

Zagreb, 24 May 2004

No 195-020/05-04/ŽR

Pursuant to Article 39 paragraph 2 under i) of the Croatian National Bank Act (official gazette *Narodne novine*, No. 36/2001), and in connection with Article 40 of the Banking Act (official gazette *Narodne novine*, No 84/2002) and item 2 of the Decision Regulating Market Competition within the Banking Sector (official gazette *Narodne novine*, No. 48/2003), in the administrative procedure dealing with the assessment of the cooperation contracts on building society saving operations, concluded between Wüstenrot stambena štedionica d.d., Zagreb and Centar banka d.d., Zagreb, Erste&Steiermärkische Bank d.d., Rijeka, HVB Bank Croatia d.d., Zagreb, Hypo Alpe-Adria-Bank d.d, Zagreb, Slavonska banka d.d., Osijek and Volksbank d.d., Zagreb, the Governor of the Croatian National Bank hereby enacts the following

DECISION

1. The provision referred to in item 2.2 of the cooperation contracts on building society saving operations, concluded between Wüstenrot stambena štedionica d.d., Zagreb, Ilica 14, and the following banks:

1. Centar banka, d.d., Zagreb, Jurišićeva 36;
2. Erste&Steiermärkische Bank d.d., Rijeka, Jadranski trg 3a;
3. HVB Bank Croatia d.d., Zagreb (legal successor: HVB Splitska banka d.d., R. Boškovića 16);
4. Hypo Alpe-Adria-Bank d.d., Zagreb, Koturaška 47;
5. Slavonska banka d.d. Osijek, Kapucinska 29;
6. Volksbank d.d., Zagreb, Varšavska 9;

which obligates the said banks, during the contractual relationship related to building society saving operations, to exclusively sell the products of Wüstenrot stambena štedionica d.d., and does not permit them to perform the operations referred to in the above mentioned contracts on behalf of any other building society, shall be declared null and void.

2. The cooperation contracts on building society saving operations, referred to in item 1 of this Decision, shall remain in force, with the exception of item 2.2, which has been proclaimed null and void, and shall be individually exempt from the application of Article 9 of the Law on the Protection of Market Competition, and items 2.1 and 2.2 of the Decision Regulating Market Competition within the Banking Sector.

3. The exemption referred to in item 2 of this Decision shall be granted for a five-year period, starting from the day this Decision is enacted.

4. Wüstenrot stambena štedionica is ordered to annul the provisions referred to in the cooperation contracts on building society saving operations, proclaimed null and void in item 1 of this Decision, and provide the Croatian National Bank with the evidence

on the execution of this order within 30 days from the submission date of this Decision.

5. Wüstenrot stambena štedionica d.d. shall provide the Croatian National Bank with all subsequent amendments to the contracts referred to in item 1 of this Decision, and the annexes thereto, within 15 days from the date they were concluded, and shall notify the Croatian National Bank of its intention to conclude a cooperation contract on building society saving operations with any other bank.

6. This Decision shall be published in the official gazette *Narodne novine*.

STATEMENT OF GROUNDS

In accordance with item 8.1.5 referred to in the Decision Regulating Market Competition within the Banking Sector (official gazette *Narodne novine*, No. 48/2003 -hereinafter: the Decision), Splitska banka d.d., Split submitted to the Croatian National Bank, on 16 April 2003, a notification of the intended implementation of the concentration, arising from the merger of HVB Bank Croatia d.d., Zagreb, with Splitska banka d.d., Split, accompanied by eleven agreements signed by the banks participating in the concentration. Among the submitted agreements was the Cooperation Contract on Building Society Saving Operations, concluded between Wüstenrot stambena štedionica d.d, Zagreb, and HVB Bank Croatia d.d., Zagreb, together with Annex 1 - the Fee Agreement, which is a constituent part of the said Contract.

In accordance with the provisions referred to in items 2 and 3 of the Decision, the Croatian National Bank commenced an appraisal procedure to evaluate the said agreement.

On 17 October 2003, the Croatian National Bank required completion of the documentation and some clarifications. On 4 November 2003 (registered at the Croatian National Bank as at 5 November 2003), the Cooperation Contract on Building Society Saving Operations, concluded between Wüstenrot stambena štedionica d.d, and Splitska banka d.d., and a letter of Wüstenrot stambena štedionica d.d, to Splitska banka d.d., dated 31 October 2003, were submitted by lawyer Uroš Pavasović.

At the request of the Croatian National Bank, Wüstenrot stambena štedionica d.d, Zagreb (hereinafter: the Building Society) submitted, on 11 December 2003, cooperation contracts on building society saving operations concluded between the Building Society and the following five banks:

- Cooperation Contract on Building Society Saving Operations, concluded on 4 November 1999 between the Building Society and Centar Banka d.d., together with the Annex 1 attached thereto - the Fee Agreement;
- Cooperation Contract on Building Society Saving Operations, concluded between the Building Society and Hypo Alpe-Adria-Bank d.d., together with the Annex attached thereto- the Fee Agreement;

- Cooperation Agreement on Building Society Saving Operations, concluded between the Building Society and Slavonska banka d.d., together with the Annex attached thereto - the Fee Agreement;
- Cooperation Agreement on Building Society Saving Operations, concluded on 31 October 2003 between the Building Society and Volksbank d.d. and Annex 1 attached thereto - the Fee Agreement;
- Cooperation Agreement on Building Society Saving Operations, concluded on 24 November 2003 between the Building Society and Erste&Steiermärkische Bank d.d., together with Annex 1 attached thereto.

Upon examination of the submitted contracts it was established that the contracts contained identical or very similar provisions regulating the contractual relationship between the Building Society and the other contractual party, that the same regulations applied in the admissibility evaluation procedures of all stated contracts and that evaluation of all contracts fell within the competence of the Croatian National Bank, and it was therefore determined, in accordance with Article 127 paragraph 1 of the General Administrative Procedure Act (official gazette *Narodne novine*, No. 53/1991), under Decision No. 46-020/02/ŽR, dated 6 February 2004, that the said procedures shall be integrated.

The six said cooperation contracts on building society saving operations (hereinafter: the contracts), and the fee agreements, which are as annexes constituent parts of the contracts, were examined during the evaluation procedure, and the following was established:

1. The contracts provide for the cooperation between the Building Society and the six banks in such a manner that the banks actively provide information, through their branches, on the Building Society saving operations, receive applications for concluding building society saving contracts and forward these applications to be processed by the Building Society. Concerning their content, it was established that these were standard contracts, differing only slightly with respect to market competition.
2. As referred to in item 2.2 of the contracts, the banks signatories thereto undertake to exclusively sell Building Society products during the contractual relationship, and not to perform operations referred to in the contracts on behalf of any other building society.
3. As referred to in item 9.1 of the contracts (item 8 of the contract concluded with Centar banka d.d.), the Building Society undertakes, *inter alia*, not to attempt, even after the termination of the contractual cooperation, to sell financial services or insurance products to the customers acquired through these banks.
4. As referred to in item 8 of the contracts, the banks (except Centar banka d.d.) undertake to receive payments on behalf of the Building Society without any fees, or with a fixed fee of HRK 3.00 per each payment.
5. All contracts are concluded for an unlimited period of time.

6. The contracts constitute vertical agreements, banks being the distributors of building society products, compensated accordingly by the Building Society. The Building Society and the banks signatories to the contracts therefore operate at different production levels, as building society saving is a specific product which, pursuant to the Act on Saving with a Building Society and Government Incentives to Saving with a Building Society (official gazette *Narodne novine*, Nos. 109/1997, 76/1999 and 10/2001) may be sold only by building societies, so that banks cannot be considered as competitors to building societies.

The evaluation procedure involved the analysis of a relevant market and distributive network, and the following was established:

1. There are four building societies operating in the building society saving market in the Republic of Croatia, defined as the relevant market. The Building Society market share as at 31 December 2003 was 15.13%.

2. An analysis of the general banking market of the Republic of Croatia, with regard to received deposits, granted loans and the total assets of the banks signatories to the contracts, has shown that none of the banks signatories to the contracts, individually or as a group, are leaders in the said market.

3. The Building Society distributive network, consisting of its offices in 18 towns, is much smaller than that of other building societies. Specifically, the other three building societies are joined in ownership with banks whose seats are in the Republic of Croatia, and are present in the market through the branches of these banks. The Building Society has thus expanded its distributive network through the above-mentioned contracts, improving the provision and distribution of services to the benefit of Building Society customers.

