EUROPEAN COMMISSION

Brussels, 25.7.2012
C(2012) 5063 final

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 This document is made available for information purposes only.

Subject: State aid SA.34381 (2012/N) – Germany

Restructuring aid to Norddeutsche Landesbank AöR

Sir,

1. PROCEDURE

(1) By letter of 16 December 2011, registered with the Commission on the same date, Germany notified the first part of the support measures in favour of Norddeutsche Landesbank Girozentrale group[1] ("NORD/LB" or the "bank") covered by this decision. By decision of 22 December 2011 the Commission authorised those notified measures as rescue aid[2].

[1] Comprising of Norddeutsche Girozentrale AöR (Anstalt des öffentlichen Rechts – institution under public law) and its subsidiaries, which together submit consolidated accounts as a group.

[2] Commission Decision of 21 December 2011 in case SA.33571, *Rescue aid to NORD/LB*, available on the website: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33571

Seiner Exzellenz Herrn Dr Guido WESTERWELLE
Bundesminister des Auswärtigen
Werderscher Markt 1
D - 10117 Berlin

(2) On 19 March 2012, NORD/LB submitted a draft restructuring plan. At the same time Germany notified further support measures, in form of capital-strengthening measures and a contingent asset guarantee.

(3) A large amount of additional information and supporting documentation was submitted by Germany between March and late June 2012.

(4) On 31 May 2012, the Commission hired external experts ("Commission's experts" or "external experts") to assess the asset guarantee. The experts submitted a final report on 2 July 2012.

(5) On 11 July 2012, Germany submitted a modified restructuring plan.

(6) On 12 July 2012 Germany submitted a list of commitments regarding the implementation of the restructuring plan to the Commission.

(7) For reasons of urgency, Germany accepts that exceptionally the decision is adopted in the English language.

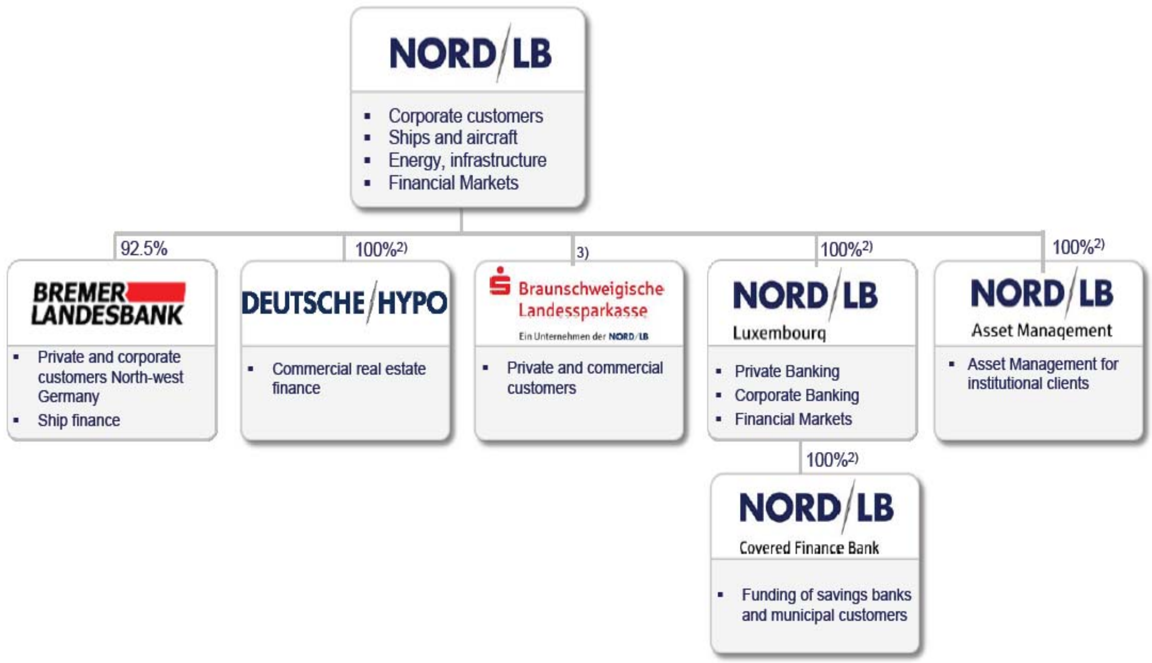
2. DESCRIPTION

2.1. Beneficiary

(8) The NORD/LB group is the fourth-largest Landesbank in Germany which serves as the central institution of the savings banks in the Länder of Niedersachsen, Sachsen-Anhalt and Mecklenburg-Vorpommern. The NORD/LB Group is comprised of NORD/LB AöR and its participations. The most important ones are the following entities: Bremer Landesbank AöR[3]; Norddeutsche Landesbank Luxembourg S.A. (100% ownership), which in turn owns 100% of NORD/LB Covered Finance Bank; Braunschweigische Landessparkasse (a fully-owned subsidiary of NORD/LB); NORD/LB Asset Management (100%); and Deutsche Hypothekenbank (100%). Chart 1 shows the structure of the Nord/LB Group.

Chart 1: The structure of the NORD/LB Group

[3] Prior to the recapitalisation measures, which are subject of this decision, the ownership structure of Bremer Landesbank was as follows: NORD/LB AöR (92.5%) and Freie Hansestadt Bremen ("Land Bremen" with 7.5%).



1) Please find additional subsidiaries and affiliated companies in our Group Annual Report 2011 page 253 ff.
2) "NORD/LB ensures that the banks and financial institutions included in the Group accounts as wholly-owned subsidiaries of NORD/LB can meet their obligations."
3) Incorporated under public law with partial legal capacity

Source: NORD/LB Group presentation, April 2012

(9) Before the measures dealt with by this decision came into effect, NORD/LB had the following ownership structure: the Land Niedersachsen (41.75%), the Land Sachsen-Anhalt (8.25%), the Sparkassenverband Niedersachsen (SVN) (37.25%), the Sparkassenbeteiligungsverband Sachsen-Anhalt (SBV) (7.53%) and the Sparkassenbeteiligungszweckverband (SZV) (5.22%). SVN, SBV and SZV will hereinafter collectively be referred to as "the Savings Banks' Associations".

(10) The bank offers a wide range of financial services to its private, corporate and institutional customers and public authorities. The business segments of NORD/LB are retail, private and corporate banking, services to associated savings banks and municipalities, financial markets, ship and aircraft financing, project finance in the area of energy and infrastructure financing and real estate.

(11) To date NORD/LB has not been subject to restructuring. During the financial crisis, the bank has not used any support measures provided by the Special Financial Market Stabilization Funds (SoFFin). The Commission was only requested to authorise liquidity guarantees by the Länder of Niedersachsen and Sachsen-Anhalt to facilitate financing of NORD/LB. They were approved by decision of 22 December 2008[4]. After one prolongation of the programme, NORD/LB decided on 15 December 2009 to phase out the guarantee programme earlier than required. After the guarantee programme was terminated, the bank was able to obtain sufficient funding on the capital markets without any State support.

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4 The Commission Decision of 22 December 2008 in case N655/2008, *Secured guaranteed medium-term note programme*, OJ C 63, 18.03.2009.

(12) NORD/LB also remained profitable during the crisis. The one exception was the financial year 2009, when the bank generated a consolidated loss of EUR 215 million due to record loan loss provisions of around EUR 1 billion. In 2011 those loan loss provisions were partly reversed. Two other elements contributed to the bank's losses in 2009: i) losses amounting to EUR 228 million generated by DnB Nord[5], which was affected by the recession in the Baltic States; ii) a case of fraud at a Swiss subsidiary Skandifinanz Bank AG[6], for which a risk provision amounting to EUR 134 million was built.

2.2. The 2011 recapitalisation measures

(13) On 8 April 2011, the European Banking Authority (EBA) announced that it would use a benchmark of Common Equity Tier 1 (CT1)[7] of 5% against which it would assess banks in the EU-wide stress test ('EBA stress test') in June 2011. EBA only included commercial instruments of the highest quality in that CT1 definition.

(14) Initially, NORD/LB assumed that it would fulfil the requirements of CRD IV/CRR[8] package in due time by profit retention over the next years. However, the tightened requirements for capital in the context of the 2011 EU-wide stress test organised by EBA had put additional constraints on NORD/LB. That was due to the fact that many of its silent participations[9] did not fulfil the stricter loss-absorbing requirements imposed for capital instruments in the EBA stress test.

(15) Therefore, on 27 April 2011, the 'Trägerversammlung' of NORD/LB decided to set up a capital-strengthening programme. On 25 May 2011, in relation to that programme Land Niedersachsen approved a law allowing for the following capital measures[10] to NORD/LB.

(i) Termination of the silent participation held by Land Niedersachsen in NORD/LB of around EUR 700 million;

(ii) Termination of two silent participations held by its wholly-owned subsidiary Hannoversche Beteiligungsgesellschaft mbH (hereafter "HanBG") in NORD/LB of around EUR 129 million;

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5 DnB Nord is a joint venture of NORD/LB and the Norwegian financial group DnB Nor ASA. The NORD/LB stake in DnB Nord was sold in 2010.

6 Skandifinanz is consequently being liquidated.

7 That definition is based on EBA's own definition of Core Tier 1, which differs in a number of points from the Tier 1 definition in the current EU legislation in the Capital Requirements Directive (CRD) comprising Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, OJ L 177, 30.6.2006, p. 1 and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast), OJ L 177, 30.6.2006, p. 201 with subsequent amendments.

8 The term 'CRD IV/CRR' (Capital Requirements Directive IV/Capital Requirements Regulation) refers to the proposal of the European Commission, how to transpose Basel III rules into European Union law. Basel III, on the other hand, is a global regulatory standard on bank capital adequacy, stress testing and market liquidity risk, developed and agreed upon in response to the deficiencies in financial regulation revealed by the recent financial crisis. Among others, it sets quantitatively and qualitatively stricter capital requirements for banks. The gradual phasing-in of the new requirements is to start in 2013.

9 Those silent participations did not result from rescue measures.

10 Gesetz über Kapitalmaßnahmen zugunsten der Norddeutschen Landesbank.

(iii) Repayment of subordinated loans ('Nachrangmittel') held by HanBG in NORD/LB of around EUR 150 million;

(iv) Repayment of a special loan ('besonderes Darlehen') held by Land Niedersachsen in NORD/LB of around EUR 38 million; and

(v) Repayment of a special capital injection ('besondere Kapitaleinlage') in NORD/LB of around EUR 51 million.

(vi) The reinvestment of all of the amounts mentioned in points i) to v) above into NORD/LB in form of CT1

(vii) In addition, a capital injection in cash of around EUR 600 million.

Later on, the amount of the capital injection in cash by the Land Niedersachsen was reduced to around EUR 500 million. The Savings Banks' Associations took part in the measures with an amount of around EUR 100 million, of which around EUR 79 million result from a conversion of capital investments (Genussscheine) into CT1. As a consequence of those measures ("the 2011 recapitalisation measures"), NORD/LB passed the EBA stress test with 5.6% CT1 ratio as compared with the minimum required CT1 of 5%.

(16) That increase of the CT1 of EUR 1,667 million is composed of nominal share capital (Stammkapital) of EUR 408.4 million and the corresponding issuance premium (Agio[11]) of EUR 1,258.8 million. As a result of the increase, the nominal share capital amounts to EUR 1,493 million; the total issuance premium to EUR 3,037 million and the total paid in capital to EUR 4,531 million.[12]

(17) As a result of the 2011 recapitalisation measures, the distribution of voting rights changed. The voting rights following the capital measures are as follows: Land Niedersachsen receives around 56.03% of the voting rights; Land Sachsen-Anhalt around 5.99% and the Savings Banks' Associations 37.98%.

(18) The new distribution of the voting rights is based on a fully-fledged company valuation conducted by an external consultant ("company valuation expert" or "expert"). That expert conducted NORD/LB's valuation in line with the valuation principles determined by the German Institute of Auditors[13] ("the IDW") and used a generally accepted valuation methodology (income approach - *Ertragswertverfahren*) and for purpose of plausibility a check analysis of multiples, among others P/B multiple[14].

(19) The key assumptions in the valuation are: a CT1 ratio of NORD/LB of [8.5-9.5][*]%; a discount rate of [9-11]% up to and including 2015 and [8-10]% thereafter.

[11] The Agio is defined as difference between the nominal value of shares and the amount actually paid in.

[12] Before the capital measures, the nominal share capital amounted to EUR 1085 million and the issuance premium (Agio) to EUR 1,779 million. The total common equity was EUR 2864 million.

[13] IDW Institut der Wirtschaftsprüfer (German Institute of Auditors) - Grundsätze zur Durchführung von Unternehmensbewertungen.

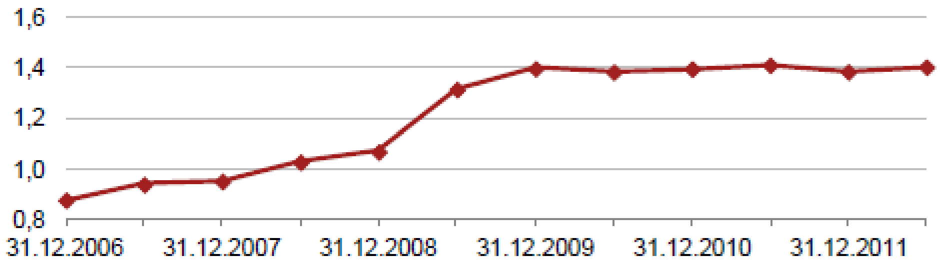
[14] Price-to-book ratio: a ratio used to compare the company's market value to its book value.

[*] Confidential information.

(20) More specifically, the components of the discount rate are a risk-free interest rate of [2.5-4.5]% and a risk premium for NORD/LB of […]% (until 2015) and […]% (from 2016 on). The latter was calculated with a Beta-factor[15] of [1.2-1.4] (until 2015) and [1.0-1.1] (from 2016 on) multiplied by a market risk premium of [4.5-5.5]% (which is in [...] of the band from 4.5% to 5.5% recommended by the IDW).

(21) The expert referred to the historic evolution of the Beta-factors observable for the selected peer-group of listed banks as shown by Chart 2.

Chart 2: the evolution of median Beta-factor for the selected peer group since 2006



(22) The expert argued that the currently observable Beta-factors are at a level significantly above the historical levels. The expert considered that that discrepancy is due to the current distortions on the capital markets. Therefore, it could be reasonably assumed that in the course of the normalisation of the macroeconomic environment expected in the medium-term, the Beta-factors will also move back to the historical levels. On that basis, the expert considered it appropriate to use a Beta-factor of [1.2-1.4] for the years 2011 to 2015 and for the period of 2016 and thereafter a Beta-factor of [1.0-1.1], which is higher than pre-crisis levels (observable in 2007 and before) but still lower than currently observable 1.4.

(23) As a result, the expert determined the company value at the level of EUR [4,000-4,500] million as of 30 June 2011 (valuation date, company value before 2011 recapitalisation measures) which was compounded to EUR [4,000-4,500] million as of 1 December 2011. 1 December 2011 was the initially envisaged date for the implementation of the 2011 recapitalisation measures. At the request of the Commission, the expert provided an estimation of the company value based on the assumption that the Beta-factor of [1.2-1.4] is used consistently for all the valuation phases. The resulting pro-forma company value was EUR [3,000-3,500] million (before recapitalisation measures).

2.3. The 2012 recapitalisation measures

(24) On 8 December 2011 EBA published a formal Recommendation related to banks' recapitalisation needs ('EBA capital exercise' or 'exercise'). The measure was part of a broader European package, agreed by the European Council on 26 October and confirmed

[15] Beta is a measure of a stock's volatility as compared to the market, whose Beta is set at 1.0. If a stock records higher changes than the market over time, its Beta would be above 1.0. Those stocks are considered riskier than the market average. On the contrary, stock that fluctuates less than the market has a Beta of less than 1.0. The product of the Beta factor and the market risk premium allows quantification of how much higher than the risk-free rate the return on the stock should be in order to meet the requirements of investors.

during the ECOFIN Council on 30 November, to restore stability and confidence in the markets. The criteria for that exercise stipulated that the CT1 as a percentage of risk weighted assets ("RWA") had to reach 9% including a sovereign buffer. Banks are expected to build those buffers by 30 June 2012 in order to reach 9% of CT1. For NORD/LB, EBA observed a capital shortfall of EUR 2,489 million[16] (not considering the 2011 recapitalisation measures).

(25) In order to improve the bank resilience to withstand shocks as determined in the EBA capital exercise, it was decided to recapitalise NORD/LB by a further EUR 931 million (after the recognition of the 2011 recapitalisation measures) in order to meet the June 2012 target of a minimum CT1 ratio of 9%. In fact, the German financial supervisory authority, the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) requested in a letter dated 7 March 2012 that banks on the EBA list[17] should continue to have a CT1 ratio of above 9% on a permanent basis. In line with the EBA requirements, BaFin requested NORD/LB group to have a CT1 capital ratio of a minimum of 9% on the due date of 30 June 2012 plus a 'sovereign buffer' for covering unrealised losses resulting from aligning the book value of debt of EEA Member States with their market value as calculated per 30 September 2011.

(26) In detail, the capital-strengthening measures to be undertaken in order to meet the June 2012 target ("the 2012 recapitalisation measures") include[18]:

(i) a EUR 400 million capital increase by Land Niedersachsen in NORD/LB in the context of the so-called "Fürstenberg transaction";

(ii) the conversion of silent participations[19] of EUR 480 million of Land Bremen in Bremer Landesbank (BLB), a fully consolidated subsidiary of NORD/LB, into CT1 capital;

(iii) the conversion of a silent participation of EUR 51 million of SVN in BLB into CT1 capital;

(iv) the conversion of a silent participation of EUR 77 million of NORD/LB in BLB into CT1 capital.

Those measures are referred to in this decision as "the 2012 recapitalisation measures".

(27) Under the Fürstenberg transaction, it is envisaged that NORD/LB buys Capital Notes from Hannoversche Beteiligungsgesellschaft (HanBG, a firm wholly owned by Land Niedersachsen) for […] million, although they currently trade at around 60% of the nominal value at the market. Those Capital Notes were a form of funding, which Fürstenberg capital companies issued in order to finance a silent participation they hold in NORD/LB. In consequence, Land Niedersachsen will enjoy an economic advantage of […] compared to a buy-back of those instruments at market conditions. HanBG will

16 Source: EBA website-Results of the 2011 EU Capital Exercise.

17 Cross-border financial institutions.

18 The consolidated capital of NORD/LB will be also strengthened by the reallocation of EUR 34 million of free reserves pursuant to § 340 f of the German Commercial Code (HGB) into the fund for general banking risks, recognised as an element of CT1 capital, in subsidiaries of BLB. That measure is, however, not further analysed under State aid rules, because it is financed from own resources of the company.

19 Preference shares without voting right, but bearing a fixed-coupon

subsequently transfer the obtained liquidity to Land Niedersachsen, who will in turn inject it into NORD/LB in the form of ordinary capital. Germany claims that the pecuniary advantage should be considered as a discount.

(28) As with the 2011 recapitalisation measures, the distribution of the voting rights resulting from the 2012 recapitalisation measures is based on a fully-fledged company valuation[20] conducted by the same external consultant and submitted by Germany on 25 May 2012. The expert has updated the previous valuation of NORD/LB from 2011 in line with the valuation principles determined by the IDW and has used the same generally accepted valuation methodology as in 2011. Using the same basic analytical framework described in recitals (21) and (22), the expert decided to determine the discount rate by using two different levels of Beta-factors: Beta-factor of [1.2-1.4] (until 2016) and [1.0-1.1] (from 2017 on).

(29) As a result, the expert determined the company value at the level of EUR [5,000-5,500] million as of 31 March 2012 (valuation date) before the 2012 recapitalisation measures. At request of the Commission, the expert provided an estimation of the company value based on the assumption that a Beta-factor of [1.2-1.4] is used consistently for all the valuation phases. The resulting pro-forma company value was EUR [4,000-4,500] million (before the 2012 recapitalisation measures).

(30) Since the new share capital is solely allotted to Land Niedersachsen, its percentage of share in NORD/LB increases from 56.03% to 59.1%[21].

(31) As regards the conversion of the silent participation in Bremer Landesbank (BLB), the resulting increase in the stake which Land Bremen should hold in BLB was also calculated on the basis of a recent company valuation.

(32) As with the NORD/LB valuation, the expert conducted the valuation of BLB[22] in line with the valuation principles determined by the IDW, used a generally accepted valuation methodology (income approach and for purpose of plausibility check analysis of multiples, among others P/B multiple) and assumed two different levels of Beta-factor for the calculation of the discount rate: [1.2-1.4] for the period 2012-2016 and [1.0-1.1] for 2017 and afterwards[23].

(33) As a result, the expert determined the company value at the level of EUR [750-850] million as of 31 March 2012 (valuation date, prior to the recapitalisation). At the request of the Commission, the expert provided an estimation of the company value based on the assumption that the Beta-factor of [1.2-1.4] is used consistently for all the valuation phases. The resulting pro-forma company value was EUR [600-700] million.

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20 The valuation report is dated 8 May 2012.

21 As the result, Land Sachsen-Anhalt will hold 5.6% and Sparkassen Associations 35.30% of NORD/LB.

22 The valuation report is dated 8 May 2012.

23 The different levels of Beta-factors used in the NORD/LB and BLB valuations is due to slightly different peer-groups selected for each of the valuation objects. Contrary to NORD/LB's peer group, the selection criteria in the case of BLB excluded those banks from the peer group, which are focused on retail banking or generate the major proportion of their income outside of Europe.

(34) Based on the company value of EUR [750-850] million (prior to the 2012 recapitalisation measures), the percentage of share of Land Bremen should have increased from 7.5% to 37.8%[24]. However, since Land Bremen was not prepared to consent to the conversion on that basis, the other owners of BLB agreed to increase the percentage of share of Land Bremen to 41.2% at their own expense[25]. Germany claims it corresponds to an additional discount of 17.5% on the company value.

(35) Germany finds that although the silent participation is not traded and therefore its market value is not directly observable, it can be assumed that the market value would be at similar level as the Capital Notes bought in the Fürstenberg transaction as described in recital (27), because it refers to an entity from the same group and with the same business model. Germany provided evidence that the terms of all but one of the instruments which Land Bremen intends to convert into BLB's ordinary shares are directly comparable to the NORD/LB silent participations. The one exception concerns a silent participation instrument amounting to EUR 102.2 million. The terms of that instrument give the Land the right to terminate the instrument with a two-year notice.

(36) Therefore, Land Bremen obtains a stake in BLB's capital worth the nominal value of the silent participation, while the theoretic value realisable on the market is likely to be only 60% of the nominal. Germany claims that in addition to the increased stake achieved by Land Bremen that direct advantage of 40% should also be taken into account when assessing whether the transaction entails sufficient discount to the benchmark share price as required by the 2011 Prolongation Communication[26].

(37) Finally, Land Bremen, the SVN and NORD/LB agreed to give up the fixed coupon payments linked to their silent participations and to convert the investment into equity under the condition, that they could limit their reinvestment into BLB to 89% of the redeemed nominal of the silent participations. That maximum additional 11% discount translates to EUR 66.9 million in absolute terms.

2.4. The contingent asset guarantee

(38) The bank will obtain a contingent asset guarantee scheme on a portfolio of EUR 14.375 billion, which will be granted by Länder Niedersachsen and Sachsen-Anhalt and will trigger an asset relief measure if the bank's CT1 ratio should fall below 9% before the end of 2014 (see Chart 3).

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24 The same calculation method applies to Bremer Landesbank with a calculated company value of EUR [750-850] million before and EUR [1.4-1.5] billion after implementation of the measures. Taking into account the existing share capital of EUR 140 million it results in a percentage value of [550-600]% and new shares to be issued in the amount of approximately EUR 105 million (EUR [600-700] million/[550-600]%=EUR 105 million new share capital).

25 As the result, NORD/LB will hold 54.8% and SVN 4.0% of BLB.

26 Communication from the Commission on the application, from January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356, 6.12.2011, p. 7.

(39) In detail, the contingent asset guarantee measure gives the bank the option to obtain protection from losses on a EUR 0.70 billion mezzanine tranche (4.93%) of a portfolio of around EUR 14.375 billion[27] that includes real estate, project finance, aviation financing and corporate lending with a weighted average life-time of 5.4 years. There is a first loss tranche of EUR 0.20 billion (1.41%) borne by the bank, and, on an annual basis, an excess spread of up to 0.35% on the portfolio, normally paid out to the bank, which will be directed to cover provisions made on the portfolio before any assignment to the first loss piece.

(40) If exercised immediately, the underlying guarantee should give a capital relief effect of around EUR 400 million.

(41) The Commission has conducted an assessment of the portfolio, the second loss guarantee and the contingency of the guarantee with the help of external experts. The analysis was supplemented through a credit re-underwriting exercise by sampling, performed by an independent third party. That analysis was confirmed by the Bundesbank[28], which also indicated that the portfolio was of good credit quality[29].

(42) As regards the portfolio, the experts of the Commission have computed stressed expected losses[30] using a ratings-based approach in line with case practice[31] and concluded that the real economic value of the portfolio is [94-99]% of the outstanding notional.

(43) The Commission also asked the experts to assess the loss absorption contribution made by the excess spread. In their final report[32], they state that if one takes into account the weighted average life of each loan and computes the excess spread, taking into consideration that the excess spread contribution can only last for 10 years, one would arrive at an equivalent tranche thickness[33] of 1.88%. Taking into consideration the potential for clustering of defaults and the excess spread availability over time, the external experts concluded that over a 10 year period, a cumulative excess cash contribution would not exceed 1.60% and that an estimate of 1.00%-1.50% would be appropriate for a prudent

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27 Estimated outstanding amount per 30.06.2012 was EUR 14.19 billion and as such evaluated by the Commission's experts. Germany finally clarified the amount to be EUR 14.375 billion.

28. Stellungnahme der Bundesbank zum […]-Gutachten über ein von den Trägern Niedersachsen und Sachsen-Anhalt zu garantierendes Kreditportfolio, 6 June 2012

29 "Das Portfolio, das die NORD/LB für die Garantiemaßnahme ausgewählt hat, ist nach unserer Einschätzung ein qualitativ hochwertiges Portfolio", page 2 of the Stellungnahme mentioned above.

30 The Commission applies specific stress scenarios to make a sufficiently prudent assumption of the real economic value in line with (41-43) of the IAC.

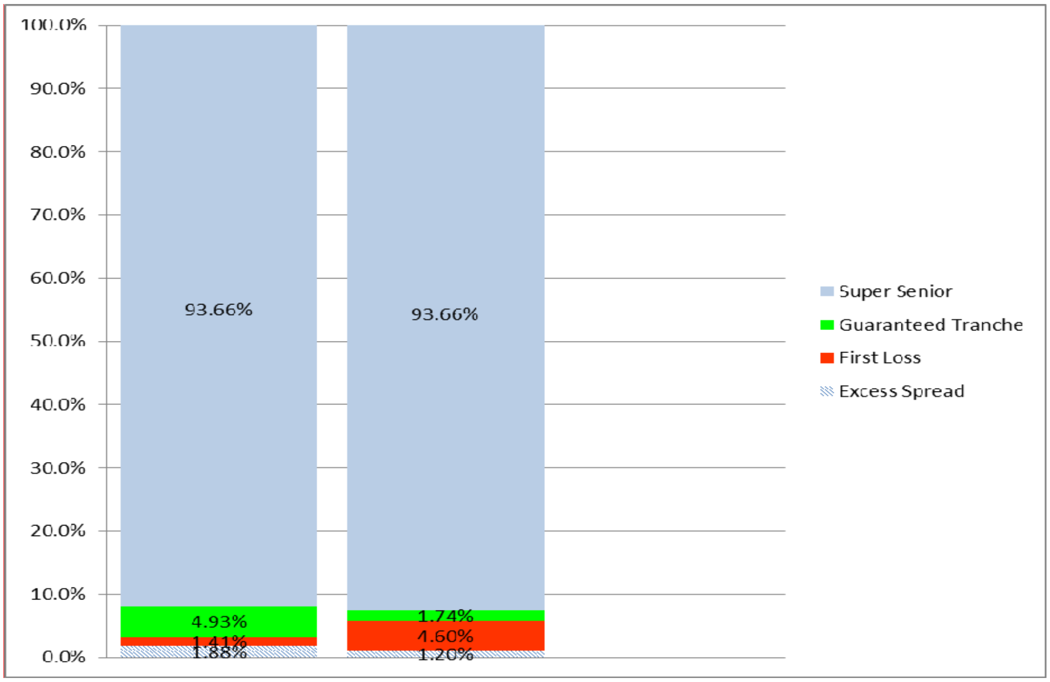
31 e.g. Royal Bank of Scotland (2010) OJ C 119 p 1, HSH Nordbank (2011) OJ C 276 p 5.

32 Final Report "Advisory Services Related to Case Nord/LB", by Prof. Schoutens and Dr. Bangert, 2 July 2012

33 When evaluating the risk shield with a second loss guarantee, the portfolio under consideration is treated as a synthetic securitization into different tranches - the first loss tranche, the second loss or guaranteed tranche and the super senior tranche. Each one is represented by percentages of the notional amount in Chart 4. In addition, the cumulative excess spread, which isn't part of the notional amounts in the portfolio but contributes to the loss absorption capacity of the portfolio, is translated into a "zero tranche" before the first loss tranche, as its existence can delay losses to be assigned to the first loss piece and hence form an additional buffer before the guarantee is actually being called upon. Some expert debate took place as to which thickness of that zero tranche would correctly represent its loss absorption capabilities over the lifetime of the guarantee.

assessment. In line with that finding, they continued to work with a tranche contribution of 1.20% for the rest of their calculations.

(44) A graphic chart of the capital relief measure is depicted below.
Chart 3:



The left-hand side depicts the measure as proposed by Germany, the right hand side incorporates the Commission's expert assessment, with a smaller excess spread ("zero tranche") and a larger first loss piece of 4.60%.

(45) Following discussion with the Commission, Germany proposes to increase the remuneration for the guarantee and have NORD/LB pay an annual remuneration of 6.27% of the guaranteed amount (initially EUR 700 Million) from the start date of the contingent guarantee (30 June 2012), and to continue to pay that amount on a semi-annual basis until it either foregoes its option or, after exercising the guarantee, it cancels the guarantee.

(46) Moreover, in view of the fact that, following the Commission's expert assessment, the increase of the remuneration for the asset guarantee still would not constitute a sufficient claw-back making up for the fact that the first loss piece is too small Germany further agreed to a contingent balance sheet reduction of [< EUR 5] billion if the asset guarantee is drawn.

(47) In light of the currently proposed fee structure, the Commission's experts determined the premium the market would have charged for the contingent guarantee measure in terms of an upfront premium considering an annual remuneration of 6.27% of the guaranteed amount from the start date of the contingent guarantee (30 June 2012), and until NORD/LB either foregoes its option or, after exercising the guarantee, NORD/LB were to cancel the guarantee. They found a premium of 13.4% of the guarantee amount, or EUR 93.8 million, to be in line with market conditions.

3. THE RESTRUCTURING PLAN

3.1. Description of the restructuring plan and business model of NORD/LB

(48) The main pillar of the restructuring plan is a moderate adjustment of the bank's size in terms of total assets and risk weighted assets, a stronger concentration on the core clients of NORD/LB and the shift of the business mix towards more stable business segments. Further, the bank proposes a cost-optimisation programme and a set of behavioural commitments.

(49) NORD/LB aims at reducing its RWA to [< EUR 85] billion in 2016 (from EUR 92.6 billion in 2009 over EUR 84.8 billion at the end of 2011). In the planning period the bank expects a temporary increase of RWA in 2013 to the level of [~ EUR 88] bn. That increase is, however, solely due to the implementation of CRD IV/CRR imposing stricter RWA calculation principles, and not to a business expansion. The reduction of RWA will also result in a reduction of total assets from EUR 227.6 billion at the end of 2011 to below EUR 200 billion by end 2016[34].

Description of the business segments of NORD/LB

a) private and commercial customers:

(50) Via its retail banking subsidiary Braunschweigische Landessparkasse, insurance companies Öffentliche Versicherung Braunschweig, the building society (Landesbausparkasse) and NORD/LB Luxembourg (private banking) NORD/LB provides the following services to its private and commercial customers: lending and deposits, asset management and financial advisory, services to Mittelstand, insurance and mortgages. The regional focus is mainly the region of Braunschweig and Bremen. For NORD/LB Luxemburg those are following countries: Germany, Austria, Switzerland and Luxembourg.

(51) In the past, the segment generated income, which translated to margins of around 500-660[35] basis points (bps) on the RWA. The risk provisions amounted to around 20-30 bps on the RWA[36] p.a. That segment made a positive contribution to the profitability of NORD/LB except in the financial years 2009 and 2010 due to DnB Nord, a joint venture of NORD/LB and DnB Nor ASA that was active in the Baltic States and was negatively affected by the recession in that region. DnB Nord was sold in 2010.

(52) In the future, NORD/LB intends to continue its past strategy in that segment. It expects the total assets and RWA in the segment to remain largely unchanged (in 2016 total assets are expected to amount to [~ EUR 12.5] billion, RWA to [~ EUR 6.0] billion vs. EUR 11.6 billion and EUR 5.2 billion respectively as of end 2011). The bank assumes that margins on the RWA in that segment will reach the level of [600-700] bps in 2016 and the risk provisions will remain at a level [< 40] bps in the whole restructuring period.

[34] For the purpose of management reporting and planning, the bank uses RWA as the basic indicator of the size and not the total assets. They, however, can be derived from the RWA volumes planned at the business segment level.

[35] Adjusted for the impact of DnB Nord, not taking into account the credit risk provisions.

[36] One exception: financial year 2009, when the risk provisions of 55 bps/RWA were built.

b) <u>corporate clients:</u>

(53) NORD/LB and BLB provide following products and services to their corporate clients: Mittelstand financing, agricultural banking, financing of residential housing, acquisition finance, trade and export finance. The bank is active in that segment in Germany, with a focus on Northern Germany.

(54) In the past, the segment generated income, which translated to margins of around 240-280[37] bps on the RWA. The risk provisions amounted to around 30-60 bps on the RWA[38] p.a. That segment made a positive contribution to the profitability of NORD/LB except in the financial year 2009, due to a fraud case at a Swiss subsidiary, Skandifinanz Bank AG. The potential losses were provisioned for with EUR 134 million. Skandifinanz is being liquidated.

(55) In the future, NORD/LB intends to continue its past strategy in that segment. As the bank plans to continue acquiring new clients and to utilise cross-selling potential, it expects the total assets and RWA in the segment to increase moderately from EUR 14.8 billion and EUR 9.9 billion in 2011 respectively to [~ EUR 18] billion and [~ EUR 14] billion in 2016. The bank assumes that margins on the RWA in that segment to remain in the range of [200-300] bps until 2016 and the risk provisions will remain [< 60] bps over the restructuring period.

c) <u>Verbund business with savings banks ("Verbundgeschäft")</u>

(56) NORD/LB is member of the Sparkassen-financial group and acts as the central savings bank for savings banks in Niedersachsen, Sachsen-Anhalt und Mecklenburg-Vorpommern. The segment includes the following business lines: institutional savings banks business, syndicate savings banks business, savings banks private clients business, promotional loans and municipal business.

(57) In the last three years, the segment generated income, which translated to steadily increasing margins in the range of 430-550[39] bps on the RWA due to the expansion of the fee business. The risk provisions amounted on average to around 40 bps on the RWA p.a. That segment made a consistent positive contribution to the profitability of NORD/LB.

(58) In the future, NORD/LB intends to adapt slightly its past strategy in that segment to better tailor its products and services to the needs of the savings banks, intensify the cooperation and achieve cost savings. That adaption should also allow the bank to free up some capacity, which will then be used to expand the NORD/LB's geographic area of activity to […] Germany. As the result, the bank expects the total assets and RWA in the segment to grow modestly (EUR 26 billion and EUR 1.6 billion in 2011 respectively vs. [~ EUR 27] billion and [~ EUR 2] billion in 2016). The bank assumes that margins on the RWA in that

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37 Not taking into account the credit risk provisions.

38 One exception: financial year 2009, when the risk provisions of 250 bps/RWA were built, mainly due to Skandifinanz.

39 Not taking into account the credit risk provisions.

segment will remain in the range of [450-500] bps until 2016 and the risk provisions [< 50] bps over the restructuring period.

d) energy and infrastructure:

(59) The segment includes the following business lines: renewable energy (with focus on wind, solar energy, biological gas and other regenerative energy in Germany and selected countries), infrastructure (social infrastructure projects in fields of accommodation, education, blue light[40], waste/water and land transportation), trade and export finance and leasing.

(60) In the last four years, the segment generated income, which translated to margins increasing steadily from 200 bps in 2008 to 285[41] bps on the RWA in 2011. The risk provisions amounted on average to 43 bps on the RWA p.a. That segment made a consistent positive contribution to the profitability of NORD/LB.

(61) Given the change of political focus regarding the structure of energy production in Europe and withdrawal of some competitors, NORD/LB was able to generate new business at increased margins (over 280 bps per RWA) in the second half of 2011. The bank expects that trend to continue in the future. On that basis, the bank expects the total assets and RWA in the segment to increase moderately from EUR 14.1 billion and EUR 7.2 billion in 2011 respectively to [~ EUR 18] billion and [~ EUR 9] billion in 2016. The bank assumes that margins on the RWA in that segment to remain in the range of [250-300] bps until 2016 and the risk provisions will remain at the level [< 50] bps over the restructuring period.

d) real estate:

(62) The segment is composed of the two strategic business units "commercial real estate financing" (offices, hotels, logistics) of the bank's subsidiary Deutsche Hypo and "social real estate" (residential and nursing homes in Germany) of its subsidiary BLB. Currently, the remaining portfolio of commercial real estate financing of NORD/LB group is being gradually transferred into Deutsche Hypo. In 2011, the breakdown by country of the commercial real estate portfolio was 64.4% in Germany, 12% in USA, 9.1% in UK and 11.7% in Benelux, France and Spain.

(63) In the past, the real estate segment was affected by significant volatility stemming from the portfolios generated by Deutsche Hypo before the entity was acquired by NORD/LB in 2008. On one hand there were investments in securities and derivatives, which in 2011 still amounted to EUR 167 million despite on-going run-off of the portfolio. On the other, the portfolio of US real estate financing, in which Deutsche Hypo participated on a syndicated basis, had to be written down during the crisis. That portfolio is currently being run-off. In the past, the segment generated income, which translated to margins in the range of 150-190 bps on the RWA. The risk provisions amounted on average to 50 bps on the RWA p.a.

[40] E.g. hospitals, police stations and fire stations.
[41] Not taking into account the credit risk provisions.

(64) Due to the factors described above, the segment real estate is currently undergoing a structural and strategic change. NORD/LB intends to increase its lead arranger mandates and to substantially reduce participations in syndicated real estate financing. Given the withdrawal of some competitors, NORD/LB was able to generate new business at increased margins (over 240 bps per RWA) in the second half of 2011. The bank expects to maintain this trend by strict new business selection in the future, which will gradually replace the amortising real estate portfolio characterised by lower margins. The bank expects the total assets and RWAs in the segment to stabilise (EUR 20 billion and EUR 14.1 billion in 2011 respectively vs. [~ EUR 20] billion[42] and EUR [~ 14] billion in 2016). The bank assumes that margins on the RWAs in that segment will improve to the level of [200-250] bps by the end of restructuring period and the risk provisions will remain over 50 bps over the restructuring period.

e) <u>shipping and aviation</u>

(65) The segment includes following products: ship finance (cargo and multipurpose vessels) and aircraft finance (air carrier, engines, warehouse- and operating lease structured finance). German clients represent 70% of the shipping portfolio of the bank. BLB concentrates on shipping-companies of the 'Mittelstand'. As for aviation, the focus is put on the object-based financing of commercial aircrafts produced by well-known manufacturers.

(66) In the last 5 years, the segment generated income, which translated to margins in the range 170-200 bps. The risk provisions amounted to 65-75 bps on the RWA p.a. in the financial years 2009-2011.

(67) Between 2009 and 2012 many competitors such as HSH Nordbank, WestLB and BayernLB have withdrawn completely or partially from the market of shipping and aviation financing. The resulting reduction in financing capacity combined with a backlog of orders of the shipping yards has recently allowed NORD/LB to increase its margins on new business in that segment. Nevertheless, due to the cyclicality of the shipping and aviation markets and in view of the increased capital requirements caused by the rating migration, NORD/LB decided to reduce its total exposure to those sectors in the future by a restricted new business, structuring of syndicated loans and by the use of insurance cover by export credit agencies. On that basis, the bank plans to reduce the total assets and RWA in the segment from EUR 27.4 billion and EUR 22.9 billion in 2011 respectively to [~ EUR 25] billion and [~ EUR 20] billion in 2016. The bank assumes that margins on the RWAs in that segment to improve from 170 bps currently to around [200-250] bps in 2016. The bank expects risk provisions in 2012 and 2013 at the level of [~ 70] and [~ 55] bps respectively and to fall to the level [< 35] bps thereafter, at which point NORD/LB assumes that the current difficult situation in the shipping industry will improve.

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42 At the request of the Commission, the bank committed to restrict its real estate business in terms of total assets to [~ EUR 20] billion, compared to [~ EUR 21] billion projected originally.

f) Financial markets

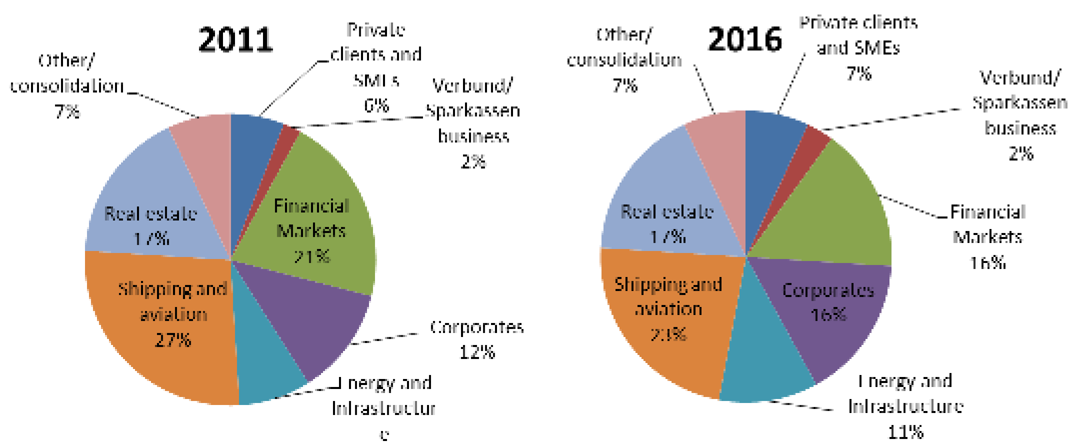
(68) Other segments of NORD/LB group are supported by the relevant financial market product segments in order to offer the clients of NORD/LB a tailored product range. Thus, that segment acts as a service provider for internal and external clients, such as: the German Bund, Länder, insurance companies, asset managers, capital investment companies, banks, savings banks, pension funds and social insurance. Its regional focus is on Germany.

(69) Additionally, that segment provides several instruments for the steering of the bank's balance sheet structure. Within the scope of its trading and treasury function the segment serves as the central point of access to the different financial markets and is responsible for the refinancing of NORD/LB group as well as for the management of interest, currency and liquidity risk.

(70) In the past, the financial markets segment was affected by significant volatility stemming mainly from the sub-segment Portfolio Investments. The bank decided to reduce profit volatility by running down the investment portfolios in that sub-segment (sale of ABS[43], CLO[44], CDS[45], single-name-credit-investments and natural run-off of some other instruments. In the first quarter 2012 the bank achieved a reduction in RWA in that sub-segment of EUR 1.8 billion). In consequence, there will be a reduction of RWA in the sub-segment Portfolio Investments from EUR 6.3 billion in 2011 to [~ EUR 2] billion in 2016. Finally, NORD/LB decided to reduce the whole segment Financial Markets from EUR 146.6 billion total assets in 2011 (RWA: EUR 18.1 billion) to [~ EUR 115] billion (RWA: [~ EUR 13] billion) in 2016.

(71) Chart 4 shows the impact of the development in the segments described above on the business mix of NORD/LB.

Chart 4: Activity structure of NORD/LB in terms of RWA broken down by business segments in 2011 and resulting from the restructuring in 2016.



43 Asset-backed securities.
44 Collateralized loan obligations.
45 Credit Default Swaps.

Regionality

(72) The main currency exposures of NORD/LB are to the US dollar, the British pound and the Japanese yen (see table below) with 22% of the assets of the bank denominated in currencies other than EUR at the end of 2011 (EUR 52 billion out of EUR 227.6 billion). 75% of the foreign currency exposure was in USD.

Table 1: Foreign currency-denominated assets end 2011 (EUR million)

Volumes, in EUR billion	EUR	USD	Other
Total assets	175.6	39.3	12.8
Thereof:			
Shipping and aviation	6.2	18.7	2.6
Energy and infrastructure	8.2	3.6	2.3
Real estate	15.7	3.3	1.0

(73) The main sources of the foreign currency exposure are the following segments: shipping and aviation (68% of the assets in that segment are denominated in USD as the US dollar is the conventional currency used for invoicing the industry), energy and infrastructure (25% of segment's assets in USD, 10% in GBP due to the project financing in UK and US) and real estate (17% in USD due to the real estate portfolio in the USA acquired by Deutsche Hypo).

(74) In order to focus the bank more on its core geographical region and core clients, the bank has agreed to reduce the size of its shipping and aviation segment, focus its business on clients with a connection to Germany or to, in the case of the energy segment, Nordic countries or on projects located in Europe covered by export credit agencies or related to a German client (infrastructure) and to withdraw from real estate financing outside Europe as indicated in detail in the commitments provided by Germany.

Funding

(75) Germany provided the following information on the evolution over the restructuring period of NORD/LB's securitised and non–securitised pre-crisis State-guaranteed grandfathered[46] liabilities:

[46] 'Gewährträgerbehaftete' liabilities

Table 2: Maturity profile of grandfathered liabilities

Stock at	In EUR billion
31.12.2011	23.5
31.12.2012	[~ 21]
31.12.2013	[~ 16]
31.12.2014	[~ 10]
31.12.2015	[~ 1]
31.12.2016	0

(76) The State-guaranteed grandfathered long-term bonds will decrease from EUR 23.5 billion at the end of 2011 to EUR 0 at the end of 2016. However, at the same time the total assets of the bank will decrease by [~ EUR 30] billion, which will more than offset the reduction of grandfathered liabilities.

(77) Additionally, Germany provided extensive information on the availability of alternative sources of funding available to NORD/LB (including foreign-denominated debt issues and covered-bond issues (Pfandbriefe)). However, NORD/LB claims that those sources of funding are not necessary to close the gap resulting from grandfathered liabilities falling due over the restructuring period.

Table 3: Currency structure of assets and liabilities in 2011

Volumes, in EUR billion	EUR	USD	Other
Local funding	185.0	15.5	8.0
Total assets	175.6	39.3	12.8

(78) As shown in Table 3, the bank funded 40% of its USD-denominated assets locally. The remaining 60% was funded through cross-currency swaps. The bank expects its exposure to US dollar to fall in the future due to the restrictive new business in shipping and aviation segment, the increased proportion of new business in that segment generated in euro and withdrawal from US real estate. As for assets denominated in other foreign currencies, 63% of the exposure was funded locally.

(79) Finally, the bank provided information, which demonstrated that funding for its new business is matched both as regards maturities and currency (be it either by local funding or swap). Should a matching funding not be available, the new business opportunity would not be accepted.

3.2. Financial planning of NORD/LB

(80) The German authorities presented a detailed business plan for NORD/LB for the period 2012 to 2016 including profit and loss and balance sheet statements, profitability and production indicators per business segment and consolidated on the group level. The plan includes a base and a stress scenario with the aim of demonstrating NORD/LB's ability to maintain its long-term viability.

Base case

(81) The restructuring plan is based on general assumptions in respect of the evolution of Germany, the Euro area, UK, US and global GDP, short-term and long-term interest rates changes, German and Euro area inflation and unemployment rates, oil prices and the EUR/USD, EUR/GBP, EUR/CHF and EUR/JPY exchange rates. The projections of the individual business units are based on assumptions in respect of growth rates of the relevant market, volumes and margins on RWA per segment. Given the importance of the shipping unit in the overall financial results of NORD/LB, the bank has provided sector-specific assumptions on the evolution of the shipping market.

(82) As illustrated in Tables 4 and 5, in the base case NORD/LB is expected to continuously improve its results until 2016. The main drivers for that progress are the improvement of margins the bank expects to achieve in shipping, energy/infrastructure, real estate and an increase in the generated fee income. Table 5 illustrates the main financial performance indicators of NORD/LB for the years 2012-2016.

Table 4: NORD/LB's pre-tax profit 2012-2016 in base case (EUR m)

	2012	2013	2014	2015	2016
Pre-tax profit	143	[> 300]	[> 400]	[> 500]	[> 800]

Table 5: NORD/LB's main financial performance indicators for 2012-2016 – base case

		2011	2012	2013	2014	2015	2016
Indicators	**RWA (€ bn)**	84.8	[83-88]	[87-92]	[86-91]	[85-90]	[83-88]
	Core Tier-1[1]		[≥ 9.1]%	[≥ 9.1]%	[> 9.1]%	[9.5-10]%	[9.5-10]%
	Core Tier-1[2]		[>9.8]%	[>9.5]%	[>9.6]%	[>9.6]%	[>9.7]%
	Pre-tax ROE	10.6 %	[< 3]%	[< 5]%	[around 5]%	[> 6]%	[≥ 9.5]%
	After tax ROE[3]	7.4 %	[< 3]%	[<3]%	[< 5]%	[around 5.0]%	[≥ 7.2]%
	CIR[4]	56%	[> 60]%	[> 60]%	[around 60]%	[> 50]%	[< 50]%

[1]- according to EBA, [2] – according to Basel III; [3] – estimated value,subject to NORD/LB's tax rate,[4] - including the non-recurring expenses

(83) The return on equity (RoE) of the bank increases moderately but steadily over the restructuring period to a level of [≥ 9.5]% (pre-tax) and [≥ 7.2]% (after-tax). The bank argues first that the pre-tax RoE is the more reliable basis for comparison of performance of financial institutions, as it is not blurred by the influence of tax treatment, including more and less favourable tax environments and the impact of the losses carried forward. Second, the bank claims that the level of RoE amounting to [≥ 9.5]% and [≥ 7.2]% (pre- and after-tax respectively) represents sufficient and market-oriented capital remuneration. The bank's main argument supporting that claim is that the business model of NORD/LB is conservative. In particular the bank is not involved in such volatile activities as investments banking or proprietary trading, which allowed it to weather the crisis without suffering major losses.

(84) The cost-income ratio (CIR) of the bank is expected to fall from [> 60]% in 2012 to [< 50]% in 2016. That decrease is on the one hand due to the on-going process of cost review and optimisation and the bank's plan to reduce the administrative costs to [< EUR 1,100] million in 2016 from 1,091 million in 2011 (excluding the non-recurring expenses such as e.g. IT investments amounting to [< EUR 240] million, redundancy costs of [< EUR 60] million) and on the other, due to the improvement of income levels. The cost-saving initiatives involve the reduction of the staff number by about 10% (leading to the redundancy costs of [< EUR 60] million), IT investments amounting to [< EUR 240] million and outsourcing. The bank considers the targeted CIR level of [< 50]% for 2016 to be very low for a financial institution including a retail subsidiary (Braunschweigische Landessparkasse).

Stress case

(85) NORD/LB furthermore provided a stress case scenario on a group level based on less favourable market assumptions. Among others a further appreciation of the US dollar against the euro and further deterioration of some sovereign ratings and of NORD/LB's portfolios in the segments shipping, aviation and real estate was assumed. Those developments would lead to the increase of the bank's RWA of [< EUR 4] billion as compared to the base case scenario.

(86) The financial projections in the stress case scenario[47] show that the impact of a stress on the solvency of the bank is buffered through the asset guarantee, which would be activated if the CT1 ratio falls below 9% by the end of 2014. In the stress scenario the bank would abstain from paying dividend for further two years and implement additional measures to reduce total assets by further [< EUR 5] billion (to EUR [190-195] billion) by the end of the restructuring period. The resulting core capital ratio of the bank would remain in the stress scenario above 9.0% during the restructuring period.

[47] See Table 6.

Table 6 : NORD/LB's main financial performance indicators for 2012-2016 – stress case

Indicators		2011	2012	2013	2014	2015	2016
	RWA (€ bn) [1]	84.8	[87-92]	[90-95]	[89-94]	[88-93]	[87-92]
	Core Tier-1[2]	7.71%	[~ 8.7]%	[~ 8.7]%	[> 8.7]%	[~ 9]%	[> 9.3]%
	Core Tier-1[3]	7.71%	[> 9]%	[> 9]%	[> 9.1]%	[> 9.2]%	[> 9.5]%

[1]- this line presents the volume of bank's RWA without taking into account the impact of the asset guarantee. That impact amounts to – [~ EUR 4] billion in the year 2012 and diminishes gradually to [~ EUR 2] billion in 2016 due to the natural amortisation of the guaranteed portfolio; [2] –according to EBA, without taking into account the asset guarantee [3]- according to EBA and taking into account the impact of the asset guarantee..

(87) Finally, the bank provided sensitivity scenarios, in which the main areas of the bank's exposures to the shipping, aviation, real estate and financial sector were stressed[48]. In each of the scenarios the relation of the available regulatory capital to the resulting total risk position of the bank as per end 2011 remained above 200%.

3.3. Reduction of balance sheet and restrictions of activities

(88) The restructuring plan of NORD/LB is based on commitments provided by the German authorities, which include a moderate reduction of the bank's size in terms of total assets and risk weighted assets, stronger concentration on NORD/LB's core region and clients, a cost optimisation programme and a set of behavioural commitments. The full text of the commitments provided by Germany is found in the Annex which constitutes an integral part of this decision. The restructuring phase will end at 31 December 2016.

(89) By 31 December 2014, NORD/LB will reduce its balance sheet from about EUR 228 billion (per 31 December 2011) to about EUR 210 billion. By 31 December 2016, the bank will further reduce its balance sheet to EUR 195 billion (i.e., by almost 15%). A minimum of EUR [16-21] billion of that balance sheet reduction will apply to areas belonging to the segment financial markets per 31 December 2011. By 31 December 2014 NORD/LB will reduce its RWA to EUR [85-90] billion. By 31 December 2016, it will reduce them to [< EUR 85] billion. If the contingent asset relief measure is drawn, NORD/LB will also provide a contingent balance sheet reduction by further [< EUR 5] billion.

(90) By 31 December 2014 NORD/LB will restrict its business in the following segments:

(a) private and business clients: NORD/LB will perform new business activities only in Germany. Its subsidiary NORD/LB Luxembourg as a centre of competence for private banking of NORD/LB Group will acquire at least 80% of their new clients in Germany, Austria, Switzerland and Luxembourg.

48 For purpose of the sensitivity analysis, following assumptions were made: downgrading by 4 notches of all ratings in the shipping and real estate portfolio, by 3 notches in aviation and by 2 notches in the financial sector portfolio. Further loss-given-default ratios were increased by 10 percentage points in all sectors.

(b) corporate clients: NORD/LB will restrict its new business activities to clients in Germany as indicated in detail in the commitments to be found in the Annex.

(c) energy and infrastructure: in the sector energy, NORD/LB will restrict new business to a minimum of 75 % in projects or transactions with a regional relationship to Germany, Denmark, Sweden, Norway or Finland. Such a regional relationship is described in detail in the commitments in the Annex.

(d) In the sector infrastructure, NORD/LB will generate at least 75% of its new business with projects located in Europe. New business in context with import/export business will be generated with a minimum of 75% by involvement of a German or European export credit insurance (e.g. Hermes) or, if the client to be financed is an off-taker (i.e. customer/supplier with a stable business relationship), of a client with a business link to Germany.

(e) real estate: NORD/LB will generate new business under the following limitations: the property to be financed is located in Germany or in the European key markets France, United Kingdom, Belgium, Luxembourg, Netherlands or Poland or the client has a connection to Germany as indicated in detail in the commitments in the Annex. Further NORD/LB will naturally run-off its existing real estate portfolio in the USA and Spain and will not generate new business. NORD/LB and its subsidiary Deutsche Hypo will also withdraw from Asia. Altogether NORD/LB will limit its assets in that segment (active business without committed business) to a total of EUR [16-21] billion.

(91) By 31 December 2016, NORD/LB will quantitatively reduce its assets in the segments shipping and aviation as well as in financial markets.

(92) NORD/LB will divest a number of participations, among other the […]% of […] by […] and […] by […].

(93) NORD/LB will close its representations in Beijing and Mumbai as well as the representation of Deutsche Hypo in Madrid, at the earliest date possible but at the latest on 31 December 2013.

(94) Until 31 December 2016, NORD/LB will reduce its administrative costs to [< EUR 1,100] million (excluding the non-recurrent expenses relating to e.g. investments in IT or costs of redundancies).

(95) NORD/LB commits to refrain for three years from new acquisitions as indicated in detail in the commitments.

3.4. Commitments

(96) Germany provided a number of commitments that are set out in the Annex and constitute an integral part of this Decision. In order to ensure that the commitments will be implemented, a monitoring trustee will be appointed. The activities of the monitoring trustee will apply throughout the restructuring period that lasts until 2016. Apart from the reductions indicated in recitals (89) to (93), the commitments comprise several behavioural restrictions for NORD/LB such as dividend ban, acquisition ban, a hybrid coupon ban and a ban on proprietary trading.

4. POSITION OF GERMANY

(97) The German authorities do not contest that the 2011 and 2012 recapitalisation measures constitute State aid within the meaning of Article 107(1) TFEU. However, they consider them compatible with the internal market on the basis of Article 107(3)(b) TFEU, as they are required to remedy a serious disturbance in the economy of a Member State and are compliant with the Commission guidance.

(98) According to the German authorities, NORD/LB is a systemically relevant bank. In view of the risk that a failure of the bank to comply with the EBA requirements would entail for Germany's financial system, Germany argues that the measures are compatible with the internal market under Article 107(3)(b) TFEU.

(99) In particular, the German authorities are of the opinion that the restructuring plan ensures that NORD/LB's long-term viability is restored, that NORD/LB provides a sufficient own contribution to the restructuring costs and that distortions of competition are limited by substantial structural and behavioural measures.

5. ASSESSMENT

5.1. Existence of State Aid

a) Recapitalisation measures

(100) According to Article 107(1) TFEU, 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.

(101) The qualification of a measure as State aid requires that the following conditions are met: a) it must be financed by a Member State or through State resources; b) it must grant an advantage liable to favour certain undertakings or the production of certain goods; c) the measure must distort or threaten to distort competition; d) and the measure must have the potential to affect trade between Member States.

(102) The Commission maintains its view that those conditions are met for all measures as it will explain below:

The recapitalisation by Land Niedersachsen and the savings banks

(103) The Commission recalls that it has already established in the Rescue Decision that, all the above elements being fulfilled, the 2011 recapitalisation measures constitute State aid.

(104) That analysis also applies to the 2012 recapitalisation measures. The 2012 recapitalisation measures are granted by the shareholders of NORD/LB. All the shareholders are either public entities such as regions or municipalities or are owned by them (the savings banks). The Commission recalls that it has already established in its decisional practice that means provided by savings banks associations are resources directly or indirectly controlled by public authorities[49]. As all the shareholders of NORD/LB are thus either directly or indirectly attributable to the State,[50] the Commission concludes that the measures stem from State resources.

(105) The capital measures allow NORD/LB to obtain capital in a financial and economic crisis situation where it would have been very difficult to find such capital on the market. While it is not excluded that a shareholder of a bank would convert its silent participation, given that such capital will lose its regulatory quality in the medium-term and provided that the new shares offer a sufficient return, it seems unlikely that private shareholders would provide significant amounts of additional capital. In any event, unlike in the present case, a market economy investor would not have agreed, even in principle, on the measures unless it was already in receipt of and had analysed a company evaluation, which did not in fact exist at that time.[51] Therefore, the Commission considers that the capital measures would not have been provided by a market economy investor. The capital measures must therefore be regarded as providing an advantage to NORD/LB. Moreover, that advantage is selective since it only benefits one bank.

(106) Given that NORD/LB is and will be active in the financial sector, which is open to intense international competition, any advantage from State resources to the bank has the potential to affect intra-Union trade and to distort competition. The measures therefore constitute State aid within the meaning of Article 107(1) TFEU.

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49 See point 64 of the Commission Decision of 29 September 2010 in case C32/2009, *Restructuring of Sparkasse KölnBonn*, OJ L 235, 10.09.2011, p. 1; point 29 of the Commission Decision of 30 April 2008 in case NN 25/2008, *WestLB risk shield*; Commission Decision of 1 October 2008 in case C43/2008, *WestLB risk shield*, OJ C 322, 17.12.2008, p. 16; and Commission Decision of 12 May 2009 in case C43/2008, *WestLB risk shield*.

50 See recital (9) and for example Commission decision of 30.6.2009 in case C 17/2009, LBBW, OJ 2009 C 248, 10.16.2009, p. 7, recital 40.

51 The 2012 recapitalisation measures were notified to the Commission as an integral part of the restructuring plan on 19 March 2012, while the relevant company valuation reports are dated 8 May 2012.

b) Contingent asset guarantee

(107) In order to assess the existence of aid in the contingent asset guarantee, the Commission's experts have independently determined, using standard Gaussian copula models referenced on relevant iTraxx[52] data, that the theoretical market value of the contingent asset guarantee with a running premium of 6.27% is positive and would command an additional up-front premium of 13.4% of the tranche thickness of EUR 700 Million, which corresponds to a value of EUR 93.8 million. As a result, the measure clearly constitutes an advantage.

(108) Furthermore, that expert assessment does not take into account any liquidity considerations. Since the hedging requirements to offset the risks of the guarantee would be of a size much larger than normally on offer in the CDS market, it would be difficult to find market counterparties other than the two Länder to enter into the transaction. Precisely quantifying the market price of the guarantee would therefore be difficult, apart from the fact that it cannot exceed the tranche thickness itself (EUR 700 million). As the advantage is granted by the two Länder, through State resources, there is no doubt that the measure constitutes State Aid, given that it will affect intra-Union trade and distort competition in the same manner as described in recital (106).

(109) In its previous decisional practice, the Commission has determined the aid amount of such guarantees to be the nominal amount of the guaranteed tranche, i.e. EUR 700 million[53] Germany has not disputed such an analysis in the course of the preliminary examination of the contingent asset guarantee.

c) Conclusion on the amount of aid

(110) The 2011 and 2012 recapitalisation measures total EUR 2.5 billion and represent 2.9% of the bank’s RWA at the end of 2011 (EUR 84.8 billion). If the contingent asset guarantee with an aid amount of EUR 0.7 billion is also taken into account, all the measures would represent 3.9% of the bank's RWA at the end of 2011.

5.2. Compatibility

(111) On the basis of Article 107(3)(b) TFEU State aid can be found compatible with the internal market if it is intended "to remedy a serious disturbance in the economy of a Member State". The Commission has acknowledged in its approval of the reactivation of the rescue scheme for financial institutions in Germany and its prolongation[54] that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures

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52 Itraxx is the brand name for the family of CDS index products covering regions of Europe, Australia, Japan and non-Japan Asia. They form a large sector of the overall credit derivative market. The indices are constructed on a set of rules with the overriding criterion being that of liquidity of the underlying CDS. The iTraxx suite of indices are owned, managed, compiled and published by Markit, who also license market-makers.

53 See Commission decision of 30 April 2008 in case NN 25/2008, rescue aid to WestLB and Commission decision of 18 December 2008 in case N 615/2008 rescue aid to BayernLB.

54 See Commission decision of 5 March 2012 in case SA.34345, *Reactivation of the rescue scheme for financial institutions in Germany*, OJ C 108, 14.04.2012, p. 2 and of 29 June 2012, *Prolongation of the rescue scheme for financial institutions in Germany*, not yet published.

supporting banks are apt to remedy that disturbance. That assessment has been confirmed in the Recapitalisation Communication[55] and the Restructuring Communication[56]. The Commission still considers that requirements for State aid to be approved pursuant to Article 107(3)(b) TFEU are fulfilled in view of the reappearance of stress in financial markets. The Commission confirmed that view by adopting in December 2011 the 2011 Prolongation Communication that prolongs the application of State aid rules to support measures in favour of banks in the context of the financial crisis[57] .

(112) The breakdown of a bank which is considered by a Member State as being of systemic importance such as Nord/LB could directly affect the financial markets and thus the entire economy of a Member State. In light of the current fragile situation of the financial markets, the Commission therefore continues to base its assessment of State aid measures in the banking sector on Article 107(3)(b) TFEU.

5.2.1. The recapitalisation measures

(113) The compatibility of the recapitalisation measures in particular as regards their remuneration must first be assessed on the basis of the Recapitalisation Communication[58] and the 2011 Prolongation Communication.

(114) According to Annex I to the Recapitalisation Communication and the 2011 Prolongation Communication, capital increases for non-listed banks (such as NORD/LB) should, where there is no observable market price, be valued on the basis of an appropriate market-based valuation approach (including a peer group price-to-earnings (P/E) approach or other generally accepted valuation methodologies).

(115) NORD/LB has based both the 2011 and the 2012 recapitalisation measures on a company valuation in line with those requirements, as described in recitals (18) to (23) and (28) to (29) . Capital measures in favour of BLB were based on the company valuation conducted in 2012 and described in recital (32). The Commission has critically reviewed the valuation approach and considers it being in line with generally accepted valuation methodologies. Further, the Commission has not identified any issues in the assumptions taken by the company valuation expert, which would give raise to major inconsistency with the notified restructuring plan or doubts regarding their feasibility.

(116) The only issue which the Commission notes critically concerns the adjustment of the level of the Beta-factor applicable after the year 2016. The Commission takes note of the arguments by the company valuation expert's in favour of the downward adjustment for

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55 Commission Communication - Recapitalisation of financial institutions in the current financial crisis: limitation of the aid to the minimum necessary and safeguards against undue distortions of competition, C 10, 15.1.2009, p. 2.

56 Commission Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.08.2009, p. 9.

57 Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356 of 6.12.2011, p.7.

58 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.

2017 and thereafter. However, it does not share the opinion that the current volatility as expressed by the Beta-factor amounting to [1.2-1.4] for NORD/LB and BLB respectively is solely due to the current distortions on the capital markets and that it would be reduced to the levels close to 1 once the macroeconomic environment normalises in the medium-term. The Commission considers that the financial crisis revealed the risks inherent in the banking business model as such, which will be taken into consideration by the markets also after the crisis, leading to higher volatility of share prices than historically observed.

(117) However, the Commission admits that due to the current uncertainty it would be difficult to determine an ultimate level of Beta-factor for a bank. It does not dispute that it would be significantly lower than current levels but is not sure when the reduction could reasonably be expected. Therefore, the Commission would prefer to take into account a range of theoretical company values, where the company value as determined by the expert (with the downward adjustment of Beta-factor for the period after 2016) represents the ceiling and the value calculated without any adjustment of the Beta-factor level determined on the basis of the current market data defines the floor. The Commission then analysed whether shareholders of NORD/LB and BLB acquired an appropriate share in the relevant bank in the course of the recapitalisation, assuming the lower range end of the company values (for NORD/LB: EUR [3,000-3,500] million in 2011 and EUR [4,000-4,500] million in 2012, for BLB: EUR [600-700] million). The Commission considered that if it can be concluded that the shareholders, who contributed to the recapitalisation of the banks, obtained an appropriate share in the banks even when the lowest company value is assumed, it would allow for the conclusion that the measures fulfil the Commission's requirements even if the company value is in fact higher than the lowest in the range. However, before making that assessment, it also needs to be considered that the new capital providers should receive a sufficient discount.

(118) In fact, according to points 8 and 9 of the 2011 Prolongation Communication[59] capital injections should be subscribed at a sufficient discount to the share price after adjustment for the dilution effect which can be quantified by using generally accepted market techniques (TERP[60]). That approach is applied to the 2012 recapitalisation measures.

(119) The Commission notes that an acceptable discount in its recent decisional practice has been identified to be 25%[61]. That level needs to be adjusted taking into account the size of the capital-strengthening measures in relation to the existing capital of both banks.

59 Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 356 of 6.12.2011, p. 7.

60 Theoretical ex-rights price

61 Commission Decision of 30 May 2012 in case SA.34055, *New recapitalisation scheme for credit institution in Portugal*, not yet published.

(120) For the purpose of the calculation of the appropriate subscription price[62], the Commission first acknowledges that an investor perspective needs to be considered when determining the relative size of the recapitalisation. Therefore, it used the estimated market value of the instruments to be converted into share capital of BLB and NORD/LB in 2012. As presented in recital (27), in the case of the NORD/LB measure the market value of the instruments to be converted is EUR […] million ([…]% their nominal value).

(121) In the case of the BLB instruments (see recital (35) above), the Commission considers that the same rationale can be applied for some of the instruments to be converted by Land Bremen and the Savings Banks' Associations. The Commission compared the terms of the NORD/LB's and BLB'S silent participations to be converted and considers that all but one silent participation in BLB to be converted are directly comparable to those of NORD/LB. Therefore their market value can also be estimated at around 60% of the nominal. Those silent participations amount to EUR 377.8 million in nominal terms, thus reaching a market value of EUR 226.7 million. However, the terms of the remaining silent participation, which has the nominal value of EUR 102.2 million, are not comparable because they give the Land Bremen the right to terminate the instrument with two-years notice. Given the past and projected profitability of BLB, the Commission finds it unlikely that the instrument would be repaid below nominal if terminated by Land Bremen. Therefore the market value of that instrument is considered to be equal to its nominal value. As a result, the market value of the instruments to be converted by Land Bremen totals EUR 328.9 million.

(122) An additional condition under which Land Bremen agreed to give up the fixed coupon on its silent participation (see recital (26)(ii) and (37)) and convert the investment into equity was that the Land would reinvest only 89% of the redeemed nominal of the silent participation. That additional 11% discount translates to EUR 52.8 million in absolute terms**.** As a result, the Commission considers that for the purpose of calculation of the appropriate subscription price at which Land Bremen should have acquired the shares in BLB, the total value of investment amounting to EUR 276.1 million[63] should be taken into account.

(123) Consequently, the Commission has arrived at the following minimum dilution-adjusted discounts to the benchmark price required for NORD/LB and BLB in the context of the 2012 recapitalisation measures: [> 25]% and 34.1% respectively[64].

(124) Considering those discounts, the Commission has calculated on the basis of the revised range of the company evaluation the theoretical shareholder structure of NORD/LB and BLB after the 2012 recapitalisation measures and compared it to the shareholder structure of each bank de facto agreed upon as a result of those measures.

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62 Appropriate subscription price is equal to [(1 - dilution-adjusted discount)*benchmark share price], where benchmark share price is determined by means of the company valuation.

63 Market value of the silent participation of EUR 328.9 million – 11% x EUR 480 million.

64 That discount already takes into account the dilution effect thanks to the application of TERP methodology.

(125) The Commission observes that the new shareholder structure of BLB (see recital (34)) as agreed upon by its shareholders gives Land Bremen, which contributed most to the recapitalisation of the bank, a slightly higher stake than determined by the Commission. On that basis, the Commission concludes that the recapitalisation of BLB is in line with the Recapitalisation Communication and the 2011 Prolongation Communication.

(126) As regards NORD/LB's shareholder structure, the one agreed upon by its shareholders (see recital (30)) is slightly less favourable for Land Niedersachsen than the one determined theoretically by the Commission. However, it has to be borne in mind that the Commission based its calculation on the lowest end of the company value's range without prejudice to the likelihood that a higher company value is appropriate. Against that background, the Commission considers that the new shareholder structure as agreed upon among the shareholders is in line with the Recapitalisation Communication and the 2011 Prolongation Communication.

5.2.2. Contingent asset relief measure

(127) Any measure given by the State with the aim of providing asset relief or for the avoidance of future losses through an asset transfer or an asset guarantee should normally constitute State aid and needs, if given in the context of the financial crisis, to be examined in the context of Article 107(3)(b) TFEU under the Impaired Assets Communication (IAC).[65]

(128) The Commission is aware that the additional contingencies (optionality until 31 December 2014) as well as the underlying assets neither being "toxic"[66] nor "unstrategic" potentially raise issues as to the eligibility of assets and the overall compatibility of the measure with the IAC. Nevertheless, the Commission has to consider the fact that the activation of the measure is contingent on the bank's capital ratio. Therefore, the Commission will assess the measure along the lines of the IAC in line with its previous decisional practice.[67]

(129) It has been established that the real economic value of the portfolio is [94-99]% of the notional amount. As a result, the attachment point of the guarantee[68] should be increased to the 5.80% - mark in order to bring the measure in line with the IAC (which requires that the transfer value should not exceed the real economic value or, equivalently, that the guarantee attachment point lies above a prudent estimation of the portfolio loss expectations).

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65 Communication from the Commission on the *Treatment of Impaired assets in the Community Banking Sector*, OJ 72, 26.03.2009; OJ C 72, 26.3.2009, p. 1.

66 To the contrary, the Commission notes that according to the Bundesbank the portfolio is of average to good credit quality.

67 See the Commission Decision of 20 December 2011 in case SA.29590, *Restructuring of WestLB*, not yet published and the Commission Decision of 20.09.2011 in case C29/2009, *Restructuring of HSH Nordbank AG*, not yet published.

68 Thus the zero tranche and the first loss tranche, which precede the guarantee tranche, should amount to at least 5.80%. Following the Commission's expert's assessment that found a tranche thickness of 1.20% for the excess spread ("zero tranche"), an increase of the first loss piece from 1.41% to 4.60% (that is, 5.80%-1.20%) would therefore be required.

(130) The Commission also takes into consideration that the lifetime of the guarantee is limited to ten years after its activation. By taking into account that no losses can occur after ten years, a cap on the weighted average life of ten years would reduce the loss expectation to [< 6]%. On the other hand, the Commission's experts established that the mitigating effect of the excess spread (or "zero tranche") is overestimated by about [0.3-0,7]%. To be compatible with the IAC, the first loss piece would therefore have to be increased significantly from the current 1.41% (EUR 200 million) to 4.35% (EUR 617 million).

(131) However, such an adjustment of the first loss piece would have drastically reduced the capital relief effect of the measure, making it virtually ineffective from 2015 onward. Therefore, the German regulator BaFin did not authorise an adjustment of that magnitude. It did however signal that it would still grant capital relief effect if the premium were not to exceed 6.27 % of the guarantee notional (of EUR 700 million, i.e. paying EUR 44 million per annum). The remuneration if calculated on the basis of the initial capital relief effect (i.e. EUR 400 million) would thereby be at about 10.75%.

(132) Pursuant to point 41 of the IAC a measure can be considered compatible even if an asset transfer is implemented with a transfer price above the real economic value or, in a similar manner, where the attachment point of the guaranteed tranche lies below the stressed expected loss value[69] (notably to avoid a technical insolvency, such as a breach of a regulatory capital requirement), on the introduction either of conditions allowing for the recovery at a later stage, i.e. a so-called claw-back, or where the former is not possible on the introduction of additional restructuring measures. In concrete amounts, an a priori incompatible gap in the first loss piece of EUR 417 million needs to be accounted for.

(133) The Commission considers that Germany has remedied that gap by offering a number of mitigating measures. First, the Commission notes that Germany commits that NORD/LB will pay the 6.27% premium, even though the bank receives no capital relief effect before activating the measure. Moreover, paying 6.27% during the activation of the guarantee (which corresponds to paying 10.75% on the initial capital relief effect) also exceeds the fee that the Commission would normally accept for such a capital relief effect, namely 7%.[70] Both premium excesses above the capital relief effect allow for the recovery of a significant part of potential losses above the real economic value to which the second loss guarantee exposes the Länder. Germany also commits that contingent on the activation of the guarantee, NORD/LB's balance sheet will be further reduced by [< EUR 5] billion to [EUR 190-200] billion in 2016. That final commitment can be considered as additional restructuring.

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69 Which is the complement of the real economic value.

70 The IAC states in Annex 4 that the necessary target return could be "inspired" by the remuneration that would have been required for recapitalisation measures to the extent of the capital effect. It should be in line with the Recapitalisation Communication, while taking into account the specific features of asset relief measures and the fact that they may involve higher exposure than capital injections. Furthermore, in an asset guarantee scenario, it would have to be taken into consideration that in contrast to recapitalisation measures, no liquidity is provided. Using that guidance, the Commission has determined that the base remuneration for a CT1-targeted measure ought to be 10%. Because of the relatively good quality of the underlying portfolio, no additional capital remuneration would have to be foreseen. In order to distinguish between asset transfers and asset guarantees (where in the latter no liquidity is foreseen), a long-term interest rate could be deducted. The Commission's decisional practice has put that interest rate deduction at 3%.

(134) Considering the fact that NORD/LB has adjusted the remuneration to close to the maximum allowable premium consistent with still obtaining regulatory capital relief[71] and that sufficient additional restructuring measures are being implemented, some which incentivise the bank not to activate the guarantee measure, the Commission deems the contingent asset relief measure compatible with the internal market.

5.2.3. The restructuring measures

(135) All the measures identified as State aid have been provided in the context of the restructuring of NORD/LB. The Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ("Restructuring Communication")[72] sets out the rules applicable to the granting of restructuring aid of financial institutions in the current crisis. According to the Restructuring Communication, in order to be compatible with the internal market under Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis has to (i) lead to the restoration of the viability of the bank, (ii), include sufficient own contribution and burden-sharing and (iii) contain sufficient measures limiting distortion of competition.

a) Viability

(136) For assessing a restructuring plan the Commission must ensure that the restructuring plan is apt to restore the viability of the beneficiary (section 2 of the Restructuring Communication).

(137) According to the Restructuring Communication, long-term viability is achieved when a bank is able to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements. It should be able to cover all its costs and provide an appropriate return on equity taking into account the risk profile of the bank. Long-term viability also requires the identification of the causes of the bank's difficulties and weaknesses and an explanation how the restructuring is addressing them. In particular, successful restructuring entails withdrawal from all activities which would remain structurally loss-making in the medium-term.

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[71] According to NORD/LB, 6.27% is close to the maximum premium to be paid to avoid a "High Cost Credit Protection Clause" under German Law (§232 Abs 1. SolvV). The same reference was made in a statement by the Bundesbank of 6 June 2012, where it stated that a premium of 4.08% would not be problematic under that provision.

[72] OJ C 195, 19.08.2009, p. 9.

(138) The Commission notes first that the business mix of the bank after restructuring has improved. The bank has committed to implement measures, which will result in the higher proportion of the business segments considered stable (private customers, Sparkassen Network and corporate customers) in the business mix (aggregated, the proportion of those three segments amounted to 20% of the total RWA of the bank in 2011; in 2016 it is expected to represent [> 25]% of the bank's RWA) at the expense of the segments considered as cyclical and risky (the proportion of shipping and aviation segment in the total bank's RWA is to fall from 27% in 2011 to [< 25]% in 2016, financial markets are to represent [< 18]% of the total RWA in 2016, down from 21% in 2011).

(139) The Commission has verified that the bank's exposure in the shipping and aviation segment is sufficiently controlled. In particular, the Commission welcomes the plan to reduce the RWA by [17-22]% in that segment by 2016 and total assets by [7-12]% (from EUR 27.4 billion in 2011 to EUR [< 25] billion in 2016). Further the Commission notes positively that in shipping NORD/LB focuses on clients from its core region (around 70% of the portfolio).

(140) The Commission also welcomes the plan to reduce the international presence of the bank in the real estate segment as well as the volume of the Financial Markets segment, which was the source of volatility in the past and seemed too large as compared to the other activities of the bank (Financial Markets represented 64% of total assets of NORD/LB in 2011 and [< 60]% at the end of 2016).

(141) As regards funding, the Commission has verified that NORD/LB is well-positioned to fund itself even after the expiry of grandfather State-guaranteed liabilities (Gewährträgerhaftung). First, the reduction of the balance sheet will more than offset the expiring Gewährträgerhaftung funding: there is around EUR [30] billion of balance sheet reduction as against EUR 29 billion of Gewährträgerhaftung expiring in the restructuring period. Second, the Commission notes positively that throughout the crisis the bank was able to issue debt on the capital markets without State support and is in a good position to obtain funding in the future.

(142) Although NORD/LB has significant funding needs in USD, the Commission considers the risk in that respect sufficiently controlled. First, the bank has access to USD funding e.g. by issuing US dollar-denominated debt, which allows it to fund around 40% of its USD exposure. The remainder is funded through cross-currency swaps. Second, the reduction of the shipping and aviation segment and withdrawal from the real estate financing in US will directly contribute to the reduction of the bank's US dollar exposure. The Commission also notes positively, that the bank's strategy requires that the funding of its real estate new business is matched in terms of maturity and currency.

(143) The Commission notes further that the bank on the basis of the above should be able to generate an appropriate return on equity, while covering all costs of its normal operations and complying with the relevant regulatory requirements.

(144) NORD/LB has provided financial projections for the period 2012-2016, giving information on revenues, costs, risk provisions, profits and capital position of the bank. The Commission has verified that the base case projections provided are based on reasonable underlying macroeconomic assumptions. Further, the Commission considers the future development in each business segment to be either in line with the past performance or based on a feasible business strategy and reasonable market assumptions.

(145) The bank expects to remain profitable and continuously improve its yearly results over the whole restructuring period. Further, in 2016 the after-tax ROE will reach a level of [≥ 7.2]%, which is relatively low, but the Commission considers it sufficient for a number of reasons. First, the Commission considers NORD/LB to be intrinsically sound. Second, the bank is improving its business mix, by shifting the structure of its RWA towards more stable business segments such as private and SME clients, corporate clients and the Sparkassen network at the expense of segments, which are considered risky and cyclical (shipping and aviation, Financial Markets). Further, the bank has demonstrated in the past that it is able to manage its risks, decisively addresses the sources of volatility or losses (liquidation of Skandifinanz, sale of DnB Nord, run-off of the legacy portfolio of Deutsche Hypo and Portfolio Investments) and remained sound and profitable even during the crisis. Given that relatively stable and profitable performance of the bank during the crisis as well as the demonstrated reliability of its planning, it seems justified to accept the low but reliable level of RoE. Finally, the Commission observes that NORD/LB achieves the RoE level in a relatively short period of time, measured from the moment of rescue to the end of the restructuring period. As it cannot be excluded that RoE will rise even further thereafter, it can even be seen as equivalent to other cases, where a higher RoE was reached after a longer period of time. Therefore, the level of profitability to be achieved by NORD/LB within their restructuring phase is to be assessed at least as positively as those of other aided peers[73].

(146) Second, the bank's capital ratios remain above the minimum regulatory requirements with the EBA CT1 ratio improving from [≥ 9.1]% in 2013 to [9.5-10]% in 2016.

(147) Third, NORD/LB demonstrated that it is able to withstand a stress scenario. The assumptions of the stress scenario have been assessed as reasonable. As the stress scenario demonstrates that by activating the contingent asset guarantee measure, NORD/LB will continue to exceed its regulatory capital requirements (as defined by EBA), the bank can be regarded as meeting the requirements of point 13 of the Restructuring Communication. Finally, the Commission notes positively that the bank has provided a sensitivity analysis demonstrating the ability of the bank to sustain a stressed scenario in the shipping, aviation, real estate and financial sectors.

(148) Consequently, the Commission considers that the restructuring plan submitted by NORD/LB fulfils the requirements of the Restructuring Communication with regard to the restoration of the long-term viability.

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[73] See Commission Decision of 25 July 2012 in case SA.28487, *BayernLB*, not yet published.

b) Own contribution and burden-sharing

(149) As stated in the Restructuring Communication, banks and their stakeholders need to contribute to the restructuring as much as possible in order to ensure that aid is limited to the minimum necessary. Thus banks should use their own resources to finance the restructuring, for instance by selling assets, while the stakeholders should absorb the losses of the bank where possible.

(150) The restructuring plan does not contain any elements that suggest that the aid exceeds the means required to cover those costs which are triggered by the restoration of viability. The aid received is required to ensure that NORD/LB will have reasonable capital buffers of above 9% CT1 capital required by EBA in the base case and will be able to comply with regulatory capital requirements in a stress scenario.

(151) In respect of the contribution to restructuring costs through internal resources generated by NORD/LB, the Commission notes that the bank implements cost-cutting measures. The cost-cutting measures will result in a reduction of the annual costs by [> EUR 20] million (excluding the non-recurring expenses) by the end of the restructuring period and reduce the number of staff by [≤ 10]%. Consequently the bank is to achieve a cost-income ratio of [< 50]%, which the Commission considers satisfactory.

(152) Further, the divestments of profitable non-core subsidiaries will generate proceeds, which can be used to finance the restructuring costs.

(153) Point 24 of the Restructuring Communication states that an adequate remuneration of the State capital is also a means of achieving burden-sharing. In that context the Commission recalls that it already established in recitals (125) and (126) that the owners of NORD/LB and BLB, who contributed to the recapitalisation measures, obtained appropriate stakes in the respective banks. Those stakes were based on company valuations determined objectively on the basis of the future reasonably expected results of the bank (Ertragswertverfahren). Further, as established in recitals (118) to (126) the 2012 recapitalisation measures are subscribed at a sufficient discount, which is a form of an ex-ante remuneration of the capital injection. Therefore, the Commission considers the level of remuneration appropriate in association with the other burden-sharing measures.

(154) Moreover, in order to ensure that the owners of the bank participate to the maximum extent in the reconstitution of an adequate capital basis over the restructuring period, the bank has committed to retain dividends and not to pay any coupons which it is not under law obliged to pay until the end of the restructuring period or beyond if the silent participation is not repaid by then. Thereby it will, in line with point 26 of the Restructuring Communication, be ensured that NORD/LB does not use State aid to make payments on own funds if there are insufficient profits to make such payments.

(155) That finding is not altered by the fact that the shareholders in BLB retained 11% in cash of the proceeds from the buy- back of the silent participations. That retention can be seen as an incentive for injecting new capital into the bank. In fact, point 26 of the Restructuring Communication allows for promoting new capital by providing an incentive in the form of a reward, as long as the other existing shareholders do not receive the same reward (so as to

ensure burden-sharing) and the reward does not disproportionally impede the capital of the bank (the CT1 is significantly improved). The Commission observes that the incentive is limited to 11%. Since Land Bremen would otherwise not have been willing to convert its investment, the Commission considers that payment justified as it enables BLB to obtain additional capital of highest quality.

(156) Another aspect concerns the Savings Banks' Association, the second group of shareholders of NORD/LB. The Commission noted that they have also contributed to the restructuring of the bank both in the conversion of capital as well as in the provision of new capital.

(157) Finally, it should be noted that the Länder providing the contingent asset guarantee will receive a claw-back of the entire part of the asset guarantee above the real economic value.

(158) In view of the significant contribution of the bank by cost reduction, by all shareholders through conversion and profit retention and through assuring an adequate remuneration for both the capital measures and asset guarantee, the restructuring plan can be considered as providing for an appropriate own contribution and burden sharing .

c) Compensatory measures

(159) The Restructuring Communication requires that the restructuring plan proposes measures limiting distortions of competition and ensuring a competitive banking sector. Moreover, they should also address moral hazard issues and ensure that State aid is not used to fund anti-competitive behaviour.

(160) As regards the scope of the restructuring, the Commission notes that the recapitalisation measures are all related to recent EBA requirements[74]. The EBA requirements are directly linked to a confidence crisis on sovereign debt. Those measures should therefore qualify for a proportionate treatment as indicated in the third sentence of point 14 of the 2011 Prolongation Communication. Accordingly, for the bank there is less need for significant restructuring, meaning that compensatory measures may in principle be limited, in particular through behavioural measures which help focus on restricting the activities of the bank during the restructuring period.

(161) Nevertheless, Germany committed to implement a comprehensive number of sales of profitable non-core businesses. They include several participations including the stake in […], the stake in […] and the total sale of other participations.

(162) The German authorities have provided a detailed timeline for planned divestments and committed to the appointment of a monitoring trustee in order to ensure that the commitments will be carried out in a timely manner. A divestiture trustee would be appointed for the major divestments if the committed timeline is not met.

(163) Furthermore, NORD/LB will reduce the number of its international branches or representation offices.

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74 Stemming from both: EBA stress test and EBA capital exercise.

(164) In addition, NORD/LB will limit its international business activities in corporates, real estate and energy and infrastructure in scope and absolute volumes. The restructuring of the bank includes reduction of NORD/LB's presence in certain segments. Those measures will allow competitors to access parts of the bank's corporate and institutional client's base.

(165) As a consequence of the implementation of the restructuring measures, NORD/LB will reduce its total balance sheet between 2011 and 2016 by around 15%.

(166) Germany also agreed to several behavioural constraints such as an advertisement ban, an acquisition ban, a dividend and hybrid coupon ban and a cap on the remuneration of the executives of the bank. In particular, the dividend ban will be prolonged if the asset guarantee is activated, which ensures an incentive structure for limiting the aid to the minimum.

(167) Based on the above, the Commission considers that the scale and nature of measures proposed by Germany and NORD/LB are sufficient and adequate to address any distortions of competition.

(168) Therefore, the restructuring plan of NORD/LB fulfils the requirements of the Restructuring Communication in terms of viability, burden-sharing and measures to mitigate the distortion of competition.

d) Monitoring

Pursuant to section 5 of the Restructuring Communication, regular reports are required to allow the Commission to verify that the restructuring plan is being implemented properly. Germany will appoint a monitoring trustee who will provide semi-annual monitoring reports. Germany agreed with the Commission on a procedure for the appointment of trustees. The first report should be due in December 2012. The Commission therefore finds that proper monitoring of the implementation of the restructuring plan is ensured.

6. CONCLUSION

The Commission finds that the measures in the restructuring plan, together with the commitments in the Annex, will enable NORD/LB to ensure its long-term viability, are sufficient with respect to burden-sharing, and are appropriate and proportional to offset the competition distorting effects of the aid measures examined in the present decision. The restructuring plan submitted fulfils the criteria of the Restructuring Communication and those measures should therefore be considered compatible with the internal market.

7. DECISION

The Commission has decided to consider the restructuring aid in favour of NORD/LB to be compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on Functioning of the European Union, in light of the commitments in the Annex and raises no objection to it.

Germany exceptionally accepts that the decision be adopted in the English language, for reasons of urgency.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a 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/competition/elojade/isef/index.cfm

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

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

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

Annex - COMMITMENTS TO THE EUROPEAN COMMISSION

The Federal Government of Germany and NORD/LB commit the following measures:

1 **[Restructuring phase]** The restructuring phase will end on 31 December 2016. The following commitments apply during the restructuring phase, provided they do not specifically define a different period.

2 [**Monitoring Trustee**] Full and proper implementation of all commitments will be continuously and thoroughly monitored and verified in detail by an independent of NORD/LB and suitably qualified monitoring trustee, preferably a qualified auditor. The mandate will end when the restructuring phase finishes.

3 **[Reduction of balance sheet total]** Coming from NORD/LB group's audited balance sheet total of around EUR 228 billion on 31 December 2011, it will reduce its balance sheet assets to around EUR 210 billion by 31 December 2014. The balance sheet assets will be reduced further to EUR 195 billion by 31 December 2016. Sub-segments that belonged to the Financial Markets segment until 31 December 2011 account for at least EUR 20 billion of this reduction of the balance sheet total. This reduction is also reflected in a restriction of the risk-weighted assets (RWA): NORD/LB commits to restricting its RWA to EUR [85-90] billion[1] by the end of 2014 and [< EUR 85] billion by the end of 2016. The requirements for the group are considered as a fixed maximum limit. The monitoring trustee checks the individual business segments for deviations of more than 10% from the RWA restriction in the restructuring plan.

4 [**Restriction of business activities**] In its core areas mentioned below NORD/LB commits, with regard to new business, to implement a business policy that is tailored to the region and its target customers according to the following principles:

4.1 In the **private and corporate customers** business segment NORD/LB will generate new business only in Germany until the end of 2014. NORD/LB Luxembourg, the private banking competence centre for the entire group, will concentrate on acquiring new customers in the German-speaking region (at least 80% from Germany, Austria, Switzerland and Luxembourg).

4.2 In the **corporate banking segment** NORD/LB commits until the end of 2014 to restrict new business to the following activities linked to the criteria mentioned below:

(i) the customer or its parent company or a significant subsidiary has/have its/their registered office in Germany, or

(ii) the financing operation is connected with import/export transactions involving export credit agencies (e.g. Hermes), or the customer to be financed is the

1 According to CRD IV

offtaker (i.e. purchaser/supplier with stable commercial relations) of a customer with connections to Germany as stated under (i).

4.3 In the **real estate customer segment**, the following restrictions apply to new business:

(i) the real estate to be financed is situated in Germany or in the key European markets of France, Great Britain, Belgium, Luxembourg, the Netherlands or Poland; or

(ii) the customer, its parent company or a subsidiary that is of significance to the transaction has/have its/their registered office in Germany, or in one of the above-mentioned key European markets.

Financing operations with links to Germany are to account for at least 60% of new business in the case of commercial real estate in the group. European financing operations outside the above-mentioned key markets will take place only with a financing volume of no more than EUR [230-270] million per year.

For the rest, NORD/LB commits to allow existing real estate financing operations in the USA and Spain to run off, and not to generate any new business. NORD/LB (including the Deutsche Hypothekenbank) will cease its presence in the Asian market. The corresponding residual portfolios will gradually run off.

The business volume in the NORD/LB group's commercial real estate business in Great Britain will be restricted to the currently existing business volume of [~ EUR 2] billion.

In addition, NORD/LB commits to restrict its segment assets (lending operations without commitments) to EUR [16-21] billion in total.

4.4 In the **energy and infrastructure customers segment** NORD/LB commits to the following until the end of 2014:

4.4.1 In the **energy** sub-segment at least 75% of NORD/LB's new business will be in projects or transactions that have a regional link to Germany or Scandinavia (Denmark, Sweden, Norway, Finland). Such a link exists if

(i) the customer or its parent company or a significant subsidiary has/have its/their registered office in Germany or Scandinavia, or

(ii) the project to be financed is located in Germany or Scandinavia, or

(iii) the installations to be financed are constructed by a group that constructs a significant part of its installations in Germany or Scandinavia.

4.4.2 In the **infrastructure** sub-segment at least 75% of NORD/LB's new business will be in projects located in Europe.

4.4.3 At least 75% of new business connected with **import/export transactions** will involve a German or European export credit agencies (e.g. Hermes), or the customer to be financed will be the offtaker (i.e. purchaser/supplier with stable commercial relations) of a customer with connections to Germany.

4.4.4 In the energy and infrastructure customers segment, the risk-weighted assets (RWA), as indicated by supervisory reporting, attributable to this business segment will be restricted to [~ EUR 8.6] billion by the end of 2014, and [~ EUR 9] billion by the end of 2016.

4.5 New business is considered to be all business that is generated after the coming into effect of the approval of the restructuring plan. Agreements under which obligations already undertaken or loans already granted are extended, or their conditions are renegotiated, are not considered to be new business. Additions to obligations already undertaken or increases in loans already granted are not considered to be new business provided that they are necessary from a commercial point of view in each case (for example, obtaining a much better security through minor credit growth or expedient asset enhancing investments in the real estate segment).

4.6 Assets in the **shipping and aviation customers segment** will be reduced to EUR [< 25] billion by the end of 2016.

4.7 Assets in the **financial markets** segment will be reduced to EUR [< 130] billion by the end of 2014, and EUR [< 120] billion by the end of 2016.

5 [Disposal of participations]

5.1 NORD/LB will divest the following participations if not already (partially) divested, at the very latest within the deadlines set out below at the best possible price and with a view to preserving the company's assets. Thereby the main value-determining elements of the holdings' present volume of business will be preserved until they are offered for sale.

(a) Sale of participation in DekaBank Deutsche Girozentrale in 2011 (approx. 10 %, of which 7.4 % NORD/LB and 2.9 % BLB);

(b) […];

(c) […];

(d) Sale of the following participations by the end of 2013: stakes in BHS Berlin-Hannoversche Software GmbH, VISA Inc, Bürohaus Petuelring GmbH & Co Vermietungs-KG, Combined operations Inc, CeWe Color Holding AG, Invest in Mecklenburg-Vorpommern GmbH, Martis Beteiligungs GmbH & Co KG and NORD/LB Financial Services LLC.

5.2 NORD/LB may postpone a sale of the participations referred to in point 5.1 for not more than 12 months if it can demonstrate that the price that would be obtained by the transaction is lower than the book value of the participations in NORD/LB's individual accounts drawn up in accordance with the German Commercial Code (Handelsgesetzbuch; "HGB"), or would result in losses in the group accounts in accordance with International Financial Reporting Standards.

If NORD/LB has not concluded a sales agreement by the end of the divestiture period, it will grant the divestiture trustee an exclusive mandate to sell the divestment business within the trustee divestiture period. Should the divestiture trustee not succeed in securing the best possible price for NORD/LB within its divestiture period, then NORD/LB will be entitled to propose alternative divestiture measures to the Commission. The price negotiated by the divestiture trustee will not be deemed the best possible if it is below [80-85]% of the minimum value threshold described in the first sentence.

6 **[Closure of representative offices]** NORD/LB will close the following representative offices as soon as possible, but no later than 31 December 2013:

(a) Beijing (Representative office of NORD/LB AöR)

(b) Madrid (Representative office of Deutsche Hypo)

(c) Mumbai (Representative office of NORD/LB AöR)

7 **[Financial Markets/Proprietary Trading]** In addition to the commitment in point 3, NORD/LB commits to cease all opportunistic proprietary trading. This means that NORD/LB will carry on only those trading transactions that are indicated in its trading book (“transactions”) that are effected either

(a) for accepting, transferring and executing the sales and purchase orders of its customers (i.e. trading with financial instruments as a service without creating a position on its own account), or

(b) for hedging customer business, for market management of customer products and in support of interest-rate, liquidity and cover management, or

(c) in the context of risk-weighted assets (RWA) management.

Under no circumstances will NORD/LB carry out transactions that serve purely to make a profit apart from the purposes mentioned in (a), (b) or (c).

The total risk of the transactions identified in (a), (b) and (c) is to be limited to a value at risk of EUR [40-45] million the value at risk will be calculated on the basis of a one-day holding period and a confidence level of 99 %. Information about the risk evolution of individual portfolios will be consolidated centrally within the group, in order to enable the monitoring trustee to review and monitor it.

8 **[Ban on acquisitions]** NORD/LB commits to refrain from purchasing shares in other companies. This concerns both the acquisition of companies as well as shares in companies. This commitment is valid for three years from the date of the Commission decision. This period will be automatically extended (although not beyond the restructuring phase) should the divestments in point 5 not be completed by then. Acquisitions with a purchase price up to EUR 20 million are exempt from the ban, as long as their cumulative value does not exceed EUR 50 million during the restructuring phase. Also exempt are acquisitions that are part of usual banking business, in particular (a) emergency acquisitions in the case of non-performing loans and (b) acquisition of LBS or LHI shares in the event that their joint owners divest their shares and thereby threaten to impair the value of NORD/LB's assets.

9 **[Hybrids]** NORD/LB will not service hybrid capital instruments unless it is under a legal obligation to do so and does not need to release reserves and special items in accordance with Section 340(f) and (g) of the German Commercial Code. In this context hybrid capital instruments include all subordinate capital instruments that are serviced contractually or according to their terms of issue only if for the given period there are sufficient earnings before taxes or consolidated profit in accordance with the German Commercial Code.

10 **[Payment of dividends/Retention]** NORD/LB agrees not to pay dividends for the financial years 2012 and 2013. The retention of dividends also applies to BLB.

11 **[Ban on advertising]** NORD/LB will not use the granting of the aid measures or any advantages over competitors arising therefrom for advertising purposes.

12 **[Sustainable commercial policy]** NORD/LB’s commercial policy will stay prudent, sound and oriented towards sustainability. In its lending and investment activities it will take into account the credit requirements of business, especially small and medium-sized enterprises, by offering generally accepted market terms which are appropriate for regulatory and banking purposes.

13 **[Cost reductions]** The company's administrative expenses (‘operative Betriebskosten’) (excluding “special items” (‘Sondereffekte’),) will be reduced to [< EUR 1 100] million by the end of 2016.

14 [**Remuneration**] NORD/LB AöR commits to limit the total remuneration of its board members to an appropriate level for the duration of the dividend ban according to point 10. In principle, annual remunerations ('monetäre Vergütung') in excess of EUR 500 000 per board member are deemed inappropriate. This limitation applies in principle also to NORD/LB Group.

15 **[Commitments to the guarantee programme]** With regard to the guarantee programme, NORD/LB makes the following commitments:

- NORD/LB commits to pay guarantee fee compensation of 6.27 % for the guaranteed mezzanine tranche of EUR 700 million. This is equivalent to guarantee compensation of 10.75 % for the capital relief effect, which initially amounts to EUR 400 million.
- NORD/LB commits to pay the above guarantee fee from the start of the guarantee contract's duration, that is, from the beginning of the availability period.
- The availability period will end no later than on 31 December 2014.
- Should the guarantee be activated ("gezogen") NORD/LB undertakes to limit its balance sheet total in 2016 by a further [< EUR 5] billion to [EUR 190-195] billion.
- If the guarantee is activated the dividend ban under point 10 will be extended by further two years, to the 2015 financial year.

The assurances have been drafted on the basis of the following assumptions:

1 During the planning period, the inflation rate and the salary increase average 2 % per annum.

2 The EUR/USD exchange rate is 1.25. The effects of exchange rate fluctuations on the risk-weighted assets (RWA) as per supervisory notice and on the balance sheet total (positive as well as negative) will therefore not be taken into account. NORD/LB intends to present these effects to the monitoring trustee (or the Commission) separately.

3 Significant changes in the regulatory rules on the determination of the risk-weighted assets (RWA) as per supervisory notice, at least in areas where commitments are made based on risk weighted assets, will not be taken into account. This also applies to changes brought about by the implementation of a new calculation method (e.g. IRBA). NORD/LB intends to present these effects to the monitoring trustee (or the Commission) separately.

4 The gradual reduction of risk weighted assets shall be carried out with a view to preserving the company's assets.

duly authorised for and on behalf of

Federal Republic of Germany