COMMISSION DECISION

of 30 September 1986

relating to a proceeding under Article 85 of the EEC Treaty (IV/31.362 — Irish Banks' Standing Committee)

(Only the English text is authentic)

(86/507/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Spain and Portugal, and in particular Article 2 thereof,

Having regard to the application for negative clearance submitted on 15 October 1984 by the Irish Banks' Standing Committee on behalf of its members, concerning a number of agreements then in force between them,

After publication [2] of the summary of the application pursuant to Article 19 (3) of Regulation No 17,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

(1) On 15 October 1984 the Irish Banks' Standing Committee (IBSC) filed an application for negative clearance on behalf of its members for a number of agreements then in force between them.

(2) This application was filed as a precautionary measure, the members having earlier voluntarily terminated a number of agreements relating to commissions charged for various banking services which previously existed between them.

A. The parties

(3) The parties to which this application relates are the members of the IBSC, namely, Allied Irish Banks plc (Dublin, Ireland), Bank of Ireland (Dublin, Ireland), Northern Bank Ltd (Belfast, United Kingdom) and Ulster Bank Ltd (Belfast, United Kingdom). The latter two are wholly-owned subsidiaries of Midland Bank plc (London, United Kingdom) and National Westminster Bank plc (London, United Kingdom), respectively. The four banks are generally referred to as the 'Associated Banks'.

(4) The IBSC is an unincorporated members' association whose activities are not laid down by statute or internal regulations. In practice, its principal functions are twofold : to provide a forum for cooperation in technical and operational matters, and to coordinate and represent the views of its members in dealings with the Authorities and other relevant representative bodies.

B. The market

(5) The three categories of financial institutions operating in Ireland are as follows :

1. Licensed banks, that is, banks licensed and controlled by the Central Bank of Ireland. These banks may be subdivided into :

   (a) Associated Banks, that is, the parties, which are the four clearing banks and principal retail banks ; and

   (b) Non-Associated Banks, that is, the Merchant and Commercial ('wholesale') Banks, and Industrial (deposit taking and lending) Banks, of which there are thirty-three in total ;

2. State-owned and State-sponsored Banks, of which there are four ;

3. Building Societies, whose lending activities are confined to mortgage finance for housing in Ireland.

In addition, there also exist hire-purchase companies and credit unions.

(6) The Associated Banks' share of total non-government lending in Ireland is approximately 38 %. Their share of the total non-government deposit market is approximately 43 %.

[1] OJ No 13, 21. 2. 1962, p. 204/62.
[2] OJ No C 143, 10. 6. 1986, p. 4.

C. The agreements

(7) The agreements to which the application for negative clearance relates are as follows :

1. Bank Opening Hours

The opening hours of the Associated Banks have since 1965 been the subject of formal agreement between the parties and also with the Trade Union of the Banks' employees.

The current normal opening hours are as follows : 10.00 a.m. — 12.30 p.m., 1.30 p.m. — 3.00 p.m. Monday to Friday (and until 5.00 p.m. on one day a week Monday to Thursday inclusive). However, certain additional banking services are available up to eighteen or twenty-four hours a day from Automated Teller Machines (ATMs) operated by each of the parties.

2. Clearing Rules

The parties are members of the Dublin Bankers' Clearing Committee through which they operate a clearing exchange, supplementary to that operated by the Central Bank. The Central Bank is itself a member of this committee as are the Chase Bank of Ireland Ltd and the Trustee Savings Banks.

The agreement in question sets out the rules according to which debits and credits drawn on or for the credit of member Banks are settled as between one another. Each member nevertheless remains free to use its own Clearing System for the clearance of items drawn on, and for the credit of, offices of its own or other Banks where such a course may be deemed desirable. In addition, each member may demand that the rules be reconsidered at any time, and is free to withdraw from the agreement subject to giving one month's notice in writing.

The agreement does not refer to any requirements for membership of the Committee, which is in principle open. The clearing exchange operated by the Central Bank remains available for non-members.

