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In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].

PUBLIC VERSION

WORKING LANGUAGE

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Subject: State aid N 244/2009 – Commerzbank - Germany

Sir,

1 PROCEDURE

1) In December 2008 the Special Financial Market Stabilisation Fund (Sonderfonds Finanzmarktstabilisierung - "SoFFin") provided Commerzbank AG ("Commerzbank"), under Articles 6 and 7 of the Act of 17 October 2008 setting up a Special Financial Market Stabilisation Fund, with a recapitalisation worth EUR 8.2 billion and a guarantee framework for securities worth up to EUR 15 billion ("SoFFin I"). The measure was adopted as part of the German rescue package for financial institutions which the Commission declared compatible with the common market by decision of 12 December 2008[1]. The SoFFin I measure was therefore not notified separately to the Commission.

2) In January 2009 SoFFin and Commerzbank entered into negotiations over a further recapitalisation measure ("SoFFin II"). After having been informed by the German authorities, the Commission thereupon sent Germany several requests for information. Following an exchange of information between the German authorities and the Commission, Germany, by communication dated 23 April

[1] Commission decision of 12 December 2008 in Case N 625/2008 *Rescue package for financial institutions in Germany*, not yet published.

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2009, notified the planned package of measures, for reasons of legal certainty, and submitted a plan for ensuring Commerzbank's long-term viability.

2 DESCRIPTION OF THE AID

2.1 *The beneficiary - Commerzbank*

3) Commerzbank is a credit institution established in the form of a limited company with its headquarters in Frankfurt am Main. It has a group balance-sheet total of approximately EUR 625 billion (position as at 31 December 2008), compared with EUR 616.5 billion in 2007. In 2008 it employed 43 169 people worldwide.

4) As at 31 December 2008 most of the shares in Commerzbank were in dispersed ownership, but since 12 January 2009 Allianz SE ("Allianz") has held around 19% of the shares. Assicurazioni Generali S.p.A. currently has a stake of around 6% in the company. As a result of SoFFin's planned participation in Commerzbank of 25% + 1 share, these shareholdings will be reduced.

5) As a result of a sale and purchase agreement concluded in August 2008, Commerzbank acquired Dresdner Bank AG ("Dresdner Bank") from Allianz on 12 January 2009. The merger will become effective in May 2009. As a result of the acquisition of Dresdner Bank, the Commerzbank group had as at 31 December 2008 a total pro forma balance-sheet worth of approximately EUR 1 100 billion.

6) Commerzbank's largest shareholding is in Eurohypo AG ("Eurohypo"). As at 31 December 2008 Eurohypo had a total balance-sheet worth of EUR 291.6 billion and a Tier 1 capital ratio of 7.8%.

2.1.1 Past trend in the bank's business

7) Commerzbank's 2007 basic operating result came to EUR 2.4 billion and was achieved to a large extent in the present-day core business areas. Apart from an increase in interest and commission income and a reduction in risk provisions, the overall decisive factor was the fact that despite considerable investments the rise in administrative expenditure was only moderate. Initial charges – especially in the trading book – resulting from the US subprime crisis were more than offset by declining risk provisioning in the core operational business and by one-off earnings from divestments.

8) In 2008 the operational business continued to evolve favourably overall. Interest income increased appreciably once more despite higher refinancing costs, and commission income held steady over the year. The worsening crisis in the financial market translated, however, especially in the two last quarters, into substantially worse trading results and a marked increase in risk provisioning.

9) Despite the steady growth of its core business, Dresdner Bank's result was affected by the financial market crisis as early as during the 2007 financial year. Operationally, interest income grew, commission income held steady and administrative expenditure fell. The fallout from the US subprime crisis nevertheless impacted on the overall result, causing it to fall sharply on the previous year. The trading result was particularly hard hit by the financial market crisis.

10) Besides affecting the annual result, the financial market crisis also led to a sharp fall in the two banks' revaluation reserves.[2]

11) In 2008 Eurohypo made a pre-tax loss of EUR 1.4 billion (2007: EUR 0.6 billion) in the commercial real estate and public finance business areas. Like Commerzbank and Dresdner Bank, Eurohypo was caught out by the financial crisis. Commercial real estate financing enjoyed relatively steady growth. In this area, the operating result would have been positive despite significantly higher risk provisioning had it not been for further value adjustments in the US subprime portfolio. Interest and commission income grew steadily. Administrative expenditure was cut through stringent cost management. The crisis in the financial market and the economy as a whole, together with the integration of Essen Hyp, affected above all the public finance business area. The public finance/treasury (PFT) segment produced an EUR 949 million loss, to which a negative trading result and write-downs on the RMBS securities portfolio and on Icelandic bonds contributed.

2.1.2 Commerzbank's business areas

12) Commerzbank is a universal bank. It has an extensive branch network both at home and abroad and has various commercial interests both in Germany and elsewhere. Following its takeover of Dresdner Bank in 2008, Commerzbank became the second-largest private credit institution in Germany and one of Europe's major banks. It has positioned itself as a service provider to retail and commercial customers and to SMEs, but it also looks after large and multinational commercial customers.

13) Commerzbank's market shares in Germany in its core business areas lie in the [<10%][*] or [<25%] range (exceptions: public finance and commercial real estate)[3].

14) In retail banking Commerzbank thus has a […]market share in the case of selected products (giro accounts, deposits, loans) of between [<5%] (savings deposits) and [<10%] (sight deposits). On the deposits side, Commerzbank lies […], while Dresdner Bank currently offers […] market terms. Commerzbank's terms for savings products also place it […]. In the lending area, Commerzbank lies somewhere […] as far as building financing offers are concerned, while in the consumer finance field […].

15) In commercial banking, Commerzbank possesses a […] market share (of between [<10%] and [<20%]).[4].

