



European Court upholds AdC's decision in Banking Cartel Case

29 July 2024

The judgment of the Court of Justice of the European Union (CJEU) in the "Banking Cartel" case was published today, confirming the position of the Portuguese Competition Authority (AdC) and rejecting the banks' arguments.

In 2019, the AdC imposed total fines of 243 million EUR on 14 banks for the continuous practice of exchanging sensitive and non-public information between 2002 and 2013, which reduced competition in the commercial terms of mortgage credit, consumer credit, and SME credit. Twelve banks appealed the AdC's decision to the Competition, Regulation, and Supervision Court (TCRS), including the two that admitted to the unlawful practice and therefore did not pay a fine (Barclays) or received a 50% reduction in their fine (Montepio).

In April 2022, the TCRS confirmed all the facts relating to the infringement but suspended the proceedings and sought clarification from the CJEU on the interpretation of the applicable European law in this case. The issue was whether the AdC was correct in considering this practice a "restriction by object" under Article 101 of the Treaty on the Functioning of the European Union, which is inherently likely to harm competition and thus does not require proof of specific negative effects.

In October 2023, Advocate General Rantos had already suggested that the Court should decide as it did today. This position was also supported by the European Commission and the Member States that submitted their comments.

Today's judgment confirms that the AdC was right to conclude that the exchanges of information between Portuguese banks over 11 years were likely to restrict competition and are prohibited by competition law.

The CJEU stated (our translation): *"Article 101(1) TFEU must be interpreted in the sense that a broad reciprocal and monthly exchange of information between competing credit institutions, occurring in markets with strong concentration and barriers to entry and which has as its object the conditions applicable to operations carried out in these markets, namely spreads and risk variables, current and future, as well as the individualized values of production of participants in this exchange, to the extent that, at least, the spreads thus exchanged are those which these institutions intend to apply in the future, must be qualified as a restriction of competition by object"*.

Following this judgment, it is expected that the TCRS will confirm the AdC's decision regarding the existence of the infringement.

In parallel, Ius Omnibus is pursuing five class actions in the TCRS to compensate Portuguese consumers for the overpayments made on credit contracts and purchases of goods and services from companies that took out credit during that period. The total damages caused by the "Banking Cartel" are estimated to exceed 5.5 billion EUR.

Ius Omnibus is committed to ensuring that these actions are judged as quickly as possible and that consumers are compensated for the damages caused by a cooperation among all major Portuguese banks that lasted over 11 years.

About Ius Omnibus

Founded in 2020, Ius Omnibus is a non-profit European consumer organization based in Portugal. Ius is legally intitules to represent Portuguese consumers affected by anti-competitive or unlawful practices before Portuguese courts. It is also a qualified entity under the European Representative Actions Directive, and is entitled to represent European consumers in all EU member states.

With more than 40 ongoing actions in Portugal, its mission is to protect the rights and interests of consumers, including citizens of European Union Member States and third countries who are resident in the European Union, including those arising from Consumer Law, General Contract Terms, Advertising Law, Competition Law, Unfair Commercial Practices, Regulatory Law, Environmental Law and Personal Data Protection Law.

Ius focuses primarily on protecting these rights and interests by bringing class actions, restoring legality and seeking fair compensation for consumers harmed by companies' illegal practices.

Ius maintains that everyone has the right to be treated fairly by companies. When they break the law or adopt unfair practices, they must be held accountable. Class actions represent a robust tool that can help consumers achieve justice and compensation for the damages they are owed.

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