



EUROPEAN COMMISSION

Brussels, 12.10.2011
C(2011) 7266 final

**Subject: State aid SA.33023 (2011/NN) – Ireland
Restructuring of Quinn Insurance Ltd through the contribution of the
Insurance Compensation Fund -**

Sir,

1 PROCEDURE

- (1) Quinn Insurance Ltd (hereinafter "QIL") was put into administration by the Irish High Court on 30 March 2010 through the appointment of administrators. That appointment was confirmed on 15 April 2010.
- (2) On 13 April 2010 the Commission was informed by the Irish authorities, on an informal basis, of the difficulties experienced by QIL and the exposure of Anglo Irish Bank (hereinafter "Anglo") to both QIL and the Quinn Group as a whole.
- (3) The Commission received further information from the Irish authorities, again on an informal basis, on 14 and 18 April 2010, 10 May 2010, 18 January 2011 and 18 April 2011. That information contained information on the contribution by the Insurance Compensation Fund (hereinafter "ICF").
- (4) The Commission decided to investigate *ex officio* the State aid implications of the ICF contribution on 17 May 2011.
- (5) Further information was requested by the Commission on 28 April, 4 July and 6, 7, 12, 20, 23 and 29 September 2011. The Irish authorities provided the requested information on 29 June, 20 July, 16, 21, 23, 27 and 30 September and 3 October 2011.

Mr Eamon GILMORE,
Minister for Foreign Affairs,
Department of Foreign Affairs
80, St. Stephen's Green,
Dublin 2,
Ireland

- (6) The administrators applied to the High Court for a contribution of EUR 738 million by the ICF on 4 October 2011.

2 DESCRIPTION OF THE MEASURE

2.1 The parties involved

Quinn Insurance Limited

- (7) QIL was established in 1996 and is the largest Irish-owned general insurer. QIL is part of the Quinn Group, a conglomerate encompassing amongst others: a glass manufacturing business, a plastic manufacturing business, a packaging business, a radiator manufacturing business, a real estate business, a wind farm and several properties in the hospitality sector.
- (8) QIL is a leading insurer in the Irish market. QIL is also active in the UK, where it operates a private motor insurance business and where, before it was put in administration, it used to provide other business lines (household, commercial motor, commercial fleet, professional indemnity, commercial property and liability insurance).
- (9) QIL employed over 2,800 staff in its operations in Ireland and in its Northern Ireland and UK offices. The Quinn Group acquired health insurance provider BUPA Ireland Limited in 2007 and has subsequently re-branded it as QUINN-healthcare. Table 1 provides information on QIL's market shares in the non-life insurance segment¹.

Table 1: QIL market shares of gross written premium in Ireland 2009-2010 (%)²

market share/%	2009	2010
Liability insurance	11.1	7.5
Motor insurance	17	13.9
Property insurance	4.3	4.1
Health insurance	-	21
Non-life insurance	10.4	8.6

- (10) QIL's gross written premiums for 2009 (i.e. before it was put in administration) amounted to around EUR 1.06 billion, of which around EUR 617 million was written in Ireland and EUR 445 million was written in the United Kingdom. Table 2 provides information on gross written premium written by the different parts of QIL.

¹ For the purposes of this decision, the Commission will not focus on QIL's life insurance business as it is not affected by the contribution of the ICF.

² Source: Irish Insurance Federation statistics and information provided by the Irish authorities.

Table 2: Gross written premium non-life insurance by QIL for 2009³

Gross written premium QIL (2009), €mn					
	Motor, 3rd party, other	3 rd party liability	Fire and other property damage	Health	Total
Ireland	226.1	59.3	40.4	291.5	617.4
UK	319.8	107.2	18.3	0	445.3
Total	545.9	166.5	58.7	291.5	1062.7

Anglo Irish Bank

- (11) Measured by balance sheet size, Anglo Irish Bank ("Anglo") was one of the largest banks operating in Ireland. As at 31 December 2010, it had a balance sheet size of EUR 72.2 billion. In terms of its business model, Anglo was a "monoline" bank specialising in commercial real estate lending in three core markets: Ireland, the United Kingdom and the United States of America. Since the beginning of the financial crisis, Anglo registered heavy losses mainly driven by impairment charges on its commercial loan book. Anglo was nationalised by Ireland on 21 January 2009. A detailed description of Anglo and its difficulties was provided in Sections 2.2 and 2.3 of the Commission's opening decision of 31 March 2010⁴.
- (12) On 29 June 2011, the Commission approved the restructuring of Anglo, thereby also finally approving the significant amount of aid provided to it⁵. Anglo received, amongst other measures, four recapitalisations for an amount of EUR 29.3 billion⁶. In line with its restructuring plan Anglo has been merged with Irish Nationwide Building Society in order to resolve both institutions over time⁷.
- (13) Anglo has an exposure of EUR 2.8 billion as lender to the Quinn family and the family interests ("the Quinn Family companies") with a modest amount of lending to the Quinn Group (the owners of QIL). Anglo's security over the loans is a pledge over the shares the Quinn family hold in the Quinn Group.

Liberty Mutual

- (14) Liberty Mutual was established in the USA in 1912. It is a diversified global insurer and the third-largest property and casualty insurer in the USA based on 2010 written premiums. As at 31 December 2010, Liberty Mutual had \$112.5 billion of assets on a consolidated basis and \$33.2 billion of consolidated revenue. Liberty Mutual is active

³ Source: Quinn Insurance audited annual accounts 2009.

⁴ Commission Decision in Case NN 12/2010 and C11/2010 (ex N 667/2009), Second rescue measure in favour of Anglo Irish Bank, OJ C 214, 7.8.2010, p. 3.

⁵ Commission Decision in cases SA.32504 (2011/N) and C 11/2010 (ex N 667/2009), joint restructuring of Anglo Irish Bank and Irish Nationwide Building Society, not yet published.

⁶ The Commission approved EUR 29.44 billion of recapitalisations in total. In the end Anglo received EUR 29.3 billion from the Irish authorities while the remaining sum was never granted.

⁷ The merger has already taken place. The merged entity has been renamed IBRC.

in 26 countries worldwide and employs 45,000 people.

- (15) In Europe, Liberty Mutual operates from the UK where it is based and regulated. It provides several types of non-life insurance including property, casualty and general liability, motor and professional indemnity insurance. Liberty Mutual's activities in Ireland (at around EUR [...] million of gross written premium) have been limited compared to the size of the non-life market in Ireland where the gross written premium amounted to around EUR [...] billion in 2010. Liberty Mutual's activities in Ireland are mainly focussed on liability insurance (EUR [...] million), motor insurance (EUR [...] million) and property damage insurance (EUR [...] million).
- (16) Liberty Mutual's organisational model is one of acquisition of insurance companies which have a similar businesses model as Liberty Mutual. One of the primary features of the organisational model is to leave the acquired company a large degree of autonomy to run the business. In addition, Liberty Mutual supplements the local knowledge with the global expertise gained by Liberty Mutual in actuarial analysis and technological efficiencies.

2.2 The events triggering the ICF contribution

- (17) QIL was put in administration by the High Court on the request of the Financial Regulator for several reasons. Firstly, the Financial Regulator noted an ongoing breach of the regulatory capital requirements amounting to approximately EUR 150 million based on the figures for 2008 with a possible further increase to EUR 200 million once the 2009 audit would be completed.
- (18) Secondly, the Financial Regulator found that two senior groups of lenders with a total exposure of EUR 1.3 billion⁸ to the Quinn Group had obtained as security for their loans joint and several guarantees from subsidiaries of the Quinn Group, including QIL. Once the Financial Regulator became aware of the guarantees, it reduced QIL's regulatory capital by around EUR 450 million, thus negatively affecting its solvency margin.
- (19) The Financial Regulator furthermore found that there were issues surrounding QIL's ability to comply with supervisory regulation and the way it was being managed.
- (20) Following the decision by the High Court to put QIL into administration, administrators were appointed to run the business as a going concern until the issues mentioned in the previous points were addressed or QIL was resolved.
- (21) Following QIL's entry into administration, an actuarial analysis conducted by the administrators revealed a number of problems in the underlying business and in particular a deep under-provisioning. It required a significant increase in the company's reserves. [...]. Consequently, premiums had been set at too low a level.
- (22) The upwards adjustment to the provisions following the actuarial review means that

* Contains business secrets, where possible ranges have been provided.

⁸ Those groups consist of bondholders for EUR 600 million and a bank syndicate led by Barclays for EUR 700 million.

the UK non-life business had in fact been loss-making [...]. Furthermore, the Irish non-life/non-health business had incurred losses during [...] and [...] (whilst having been profitable in the years before).