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2 According to IAS 39, available-for-sale financial assets are evaluated at fair value, i.e. at current market value. Changes in market values result in unrealized gain or losses which are charged directly to equity as revaluation reserves, without being recognized through profit or loss. Only impairment losses and realized gains or losses are reported in the income statement.

* Confidential information.

3 Unlike in other Member States, compared with their total balance sheet worth the large private banks play only a relatively subordinate role in their home market. This traditionally comprises three types of institution: public banks (in particular the *Landesbanks* and the savings banks), cooperative banks and private banks.

4 Especially in its core business areas of retail banking and SME commercial banking, Commerzbank has strong competitors with a market share that in some instances far exceeds its own. This is particularly true of the *Landesbanks* and savings banks, which have a 55% market share in the case of savings deposits and savings bonds and a 40% market share in the case of commercial lending. In the investment banking field, market shares are difficult to determine

16) In the public finance segment, Commerzbank has a market share of [<25%], a share which was increased only a little (by [<5%]). by the merger with Dresdner Bank.

17) Commerzbank is - through Eurohypo AG – […] commercial real estate financier in Germany and Europe with a market share in commercial real estate financing in Germany of approximately [<25%]. In the area of open real estate funds, Commerzbank is, with hausInvest Europa, the market leader in Germany.

18) In the area of ship financing, Commerzbank is, through Deutsche Schiffsbank AG and its own and Dresdner Bank's ship financing portfolios, the […] ship financier in the world (after HSH-Nordbank). […].

19) In Central and Eastern Europe, Commerzbank has a significant presence in Poland, where its subsidiary BRE Bank ranks […] in the market with a share of [<10%], and in Ukraine, where it has a market share of […<5%].

2.1.3 Causes of the company's difficulties

20) Commerzbank's quarterly results to the end of June 2008 were relatively stable despite the already apparent effects of the financial market crisis. The same goes for Dresdner Bank, whose investment banking business was, however, harder hit as early as during the second half of 2007.

21) Up until the Lehman Brothers insolvency on 15 September 2008, Commerzbank's business model was affected less than average by the financial market crisis owing to the bank's focus on retail and commercial banking and its low-key proprietary trading and investment activities. Commerzbank had, for example, only EUR 1.2 billion worth of subprime portfolios and small ABS and LBO books. As a result of the worsening of the financial market crisis following the Lehman insolvency, further portfolio parts were affected. Among other things, in the public finance business area there was, as a result of a reduction of the revaluation reserve, a capital loss of approximately EUR 3 billion in 2008. On top of this came the need for higher risk provisioning in the commercial real estate segment and in the financial institutions business area due *inter alia* to the Iceland crisis and the Lehman insolvency.

22) Dresdner Bank's retail and commercial banking business proved to be as stable as that of Commerzbank. As a result of its markedly larger investment banking portfolio with a high proportion of investment and trading positions, Dresdner Bank was nevertheless harder hit by the effects of the financial market crisis. The likelihood and size of write-downs increased significantly after the Lehman insolvency.

23) Commerzbank's capital requirements stem essentially from the business results for the second half of 2008 (including the revaluation reserve effects) and the much increased demands of the capital market.

24) Despite the first perceptible effects of the financial market crisis in 2007 and during the first half of 2008, the capitalisation of both institutions was for the time being adequate. The worsening of the crisis in the second half of 2008 is clearly reflected, however, in the change in the results and the revaluation reserve. The implementation of an EUR 1.1 billion capital increase by Commerzbank in the

owing to a shortage of reliable data. In 2008 Dresdner Bank and Commerzbank were mid- to low-ranking in terms of market position (exception: German bond issues).

third quarter of 2008 to help part-finance its takeover of Dresdner Bank, therefore, strengthened Commerzbank's capital base only in the short term. Commerzbank's Tier 1 ratio fell on 30 September 2008 to 7.3% and on 31 December 2008 to […]. Dresdner Bank's Tier 1 ratio fell on 30 September 2008 to […] and on 31 December 2008 to 4.0%.

25) Although these core capital ratios still met regulatory requirements, a significant strengthening of the capital ratio appeared necessary, especially in the light of the recessionary conditions forecast for 2009 and 2010 and the increased capital expectations of market players and rating agencies.

26) In view of the lack of opportunities for raising capital on the capital market, implementation of the SoFFin I measure became necessary. This safeguarded the solvency and risk-bearing capacity of Commerzbank against the background of the mounting financial and economic crisis and enabled the bank to attain the Tier 1 ratio of at least 8% that was considered by the capital market to be adequate at that time.

27) The ever more stringent conditions on the financial markets, especially in November and December 2008, had a much stronger negative impact on the actual commercial development of Commerzbank and Dresdner Bank. Following the necessary adaptation of forecasts, the capital base came under stronger pressure owing to operating losses, write-downs and further negative growth in both banks' revaluation reserves.

28) These additional burdens and increased external expectations were to be taken account of by the implementation of the second SoFFin measure. This was to enable an increase in the Tier 1 ratio to around 10% as at 31 December 2008 (pro forma). With a Tier 1 ratio of around 10%, Commerzbank would, according to its internal criteria and general market estimates, be adequately capitalised.

2.1.4 Measures in favour of Commerzbank

29) The SoFFin I measure took the form of a silent participation amounting to EUR 8.2 billion. It was made available on 31 December 2008. The agreement on the silent participation provides for a fixed interest rate of 9% per annum on the whole amount. In addition, a variable rate of interest is provided for, based on the sum of the distributed dividends. For each EUR 4.4[×] million in distributed dividends, an additional amount of 0.01% will become due.

30) In addition, SoFFin is providing Commerzbank with a guarantee framework worth EUR 15 billion. The guarantee framework may be used to cover bearer bonds issued up to 31 December 2009 and whose maturity does not exceed 36 months. As remuneration for the provision of a guarantee, Commerzbank is to pay 0.5% per annum in the case of guarantee periods of between three and twelve months and 0.948% per annum in the case of periods longer than twelve months.

31) Under an agreement dated 9 January 2009 between Commerzbank, Allianz and SoFFin, SoFFin is to make available to Commerzbank additional equity capital totalling EUR 10 billion. This SoFFin II measure is made up of a further silent participation amounting to EUR 8.2 billion and a capital increase of 25% plus one share against payment of EUR 1.8 billion.

[×] Clerical error: should read "5.9 million".

32) In order to implement this participation, the agenda for Commerzbank’s general meeting of shareholders on 15 May and 16 May 2009 provides for a share capital increase of a corresponding amount, to the exclusion of any pre-emption rights or, alternatevely, a rights issue. As to the conditions governing the second silent participation, those governing the first silent participation were by and large carried over.

33) Following the granting of this equity support, the SoFFin measures will encompass, in total, capital measures worth EUR 18.2 billion and a guarantee framework for the refinancing worth EUR 15 billion.

34) The agreement providing for a silent participation of EUR 8.2 billion which was reached with SoFFin on 19 December 2008 (SoFFin I) prohibits any dividend payment for the years 2008 and 2009. For the duration of SoFFin I there is also a ban on other distributions and to a great extent on share repurchases. It likewise prohibits any repurchase of liable capital instruments (hybrid instruments and profit-sharing certificates *(Genussscheine)*).

35) The lead shareholder, Allianz, is to take a silent participation of EUR 750 million in Dresdner Bank or Commerzbank. Allianz has also strengthened Dresdner Bank's capital base by acquiring Dresdner Bank CDO portfolios. This measure has strengthened the capital base by a book value of about EUR 700 million.

36) In September 2008 there was a capital increase of EUR 17 a share, for a total of about EUR 1.1 billion.

37) In February 2009 the board of management decided that Commerzbank would reduce its administrative costs by […] in 2009, mainly at the expense of the bonuses previously programmed. […] Under the same decision of the board of management, the bonus for 2008 was reduced by […]. The total remuneration of any member of either of Commerzbank’s governing bodies (the board of management *(Vorstand)* or the supervisory board *(Aufsichtsrat)*) is limited to EUR 500 000 a year in both 2008 and 2009.

2.2 *The measures planned by Commerzbank*

38) The central elements in Commerzbank’s strategy for maintaining and strengthening its viability are: a concentration on core business, with capital-friendly dismantling of non-strategic business; a stronger focus on the domestic German market, with selective growth in Eastern Europe; and the achievement of cost and revenue synergies as a result of the merger with Dresdner Bank.

39) Commerzbank will reduce its market presence in the retail and commercial customers area by cutting the number of its branches from 1 540 to 1 200 by from 2010 to 2015. The head offices of the two banks in Frankfurt are also to be merged. This will reduce the number of employees by 2 200. Another 4 300 jobs are to go in Germany, and 2 500 internationally.

2.2.1 Business areas

40) The retail customers segment is one of Commerzbank’s core segments, with four business areas: retail and commercial customers, wealth management, direct

banking, and lending. The main step to be taken here is the merger of the existing retail and private banking business of Commerzbank and Dresdner Bank. The segment is structurally profitable, and is expected to continue to be the driver of the group's profitability and revenue.

41) A second Commerzbank core segment is its business as a bank to small and medium-sized enterprises, divided into domestic SME banking, international SME banking (Western Europe and Asia), and financial institutions. Here, too, the salient point is the integration of Dresdner Bank's activities into the Commerzbank model. The segment is structurally profitable, though after some very successful years it has been affected by increased provisioning against risks as a result of current conditions.

42) The Central and Eastern Europe segment is another of the bank's core segments: Commerzbank has subsidiaries with market positions that could be expanded in Poland and Ukraine. In the other markets it is only a niche player. Commerzbank's business model in Eastern Europe, as in Germany, is focused on retail and commercial customers. The segment is structurally profitable but has been negatively affected by the need for greater risk provisioning as a result of the knock-on effects of the crisis in financial markets and the current economic situation. In the next few years selective growth will be pursued in suitable markets.

43) The corporates and markets segment, divided into investment banking and public finance, is to be reorganised strategically and structurally as a result of the integration of Dresdner Bank. The reorganisation will include a reduction and reorganisation of investment banking, including a focus on customer-driven business and a shutdown of most own-account trading. In investment banking, it is hoped that a contraction of balance sheets and a reduction in risk positions (de-risking) will free significant volumes of capital and reserves. Positions in public finance will likewise be scaled down drastically.

44) Commercial real estate is an important segment in Commerzbank's business, and includes shipping and real estate asset management. The strategy is marked by a significant contraction in the balance sheet and a reduction in risk positions (de-risking). The business model focuses more sharply on core regions and core customers. Commerzbank states that without special burdens the segment is structurally profitable; in the current economic situation that profitability has been affected by increased risk provisioning.

45) As part of the reorganisation, a roadmap has been developed for the restoration of sustained profitability (discounting the effects of the financial market crisis), and is to be implemented in the years to come. Foreseeable tightening in the regulatory environment has been taken into account in the strategy for the future[5].

[5] In the 'most realistic case' scenario submitted, the changes in the method of calculating market risk which are expected to apply from 2011 have been allowed for by increasing market risk by […] with effect […]; they are also incorporated into the basis of the calculations of Tier I and Tier II ratios referred to above. A possible increase in the regulatory minimum capital ratios has already been anticipated by increasing the internal target ratios for Tier I capital from 7.0% to 9.0%. Gradual replacement of silent participations by self-generated Tier I capital should also allow future ratio requirements to be met.

2.2.2 Measures to maintain viability and their effects on the profit-and-loss account and balance sheet

46) As a result of measures planned as part of the strategic reorganisation or in order to offset possible distortion of competition, the balance sheet total is to be reduced by the sale of holdings and other assets from about EUR 1 100 billion to about EUR 900 billion by 31 December 2012, and, thereafter, to about EUR 600 billion, that is to say by about 45%. A major role will be played by the sale of Eurohypo and the running down of investment portfolios.[6].

47) Big synergy effects are also expected. The cost base is to be reduced by EUR [> 2] billion a year, with about […] being realised by […]. In the course of this process 9 000 jobs will be cut by […]. Revenue dissynergies of […] are also expected, essentially in investment banking, as a result of the restructuring of the business model and the simultaneous release of capital of cash equivalent in this area. The integration of Dresdner Bank will entail a one-off charge of [about EUR 2.0 billion]. The total cash value of the synergies expected amounts to about EUR 5.0 billion.

48) According to Commerzbank's plans the measures launched and the aid granted will put Commerzbank in a position to withstand further substantial effects of the recession expected in 2009 and 2010, and to emerge from these years of crisis with a Tier I ratio of […]. In addition, it plans to achieve a rate of after the crisis and after synergy effects have been fully realized in […]. It should also be able to repay the aid by […].

2.2.3 Basis of the plans

49) The plans for the projected development of Commerzbank rest on combined medium-term plans for Commerzbank and Dresdner Bank for the years 2009 to 2011. The main profit-and-loss positions are adjusted by a […] for the years therafter. The medium-term planning makes use of three scenarios, namely a most realistic case, a downside case and an upside case, which assume flat-rate changes in risk weightings. The medium-term plans also make assumptions regarding changes in the bank's results related to the volume of gross domestic product.

50) These forecasts have already been partly overtaken by events. This does not, however, reduce the validity of the figures presented. The current adverse development was taken into account in so far as a complex process simulates the effects of the financial crisis and the future development of the credit portfolio.

51) This process is based essentially on Commerzbank's medium-term credit risk planning. Under Commerzbank's internal definition, the most realistic case is not to be understood as an average of the possible economic scenarios. It attempts rather to portray a realistic expectation of the development of the portfolio in the next few years. Commerzbank here looks at external macroeconomic indicators and the economic drivers relevant to its customers' credit standing. The current most realistic case, therefore, replicates a further strong downswing, from an already very weak economic position, which is generally accepted in public debate.

52) In its planning process the bank utilises two different complex approaches. First, a 'top-down' estimate is made of risk trends. This estimate is largely automated and is an important point of reference in the ordinary monitoring of the

[6] The measures are described in detail in paragraph 73.

portfolio. But it can represent only general stress on the portfolio, and more specific effects such as a running down of the portfolio, or changes in provisioning, cannot be estimated and accounted for in detail. Where necessary, additional ‘bottom-up’ analyses are carried out. These offer a clear advantage in terms of detailed results. The effects of the stress calculation are simulated for homogeneous sub-portfolios, and often at the level of individual customers; and detailed estimates can be made of movements in the portfolio volume and risk provisioning.

53) The current bottom-up forecast for the years 2009 to 2012 makes differentiated predictions for the quality and loss expectations of all performing portfolios and changes in their risk-weighted assets, and for risk provisions for defaulting debtors in the non-performing portfolio. This approach reflects these effects much more realistically than would any top-down estimates (including a downside case). It takes account of the most up-to-date planning for balance-sheet contraction and de-risking and of the far-reaching increase in provisioning which is planned.

54) Risk density as an indicator of portfolio quality shows that the worsened effects of the economic situation have been taken into account, in that the level is several times that of previous years. Account is also taken of the time-lag in the impact of the economic situation on conventional bank portfolios. With volume effects stripped out, both the top-down and the bottom-up analyses show a pro-cyclical growth in risk-weighted assets as a result of the general level of economic activity, of the order of […] during the downturn phase.

2.2.4 Expected changes in result and capital ratios

55) According to these plans, in the most realistic case, Commerzbank’s result after tax (before SoFFin) will be – EUR […].in , and in the years thereafter – EUR […]in […],, - […]in […] and + EUR […] in[…]. In parallel, the return on equity after tax will initially fall to[…] in […], and rise gradually thereafter to reach [>12] % in 2012 ([…], […]). From 2013 onward, the return on equity will be above [that level] continuously.

56) By reason of the loss expected in 2009, the Tier I ratio will initially fall from [about] 10.0% at the end of 2008 to […] in 2009. Afterwards, it will remain above the target of […]. Charges resulting from remunaration and amortization payments for the silent partnerships are compensated by retained earnings.

57) In 2012 the plans expect a profit of EUR […]. This would be roughly equivalent to the profit […]. From 2005 to 2007, the bank always covered its risk-adjusted capital costs […] and was gradually approaching the announced revenue target of 15% after tax, until the upheavals of the financial market crisis hit the markets. Over the same period the bank always covered, or more than covered, the necessary capital costs in the individual core segments too.

2.2.5 Repayment of aid

58) From Commerzbank’s point of view it is desirable that the silent participations be repaid as rapidly as possible, as soon as there is a possibility of refinancing the necessary resources on more favourable terms on the capital market. By comparison with the market terms available before the outbreak of the financial market crisis, the fixed interest rate on the silent participation is about 500 basis points over the level before the financial market crisis.

59) In the most realistic case, SoFFin will withdraw from its holding, with full repayment of the silent participations of EUR 16.4 billion, by […]. Redemption would begin in 2012, and the last tranche would be repaid in […]. In a more rapid scenario, […], the last tranche would be repaid in […].

2.2.6 Liquidity situation

60) Under the traffic-light model used internally, the liquidity status of the Commerzbank group as a whole is "green". The limits have not been exceeded either in the case of Commerzbank's liquidity risk model or in the case of Dresdner Bank. The prudential requirements have been and continue to be observed.

