German Landesbanken: Recovery of more than €3 billion, plus interest, from WestLB and six other public banks

Martha CAMBAS, Elke GRÄPER and Yvonne SIMON, Directorate-General Competition, unit H-2, and Stefan MOSER and Annette SÖLTER, formerly Directorate-General Competition

On 20 October 2004, the European Commission concluded its long-standing investigation of the transfer of public assets, in the 1990s, to seven German public banks (Landesbanken) by ordering Germany to recover €3 billion plus interest. The decisions end the probe of the aid to the Landesbanken which occupied the Commission for about 10 years and which culminated in a landmark agreement, in 2001, to abolish the state guarantees known under the term ‘Anstaltslast and Gewährträgerhaftung’ attached to the banks’ statute.

At the beginning of the nineties, the introduction of the Own Funds and Solvency Ratio Directives required European banks to increase their capital adequacy ratios. If the banks’ level of activities was to be maintained, this required them to take up fresh capital. This was the background for most of the Landesbanken subject to the Commission’s investigation. In all cases, the capital was provided by the German Länder, which partly or fully owned the banks, by way of a transfer of public housing and other assets.

The financial transfers triggered a complaint by the Association of German Private Banks (BdB) as they were under the same obligation to increase their solvency ratios without, however, being able to rely on public support. The complaint addressed the following seven banks:

**Westdeutsche Landesbank Girozentrale** (WestLB), then the biggest of the German public banks, to which the Land of North Rhine-Westphalia transferred at the beginning of 1992 a housing asset (Wohnungsbauförderanstalt, Wfa). Of this asset, about DM 2.5 billion were to be used for the extension of business and DM 3.4 billion as a guarantee. WestLB was transformed into a private law company (WestLB AG) as of 1 August 2002;

**Landesbank Berlin**, a bank owned entirely by the Land Berlin which transferred at the beginning of 1993 a special reserve (Zweckrücklage) worth DM 1.7151 billion and liquid cash (WBK Grundkapital) worth DM 187.5 million;

**Norddeutsche Landesbank**, to which the Land of Lower Saxony transferred in 1991 three Landestreuhandstellen of a total value of DM 1.754 billion;

**Bayerische Landesbank**, to which a special reserve in form of trustee claims of Bavaria was transferred in two instalments, the first one worth DM 655 million at the end of 1994, and the second one worth DM 542 million at the end of 1995;

**Hamburgische Landesbank** (1), fully owned by the City of Hamburg which transferred assets of Hamburgische Wohnungsbaukreditanstalt worth DM 959 million at the beginning of 1993;

**Landesbank Schleswig-Holstein** (1), to which the Land of Schleswig-Holstein transferred at the beginning of 1991 a housing asset (Wohnungsbaukreditanstalt) and an economic promotion asset (Wirtschaftsaufbaukasse) worth DM 1.306 billion. At the beginning of 2000 a real-estate reserve of some DM 300 million was transferred as well;

**Landesbank Hessen-Thüringen**, a fairly recent transfer dating to the end of 1998 where the Land of Hessen invested into a silent partnership based on its claims in respect of loans granted to promote social housing construction with a cash value of DM 2.3 billion.

In 1999, the Commission adopted a first negative decision concerning the transfer to WestLB and ordering the recovery of some € 800 million. In 2003, the Court of First Instance annulled the decision taking the view that the Commission had not sufficiently explained its calculations of the aid element but confirmed the decision on the substance.

The Commission’s assessment of the cases showed that the remuneration agreed by the Länder in return for the transfer of assets was very low (about

1 The Landesbanken of Schleswig-Holstein and Hamburg merged in 2003 to become HSH Nordbank AG.
1% p.a.) and did not correspond to the normal return on investment that a private investor would have required. The appropriate remuneration was calculated at some 6-7%, except for Landesbank Hessen-Thüringen where it was found to be lower.

The Commission therefore established that the agreed remuneration constitutes State aid within the meaning of Article 87(1) of the EU Treaty and ordered Germany to take measures to recover the difference from the Landesbanken.

Although the seven cases are similar in many respects, they differ in the overall amount, form of capital transferred, the date of transfer and the amount of capital actually used to underpin commercial business, amongst other things. As a result, the amounts to be recovered from each bank are:

- WestLB: €979 million plus interest
- Landesbank Berlin: €810 million plus interest
- Norddeutsche Landesbank: €472 million plus interest
- Landesbank Schleswig-Holstein: €432 million plus interest
- Bayerische Landesbank: €260 million plus interest
- Hamburgische Landesbank: €90 million plus interest
- Landesbank Hessen-Thüringen: €6 million plus interest

The closing of the procedures was facilitated by bilateral negotiations and an ensuing agreement reached in September 2004, between the Landesbanken, the Länder (regions) concerned and the complainant, BdB, on the appropriate remunerations for the transferred assets. The Commission reviewed these remunerations and considered that they were in conformity with the market economy investor principle.

As of January 2005, the overall amount of €4.3 billion (including interest) had been paid back by all banks concerned to the respective Länder (regions).