- (23) In addition, a review of QIL's property and investment assets led to a downward revaluation of those assets.
- (24) As a result of the actuarial review and the revaluation of the investment assets, the ultimate shortfall in shareholder's funds was established at around EUR 550 million.
- (25) Since QIL has been put under administration, its activities in the Irish and UK non-health insurance have been reduced. The Irish general insurance business registered EUR 262 million of premium income in 2010 compared to EUR 325 million in 2009. The UK property, motor and liability insurance business fell from around EUR 445 million in terms of premium income in December 2009 to EUR 273 million in 2010. The premium income of both business lines are reducing further in 2011 (see Table 3 below).

Table 3: Premium income of QIL before and during administration⁹

Premium Income (amounts stated in Euros)	Dec-09	Mar-10	Dec-10	H1 2011	Aug rolling 12mths
	Republic of Ireland Property, Motor and Liability	325,000	310,000	262,000	99,000
Republic Of Ireland Health	295,000	300,000	285,000	149,000	320,000
UK property Motor and Liability	445,000	502,000	273,000	84,000	188,000
TOTAL	1,065,000	1,112,000	820,000	332,000	711,000

2.3 The measures - contribution by the ICF

- (26) The ICF was established by the 1964 Insurance Act for non-life insurance companies. The ICF originally was only available in circumstances of liquidation of a non-life insurer in order to meet the payments to the policyholders. From 1983 onwards, the coverage of the ICF was expanded to enable it to support companies that were put into administration, but which were potentially viable in the long-term.
- (27) There are two ways in which the ICF can be used. Firstly, in case of a liquidation of a non-life insurance company, the ICF can be used to pay non-corporate policy holders the amounts due to them after all the assets of the company have been sold, up to a limit of 65% of their entitlement or EUR 825,000, whichever is the lower. In the case of liquidation, all policy holders have to be treated in the same way, meaning that it is not possible for a liquidator to sell parts of the business as it would potentially provide an advantage to the policy holders transferring to a buyer as part of the sale.

⁹ Information provided by the Irish authorities on 21 September 2011.

- (28) Secondly, the administrator of a non-life insurance company under administration can apply for funds to enable it to carry on the business of the company with a view to establishing whether (parts of) the business can be salvaged. Policy holders in that case are in principle compensated in full (they either get transferred to a new business or remain and get paid when their liabilities become due as the company is wound-up over time). To that end, the administrator can restructure the business by, amongst others, re-opening or closing certain business lines, selling (parts of) the company and dismissing staff.¹⁰
- (29) In order to get funds from the ICF, the administrator has to make an application to the High Court of Ireland, which maintains and administers the ICF, for the necessary amounts to enable it to carry on the business of the insurer.
- (30) Once the application of the administrator is successful, it can apply to the ICF for funds. If the ICF lacks the funds to pay out the requested amount, the Central Bank of Ireland (hereinafter "CBI") on behalf of the Minister for Finance can impose a levy on the insurance sector of up to 2% of the aggregated premium income a year. The CBI will receive the amounts payable under the levy and advance them to the ICF. Given that it takes time for the levy to generate income for the ICF, the Minister for Finance, on the recommendation of the CBI, can provide an advance in the form of a loan. The ICF is activated and financed only if a non-life insurance company is put into administration and does not accumulate a standing fund.
- (31) The Insurance Acts of 1964, 1983 and 1989 determine the powers of the administrator during the administration. They furthermore provide that the ICF should be repaid and that during the administration the legal owners of a non-life insurance company cannot receive any dividends.
- (32) To date, the ICF has been used in two cases: the administration of PMPA in 1983 and Insurance Corporation of Ireland (ICI) in 1985.
- (33) In the case of the administration of QIL, the administrators have made an initial application to the High Court for an amount of around EUR 738 million.

2.4. The restructuring of QIL

- (34) The administrators have decided to restructure QIL in the following way:
- (i) The sale of QIL's viable activities (Irish health insurance and general insurance business);

¹⁰ It should be mentioned that the initial purpose of the 1964 Insurance Act was to protect the policy holders in the event of insolvency and subsequent liquidation of an insurance company. The introduction of the process of administration in the 1969 Insurance Act enabled the administrators to continue the insurance business in administration as a going concern, which increased the chances of the policy holders having their claims repaid in full. For those reasons, an administration is preferred to a liquidation of an insurance company.

- (ii) Continuation of a limited part of the UK operations (private motor insurance) until the end of 2012;
- (iii) Immediate discontinuation of the non-viable product lines (other UK activities).

(i) The sale process of QIL's Irish activities

- (35) The administrator started the sale process of QIL's Irish activities, i.e. its general insurance business (consisting of the motor insurance, property insurance and liability insurance business) and the health insurance business, in the first half of 2010. The sale process was in the form of an open tender. It approached over 90 international and domestic bidders. All bidders were given the opportunity to bid for both the general insurance business and the health insurance business.
- (36) The administrator received [...] indicative bids for the general insurance business and [...] for the health insurance business in the first round. [...] bidders were subsequently invited to participate in the second round for the general insurance business, while [...] bidders were invited to continue in the second round for the health insurance business. The consortium of Liberty Mutual and Anglo were named preferred bidders for the general insurance business on 15 April 2011, after which a sale and purchase agreement was concluded on 28 April 2011. The sales process of the health insurance business is still ongoing.
- (37) According to the administrator, who employed an independent advisor to advise it on the respective value of the bids, the deal proposed by Liberty and Anglo minimised transaction risk as the deal concerned a going concern sale of the business in its current state at the best financial terms. The deal furthermore de-risked the substantial claims book as it includes the full reserves of the non-health Irish business, thereby reducing the claims remaining with the QIL rump by approximately 50%. The deal also provided a solution to the administrator for the management of the UK claims book that remains in QIL after the sale, through a transitional services agreement entered into with Liberty Mutual. The sale of the Irish general insurance business to Liberty Mutual furthermore would result in a lower contribution by the ICF compared to the competing bid.

The transaction

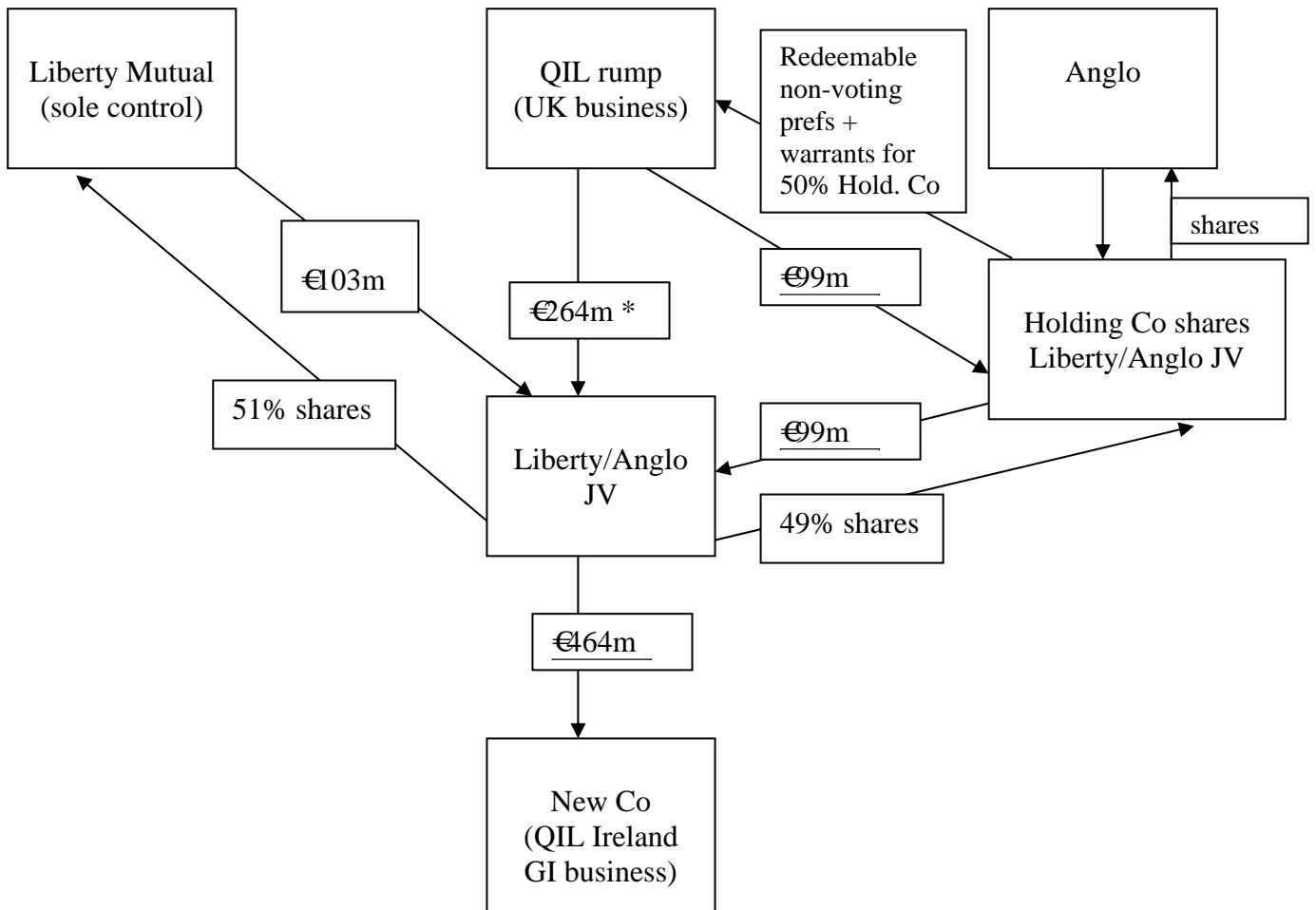
- (38) The administrator agreed to sell the Irish general insurance activities of QIL (hereinafter "the QIL Ireland GI business") to a joint venture set up by Liberty Mutual and Anglo (hereinafter "Liberty/Anglo JV"). The part of QIL that is left after the sale (excluding the health insurance business) will remain in administration (hereinafter "the rump of QIL").
- (39) The Liberty/Anglo JV that will acquire the QIL Ireland GI business is 51% owned by Liberty Mutual and 49% owned by a holding company set up by Anglo and the administrators of the rump of QIL (see Graph 1 for the outline of the transaction). That holding company will hold the shares in the Liberty/Anglo JV. Anglo owns all the ordinary shares and voting rights in the holding company and will nominate its entire board. [...].

- (40) Liberty Mutual will have all the rights necessary, including control of the board, to enable it to exercise sole control over the Liberty/Anglo JV in the meaning of the Merger Regulation¹¹. [...].
- (41) Liberty Mutual will pay EUR 1 for the QIL Ireland GI business. In addition, the three parties will jointly meet the capital requirements of the Liberty/Anglo JV. Liberty Mutual will contribute EUR 103 million. The rump of QIL (through the holding company) will contribute EUR 99 million (that contribution may be financed by the ICF). Furthermore, Anglo will contribute by organising the release of EUR 246 million worth of guarantees on QIL by the senior creditors which will result in releasing value to QIL¹².

¹¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), Official Journal L 24, 29.1.2004, p. 1.

¹² Anglo's contribution consists in negotiating the lifting of existing guarantees from senior creditors (bank syndicate and bond holders) worth EUR 464 million over Quinn Property Holding's assets in return for EUR 200 million (versed to banks and bondholders in the form of [...] and cash). That exchange will release value of EUR 264 million to QIL which will reduce the call on the ICF.

Graph 1: Transaction outline



* Amounts released from the QIL “Guarantee subsidiaries” through deal made by Anglo with senior debtors

Liberty Mutual's plans for QIL's Irish activities

- (42) Liberty Mutual intends to separate the acquired business from the remaining activities of QIL and fully integrate it into Liberty Mutual. The overall objective is to continue the business, i.e. to write new policies, renew expiring policies and service previous policies of the QIL Ireland GI business. The integration of the QIL Ireland GI business into Liberty Mutual will provide the former with expertise and synergies, in particular in areas such as information technology, underwriting, claims management, marketing and actuary.
- (43) The QIL Ireland GI business will be rebranded and operate on a stand-alone basis. The transaction is an asset sale and involves the takeover of the business, employees, policies and processes. [...].

- (44) The Irish authorities have provided three business plans made by Liberty Mutual for the QIL Ireland GI business: one for a realistic scenario, one for an optimistic scenario and one for a pessimistic scenario. [...].

Anglo's interest in participating in the sale

- (45) Anglo participated in the sale of the QIL Ireland general insurance business to improve its chances of recouping (a part of) its exposure to Quinn family to which it has provided loans of around EUR 2.8 billion. As part of the collateral for that lending, Anglo took security over the shares that the Quinn family held in the Quinn Group and accordingly was the beneficial owner of those shares. Attempts by the creditors to agree the terms of a restructuring with the Quinn Group were not possible due to the refusal of the family owners to make concessions to the creditors. In addition, the attempts to sell QIL, or parts of it, were frustrated by the guarantees granted by the QIL subsidiaries to the creditors. Additionally there were significant inter company transactions and therefore potential claims between Quinn Group companies and Quinn Family companies which made the restructuring additionally complex.
- (46) Anglo was able to fulfil the following roles:
- (i) Take over the Quinn Group shares and replace the shareholder, including taking control of the Group and replacement of Quinn Group boards;
 - (ii) Agree terms for the Quinn Group restructuring with the creditors which envisage the extension of the debt for a further five years, with Anglo retaining a 75% economic interest in the value of the Quinn Group and a 25% voting interest;
 - (iii) Identify and agree terms with Liberty Mutual and the QIL administrator for the acquisition of parts of the QIL business;
 - (iv) Agree terms for the release of the guarantees from the creditors from the QIL subsidiaries at a concession to facilitate a part of the recapitalisation of the acquiring entity;
 - (v) Facilitating and agreeing the terms of the “clean break” which sees the cancellation of known and unknown claims between QIL and the Quinn Group and in turn between the Quinn Group and the Quinn Family companies.
- (47) Anglo’s unique position as lender to the family interests and to the Quinn Group and as the beneficial equity holder over the Quinn Group allowed all of those elements to come together. There is an interdependency between all the restructuring elements, beginning with Anglo’s initial enforcement over the shares of the group. Therefore should the QIL transaction not proceed, it could prevent the broader Quinn Group restructuring and cause the Group to be placed into administration by the creditors.

(48) If Quinn Group were to go into administration, it would eliminate the prospect of recovery of the loans to the Quinn family and the Quinn Family companies from Anglo's residual equity holding in the Quinn Group. In addition it would likely result in the pressing of claims by creditors in relation to Quinn Family companies to which Anglo has lent and reduce the potential recovery from the realisation of the assets by Anglo.

(ii) The continuation of the UK motor insurance activities

(49) Following the decision of the Irish Financial Regulator to put QIL in administration, the UK Financial Services Authority (hereinafter "FSA") directed the administrator to cease writing business in the UK. The administrator has succeeded in obtaining permission from the FSA to reopen the profitable private motor insurance business line, provided that:

- (i) It would carry through substantial price increases;
- (ii) A full GLM statistical analysis of the UK market would be prepared;
- (iii) Regular actuarial reviews would take place; and
- (iv) Lower volumes of business would be written.

(50) As regards the front book¹³ that is being generated by QIL in the UK on the basis of the agreement with the FSA, the administrator will either sell it by the end of 2012 (to Liberty Mutual or another buyer) or, if the sale is not successful, cease writing business as of 1 January 2013 and wind it down. Currently, the UK private motor insurance business line comprises some [...] active policies with annualised income of EUR [...] million.

(51) The administrator has furthermore agreed a Transaction Service Agreement (TSA) with Liberty Mutual for an initial period of five years. Under the agreement, Liberty Mutual will provide certain services regarding the front and back book of QIL's activities in the UK. Those services include administrative support, customer care, claims handling, debt collection, recovery collection, reinsurance, financial and reporting, risk management, internal audit, compliance and managing agent services. The administrator will pay a fee to Liberty Mutual in return for those services. Under the terms of the TSA, Liberty Mutual is not entitled to use the customers' data in order to sell its own products.

(iii) The wind-down of the rump

(52) As regards the remainder of the UK activities, i.e. the household insurance, commercial motor insurance, commercial (car) fleet insurance, professional indemnity insurance and liability insurance business, QIL ceased writing new business in those loss-making lines from the moment it was put into administration (see Table 4).

¹³ The front book consists of the premiums written in the UK private motor insurance business since the FSA allowed the reopening of that business line.

Table 4: discontinued UK business 2009, (in GBP)¹⁴

Business Line	2009 Premium	Reason
UK Household	3,000,000	Loss Making
UK Commercial Motor	15,000,000	Loss Making
UK Commercial Fleet	13,000,000	Loss Making
UK Professional Indemnity	30,000,000	Loss Making
UK Commercial Property	14,000,000	Loss Making
UK Liability	87,000,000	Loss Making
Total	162,000,000	

3 POSITION OF THE IRISH AUTHORITIES

- (53) The Irish authorities have indicated that they do not consider the contribution of the ICF to the restructuring of QIL as State aid because of a lack of selectivity.
- (54) The Irish authorities have pointed out that whether a company is put into liquidation or administration, there is access to the ICF for the liquidator or administrator, as the purpose of the fund is to provide policyholder protection.
- (55) As regards the funding of the ICF, the Irish authorities recall that the cost of any funding provided by the ICF is met by the insurance industry through the application of a levy by the Central Bank of up to 2% of aggregate income. Because the fund is not pre-funded, the State may advance its funds with a loan on terms and conditions decided by the Minister for Finance (depending on whether it is made in the context of liquidation or administration). Thereby it is ensured that there are sufficient monies in the fund to meet the initial cost of the liquidation or administration. That loan is repaid over a number of years as has happened with the PMPA and ICI administrations.
- (56) The Irish authorities emphasise that the QIL business is being sold at a market price after a competitive sales process. There is no subsidy from the ICF, albeit the ICF facilitated the process, notably the split-off of the viable part of the business. However the policyholder protection nature of the ICF means that it would have facilitated whatever deal was agreed or process followed. Therefore it cannot be argued that the arrangement is particular to the Liberty Mutual/Anglo deal.
- (57) The Irish authorities furthermore argue that any decision to liquidate QIL could have resulted in a much greater call on the ICF because there would have been pressure to sell off assets of the company immediately to compensate policyholders. Those assets would have been sold into a depressed market, particularly the property assets. The business would also have ceased immediately and there would not have been an opportunity for future profitable business to improve the overall position of the company. It would have resulted in a considerable panic for the significant number of personal and commercial QIL customers who would effectively have had to obtain new insurance cover over night. Therefore, the Irish authorities consider that from an economic point of view administration (with the split and sale of the viable part) is the more efficient way of dealing with a failing insurance company.

¹⁴ Information provided by the Irish authorities on 16 September 2011.

- (58) The Irish authorities have provided the following commitments:
- (i) The following UK business lines, which have been discontinued since the beginning of the administration and are currently in run-off (see Table 4), will not be re-started by the administrators:
 - a. UK Household;
 - b. UK Commercial Motor;
 - c. UK Commercial Fleet;
 - d. UK Professional Indemnity;
 - e. UK Commercial Property
 - (ii) The assets related to the UK retail motor business line will be sold by 31 December 2012. [...];
 - (iii) The Minister for Finance will not exercise his power, pursuant to section 3(2C)(b) of the Insurance Act 1964, as amended, to waive all or part of the debt of the rump of QIL towards the ICF with a view to facilitating the placing of the business of the insurer on a sound commercial and financial footing;
 - (iv) [...].

4 ASSESSMENT

The scope of the present decision

- (59) The Commission notes that the current investigation is on the basis of an *ex officio* investigation on its own initiative. The Commission considers, on the basis of the information it has received, that it is able to pronounce itself on the measures, their State aid character and their compatibility with the internal market pursuant to the Treaty on the Functioning of the European Union (TFEU) with regard to the Liberty/Anglo JV, Liberty Mutual, Anglo, the QIL Ireland GI business and the rump of QIL.
- (60) As regards QIL's health insurance business, the Commission notes that the sale process for that business is still ongoing. Therefore, at present the Commission cannot assess the compatibility of any potential aid granted to the health insurance business. That assessment will be the subject of a separate decision.

4.1 Existence of State Aid

- (61) The Commission first has to assess whether the contribution of the ICF to QIL constitutes State aid within the meaning of Article 107(1) TFEU. According to that provision, State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States. The Commission observes that the Irish authorities dispute that the measure constitutes State aid.

State resources and imputability

- (62) As to whether the contribution of the ICF to QIL is financed by State resources, according to settled case-law, all the financial means by which the public sector may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector, fall under Article 107(1) TFEU, provided that they constantly remain under public control, and therefore available to the competent national authorities. In particular, State resources are generally considered to be involved where funds come from contributions made compulsory by State legislation and are managed and apportioned in accordance with that legislation, even if they are administered by institutions separate from the State¹⁵. The status of the body or undertaking granting the aid in question is not regarded as a determining factor for the application of State aid rules; otherwise, given the growing interpenetration of the public and private sectors of the economy, a significant portion of State measures having the effects of State aid would escape the scrutiny of the Union's institutions¹⁶.
- (63) In the present case State resources are involved in two ways in the funding of the ICF.
- (64) Firstly, the funding for the ICF will initially be provided by the Irish authorities in the form of a loan to the ICF in order to enable it to disburse funds to QIL upfront, while the levy on the industry is put in place to raise the necessary funds ex-post. The proceeds of the levy will contribute to the repayment of the government loan.
- (65) Secondly, the funding to the ICF will be provided in the form of a mandatory levy on the non-life insurance industry in Ireland once the High Court has granted its permission to the administrator to approach the ICF. In that context the Commission notes that the operation of the ICF is laid down in the Insurance Acts of 1964, 1983 and 1989, pursuant to which: 1) the ICF is administered and maintained by the High Court, 2) access to the ICF can only be obtained by means of High Court permission, 3) the levy is set by the CBI (subject to a maximum percentage laid down in the relevant legislation) and 4) the Minister for Finance can provide funding to pre-finance the ICF. The institutions involved are all part of the Irish State. As a result, the operation of the ICF, including its funding and the distribution of funds from it, is completely controlled by the State.

15 See Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 16.

16 See Case 78/76 *Steinike & Weinlig v Federal Republic of Germany* [1977] ECR 595, paragraph 21 and Opinion of Advocate General Poaires Maduro in Case C-237/04 *Enirisorse* [2006] ECR I-2843, paragraph 50.

- (66) The Court of Justice held in its ruling in *PreussenElektra* that "a measure which is made obligatory by the public authority but which is financed by private undertakings, while the public authority has at no time power of disposal of the funds in question, does not involve any direct or indirect transfer of State resources"¹⁷. The Commission considers however that the *PreussenElektra* case-law does not apply here as: (i) the intervention of the ICF will be pre-funded by the State, (ii) the funds do not flow directly from private party to private party but transit via the CBI to the ICF¹⁸, (iii) the beneficiary of the assistance from the ICF, QIL, will not pay the levy while conversely the non-life insurance companies that contribute will not benefit from its proceeds¹⁹ and (iv) the measure is implemented in the context of a public interest mission defined by the State and does not have a purely commercial objective²⁰.
- (67) As regards imputability to the State of the contribution of the ICF to QIL, the Court of Justice²¹ has clarified that imputability to the State of an aid measure taken by a prima facie independent body (for instance, a public undertaking) can be inferred from a set of indicators arising from the circumstances of the case, such as the fact that the body in question cannot take the contested decision without taking into account the requirements of the public authorities, or the fact that, apart from factors of an organic nature which link it to the State, it has to take into account the directives issued by the State before taking the contested decision. Other indicators might, in certain circumstances, be relevant in concluding that an aid measure taken by a public undertaking is imputable to the State²².
- (68) Similarly, the fact that private persons participate in the running of an entity is not sufficient to exclude imputability to the State of the measure at issue²³.
- (69) In the present case, the Commission finds that the ICF (as operated) is entirely run by State institutions and that its functions have been embedded in the Insurance Acts of 1964, 1983 and 1989. The ICF has no discretion with regard to the disbursement of the funds to QIL once the High Court has approved the application of QIL's administrator. If the funds in the ICF are insufficient, the levy on the non-life insurance industry will be imposed and collected by the CBI on behalf of [...]. The CBI furthermore

¹⁷ Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 59.

¹⁸ See Case T-25/07 *Iride and Iride Energia v Commission* [2009] ECR II-245, paragraph 27.

¹⁹ See Case C-345/02 *Pearle and Others v Commission* [2004] ECR I-7139, paragraph 36 as well as Case T-136/05 *Salvat père & fils and Others v Commission* [2007] ECR II-4063, paragraph 162

²⁰ See Case C-345/02 *Pearle and Others* [2004] ECR I-7139 paragraphs 37 and 38 as well as Case T-136/05 *Salvat père & fils and Others v Commission* [2007] ECR II-4063, paragraph 164.

²¹ Case C-482/99 *France v Commission ("Stardust Marine")* [2002], ECR I-4397, paragraph 55. See also Case C-303/88 *Italy v Commission* [1991] ECR I-1433, paragraphs 11 to 13.

²² See Case C-482/99 *France v Commission ("Stardust Marine")* [2002] ECR I-4397, paragraph 56: "Such other indicators include, in particular, its integration into the structures of the public administration, the nature of its activities and the exercise of the latter on the market in normal conditions of competition with private operators, the legal status of the undertaking (in the sense of its being subject to public law or ordinary company law), the intensity of the supervision exercised by the public authorities over the management of the undertaking, or any other indicator showing, in the particular case, an involvement by the public authorities in the adoption of a measure or the unlikelihood of their not being involved, having regard also to the compass of the measure, its content or the conditions which it contains".

²³ Case T-136/05 *Salvat père & fils and Others v Commission* [2007] ECR II-4063, paragraph 142.

determines what the level of the levy will be, subject to a maximum determined by law of 2% per annum of the gross insurance premiums written in Ireland. Finally, the Commission recalls that the ICF has been instituted to carry out a specific public policy objective, namely the protection of non-life insurance policy holders.

- (70) In light of the above, the Commission considers that the ICF's contribution to QIL involves State resources that are imputable to the State within the meaning of Article 107(1) TFEU.

Selectivity

- (71) The Commission considers the measure in question to be selective since they will only benefit the parts of QIL that are in administration. It is also recalled that only insurance companies have access to the ICF, not all companies.

Advantage

- (72) The Commission recalls that according to established case-law, a measure adopted by the public authority and favouring certain undertakings or products does not lose its character of a gratuitous advantage by the fact that it is wholly or partially financed by contributions imposed by the public authority and levied on the undertakings concerned²⁴.
- (73) The Commission finds that the measures in this case confer an advantage to the different parts of QIL as they ensure that the business, while in administration, can continue as a going concern. The financing from the ICF will allow the administrator to carry on the business while it tries to put the business on a sound commercial and financial footing in accordance with its mandate as set out in the Insurance Acts of 1964, 1983 and 1989. As a result, the different parts of QIL can continue to compete on the market until they are solved or resolved. Without the forthcoming support of the ICF while QIL is in administration, the administrator would have had to liquidate QIL, which would therefore have disappeared from the market.
- (74) The Commission considers that no market economy investor would have provided such a sizable contribution to what is essentially the 'bad part' of the business that is going to be wound-down. In that context it has to be recalled that without the ICF contribution, there would be a gap between the assets of QIL that can be sold and the insurance policies that have to be paid out. Although the ICF will receive any profit from the wind-down, it is estimated that the final gap at the end of the resolution will be above EUR 700 million, which will be covered by the ICF. There is therefore no prospect of profit. A private investor seeking a return on investment would therefore not enter into such a transaction

Distortion of competition and effect on trade between Member States

- (75) As concluded above, because of the forthcoming contribution of the ICF, the administrator of QIL can keep the firm in operation and does not have to liquidate it. The Commission observes that throughout the period that QIL has been in administration it has been active in both the Irish and UK non-life insurance market. It

²⁴ See Case 78/76 *Steinike & Weinlig v Federal Republic of Germany* [1977] ECR 595, paragraph 22.

has therefore been competing with international operators that are active on those markets. The Commission also observes that, even after the sale of the Irish GI business and of the Irish health activities, certain UK product lines will continue to be offered until the end of 2012.

- (76) For those reasons, the forthcoming support of the ICF to QIL distorts competition and affects intra-Union trade.

Identification of the beneficiary of the aid

- (77) The Commission notes that the (prospective) contribution by the ICF has enabled QIL to continue to do business as a going concern from the moment it was put into administration until the sale of the QIL Ireland GI business to the Liberty/Anglo JV. The contribution, apart from allowing QIL to operate on the market, will enable QIL to be split into three legal entities, the QIL Ireland GI business, the Irish health insurance business and the rump of QIL.

- (78) As a result of the (prospective) the ICF contribution, QIL has been able to compete on the market since the administration until the sale of its good parts. The fact that QIL was able to continue as a going concern aided the sale of the QIL Ireland GI business to the Liberty/Anglo JV and will thus enable that business to continue part of the economic activity of QIL, which will be freed from the burden of the losses caused by the UK activities that will remain in the rump of QIL. For those reasons, the Commission considers that QIL (in its form as before the sale of its good parts) is to be considered as the main beneficiary of the measure

- (79) The Commission will now assess whether aid is transferred to other beneficiaries. The Commission identifies three parties that could potentially benefit from the aid: i) the activities sold to the Liberty/Anglo JV; ii) the purchasers of the Irish general insurance activities, namely the Liberty/Anglo JV; and (iii) the rump of QIL. As indicated above, the Commission does not assess in the present case whether aid is transferred in the framework of the sale of the Irish health insurance activities.

(i) The activities sold to the Liberty/Anglo JV

- (80) With regard to the activities sold to the Liberty/Anglo JV as part of the restructuring process, the Commission has to investigate whether they constitute an economic undertaking. If the Commission concludes that them to be so, the Commission has to establish whether it can be considered as a potential beneficiary of State aid.
- (81) In the present case, the Commission notes that the QIL Ireland GI business comprises a substantial part of QIL's business activities, namely the Irish motor insurance, liability insurance and property insurance part. The assets necessary to run those activities are sold together to one single buyer. Those assets include: any branches, staff and IT together with originated insurance policies. After the transfer of the business to the Liberty/Anglo JV, the QIL Ireland GI business' network will continue to operate as normal. The QIL Ireland GI business will be allowed to continue to provide the same products to its customers as it did before the transfer.

- (82) The QIL Ireland GI business acquired by the Liberty/Anglo JV will continue to undertake economic activities, as it will provide a variety of financial services to its customers on the financial markets. In light of those elements, the Commission finds that the assets acquired by the Liberty/Anglo JV constitute one undertaking which will continue to offer the same types of products as were offered by QIL.
- (83) The Commission observes that the contribution by the ICF will allow the sale. Indeed, without the prospect of the ICF contribution, the sale of the QIL Ireland GI business would not have been possible as acknowledged by the Irish authorities. QIL would have been liquidated, including the activities now sold to the Liberty/Anglo JV. Those activities therefore continue to exist only thanks to the intervention of the ICF.
- (84) For those reasons, the Commission considers that part of the aid granted to QIL constitutes an advantage to the economic activity sold to the Liberty/Anglo JV.

(ii) The purchasers of the Irish general insurance activities

- (85) As regards the acquisition of the QIL Ireland GI business by the Liberty/Anglo JV, an advantage for the latter could only exist if the price paid was too low and did not reflect market price. On the basis of the information provided by the Irish authorities and the administrators, the Commission considers that the sale process of QIL Ireland GI business has been an open and non-discriminatory tender which resulted in the best bid winning the tender. The Commission notes that a large number of potential bidders were approached and included in the tender procedure and that the parties had equal access to information. Therefore, the Commission has no reason to believe that the price paid did not reflect the market price.
- (86) As regards the contributions by the two buyers to the sale, the Commission considers them to reflect the respective roles of the buyers in the Liberty/Anglo JV. Liberty Mutual will contribute EUR 103 million as the joint venture's largest and controlling shareholder ([...]), while Anglo (through a deal with the administrators of QIL) contributes EUR 99 [...]. In addition, Anglo has negotiated the release of the guarantees by the senior creditors in QIL. Although that release has not resulted in additional costs to Anglo, the release of the guarantees has improved the QIL Ireland GI business' solvency ratio.
- (87) The Commission recalls that Anglo has been fully nationalised by the Irish authorities and has received a significant amount of State aid to facilitate its resolution. For that reason, the Commission needs to ensure that the decision of Anglo to participate in the sale of the QIL Ireland GI business is not imputable to the State. The Commission notes that Anglo's participation in the deal is part of a wider restructuring of the Quinn Group.
- (88) The Commission finds that Anglo acted like a market economy creditor and therefore received no advantage as a result of its participation in the sale of the QIL Ireland GI business. Anglo, because of its ability to seize the shares of the Quinn family and therefore the control of the Quinn Group, was in a position both to facilitate the sale of the QIL Ireland GI business by organising the release of the guarantees of the senior creditors on QIL and to improve its own prospects of recouping (part of) its EUR 2.8 billion exposure to the Quinn family. As a result of the release of the guarantees orchestrated by Anglo, EUR 264 million of assets were freed-up, contributing to the

value of the business. If the guarantees had remained on QIL, the sale would not have happened. Instead, it would have been likely that the creditors would have also sought the administration of the Quinn Group. In that case, Anglo would have been prevented from seizing control over the Quinn Group and would have recovered less value as the senior creditors would have received most of the proceeds of any sale of assets out of the Quinn Group.

(iii) The rump of QIL

- (89) The rump of QIL has been put into administration. It will continue to carry on writing private motor insurance in the UK in 2012. It will furthermore carry out the activities necessary to manage the back book and repay the outstanding claims of the policy holders that remain with QIL.
- (90) In order to facilitate the wind-down, the rump of QIL will undertake economic activities, which consist of writing new business in the UK and selling its assets (for instance the Irish health insurance business) and the management of its insurance policies portfolio. As those services are also provided by other operators on the market, the rump of QIL will (potentially) compete with them. It is therefore concluded that the rump of QIL will be able to continue to carry out some limited economic activities and therefore can be considered as an undertaking.
- (91) The sale of the QIL Ireland GI business combined with the aid measures has enabled the orderly restructuring of QIL. The Commission notes that the sale of the QIL Ireland GI business to the Liberty/Anglo JV would not have been possible without the contribution from the ICF (as pre-funded by the Irish authorities) to ensure that the business could continue as a going concern during its administration and to allow a solvent wind-down of the rump of QIL. That contribution ensured that the QIL Ireland GI business could continue while in administration and therefore helped to maintain its overall value.
- (92) The rump of QIL will receive around EUR 738 million to enable its wind-down. The Commission therefore concludes that an advantage has been conferred to the rump of QIL.
- (93) The Commission finally considers that the market investor principle is not applicable in this case as no investor would have contributed around EUR 738 [...] to an insurance company in administration.

Conclusion

- (94) Due to the above considerations, the Commission considers that the contribution by the ICF fulfils all conditions laid down in Article 107(1) TFEU and, therefore, contains aid to QIL and its successors, the QIL Ireland GI business and the rump of QIL.

4.2 Compatibility of the aid

- (95) The Commission would like to emphasise again that, like the State aid assessment, the compatibility assessment of the aid in this decision will only cover the aid granted to the QIL Ireland GI business and the rump of QIL through the intervention of the ICF. It will pronounce on the compatibility of any aid that may have been granted to the health insurance business that is currently being sold in a separate decision.

- (96) The Commission notes that the restructuring measures taken in this case combine: (i) the sale of the QIL Ireland GI business, (ii) the sale of the health insurance part (still ongoing), (iii) the temporary continuation of the (front book) private motor insurance business in the UK, and (iv) liquidation of the remaining (back book) part of the UK business.
- (97) Around [30-40%] of QIL in terms of gross written premium (as of December 2009) has been sold as a result of the sale of the QIL Ireland GI business to the Liberty/Anglo JV. The sale of the health insurance business will represent another [20-30%] (as of December 2009) of QIL in terms of gross written premium. Therefore, the majority of QIL's business activities will continue as before, albeit under new owners. The impaired assets, consisting of the UK back book which to a considerable degree caused QIL's difficulties, are left behind in the rump of QIL and will be wound-down by the administrator. Furthermore, the UK private motor insurance activities that were re-opened will continue until the end of 2012 (when they will either be sold or put into wind-down).
- (98) As regards compatibility of the ICF contribution with the internal market, the Commission first has to assess whether the aid remedies a serious disturbance in the economy of Ireland. Subsequently, the Commission needs to assess if the measures at issue are in line with the conditions set out in the Commission's Communications on the application of Article 107(3)(b) TFEU.

4.2.1 Legal basis for the compatibility assessment

- (99) Article 107(3)(b) TFEU provides for the possibility that State aid can be regarded as compatible with the internal market where it is intended to "remedy a serious disturbance in the economy of a Member State".
- (100) Given the present circumstances in the financial markets, the Commission considers that the measures may be examined under that provision.
- (101) The Commission considers that market conditions deteriorated all over the world since the last quarter of 2008. The Commission observes that Ireland in particular has been severely hit by the financial and economic crisis. The financial crisis has been particularly severe in the Irish banking sector as a result of the economic downturn, but has also affected the insurance sector which has suffered from a reduction of their premium income and a downward revaluation of investment assets. The worsening of the situation has been such that Ireland requested on 28 November 2010 support from the Commission and the International Monetary Fund in liaison with the ECB.
- (102) The Commission notes that the situation in Ireland in terms of financial stability still is fragile, including with regard to insurance companies. QIL is the largest Irish-owned non-life insurer in Ireland with a substantial amount of policy holders. Its administration and the sale of certain parts of the business are occurring at a time when several Irish banks are trying to sell their respective insurance businesses in the context of their restructuring. The completion of the sale of the respective parts of QIL, especially if foreign buyers are concerned, will therefore have a beneficial effect on financial stability in Ireland. Conversely, the falling through of the sale would harm investor confidence and would thus affect the chances of the other Irish banks to sell their businesses. As these sales are partly undertaken to boost the capital ratios of the

banks concerned, the Commission finds that financial stability is affected by the sale of the QIL Ireland GI business.

- (103) For those reasons the Commission accepts that the restructuring of QIL could affect the financial stability in Ireland and that the contribution by the ICF is necessary to preserve the confidence of policy holders in the financial system and to avoid a serious disturbance in the Irish economy.

4.2.2 Compatibility assessment

- (104) The Commission has established that the QIL Ireland GI business sold to the Liberty/Anglo JV and the rump of QIL will benefit from the State aid measures.
- (105) The Commission notes that the break-up of QIL by the administrator (with the contribution of the ICF), in order to facilitate the sale of the viable part to the Liberty/Anglo JV, represents a kind of asset relief measure benefitting the economic activities of QIL (the QIL Ireland GI business) that remain on the market. The effect of the measures undertaken by the administrator, aided by the ICF, led to the creation of an entity that is relieved from the impaired assets of its predecessor. Therefore, the QIL Ireland GI business sold to the Liberty/Anglo JV, being the continuation of an economic activity of QIL, does not bear the consequence of potential losses on the assets left behind in the rump of QIL (i.e. the UK back book).
- (106) The rump of QIL that contains the UK back book will be wound-down by the administrator with a view to realise those assets to discharge the obligations of the rump of QIL. The Commission observes that the contribution by the ICF will essentially cover any losses that potentially might occur after the sale of the QIL Ireland GI business and is therefore equivalent to a transaction guaranteeing losses whereby State aid will de facto cover the losses from the impaired assets in the rump of QIL. Therefore the Commission needs to first scrutinise it under its Impaired Assets Communication (hereinafter "IAC")²⁵.
- (107) The Commission furthermore observes that the split-up of QIL has as a consequence that it will be restructured. It is therefore necessary for the Commission to assess whether the restructuring of QIL is in line with the Commission's Restructuring Communication²⁶ and to take into account those conclusions in its analysis of the measures under the IAC.

The application of the Impaired Assets Communication

- (108) The specific conditions applying to asset relief measures are laid down in the IAC. Pursuant to section 5.2 of the IAC, an asset relief measure should ensure ex-ante transparency and should provide for adequate burden-sharing followed by the correct valuation of the eligible assets and the correct remuneration of the State so that the asset relief measure ensures shareholders' responsibility.

²⁵ Commission Communication on the treatment of impaired assets in the Community banking sector, OJ C 72, 26.3.2009, p. 1.

²⁶ Commission Communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009, p. 9.

- (109) *Ex ante* transparency implies a clear identification of the impaired assets. It has indeed already been done in the present case, since the impaired assets of the rump of QIL are delimited as the back book of QIL's UK activities.
- (110) As regards burden-sharing of the costs related to the impaired assets between the State, shareholders and creditors, the Commission notes that the former shareholders will contribute to the restructuring of the financial institution to the greatest extent possible [...]. The administration is likely to result in a net gap of EUR 700 million having to be covered by the ICF. A scenario where the administration would result in a profit available to shareholders is therefore excluded. In addition, the Commission observes that the historical shareholders of QIL will receive no ownership rights in the Liberty/Anglo JV which will harbour the assets purchased.
- (111) The impaired assets remaining in the rump of QIL will be managed by the administrator of the rump of QIL, who has entered into an agreement with Liberty Mutual for the management of the back book. The TSA between the administrator and Liberty Mutual furthermore expressly determines that Liberty Mutual is not allowed to use any confidential information, including information on the UK customers, for any other purpose than to provide the services to the rump of QIL. The rump of QIL will be separate and organisationally independent from the QIL Ireland GI business sold to the Liberty/Anglo JV as that business will be fully integrated into Liberty Mutual. The Commission therefore finds that the requirements of section 5.6 of the IAC are met.
- (112) Concerning the valuation of the impaired assets, section 5.5 of the IAC outlines the approach that should be followed by any impaired asset measure. In particular it stresses the necessity that the transfer value of assets in an impaired asset measure should be based on their real economic value (hereinafter "REV"). With regard to the assets in the rump of QIL, the Commission observes that the contribution of the State to the wind-down of the rump is unrelated to the REV of those assets, as that contribution was based on the amount of cash needed to compensate the policy holders and to ensure the sale of the QIL Ireland GI business. The ICF basically covers all the losses stemming from the back book (the impaired assets), except those which have been absorbed by the capital which existed in QIL at the moment when it was put in administration. As indicated above, following the review of the impaired assets (i.e. the back book) by actuaries, it is expected that the losses will exceed that capital by several hundreds of million of euros. In other words, it is already known that the transfer price is above the REV. Consequently, the exposure of the ICF to the rump of QIL was not limited *ex ante* to the REV.
- (113) For the reasons stated in point (112), the Commission considers that the measure does not meet the valuation requirement of the IAC.
- (114) With regard to the remuneration paid for the asset relief, the IAC requires that beneficiaries must pay some form of remuneration for the capital relief achieved by impaired assets measures. The Commission notes that in this case there is no remuneration paid for the implied asset relief by the QIL Ireland GI business to the rump of QIL. In addition, the State will not recuperate any direct benefit which the QIL Ireland GI business sold to the Liberty/Anglo JV may enjoy as a result of the asset relief measure through a higher sale price of the assets, since the business has already been sold without any possibility of revising the price obtained. Therefore, the measure does not meet the remuneration criterion of the IAC.

- (115) As a result, the Commission concludes that the criterion of an adequate contribution by the beneficiary to the costs of the asset relief measure is not met as remuneration criteria are not complied with. In line with point 50 of the IAC, the conditions relating to the return to viability and measures limiting the distortion of competition are therefore subject to stricter requirements.
- (116) Concerning the measures necessary to guarantee the return to viability of the QIL Ireland GI business and to remedy competition distortions, which will be further discussed below in points (124) to (132) and (147) to (153) respectively, QIL is indeed subject to a far-reaching restructuring which addresses the issues of viability and limitations of competitive distortions. To summarise, the non-life insurance company was split up, with the good parts representing 58% of gross written premium, the QIL Ireland GI business and the Irish health insurance business, being sold to new owners. Considering the size of QIL, together with the fact that the QIL Ireland GI business was sold to the Liberty/Anglo JV in an open, transparent and unconditional tender by the administrator, that level of restructuring can be considered as sufficient in this context.
- (117) As regards the attainment of the objective of appropriate burden-sharing, in this case, as indicated in point (110), burden-sharing has been achieved as the former shareholders have lost control of QIL and remain with the rump of QIL, with a more junior ranking compared to the ICF, and have no stake in the entity purchasing the QIL Ireland GI business. As to the second objective, the distortion of competition can be considered as minimised as a result of the considerable down-sizing of QIL in the context of its in-depth restructuring. In addition, the distortion of competition is also minimised by the fact that the QIL Ireland GI business was sold through an open tender procedure. Therefore, the Commission considers that the objectives pursued by the requirement for appropriate remuneration, namely burden-sharing and minimising competition distortion, have been attained by other means.
- (118) It is therefore concluded that, despite non-compliance with the criteria of valuation and remuneration, in view of the far-reaching restructuring described in point (116) and below, taking into account that the competition distortion has been limited by the scaling-down and sale of parts of QIL in an open, transparent and unconditional tender, the asset relief in favour of the QIL Ireland GI business sold to the Liberty/Anglo JV is in conformity with the IAC, in particular its point 50.

The application of the Restructuring Communication

- (119) The Restructuring Communication sets out the State aid rules applicable to the restructuring of financial institutions in the current crisis. According to the Restructuring Communication, in order to be compatible with Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis has to:
- (i) Lead to a restoration of the viability of the financial institution or demonstrate how it can be wound up in an orderly fashion;
 - (ii) Include sufficient own contribution by the beneficiary (burden-sharing);

(iii) Contain sufficient measures limiting the distortion of competition.

(i) Restoration of viability/wind-up in an orderly fashion

- (120) The Restructuring Communication provides in points 9 and 10 that the Member State should provide a comprehensive and detailed restructuring plan which should include a comparison with alternative options. Where a financial institution cannot be restored to viability, the restructuring plan should indicate how it can be wound up in an orderly fashion. The plan should furthermore also identify the causes of the difficulties faced by a financial institution.
- (121) As set out in Section 2.4, the administrator has embarked on an immediate direct restructuring of QIL. The Irish authorities have provided information to the Commission concerning the details of the restructuring of the QIL Ireland GI business. An analysis of the troubles faced by QIL was also provided (see Section 2.2 above). The Commission therefore considers the conditions of points 9 and 10 of the Restructuring Communication to be met.
- (122) In the present case the Commission observes that the Irish authorities have chosen an orderly wind-up of QIL through the sale of parts of it to a third party and the liquidation of the rump of QIL. The Commission therefore has to assess whether: a) the break-up of QIL has occurred in an orderly fashion; b) the business of QIL transferred to the Liberty/Anglo JV will be viable; and c) the rump of QIL is liquidated in an orderly fashion.

a) Break-up of QIL in orderly fashion

- (123) The Commission notes that under the Insurance Acts and the relevant financial supervisory legislation, a legal framework is in place that gives the Irish authorities the power to put an insurance company in administration with a view to resolve it in an orderly fashion. The Irish authorities have used those powers in the case of QIL. Based on the information available to the Commission, it has no reason to doubt that QIL has been broken-up in an orderly manner.

b) Viability of the QIL Ireland GI business

- (124) As regards the restoration of viability, the Commission considers that a sizeable part of QIL has been sold to the Liberty/Anglo JV and that the Irish health insurance business is being sold, while the impaired assets in the rump of QIL (the UK back book) will be wound-down by the administrators. Since the Commission has established that the QIL Ireland GI business sold to the Liberty/Anglo JV continues to carry out an economic activity and has benefited from aid, it has to verify whether the restructuring will ensure long-term viability of the business.
- (125) The Restructuring Communication in point 17 confirms that a sale of part of the financial institution to a third party can help to restore its long-term viability. In that context, the Commission notes that chapter 5 of the Banking Communication²⁷ is also relevant. Given the sale process described in points (35)-(37), the Commission is

²⁷ Communication on the application of 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.

satisfied that the requirements in the Restructuring Communication and the Banking Communication are met.

- (126) The Commission notes that the QIL Ireland GI business was essentially sold to an international player with a small presence in Ireland, who is viable and capable of absorbing the business²⁸. Liberty Mutual is the third-largest property and casualty insurance company in the USA and employs about 45,000 staff worldwide. As at 31 December 2010, Liberty Mutual had \$112.5 billion assets on a consolidated basis and \$33.2 billion of consolidated revenue. Liberty Mutual's financial strength ratings are A2 from Moody's and A- from Standard & Poor's.
- (127) The Commission notes that the impact of the acquisition of the QIL Ireland GI business on Liberty Mutual in terms of gross written premiums was around 1%, based on gross written premium by Liberty Mutual of \$28.7 billion as at 31 December 2010 and the QIL Ireland business of EUR 325.8 million.
- (128) Liberty Mutual intends to completely integrate the QIL Ireland GI business, including employees, policies and processes, to enable Liberty Mutual to write new policies, renew expiring policies and service previous policies and claims of the QIL Ireland GI business under a new brand. The QIL Ireland GI business will in turn benefit from Liberty Mutual's expertise in areas like IT, underwriting, claims management and actuary.
- (129) The transaction, which is an asset sale (not a share deal), requires that the integrated business be completely separated from QIL and operate as a stand-alone, independent entity. At the same time, the entity will profit from a strong parent [...].
- (130) For those reasons, the Commission has no reason to doubt the viability of Liberty Mutual or its ability to integrate the QIL Ireland GI business it has acquired.
- (131) In addition, the Commission also considers the QIL Ireland GI business sold to the Liberty/Anglo JV to be a viable business. It is transferred as a going concern and has been mainly profitable over the past years²⁹. In addition, the method to assess the risk insured will be modernised, as QIL was working on the basis of an old model. That development should avoid under-provisioning and mispricing. In that respect, the undertaking can in addition rely on the expertise of the buyer. The Commission observes that the QIL Ireland GI business sold to the Liberty/Anglo JV has been cleansed of its impaired UK back book. The separation of the QIL Ireland GI business from QIL has thus ensured that it is no longer burdened by potential losses from that particular part of QIL. That release aids its return to viability.
- (132) The Commission is therefore satisfied that both the buyer and the QIL Ireland GI business are viable.

²⁸ For the purposes of the analysis, the Commission will focus on Liberty Mutual, as it is the company that will have sole control over the QIL Ireland GI business and will run it on a daily basis. Anglo's involvement in the Liberty/Anglo JV will be that of a silent investor. The rump of QIL's investment in the holding company set-up together with Anglo helped to enable the sale and will provide the administrators with a return.. See also Commission Decision in Case M.6245, *Liberty Mutual Group/The Irish General Business of Quinn Insurance Limited*, not yet published.

²⁹ Losses incurred in 2008 and 2009, but the business was overall profitable in the past five years.

c) Orderly liquidation of the rump of QIL

- (133) Concerning the wind-down of the rump of QIL, the Commission observes that apart from the private motor insurance activities in the UK it no longer undertakes any new activities on the market. The Commission notes that the Irish authorities have given the commitment [...].
- (134) The Restructuring Communication in point 21 provides that governments should allow for the exit process to take place within an appropriate time frame that preserves financial stability. On the other hand, the Banking Communication in point 47 is clear that the liquidation phase should be limited to the period strictly necessary in view of the objective pursued.
- (135) The Commission observes that the rump of QIL has been placed into administration and has to be resolved within the ordinary legal framework for such operations. The Commission notes that, based on previous experiences, the administration procedure is likely to take a considerable period of time to be completed. However, the firm will completely stop competing on the market by 31 December 2012, which is the relevant date to assess distortion of competition.
- (136) On the basis of the foregoing, the Commission is satisfied that QIL has been broken-up in an orderly fashion and that the restructuring of QIL ensures the long-term viability of that part of its business that was sold to the Liberty/Anglo JV. The Commission furthermore concludes that the winding-down of the rump of QIL satisfies the conditions of the Restructuring Communication.

(ii) Own contribution/burden-sharing

- (137) The Restructuring Communication indicates that an appropriate contribution by the beneficiary is necessary in order to limit the aid to a minimum and to address distortions of competition and moral hazard. To that end, firstly, the restructuring costs should be limited while, secondly, the aid amount should be limited and a significant own contribution is necessary.
- (138) As regards the limitation of the restructuring costs, the Restructuring Communication indicates in point 23 that the restructuring aid should be limited to cover the costs which are necessary for the restoration of viability.

Limiting of restructuring costs

- (139) The contribution by the ICF will principally enable the administrators to continue to operate the rump of QIL, while any profit in the rump of QIL will first serve to repay the ICF. The Commission furthermore observes that the sale of the QIL Ireland GI business has been realised through an open tender in which the highest bidder was selected. That tender has therefore contributed to a limitation of the restructuring costs. Those costs will be further reduced by the sale of the Irish health insurance business.

- (140) The ICF contribution will rank as claim to QIL and will therefore be partially repaid if the proceeds from the wind-down of the rump of QIL are higher than expected. That element furthermore reduces the restructuring costs.
- (141) Finally, none of the costs in the restructuring plan aim at entering new markets or expending in any manner.
- (142) For those reasons, the Commission considers that appropriate steps have been taken to reduce the amount of aid in the measure.

Limited amount of aid/Own contribution

- (143) The Restructuring Communication sets out in point 24 that companies should use their own resources to finance restructuring, for instance through the sale of assets. In addition the costs of the restructuring should also be borne by investors, loss absorption and by paying an adequate remuneration.
- (144) The former shareholders of QIL will in any case not benefit from the measures taken by Ireland to aid the administration of QIL. They are part of the rump of QIL that will be wound-down. They rank last or second-last and will only be paid out after all the other creditors have been compensated. The Commission notes that legally the rump of QIL is still owned by its shareholder, the Quinn Group (which is itself under share receivership). However, the Quinn Group will receive money only if the ICF is repaid in full. Given that the expected gap in the rump of QIL is estimated at EUR 738 million, there is no prospect of future economic value in that ownership of the rump.
- (145) The Commission also note that the administrator is selling a large part of the assets of QIL to contribute to covering the restructuring costs.
- (146) On the basis of the foregoing, the Commission concludes that the restructuring costs are limited to the minimum necessary. It also considers, that there has been sufficient own contribution by QIL and its shareholders in the context of the restructuring, thus limiting the aid to minimum necessary.

(iii) Measures limiting the distortion of competition

- (147) As regards the measures limiting the distortion of competition, the Restructuring Communication indicates in point 30 that the Commission has to take into account in its assessment the amount of aid and the conditions and circumstances under which that aid was granted (including, in that context, the degree of burden-sharing) and the effects of the position the financial institution will have on the market after the restructuring. On the basis of that analysis, suitable compensatory measures should be put into place.
- (148) In that context, the Commission observes that the break-up of QIL in several parts and the substantial reduction of the continuing portfolios can be seen as a significant compensatory measure. Due to the immediate restructuring measures the overall QIL insurance book was considerably reduced: over the period March 2010-June 2011, the number of policies written dropped by 23%, entailing a 30% reduction of premium income. It is forecast that the QIL insurance book until December 2011 will reduce even further. The market presence of QIL as a result has been significantly reduced since administration, in particular in the UK (see Table 5 below). The number of staff

was reduced by around 600 persons under the voluntary redundancy process.

Table 5: QIL – UK Market shares in terms of premiums by business segments (in GBP)³⁰

Market Share Movement (By Premium)						
	Market STGm	QIL 01/03/2010 STg	QIL Now Stg	Market Share mrt-10	Market Share Now	
Motor	12.566	315,4	159,8	2,51%	1,272%	
Liability	5.713	99,5	-	1,74%	0,000%	
Property	12.365	11,9	-	0,10%	0,000%	
	30.644	426,7	159,8	1,4%	0,521%	

- (149) The Commission also finds that the exit of a failed entity from the market is a clear indication that moral hazard is addressed, in that commercial failure results in a break-up and liquidation. As a result, the distortion of competition resulting from the State aid is greatly reduced. In the case at hand, QIL exited the UK market except for the private motor insurance business line.
- (150) The Commission furthermore notes that the sale of the QIL Ireland GI business to a competitor has been undertaken in an adequately open, transparent and non-discriminatory tender procedure. It has given competitors the opportunity to acquire the QIL Ireland GI business and thus gain market share. The procedure followed by the administrator has the effect of limiting the distortions of competition as it aims to establish the market price for the assets and liabilities taken over by the purchaser.
- (151) As regards the markets where the distortion of competition occurs, the Irish and UK non-life insurance markets, the Commission notes that in the UK non-life market, QIL has ceased its insurance activities apart from the private motor insurance business line. That business line will also cease its activities by 31 December 2013, unless it is sold. QIL will therefore completely exit that market. The Irish authorities in that regard have provided the Commission with the necessary commitments that ensure that no new business lines are opened and that the business will be wound-down.
- (152) [...]. The QIL Ireland GI business will however continue the motor insurance and liability insurance activities. With regard to those business lines, the Commission notes that their activities have been reduced over the last two years. In addition, those business lines will grow gradually, while the overall QIL Ireland GI business will reduce in terms of gross premiums written compared to the pre-administration period. Moreover, the Irish authorities have provided the commitment that the Irish health insurance business will not be sold to Liberty Mutual. As a result, that business will be sold to another third party, thus ensuring that QIL's activities in Ireland will be split up and will not continue as they did before the administration.
- (153) On balance, the Commission has thus come to the conclusion that distortion of

³⁰ Information provided by the Irish authorities on 16 September 2011.

competition is limited to the minimum.

5 CONCLUSION

- (154) In view of the above, the Commission concludes that the contribution by the ICF to QIL constitutes State aid. The direct aid beneficiary is QIL and its successors, the QIL Ireland GI business sold to the Liberty/Anglo JV and the rump of QIL. That aid can be considered as compatible with the internal market based on Article 107(3)(b) TFEU in light of the IAC and the Restructuring Communication.
- (155) The Commission recalls that the present decision does not assess whether aid has been provided to the Irish health insurance business which is being sold.

DECISION

The Commission concludes that the contribution by the Insurance Compensation Fund to Quinn Insurance Ltd constitutes State aid pursuant to Article 107(1) TFEU to QIL, the QIL Ireland GI business and the rump of QIL.

As Ireland has put the aid into effect in breach of Article 108(3) TFEU, the aid measures constitute non-notified State aid. However, as that measure is nevertheless compatible with the internal market pursuant to Article 107(3)(b) TFEU, the Commission raises no objection against it.

If the letter contains confidential information which should not be published, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that target date, you will be deemed to agree to publication of the full text of the decision. Your request specifying the relevant information should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II, 70
B-1049 Brussels
Fax No: +32-2-296 12 42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President