3. Direct Debiting Scheme

The parties operate a scheme whereby their customers may make use of a facility to collect amounts due to them from debtors by originating direct debits on debtors' bank accounts. The scheme is described in the publication 'Originator's Guide' published jointly by the parties, which also sets out the rules to be observed by participants. These rules conform to requirements laid down by the parties in respect of direct debiting operations carried out in Ireland.

D. Background to the present application

(8) In 1981 the Commission carried out a Community-wide investigation into commissions charged by credit institutions in each of the Member States for the various banking services they provided. The findings of this investigation were that in several Member States, including Ireland, such agreements or concerted practices existed between these undertakings which might be capable of infringing the EEC competition rules. Following the investigation certain banks' associations notified these agreements to the Commission. The present application, however, relates only to agreements other than Commission agreements concluded between the parties, the IBSC confirming that the latter agreements existing at the time of the Commission's investigation had since been terminated.

(9) In its original form, the application for negative clearance also related to an agreement on common interest rates on loans and deposits and other related agreements then in force between the parties.

Following a review of the concept of operating on the basis of jointly-agreed interest rates carried out by the parties and the Central Bank, however, these agreements were terminated. The same structure of interest rates, however, was retained as part of the new arrangements for Associated Banks' interest rates introduced by the Central Bank in consultation with the Associated Banks. These new arrangements were set out in a press release issued by the Central Bank on 31 May 1985.

(10) In the framework of the Commission's present policy in this sector, it is appropriate to confine this Decision to agreements relating to services, and to reserve its position regarding the arrangements for interest rates, including the structure of such rates.

E. Observations from third parties

(11) The Commission has received no observations from interested third parties following publication of the notice required by Article 19 (3) of Regulation 17.

II. LEGAL ASSESSMENT

A. General

(12) The applicability of the Community rules on competition to the banking sector has been constantly affirmed by the Commission and was confirmed by the Court of Justice in Case No 172/80, *Züchner v. Bayerische Vereinsbank* [1].

[1] ECR 2021 (1981) p. 2030 *et seq.*

B. **Article 85 (1)**

(13) Article 85 (1) provides that all agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade between Member States, and which have as their object or effect the prevention, restriction or distortion of competition within the common market, shall be prohibited as incompatible with the common market.

(a) *Undertakings*

(14) As economic entities engaging in activities of an economic nature, the banks participating in the agreements for which negative clearance is sought are undertakings within the meaning of Article 85 of the EEC Treaty.

(b) *Agreements*

(15) The application for negative clearance refers to the agreements contained therein as agreements between the parties on behalf of whom the application was made. As such the agreements may be taken to constitute agreements between undertakings for the purposes of Article 85.

(c) *Restrictions of competition*

(16) 1. Bank Opening Hours

The Commission considers that the time period within which services are made available to consumers is an aspect of competition between undertakings providing actually or potentially competing services.

However, with regard to the market on which the parties to the agreement in question are operating, given that :

(i) only some of the banking services provided by the parties are actually affected by this agreement ;

and

(ii) competition between the parties in these services is not otherwise affected by this agreement ;

the Commission takes the view that any prevention, restriction or distortion of competition which results from this agreement is not appreciable.

(17) 2. Clearing Rules and Direct Debiting Scheme

These agreements do not contain any provisions which have as their object or effect the prevention, restriction or distortion of competition within the common market. In particular, since membership to each is open, these agreements have no impact on competition.

(18) In view of the above, therefore, there are no grounds, on the basis of the facts in the Commission's possession, for action on its part under Article 85 (1). The Commission can therefore give these agreements negative clearance under Article 2 of Regulation No 17,

HAS ADOPTED THIS DECISION :

Article 1

On the basis of the facts in its possession, the Commission has no grounds for action under Article 85 (1) of the EEC Treaty in respect of the agreements on Bank Opening Hours, Clearing Rules and the Direct Debiting Scheme operating between the Associated Banks in Ireland.

Article 2

This decision is addressed to :

Allied Irish Banks plc,
Bankcentre,
Ballsbridge,
Dublin 4,

Bank of Ireland,
Lower Baggot Street,
Dublin 2,

Northern Bank Ltd,
Griffin House,
Wilton Terrace,
Dublin 2,

Ulster Bank Ltd,
College Green,
Dublin 2.

Done at Brussels, 30 September 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission