



ROUNDTABLE ON MERGERS IN FINANCIAL SERVICES

-- Note by Germany --

This note is submitted by the German Delegation to the Committee on Competition Law and Policy FOR DISCUSSION at its forthcoming meeting on 5-6 June 2000.

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I. Product market definition

Ad a. – c.:

1. The Federal Cartel Office has developed a highly differentiated market definition based on various banking products. Its normal practice is to draw a fundamental distinction between *deposit business* and *loan business*. Based on the subdivisions of the Bundesbank statistics, the Federal Cartel Office regards the following services as relevant product markets as defined by the law:

Deposit business:

- sight deposits
- time deposits
 - less than three months
 - three months to less than four years
 - over four years
- savings deposits
- bonds

Loan business:

- overdrafts
- loans with fixed repayment dates
 - up to four years
 - over four years
- real estate loans
 - housing loans
 - commercial real estate financing
 - municipal loans

2. The other financial services are treated distinctly from these markets and market segments; they have their own relevant markets. The Federal Cartel Office normally includes the following:

- securities business, i.e. trading in shares and loans on behalf of customers,
- leasing business, subdivided into leasing of movable assets and real estate
- factoring business
- share issues, i.e. IPOs and capital raising for third parties
- building society business
- fund business, comprising public and special funds
- real estate financing
- financing of foreign trade and payments
- venture capital business

3. Some of these markets can again be subdivided into markets for private customers and corporate customers, assuming the products are not in themselves tailored to a certain clientele, e.g. factoring.

4. This structure basically corresponds to the market definition used by the European Commission (cf. Case IV/M.873 “Bank Austria/Creditanstalt”, fig. 15). It is still unclear whether the direct banking market is a separate market.

2. Geographic market definition

Ad a. and b.:

5. The relevant geographic market for banking services where the customer relies on direct contact with a bank on the spot is generally defined on a regional basis (branch-related business). This particularly covers services which the customer uses frequently to conduct his payment transactions (transfers, standing orders, direct debits, cash transactions, etc.) and for which he therefore needs an easily accessible bank close to his place of residence or work. The regionally defined markets accordingly cover sight deposits, overdraft loans and savings deposits where they are mass transactions (up to DM 100,000). The same goes for the short-term and medium-term loan business which is often related to a savings or current account. This does not apply to business with larger loan amounts which generally have longer terms, since these are offered supra-regionally or nation-wide. In the case of commercial property and housing, demand is nation-wide, whereby it is doubtful in the field of financing of owner-occupied housing for retail customers whether one can still assume a regional market definition or whether this can also now be regarded as a nation-wide market.

6. For all other banking services, one can assume at least a nation-wide, and in some cases even a European and a world-wide market.

7. It remains to be seen whether and to what extent the developments will lead towards online banking via direct banks by phone and the Internet and thus to a different regional market definition, particularly for retail banking. For a variety of reasons, a number of bank customers will not initially have access to online banking, so that the current view of the Federal Cartel Office is that one can continue to work from the regional market definition for retail banking described above.

3. Assessing anti-competitive impact other than barriers to entry

8. Ad question a., the Federal Cartel Office has no specific information.

Ad b.:

9. The “failing firm doctrine” is of no practical significance for bank mergers in Germany. Banks rarely go bankrupt in Germany. The alignment of prudential rules to the size and complexity of the banks has been set in motion at international level (Basle Committee) and national level (Complex Groups Supervisory Team). This will presumably further reduce the risk of a bank collapsing. Also, German banks are relatively small in the international comparison (market capitalisation and market share). The situation cannot therefore be compared with the situation in other countries, e.g. in the United States a few years ago.

Ad c.:

10. In Germany, special regulations apply to the commercial operations of public-law banks in particular. The so-called regional principle applies to Sparkassen. According to this, Sparkassen may normally only open branches in the territory of their guarantee authority. Furthermore, their commercial activity is supposed to concentrate on this area. They may not actively advertise for customers (active business) outside their area. In passive business, the regional principle applies to a limited degree. Such restrictions play a role in mergers and are taken into consideration when a planned merger is assessed in terms of competition.

Ad d.:

11. Public-law banks participate in general transactions just like private banks. Accordingly, their interest rates are also oriented to current market conditions and are not normally set “politically”. These banks thus have no special influence on interest rates on the market.

4. Barriers to “entry” (i.e. including barriers to expansion and exit)

Ad a.:

12. Online and electronic banking is developing rapidly in Germany. The number of users is rising sharply. This trend is driven by the fast-growing number of Internet users, coupled with the rapid establishment of direct banks and the new interest in the stock exchange and related business. Deutsche Bank AG has just announced its intention to reorientate and substantially strengthen its activities on the Internet. In general terms, this development is probably only just starting, even if Germany is regarded as one of the European leaders in this field. However, it is still extremely difficult at present to predict future developments and to derive the appropriate conclusions for competition law. There are indications that the trend may come to have a particular influence on the regional market definition. For the above-mentioned reasons, however, the Federal Cartel Office currently still assumes a need for a regional market definition in the retail banking field.

Ad b.:

13. In the international comparison, Germany is considered to be “overbanked” in view of the large number of bank branches. The network of branches will probably be thinned out in the future.

Ad c.:

14. This question plays a minor role in terms of competition-based reviews of the banking sector.

Ad d.:

15. Germany has a broad-based system of deposit insurance. The deposit insurance systems are regulated in line with the EU directive. The state does not bear the responsibility for managing these systems. The organisations of the Sparkassen and the co-operatives have systems providing insurance for their banks, and these are funded by contributions from the banks. There are deposit insurance systems for the private banks and for a group of public-law banks which are funded via contributions from members and audited by auditing associations. The same goes for the voluntary deposit insurance systems run by both groups alongside the statutory deposit insurance. In this regard, it should be borne in mind that bankruptcies of banks have been very rare in Germany in the past.

Ad e.:

16. There are no statutory or informal barriers to market access.

5. Efficiencies

Ad a.:

17. Since for certain bank products (e.g. investment banking) it is assumed that there are pan-European, or even global markets, it is often claimed that banks which focus on that sort of product need to attain a certain corporate size in order to ensure an appropriate presence on these markets. However, in the investment banking segment of Mergers & Acquisitions, it is not the largest banks which are most successful, but those with the greatest expertise and the highest degree of specialisation. This question is in any case related more to operational aspects and less to competition law.

Ad b.:

18. In the German view, an excessive concentration of risk can have negative repercussions on the stability of banks (cf. Asian crisis), where the nature of the risks is insufficient for an appropriate distribution of risk. The control on mergers exerted by the Federal Cartel Office does not consider such aspects in practice at present.

6. Remedies

19. The mere existence of an independent competition authority is likely in many cases to make a substantial contribution to preventing anti-competitive mergers before they get off the ground.

7. How do you interact with prudential regulators in the course of analysing and reaching decisions concerning bank mergers? What could be done to improve that interaction?

20. The Federal Cartel Office informs the Federal Banking Supervisory Office every time a intention to merge is registered and obtains comments from it. Co-operation between the Federal Cartel Office and the Federal Banking Supervisory Office runs smoothly.

8. Other than failing firm considerations, is there a need for a special regime for bank merger review ?

21. Since it is desirable to have uniform competition rules for all sectors of the economy which ensure the same standards in all areas, specific merger rules for banks are rejected. The competition legislation in force provides the necessary instruments for effective control.

9. Have bank mergers in your country involved special political sensitivities? If so, what was their nature and how were they addressed by your agency or by some other part of the government?

22. The Federal Cartel Office examines planned mergers solely in terms of competition. No authorisation for a bank merger is required from any government agency other than the Federal Cartel Office.

10. As regards bank merger cases, please describe your agency's experience of the costs and benefits of co-operation with other countries' competition offices. How, if at all, could that co-operation be improved?

23. So far, bank mergers have all been national cases. For this reason, co-operation with competition authorities apart from the European Commission is very rare, so that no further comment can be made on this point.