61) Commerzbank continues to enjoy market access to secured and unsecured refinancing. Both state-guaranteed loans (EUR 5 billion, 3 years) and unsecured loans (EUR 1.5 billion, 5 years) have been successfully placed recently. Commerzbank's subsidiary Eurohypo has issued a mortgage bond totalling EUR 1.25 billion. There is also a possibility of issuing loans of up to EUR 10 billion under SoFFin guarantee. Interbank refinancing is not critical for Commerzbank for maturities up to 1 month; time deposits above […] are possible only to a limited extent owing to market conditions and are mostly limited to […]. Besides this, Commerzbank has sufficient reserves of securities that are eligible for central bank refinancing to obtain liquidity if this were to become necessary. Refinancing requirements in the main foreign currencies are covered by available central bank guarantees and via the currency swap markets.

62) In addition Commerzbank has a stable base of customer deposits.

2.2.7 Lessons of the crisis

63) Commerzbank has learned lessons from the crisis and taken a number of strategic decisions and made changes in risk management in order to reduce its vulnerability to risk in the future. As regards the use of assets-based securities and other structured products, these provide above all for a look-through approach and a comprehensive evaluation of all the relevant risks for such products. To tighten market risk management, the focus is on creating clearer lines of responsibility and linkage with other types of risk, in particular integrated monitoring of market and credit risks. Much greater emphasis than in the past will be placed on concentration risks and the need to limit them. To avoid possible liquidity and funding bottlenecks the focus will shift to greater matching of maturities, general avoidance of unstable wholesale refinancing, and making greater allowance for potential extreme market situations. Essentially, approaches aimed at linking more closely model-based procedures, expert knowledge and fundamental forward analysis of risk drivers need to be enhanced.

3 GERMANY'S POSITION

64) Germany regards Commerzbank as an essentially sound, systemically important credit institution. The aid granted to Commerzbank therefore falls under the Financial Market Stabilisation Act (Finanzmarktstabilisierungsgesetz – "FMStFG"), which the Commission declared compatible with the common market by Decision N 625/08 of 12 December 2008.

65) In view of the scale of the aid, however, Germany has notified the scheme so as to ensure legal certainty and has put forward a series of planned measures. Germany stresses that it was under no obligation to give notification.

66) To offset any negative effect on competition, Germany and Commerzbank have proposed a series of measures covering the disposal of shareholdings and other assets, limits on future growth (including in core business areas), and restrictions regarding Commerzbank's behaviour in terms of competition and market entry.

67) Germany will ensure that the plan is implemented and that the Commission or an expert acting on the Commission's behalf, will be able to check on all the commitments for its implementation at any time up to their completion. Germany guarantees the Commission unrestricted access to all the information necessary to monitor implementation. Germany and Commerzbank will ensure that Commerzbank's statutory auditor will examine Commerzbank's fulfilment of its obligations and will report on the content of his checks and the findings in his audit report on the Bank's annual accounts. Furthermore, Germany will ensure that the auditor sends the report to the Commission without delay on completion of the audit.

68) Essentially the measures in question are as follows and – unless indicated otherwise – are to be implemented immediately:

General commitments

69) Germany gives the Commission an undertaking to ensure that the Commerzbank group reduces its group balance-sheet total – currently standing at some EUR 1 100 billion – in two stages, first to around EUR 900 billion by 31 December 2012 and then to around EUR 600 billion after the sale of Eurohypo (–45%), with essentially no change in the overall conditions governing the balance sheet and the legal environment relevant for the balance-sheet total.

70) Germany will ensure that Commerzbank refrains from acquiring any finance institutions or other businesses in potential competition with Commerzbank until 30 April 2012 or, as far as […] is concerned, until the silent partnerships have been repayd (except for an outstanding amount of […]. This prohibition includes a ban on both the (partial or full) acquisition of companies through the transfer of shares and assets and on other transactions aimed at acquisition, such as dealings in futures and options. Disposals and restructuring within the group do not fall under the ban. Notwithstanding this prohibition, in exceptional circumstances Commerzbank may, after obtaining the Commission's agreement, acquire finance companies, in particular if this is essential in order to safeguard financial stability or competition in the relevant markets.

71) Until […] Commerzbank will not offer more favourable terms for its products and services than its three cheapest competitors, in particular for private and business customers, if its market position in terms of market share in the relevant product market is not merely subordinate (< 5%).

72) Lastly Germany will ensure that Commerzbank will not use the granting of this aid or any advantages over competitors arising in any way out of the aid for advertising purposes.

73) In its lending and capital investment the Commerzbank group will take into account the credit requirements of business, especially small and medium-sized

enterprises, by offering generally accepted market terms. Germany will guarantee compliance with the obligations under point 39 of the Commission's Communication on recapitalisation through the relevant arrangements agreed in the framework contract concluded with Commerzbank on 19 December 2008.

74) Germany will ensure that Commerzbank follows a prudent, sound business policy geared towards sustainability while implementing the planned measures. Germany will further ensure that Commerzbank reviews its internal incentive schemes and takes steps to ensure that they do not encourage unreasonable risk-taking, are geared towards long-term and sustainable goals, and are transparent.

75) The above requirements are deemed to be complied with despite breaches of the caps mentioned if it is confirmed in the annual reporting that such breaches were required to ensure lending to the real economy.

Specific measures

76) Germany will ensure that the Commerzbank group sells or otherwise transfers ownership of the following shareholdings and assets as swiftly as possible and by 31 December 2011 at the latest:

- Shareholding in Kleinwort Benson Private Bank Limited and Kleinwort Benson, (Channel Islands) Holdings Limited, United Kingdom (including the Channel Islands);
- Shareholding in Dresdner Van Moer Courtens S.A., Belgium;
- Shareholding in Dresdner VPV NV, Netherlands;
- Shareholding in Privatinvest Bank AG, Austria;
- Shareholding in Reuschel & Co. Kommanditgesellschaft, Germany;
- Shareholding in Allianz Dresdner Bauspar AG, Germany;
- Shareholding in Eurohypo AG with the commercial real estate banking and public finance business areas. Until Eurohypo is sold, Commerzbank may hive off the retail customer building finance business from Eurohypo AG and transfer it to Commerzbank, from where it may continue the business. Commerzbank is also permitted to conduct mortgage bond business. (After the sale of Eurohypo, the Commerzbank group may also continue public finance and commercial real estate banking to a certain extent in the context of existing business.) The sale must take place as soon as possible, and by 31 December 2014 at the latest. […].

77) Germany will further ensure that Commerzbank reduces its market presence in the following ways:

- A cutback in the number of its branches serving retail and business customers from 2010 onwards;
- Divesting of […] of the risk-weighted assets resulting from […] in the business area Mittelstandsbank International by […];
- A reduced market presence in investment banking (corporate finance including M&A business and structured finance, equity markets & commodities, multinational corporates) so as to free up equity capital of around EUR 1.7 billion by 31 December 2012;

- A ban on building up business in […] until repayment of silent participations up to a remainder of no more than […];
- A cutback in costs (currently some EUR 2.4 billion) by about EUR 850 million and 1 200 job cuts in the investment banking front office by 31 December 2012;
- A reduction in the balance-sheet total in the public finance business sector, which currently stands at about EUR 160 billion, by about EUR 60 billion to around EUR 100 billion by 31 December 2012 and a reduction in new business ([…], 2005-2007 average for Eurohypo and Hypothekenbank in Essen) to the level necessary for the cover fund;
- A reduction of the portfolio volume in commercial real estate banking from the current level of around EUR 80 billion to about EUR 60 billion by 31 December 2012; and
- A reduced market presence in Central and Eastern Europe by disposing of […].

78) Germany will also ensure that Commerzbank pays out no dividends for the business years 2008 and 2009 and no coupons on own funds instruments for the business years 2009 and 2010 unless there is a binding legal obligation to do so. In addition, Commerzbank will not liquidate any reserves in order to make such payments possible.

4 ASSESSMENT

4.1.1 Existence of aid

79) The Commission and Germany agree that the implemented and planned measures are aid measures within the meaning of Article 87(1) of the EC Treaty. They constitute a benefit granted to the bank from public resources and have the potential to distort competition and to affect trade between Member States. This assessment has been subject of the Commission's decision on the compatibility with the Commom Market of the German rescue package.[7]

4.1.2 Compatibility of measures with Article 87(3)(b) of the EC Treaty

80) Article 87(3)(b) of the EC Treaty allows aid to remedy a serious disturbance in the economy of a Member State. The Commission refers to the fact that the Court of First Instance has emphasised that Article 87(3)(b) of the EC Treaty should be applied restrictively[8].

81) The Commission has established that Germany's economy is experiencing a serious disturbance and that in the current market situation support for banks is,

[7] Commission Decision of 12 December 2008 in Case N 625/2008 *Rescue package for financial institutions in Germany*, not yet published.

[8] See in principle Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG v Commission* [1999] ECR II-3663, paragraph 167, as well as various Commission Decisions; cf. Commission Decision of 4 June 2008 in Case C 9/2008 *Sachsen LB*, not yet published.

under certain circumstances, a suitable measure to remedy this[9]. The compatibility of the aid with the common market must therefore be assessed on the basis of Article 87(3)(b) of the EC Treaty.

82) The aid measures are compatible with the common market on the basis of Article 87(3)(b) of the EC Treaty particularly in the case of the package of measures created for financial institutions by the Financial Market Stabilisation Act of 18 October 2008. This aid scheme was declared compatible with the common market by the Commission Decision of 12 December 2008 in Case N 625/2008 *Rescue package for financial institutions in Germany*[10], upon which Germany based the SoFFin I und SoFFin II measures ("Sonderfonds Finanzmarktstabilisierung" – Special Financial Market Stabilization Fund).

83) In the light of Commerzbank's significant losses and the extent of the measures in terms of the consequences of granting the aid (especially regarding the neccessity to file a restructuring plan), the Commission requested that this matter be clarified. Germany submitted the above-mentioned (chapter 2.2) plan for restructuring Commerzbank in order to create legal certainty both for the measures already implemented and for those still being planned. Provided the Commission can, on the basis of the plan, establish the unconditional compatibility with the common market of both the aid measures as ad hoc aid , it is no longer necessary to establish their conditional compatibility with the common market as part of the German rescue package.

84) In the case of restructuring measures, the Community guidelines on State aid for rescuing and restructuring firms in difficulty (hereinafter called "the R&R guidelines")[11] generally apply.

85) As the Commission has set out in the three Communications adopted recently[12], aid measures granted to banks in the context of the ongoing financial crisis should be assessed in line with the principles of the rescue and restructuring aid Guidelines, while taking into consideration the particular features of the systemic crisis in the financial markets.[13] That means that the principles of the rescue and restructuring aid Guidelines may have to be adapted when applied to the restructuring of Commerzbank, which is assessed on the basis of Article 87 (3) (b) EC. This refers especially to the rules set out in the rescue and restructuring aid Guidelines for own contribution[14]. Given the fact that it is almost impossible to obtain contributions from the third party investors in the markets and that, therefore, the requirement of an own contribution of 50% is unrealistic, the

9 Commission Decision of 12 December 2008 in Case N 625/2008 *Rescue package for financial institutions in Germany*, not yet published.

10 Commission Decision of 12 December 2008 in Case N 625/2008 *German banks rescue scheme,* not yet published.

11 See OJ C 244, 1.10.2004, p. 2.

12 Communication from the Commission - Application of the State Aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 25.10.2008, p. 8. point 10, 32, 42; Communication from the Commission - Recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2, point 44. Communication from the Commission on the Treatment of Impaired Assets in the Community banking sector, OJ C 72, 26.03.2009, p. 1, point 17 and 58 et seq.

