



RULING OF THE COURT OF JUSTICE OF THE EU - Case C 298/22, July 29, 2024

The ruling of the Court of Justice of the European Union (CJEU), which provided the clarification requested by the Competition Court (Santarém), was released on July 29th.

Thus, the case in Santarém met the necessary conditions for a decision to be made.

WHAT LED TO THE REFERENCE FOR A PRELIMINARY RULING?

Case C-298/22 concerns a reference for a preliminary ruling from the Portuguese Competition Court (Tribunal da Concorrência), located in Santarém, on the interpretation of Article 101(1) and (3) of

the Treaty on the Functioning of the European Union (TFEU).

The request was made in the context of a dispute between several credit institutions and the Portuguese Competition Authority concerning the latter's decision to impose a fine on those institutions for violating national competition law provisions and Article 101 of the TFEU.

This consists of their participation in a concerted practice aimed at restricting competition in the housing, consumer and corporate credit markets, in the form of an exchange of information on the current and future conditions applicable to

operations, namely spreads and risk variables, as well as the individual production values of the participants in that exchange.

The CJEU's official position comes more than two years after the Competition, Regulation and Supervision Court proved that banks exchanged sensitive information on commercial conditions over more than a decade.

However, despite finding the emails exchanged between employees of various banks to be “impressive”, the judge in charge of the case asked the CJEU for clarification as to whether there had been restrictions of competition, under the terms of Article 101(1) and (3) of the TFEU, taking into account doubts as to whether the practice had a concrete impact on customers.

DECISION OF CJEU

The Court of Justice thus declared in this judgment that Article 101(1) TFEU must be interpreted as meaning that Article 101(1) TFEU must be interpreted as meaning that *“a comprehensive reciprocal and monthly exchange of information between competing credit institutions, taking place on markets which are highly concentrated and have high barriers to entry, and which has as its object the conditions applicable to transactions carried out on those markets, in particular current and future spreads and risk variables, as well as the individual output values of the*

participants in that exchange, in so far as at least those spreads thus exchanged are those which those institutions intend to apply in the future, must be classified as a restriction of competition by object”.

Last Friday, September 20th, CJEU ruled on the request for a preliminary ruling made by the Portuguese Competition Court on July 29th on the case of the so-called “Portuguese banking cartel”, and the sentence was read out by Judge Mariana Gomes Machado of the Santarém Court.

THE OUTCOME OF THE CASE

After a ruling by the Court of Justice of the European Union that was already unfavourable to those involved, it was no surprise to hear the judge of the Santarém Competition Court confirm the 225 million fine imposed on 11 banks accused by the Competition Authority, with CGD ordered to pay 82 million euros, BCP 60 million, Santander 35.6 million, BPI 30 million, Montepio 13 million euros and BBVA 2.5 million.

BES (700,000 euros), Banco BIC (500,000 euros), Caixa Agrícola (350,000 euros) and Unión de Créditos Inmobiliários (350,000 euros) were also fined less than one million euros.

The decision can now be appealed to the Court of Appeal and then to the Constitutional Court, and it is expected that the banks in question will appeal.

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