Niederösterreich-Wien AG, established in Vienna, represented by H. Wollmann, Lawyer.

The applicant claims that the Court should:

- annul the Commission decision of 11 June 2002 in a proceeding under Article 81 EC (Case COMP/36.571/D-1 — Austrian Banks);
- in the alternative, annul Articles 3 and 4 of that decision in so far as they relate to the applicant;
- 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 that the rounds of meetings between the Austrian banks could not appreciably affect trade between States. The Commission misapplied Article 81(1) EC in the contested decision. The arrangements in question were limited to the territory of the Republic of Austria. The Commission adduced no conclusive evidence as to why the arrangements were none the less supposed to have been capable of appreciably affecting trade between States. In particular, it was not demonstrated that they had the effect of partitioning the market.

The applicant further contends that the Commission did not prove that the applicant acted with intent or negligently. The Commission misapplied Article 15(2) of Regulation No 17/62. It imposed a fine despite an absence of proof that the applicant's staff had acted with intent or negligently. The Commission fails to have regard to the fact that the question of fault does not turn on knowledge of the prohibition on cartels but primarily on knowledge of the facts which render that prohibition applicable in a specific case. Furthermore, the Commission considers fault only with regard to the requirement that competition be restricted and does not ask itself whether the applicant's staff were in a position to recognise the alleged effects between Member States. That was not the case.

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