19th September 2000 : Several major banks and credit establishments penalised for having implemented an anticompetitive agreement in the sector for property loans to private individuals in 1993 and 1994

Published on April 19, 2004

> *Version française*

In a decision dated 19th September 2000, the *Conseil de la concurrence* penalised several major banks and credit establishments, which it found guilty of implementing an anticompetitive agreement in the sector for property loans to private individuals in 1993 and 1994. It is the first time that the *Conseil de la concurrence* has dealt with anticompetitive practices in the banking sector.

In the early 1980s, long-term mortgage rates peaked at 20%, before dropping sharply within a few financial quarters from 1985, stabilising at around 12% in late 1992, when they registered another substantial drop until 1994. They then reached a level of between 7.5 and 9%.

During periods of falling rates, when the difference between the rates practised for new property loans and the rates practised in the previous period reaches around 2%, there is an advantage for holders of loans with over five/seven years still to run either to renegotiate their loan conditions with their bank, or to profit from competition between banks by paying off their loan early and renegotiating a new loan with a new lender. This last option is expressly stipulated by article L. 312-21 of the *code de la consommation*.

The *Conseil de la concurrence* found that, faced with this situation, the main

investment establishments had reached an “inter-bank non-aggression pact”, under which each of them refrained from making offers to customers of other banks who wished to renegotiate their property loans.

Besides aiming to prevent competition between banks, this agreement enabled each of them to better resist requests by their own customers to renegotiate their loans, since the customers in question were subsequently unable to turn to another bank in the event of their request being refused. Such concerted action between the main players in a market, aimed at distorting price competition, is prohibited by the Ordinance of 1st December 1986 relative to price freedom and competition. In addition, it constitutes an anticompetitive practice that is viewed as particularly serious by all competition authorities.

The *Conseil de la concurrence*, which had assumed jurisdiction on its own initiative, indicated that whilst banking activities are governed by specific regulation, like all other service activities, whether regulated or not, they are still subject to competition law. The *Conseil* also indicated that the competitive workings of the market are based on the independence and autonomy of the players involved. It stated that when concertation practices lead to the removal of any uncertainty they effectively distort competition, since each establishment is assured that the other banking networks will apply the same commercial policy.

The *Conseil* noted that, even if a cartel agreement between banks was not applied in a uniform manner, borrowers were deprived of the option of significantly reducing their property debts, whereas property represents the most substantial investment by households, and the repayment of loans required for this investment accounts for 30% of their disposable income.

According to the banking establishments, the outstanding amounts likely to be affected by the renegotiation of property loans during the period in question totalled approximately 600 billion FF. However, households were only able to renegotiate around 36 billion FF, which for them represented an overall reduction in interest charges of 3 billion FF over ten years.

Given the seriousness of the practice and the national scope of the agreement implemented by the main property loans operators, the *Conseil* imposed fines totalling more than one billion Francs: 450 million FF on the *Caisse nationale de Crédit agricole* ; 250 million FF on *Banque nationale de Paris* ; 250 million FF on *Société Générale*, 100 million FF on *Crédit lyonnais*, 70 million FF on the *Caisse Nationale des Caisses d'Épargne et de Prévoyance*, 10 million FF on the *Confédération nationale du Crédit mutuel*, 8 million FF on the *Caisse d'épargne des Alpes*, 6 million FF on the *Caisse régionale du Crédit agricole de Loire-Atlantique* and 500,000 FF on the *Fédération du Crédit mutuel Océan*.

> Decision n° 00-D-28 relative to the competition situation in the property loans sector

> See decision of the Paris Court of Appeal (27th November 2001)

> See decision of the Cour de cassation (Supreme Court of Appeals) - 23th June 2004