4. The Building Society and the banks signatories to the contracts operate in sensitive markets, which exercise a significant influence on other markets and the economy as a whole, which are in compliance with special regulations strongly inhibiting market entry, and have a limited number of financially powerful participants.

The legal basis for the assessment of the contracts is provided by Article 40 of the Banking Act (official gazette *Narodne novine*, No 84/2002, items 2 and 3 of the Decision, Articles 9, 10, 11 and 12 of the Law on the Protection of Market Competition (official gazette *Narodne novine*, No 122/2003 - hereinafter: the Law) and the Decree on the Collective Exemption of the Agreements Concluded between Entrepreneurs Not Operating at the Same Production or Distribution Level (official gazette *Narodne novine*, No. 51/2004 - hereinafter: the Decree).

As regards the protection of market competition, the contracts contain provisions limiting the freedom of market competition, and have therefore been evaluated as forbidden within the meaning of Article 9 of the Law and items 2.1 and 2.2 of the Decision. The following provisions have been evaluated as limiting:

- The provision referred to in item 2.2 of the contracts contains a non-competition obligation as it requires the banks signatories thereto to exclusively sell Building Society products during the contractual relationship related to building society

saving, and not to perform any operations referred to in the contracts on behalf of any other building society. Such a contractual provision constitutes an agreement prohibited within the meaning of Article 9 of the Law, and items 2.1 and 2.2 of the Decision, which cannot be exempt, pursuant to Article 10 of the Decree, with the result that, pursuant to item 2.3 of the Decision, the provision was to be declared null and void.

- The provision referred to in item 9.1 of the contracts (item 8 in the contract concluded with Centar banka d.d.), also contains a non-competition obligation, as the Building Society undertakes not to attempt to sell financial services or insurance products to the customers acquired based on the contracts. Pursuant to the Act on Saving with a Building Society and Government Incentive to Saving with a Building Society (official gazette *Narodne novine*, Nos. 109/1997, 76/199 and 10/2001), building societies may neither provide other financial services nor sell insurance products, and may only deal in building society saving operations, so that this provision, although limiting in its content, currently has no effect on the freedom of market competition. However, should any amendments be made to the Act on Saving with a Building Society and Government Incentive to Saving with a Building Society, extending the scope of services that can be provided by a building society, this provisions could limit the freedom of market competition.
- The provision referred to in item 8 of the contracts (except for the contract concluded with Centar banka d.d.) limits the freedom of market competition, as it obliges the banks to receive payments on behalf of the Building Society without any fees, i.e. in case of Volksbank d.d. with a fixed fee of HRK 3.00 per payment, and therefore serves to directly fix the fees, which is forbidden by item 2.2 of the Decision.

The provisions referred to in item 2.2, item 8 (except for the contract concluded with Centar banka d.d), and item 9.1 (8.1 in the contract concluded with Centar banka d.d.), as well as the fact that the contracts have been concluded for an unlimited period of time, taken in general, result in preventing, limiting and obstructing market competition in the relevant building society saving market, as they imply direct fixing of the fees, limiting or controlling the scope of services provision, as well as the market, separating the markets by preventing or limiting banks in the provision of their services, and limiting banks in their choice of markets and operating conditions.

It was established during the appraisal procedure that, once the provision referred to in item 2.2 of the contracts has been declared null and void, the remainder of the contracts will constitute an independently functioning unit; however, in view of other limiting provisions, it may remain in effect only if exempt from the application of items 2.1 and 2.2 of the Decision. In view of the appraisal procedure findings, which are as follows:

- the market share of the Building Society is lower than 30%;
- the contracts contain limitations aimed at improving service provision and distribution;
- the contract are to the benefit of the users of banking services;
- the banks signatories are not forced to abide by limitations which are not necessary for the achievement of these goals (except for the provision referred to

in item 2.2, which has been declared null and void and shall be removed from the contracts);

it was established that the conditions referred to in Article 10 of the Law have been fulfilled and that, pursuant to Article 12 of the Law, the exemption from the application of Article 9 of the Law, and items 2.1 and 2.2 of the Decision, may be granted.

With reference to the above, the resolution shall be reached as referred to in this Decision.

Available legal remedy

This Decision is final within the scope of an administrative procedure and may not be appealed against. Administrative proceedings may be initiated by filing a suit at the Administrative Court of Republic of Croatia within 30 days from the delivery of this Decision.

CROATIAN NATIONAL BANK GOVERNOR
Dr Željko Rohatinski