

**Action brought on 30 August 2002 by Österreichische Postsparkasse Aktiengesellschaft against the Commission of the European Communities**

(Case T-263/02)

(2002/C 274/54)

(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 Österreichische Postsparkasse Aktiengesellschaft, established in Vienna, represented by H.-J. Niemeyer and M. von Hinden, Lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul Articles 1 and 2 of the defendant's decision of 11 June 2002 in Case COMP/36.571/D-1 — Austrian banks, in so far as it is found therein that the applicant has infringed Article 81 EC and must cease that infringement;
- annul Article 3 of the decision in so far as it imposes a fine of EUR 7 590 000 upon the applicant;
- in the alternative, reduce the fine imposed on the applicant in Article 3 of the decision to an appropriate amount;
- order the defendant to pay the costs.

*Pleas in law and main arguments*

The pleas in law and arguments correspond to those put forward in Case T-261/02 Bank für Arbeit und Wirtschaft AG v Commission.

**Action brought on 2 September 2002 by Erste Bank der österreichischen Sparkassen AG against the Commission of the European Communities**

(Case T-264/02)

(2002/C 274/55)

(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 Erste Bank der österreichischen Sparkassen AG, established in Vienna, represented by W. Kirchhoff, F. Montag and G. Bauer, Lawyers.

The applicant claims that the Court should:

- annul Commission Decision C(2002)2091 final of 11 June 2002 in Case COMP/36.571/D-1 — Austrian Banks, in so far as it relates to the applicant;
- in the alternative, set aside the fine imposed on the applicant;
- in the alternative, reduce the amount of the fine imposed on the applicant in the contested decision to an appropriate sum;
- in any event 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 decision has numerous defects. First, it infringes in many respects the right to a fair hearing. The applicant was not given the opportunity before the decision was adopted to state its views on the allegation that all independent savings banks were to be attributed to it as the leading institution. Nor is the statement of reasons for the decision adequate. In particular, the reasons for attributing the savings banks to the applicant, and those for the calculation of the applicant's market share, on the basis of which the amount of the fine was determined, do not satisfy the requirements of the case-law on the duty to state reasons.

The applicant further submits that the decision infringes the principle of good administration. The unlawful attribution of the conduct of all independent savings banks to the applicant/GiroCredit as the leading institution in the savings bank sector is a particularly serious breach. The legal preconditions for such attribution are manifestly not present.