13 See explicitly the Banking Communication - Application of the State Aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270, 25.10.2008, p. 8. point 42

14 See point 44 of the R&R guidelines.

Commission accepts that during the crisis in the financial markets it may not be appropriate to request that the own contribution represents a predefined proportion of the costs of restructuring. Furthermore the design and implementation of measures to limit distortion of competition may also need to be reconsidered in so far as HRE may need more time for their implementation due to the current market circumstances.

86) Consequently, even during the present crisis, a restructuring plan for a bank must be suited to (a) restore long-term viability (b) ensuring that aid has been reduced to the minimum necessary and that burden is shared appropriately, and (c) avoiding undue distortions of competition.

4.1.3 Restoration of long-term viability

87) The measures must aim first and foremost to restore Commerzbank's long-term viability. This must be verified by means of the submitted measures and/or restructuring plan.

88) The Commission checked the plausibility of the submitted restructuring plan on the basis of the Commerzbank's internal reports (including ones from the management information system and risk management reports), as well as on the basis of information available to the public (particularly business reports and presentations for analysts). In addition, it evaluated ad-hoc opinions and risk assessments performed on a regular basis by the competent supervisory body under European supervisory guidelines for banks. It also took into consideration the results of current economic analyses and attempted to take into account discussions by regulators at European and global level concerning the development of methods of stress testing and of scenario analysis.

89) The Commission has come to the conclusion that the plan takes into consideration the information currently available and also makes allowance for the existing uncertainty regarding future developments. In particular, the assumptions regarding the development of risks, performance and the capital base are sufficiently pessimistic to do justice to the current crisis. The approach chosen by Commerzbank implicitly models the downside case as well.

90) The Commission approves of the fact that Commerzbank's plans assume that the crisis in the financial market will lead to substantial burdens and to a significant increase in risks and defaults in its lending operations. These are accounted for both in the form of much greater risk provisioning and also through increased requirements for own capital. Commerzbank made this assessment not only through procedures of financial mathematics, including the use of scenario analyses and stress testing, but also through a laborious bottom-up analysis of its lending portfolios with the help of experts.

91) The planning for the development of medium-term risks in Commerzbank's portfolio is reliable because the results of the model-based estimation (top-down approach) and of the analysis by experts (bottom-up approach) are identical. Moreover, historical comparisons, as well as a comparison of the current planning figures, show that they are highly consistent with external indicators for the business cycle and the economy. The representation, which has been adjusted for portfolio and accounting effects, shows that the cyclical downturn effects have largely been taken into account in the planning.

92) In addition to the uncertainty surrounding future economic developments, the prognosis is complicated in this case by the merger with Dresdner Bank and the compensatory measures that have been offered. In this connection, the Commission is convinced that the past results of both institutions, broken down by areas of operation, as well as their separately drawn up plans have been taken into consideration. There are uncertainties due particularly to the revenue and cost synergies that should be achieved through the merger. There is, however, nothing to indicate that the relevant estimations are excessively optimistic. Furthermore, allowance is made for the costs expected to occur in the context of the integration process through the creation of large restructuring reserves. It should be noted with regard to the effects of the compensatory measures and the way that they in turn affect own capital requirements, the risk situation and future performance, that they make it possible to offset some of the effects burdening Commerzbank before the measures were implemented.

93) The assumptions in the submitted restructuring plan are thus comprehensible and plausible, and are therefore suitable to be used as a basis for verifying long-term viability.

94) Moreover, the investigation confirmed that the bank has reoriented its activities and abandoned loss-making activities to the extent that no credit swap activities and no new structured investment activities will be undertaken in future.

95) Rather, the bank has focused on its SME operations and its retail and commercial banking activities. The Commission accepts Commerzbank's view that the business models in these two strategic areas of operation do not need any fundamental revision.

96) It should also be asked what basic effects the current crisis will have on the capital base requirements for credit institutions and on their future profitability. Commerzbank assumes, in accordance with most market operators and with the Commission's approval, that the development of risks and results in the past constitutes a stable criterion for future developments. Some of the business areas identified as key areas in the context of reorientation have allowed the Commerzbank to grow even during the financial crisis. This is also true in principle with regard to Dresdner Bank. Negative effects on the development of risks and results due to the recession are taken into account for the near future. Business activities that were characterised by unstable results and that suffered and continue to suffer more than average as a result of the financial crisis should, on the other hand, be terminated or at least significantly curtailed.

97) Even in the event of matters becoming much worse than under the scenario deemed to be realistic, Commerzbank's plans allow one to conclude that it has a sufficient buffer of own capital to survive […] of the current crisis. From 2011 Commerzbank should once again be in a position to generate a significant surplus. The return on equity should increase from - […] in 2009 to […] by 2012 and to […] from 2013 due to the measures to be implemented in the context of the merger and restructuring process taking effect, and to the economic upturn.

98) Additionally, on this basis, Commerzbank should be able to start repaying the aid, as planned, from 2012 and to complete repayments by […].

99) The Commission has also ascertained that Commerzbank's liquidity situation proved to be stable during the crisis and that the institution still has sufficient liquidity reserves.

100) The Commission also concludes that Commerzbank has learned from the crisis and made a number of changes to its risk management strategy that should make it less vulnerable in future. These include, in particular, a more critical examination of methods and models in financial mathematics, and the use of approaches involving the input of experts in order to complement them.

101) In the opinion of the Commission, Commerzbank has also taken a step towards improving its corporate governance by reducing bonus payments and taking stock of its internal incentive system.

102) The measures ensure that the bank's long-term viability will be restored.

103) In addition, by focusing on Commerzbank's retail and commercial banking activities a contribution can be made towards maintaining and extending the supply of credit to the real economy. Commerzbank has given a commitment in respect of SoFFin that it will use the state aid, in particular, to ensure the supply of credit to the real economy. In this way, the second essential aim of Article 87(3)(b) of the EC Treaty, after the restoration of viability, is taken into consideration in the long term[15].

4.1.4 Limitation of aid to the minimum necessary/burden-sharing between the State and the beneficiary

104) Furthermore the aid must be limited to the minimum necessary, and the State on the one hand and the beneficiary and its shareholders on the other must each shoulder an appropriate share of the burden[16]. Above all this requires the beneficiary and its shareholders to contribute towards the bank's restructuring.

105) Firstly, the Commission is satisfied that, in addition to the earlier capital increase, the planned capital increase is necessary so that Commerzbank can meet both internal and external demands and that it has adequate risk buffers at its disposal for the near future. This is not altered by the fact that its level of own funds will clearly exceed regulatory requirements. A capitalization not exceeding current regulatory requirements, given the present financial crisis and the sharply increasing risks, is insufficient to protect the bank against future losses.

106) Moreover, the Commission takes the view that Commerzbank is making its own contribution by selling shareholdings and other assets. Other than the relatively insignificant result of supplying Commerzbank with liquidity, these sales have two effects. On the one hand they lead to a reduction of risk-weighted assets and a decrease in the own-funds requirement. On the other, if the assets are sold at a price exceeding their book value, the result is an increase in own funds. Both these effects improve the capital ratios. Some sales have already started, while others are to follow in the medium term. Even though profits from these sales are uncertain and will not be realised for several years, the Commission has come to the conclusion that, given the current crisis, they constitute an acceptable own contribution. In addition, Commerzbank is not in a position to sell off further assets to reinforce its capital base in the short term without jeopardising its survival in the long term. It is also unable to free up own funds by urgently disposing of its risks.

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15 See the Commission communication on the recapitalisation of banks of 8 December 2008, OJ C 10, 15.1.2009, p. 2, paragraph 5.

16 See in principle also points 43 et seq. of the R&R guidelines.

107) Furthermore, the owners are to participate in the costs of restructuring the bank as much as possible. The existing shareholders and holders of hybrid capital instruments have not taken part in the capital increases, with the exception of Allianz, whose contribution must be attributed mainly to its desire to complete the takeover of Dresdner Bank as quickly as possible. Nevertheless they shoulder part of the burden through the ban on dividend payments and on using reserves for coupon payments. The Commission is convinced that there is a limit to imposing a heavier burden on the holders of hybrid capital instruments at Commerzbank.

108) Given the current circumstances, the appropriate burden-sharing requirement has been taken into account to the greatest extent possible. In view of the aims pursued by the aid, namely restoring financial stability and ensuring lending to the real economy[17], the burden is by and large shared appropriately.

4.1.5 Avoidance of undue distortions of competition

109) Finally, the greatest possible care must be taken to avoid adverse consequences for competitors. Measures to this effect must be proportionate to any distortions of competition the aid might cause.

110) Germany and Commerzbank have undertaken to prevent undue distortions of competition by adhering to a number of requirements. One of these is an obligation for Commerzbank, in principle, not to offer prospective customers more favourable terms than its main competitors in its future core business areas. Another is a ban on growth through acquisitions in these areas[18].

111) The ban on acquiring other banks accepted by Commerzbank prevents it from growing inorganically. The ban on offering more favourable terms than its most competitive rivals in business segments or product groups for which it has a market share of 5% or more, makes it virtually impossible for Commerzbank to grow organically at the expense of these rivals. Therefore, Commerzbank can attract new customers in these areas only on the strength of the quality of the products and services it offers. It can grow by offering more competitive terms and conditions only for those business segments and product groups for which it has no more than a minor market share.

112) In addition, Commerzbank has undertaken to scale back its business activities considerably and to sell off a large number of its holdings, most significantly by divesting itself of Eurohypo. These measures will result in a lasting reduction in its balance sheet total by approximately 45% and a decrease in risk-weighted assets by […]. Given their weight and size, they are therefore likely to reduce any distortion of competition.

113) In particular, not only will the sale of Eurohypo, which was acquired as recently as in 2005, result in a significant reduction in the Commerzbank group's balance-sheet total and a decrease in its risk-weighted assets, but it also sends a clear signal to the market. This is the only sector in which Commerzbank has a significant market share both in Germany and in the rest of Europe.

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17 Cf. Communication from the Commission — The recapitalisation of financial institutions of 8 December 2008, OJ C 10, 15.1.2009, paragraphs 4 to 6.

18 In spite of the largely homogenous market presence of both public and private banks, the German banking market is insufficiently consolidated and is characterised by strong competition on terms. Given that the services and products on offer are highly similar, the main opportunities for growth lie in the acquisition of competitors, expansion of branch networks and aggressive terms and conditions.

Commerzbank is giving up this significant market position in order to limit any distortions of competition.

114) As a whole, the agreed restrictions are therefore, under present circumstances, apt to limit as much as possible distortions of competition brought about by the aid.

5 IMPLEMENTATION OF THE PLAN AND REPORTING

As stated, Germany has given assurances that Commerzbank will implement the measures contained in the restructuring plan and that it will enable the Commission to verify this on the basis of annual reports.

6 CONCLUSION

115) To sum up, the Commission finds that, as a whole, the measures to grant restructuring aid are suited to re-establishing Commerzbank's long-term viability. In addition, measures are being taken to limit the aid to the minimum necessary and to prevent distortions of competition. This restructuring aid is therefore compatible with the common market pursuant to Article 87(3)(b) of the EC Treaty.

DECISION

The Commission has come to the conclusion that the measures adopted by Germany on 17 October 2008 and the further measures it is planning to grant to Commerzbank through the intermediary of SoFFin are compatible with the common market as restructuring aid pursuant to Article 87(3)(b) of the EC Treaty and raises no objection thereto.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within five working days of receipt. If the Commission does not receive your reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/community_law/state_aids/index.htm

Your request should be sent by registered letter or fax to:

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Directorate-General for Competition,
State Aid Registry
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Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission