



EUROPEAN COMMISSION

Brussels, 16.2.2009
C(2009) 1117 final

Subject: State aid N61/2009 – Change of ownership of Anglo-Irish Bank

Sir,

I. PROCEDURE

- (1) On 4 February 2008, the Irish Government formally notified to the Commission for reasons of legal certainty the change of ownership (the 'measure') of Anglo Irish Bank Corporation plc (hereinafter “Anglo Irish Bank” or the “Bank”) pursuant to the Anglo Irish Bank Corporation Act 2009 (“the Act”) which was signed into law on 21st January, 2009.

II DESCRIPTION OF THE MEASURE

1. Description of the Bank and the background to the measure

The Bank

- (2) Anglo Irish Bank has a balance sheet size in excess of €100 billion (approximately 50% of GDP) and accounts for a significant share of customer deposits and lending in the Irish economy. It is a focused business bank with a private banking arm. The Bank provides business banking, treasury and wealth management services. It is not a universal bank and its stated approach is niche rather than broad market. In terms of its business model, Anglo Irish Bank can be categorised as a “monoline” bank specialising in commercial and real estate lending. The Bank’s main strategy is to lend on a senior first secured basis to clients against investments and development property assets in each of its three core markets: Ireland, the UK and the US. Each of its customers deals directly with a dedicated relationship manager and a product specialist. Lending comprises approximately 70% of the Bank’s total assets of approximately €100 billion. These lending assets are split geographically as follows: 58% in Ireland, 29% in the UK and 13% in the US. Of the €42.8 billion on the Irish loan book, €18.6 billion (44%) is for investment, €10.2 billion (26%) for commercial and residential development and 11.2 billion (26%) for business banking.

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- (3) The Bank has locations in Ireland, the UK, the United States, Jersey and the Isle of Man. Prior to suspension from listing on 16th January 2009, Anglo Irish Bank's shares were quoted on the Dublin and London stock exchanges. The Irish Financial Regulator is the lead regulator.¹
- (4) Anglo Irish Bank's funding model is heavily reliant on wholesale lending, the availability of which has diminished very substantially on account of the dislocation of international credit markets. The Bank has approximately [...] of term debt maturing in 2009. Anglo Irish Bank's loan book is approximately €72 billion and it is heavily exposed to commercial investment property (c. €40 billion) and, more crucially, to the development sector (c. €20 billion).
- (5) The total number of customers with loans in Anglo Irish Bank is approximately [...], of whom the Irish customers who owe money to the Bank are approximately [...]. The total number of retail depositors in Anglo Irish Bank is approximately 300,000, of whom 72,000 are Irish customers. The total number of corporate deposits held in Anglo Irish Bank is approximately 12,000, of whom approximately 3,500 are Irish customers. The Bank lends to a wide range of customers, providing funds for investment and employment in such areas as retail, office, leisure, health care, tourism and other services. The Bank is also a significant lender to construction and development which is a very important part of its balance sheet.
- (6) According to its preliminary results for the year ended 30th September, 2008, the Bank had a balance sheet total of €101,321 million. Anglo Irish Bank results were a profit before tax of €784 million for 2008 (after making collective and specific impairment provisions, totalling €724 million). Treasury losses account for a further €155 million impairment provision. Anglo Irish Bank reported actual impaired loans of €957 million (131 basis points of its loan book) for 2008. The market viewed these provisions as too conservative and the market consensus estimate was an average of 200 basis points of the Bank's loan book (€1.4 billion per annum). Profits before impairments in 2009 were projected by Anglo Irish Bank at approximately €1.6 billion.
- (7) [...] the key risk faced by Anglo Irish Bank was a liquidity risk, which the Financial Regulator was closely monitoring on a daily basis. Since the end of November 2008, Anglo Irish Bank had experienced outflows both in terms of corporate and retail deposits. Accordingly, the Bank had to increase its level of borrowing from the interbank market [...] to manage this funding gap².
- (8) According to the Financial Regulator, Anglo Irish Bank is in compliance with regulatory capital requirements. Its current Tier 1 capital amounts to c. €7.2 billion, which is more than 8% of risk-weighted assets, and its Core Tier 1 capital ratio stands at 5.9% but it is lower than many European peers. According to the Financial Regulator, Anglo Irish Bank had a strong requirement for additional

¹ Further details on Anglo Irish Bank can be found at www.angloirishbank.com.

^{*} Confidential information also indicated below by [...]

² In addition to the €1.5 billion Government injection, other measures being put in place to enhance the liquidity position of the bank going forward include the approval of an asset covered securities bank, which will increase its access to ECB borrowings, and additional undrawn committed facilities from two credit institutions.

Core Tier 1 capital in order to reassure the market regarding its capacity to fully provide for anticipated losses on its loan book. Market feedback was that there would be little if any private investment in an ordinary share rights issue or preference share issue by Anglo Irish Bank.

- (9) Anglo 5 Yr Senior debt CDS data were higher than the average for the sector and than any of its peers in Ireland separately for the 7th January 2009, 18th December 2008 (directly before the announcement of the €1.5 billion recapitalisation measure by the Irish government), the average between January 2007 and August 2008 (comprising the pre-crisis period) and average between January 2008 and August 2008, as illustrated in the table below³:

<u>5 Year Senior CDS (bps)</u>					
	<u>Anglo</u>	<u>AIB</u>	<u>BoI</u>	<u>IL&P</u>	<u>Average</u>
07-Jan-09	394	205	266	264	282
18-Dec-08	396	205	231	254	272
Average 2-Jan-08 to 31-Aug-08	248	119	136	171	169
Average 2-Jan-07 to 31-Aug-08	127	64	70	89	88

- (10) As to its rating, Anglo was rated A1 by Moody's and has been on negative watch since 17 October, while S&P's A- rating was put on negative watch on 5 November 2008.

The recapitalisation measure

- (11) On 21st December, 2008, the Irish Government decided to make a capital injection of €1.5 billion (the "State investment") into Anglo Irish Bank under the Government's Bank Recapitalisation Programme. This decision was taken in the light of the impact of the current global financial crisis on Anglo Irish Bank and recent disclosures regarding serious lapses in its corporate governance practices, which together had undermined the market's perception of the soundness of the Bank. Owing to the size and activities of the Bank in the Irish economy and its specialised lending in the commercial property and property development areas, this was regarded by the Irish authorities as creating a significant risk of systemic disturbance to the Irish banking system.
- (12) Following preliminary consultations with the Commission, this State investment was formally notified on 8th January, 2009. The Commission approved the recapitalization on 14th January, 2009 considering that the measure constituted compatible state aid pursuant to Article 87(3)(b) EC Treaty⁴. This recapitalisation did not, however, take place.

³ Annex 7 of the Notification, Source Merrill Lynch Estimates.

⁴ Commission Decision N9/2009- Recapitalisation of the Anglo-Irish Bank by the Irish State of 14 January 2009, not yet published.

2. The Government's decision to intervene

- (13) Since the decision to make the State investment on 21st December 2008, the Bank's funding position had continued to weaken and it became clear that, in the current highly sensitive market conditions, the reputational damage caused by disclosures regarding corporate governance at the Bank (e.g. the disclosure of the unacceptable practices which took place at Anglo Irish Bank in relation to loans to its former chairman) had led to increased stress and pressure on its liquidity position.
- (14) Following the successive resignations of its chairman and chief executive on 18th and 19th December, 2008, there was an erosion of market confidence in the Bank, which saw a [...] outflow of corporate deposits from it over the four-week period from 19th December, 2008 to 15th January, 2009. The Government decided to nationalise the Bank on that same day.
- (15) Anglo Irish Bank anticipated that the Fitch ratings downgrade of the Bank's long-term credit rating to A- on 15th January, 2009, and the then-expected S&P downgrade in the following weeks to BBB+ or BBB, would see significant further corporate outflows, in the region of [...].
- (16) In the short-term, the impact of the ratings downgrades would have been likely to cause liquidity difficulties for the Bank. In addition, the Bank's longer-term funding prospects in the event of a ratings downgrade to below A-level would have been critically affected.
- (17) In these circumstances, the Irish Government considered that the previously contemplated recapitalization of the Bank was no longer an appropriate and effective means to secure the Bank's stability and long-term commercial viability as a systemically important credit institution in the Irish financial system. The Irish Government also considered that letting the bank fail would lead to very serious disruption of the Irish financial system.
- (18) Accordingly, the Government, in consultation with the Governor of the Central Bank of Ireland and the Irish Financial Regulator, following consultations with the Board of the Bank, decided that, although the Bank remains solvent, it was necessary for the State to take it into public ownership and announced the measure on 15th January 2009.

3. The Measure

- (19) Anglo Irish Bank was taken into public ownership pursuant to the Anglo Irish Bank Corporation Act 2009 which was signed into law and commenced on 21 January 2009. The nationalisation of the bank under the terms of the Act took effect as from that date.
- (20) It is contemplated that the bank will only remain in public ownership for as long as this is required to safeguard its financial stability. In the light of the current volatility of financial markets, it is not possible to indicate at this stage how long this may be.

- (21) The principal features of the Act may be summarized as follows:
- To provide for the transfer to the Minister or the Minister's nominee of all the shares in Anglo Irish Bank;
 - To extinguish options over shares in Anglo Irish Bank or rights to subscribe for shares in the Bank;
 - To disapply certain provisions of the Companies Acts and other enactments in so far as they relate to the Anglo Irish Bank to the extent that they are no longer relevant to a company that is owned by the State and with regard to national notification requirements for regulatory purposes;
 - To provide for the removal of persons from certain offices, positions or employment with Anglo Irish Bank and the appointment of persons to those offices or positions or that employment;
 - To provide for the appointment of an Assessor to assess whether compensation should be paid to persons whose shares were transferred to the Minister or whose rights were extinguished and if so to determine the fair and reasonable amount payable as such compensation;
 - To provide for the payment of any such compensation.
- (22) Anglo Irish Bank still holds a banking licence and is regulated by the Financial Regulator who has confirmed that the Bank remains solvent. It remains subject to ongoing regulatory requirements, including liquidity and regulatory capital requirements.
- (23) The Bank's subsidiaries are also nationalised as they will become indirectly 100% owned by the Minister for Finance.
- (24) With effect from 21 January 2009, all shares have been automatically transferred to the ownership of the Minister of Finance⁵. The Bank's shares have been delisted from the Irish Stock Exchange and the London Stock Exchange so they cannot now be bought or sold. According to section 8 of the Act, the Minister may transfer some or all of his shares in the bank to a nominee at any time on such terms as the Minister specifies.

Criteria for determining the amount of compensation to be paid

- (25) An Assessor will be appointed by the Minister for Finance to assess whether compensation should be paid to those persons whose shares will be transferred to the Minister for Finance and, if so, to determine the fair and reasonable amount payable as such compensation. If the Assessor determines that compensation should be payable, a scheme will be established⁶ to effect any compensation payments.
- (26) For the purposes of the payment of fair and reasonable compensation, the Assessor shall determine⁷ the fair and reasonable aggregate value of the

⁵ Pursuant to section 5 of the Act.

⁶ Referred to as the 'Anglo Irish Bank Compensation Scheme'.

⁷ Pursuant to section 25 of the Act.

transferred shares of each class and the extinguished rights as at 15 January 2009 by taking into account a wide range of criteria/factors.

- (27) The determination required shall be made on the basis of the information and evidence available to the Assessor at the time he carries out their function. The Assessor may come to the conclusion that the amount of fair and reasonable compensation to be paid in relation to the transferred shares or the extinguished rights is nil⁸.

Existing guarantees

- (28) Furthermore, the Irish Government has reaffirmed its commitment to those guarantees that were already in place before the announcement of the change of ownership in Anglo-Irish⁹. The Irish authorities have confirmed that this commitment concerns, in specific terms, the guarantees put in place under the "Guarantee Scheme", which was adopted under the Credit Institutions (Financial Support) Act, 2008 and approved by the Commission on 13th October, 2008 under EU State aid rules.
- (29) Under the terms of the Commission Decision which approved the Guarantee Scheme, Ireland will prepare a report on the operation of the Guarantee Scheme and provide the report to the Commission by the end of March, 2009. In this context, and in the light of any further developments that might occur in the interim in relation to Anglo Irish Bank, the Irish Authorities will consider with the Commission at that stage whether it would be necessary to prepare a restructuring plan in relation to Anglo Irish Bank.

Possible future measures

- (30) At this stage, the Irish Government does not believe that further support measures are necessary for Anglo Irish Bank. Nevertheless, if any such measures would become necessary in the future, the Irish Government commits to consult with the Commission in relation to whether such possible future measures would contain elements of State aid and, if necessary, to notify such measures pursuant to Article 88 EC before putting them into effect.

III. POSITION OF IRELAND

- (31) The Irish Government notes that the current global financial crisis has led to a sudden and dramatic increase in the market's perception of the risks contained in banks' balance sheets. Consequently, international capital market expectations in relation to capital levels for financial institutions have risen significantly. In particular, markets and rating agencies have increasingly focused on the adequacy of Tier 1 capital and Core Tier 1 capital.

⁸ Section 25 par. 6

⁹ See "Anglo Irish Bank Corporation plc – Nationalisation FAQs" annexed to the Minister's Statement of 15 January 2009, in particular question 13 (<http://www.finance.gov.ie/documents/publications/other/2009/anglofaqrev09.pdf>); Statement "Notification of the Anglo Irish Bank Corporation Act 2009 to the European Commission", <http://www.finance.gov.ie/viewdoc.asp?DocID=5653>

- (32) The Irish authorities state that, under the current circumstances, the nationalisation of Anglo Irish Bank was required as a matter of absolute urgency in order to preserve financial stability, to safeguard the Irish financial system and to remedy a serious disturbance in the Irish economy caused by the impact of the ongoing global financial crisis and recent corporate governance developments on the financial position of the Bank.
- (33) In the view of the Irish Government, this change of ownership is consistent with EU State aid law. The Irish authorities have nevertheless notified the change of ownership of Anglo Irish Bank to the Commission for the purposes of legal certainty.
- (34) According to Ireland, the change of ownership itself does not involve the transfer of State resources to Anglo Irish Bank, its shareholders or to any other third party. Ireland submits that on nationalisation of the Bank, no State resources would be used or expended. In addition, the national debt would remain unchanged by the Bank's nationalisation.

IV. ASSESSMENT

1. Existence of State Aid

- (35) According to Article 87(1) EC, 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, in so far as it affects trade between Member States.
- (36) As noted above, the Irish authorities consider that the terms on which Anglo Irish Bank was nationalised do not provide aid. In general, the Commission considers that the purchase of existing shares and the takeover of assets, when these are not accompanied by a capital injection, assumption of liabilities or some other State measure, do not favour the financial institution inasmuch as they amount to a mere change of ownership¹⁰. In line with the Treaty (Art. 295 EC), the Commission considers that the act of nationalisation as such involves no aid. Therefore, the Commission agrees with Ireland that a mere change of ownership of Anglo Irish Bank does not in itself entail State aid.
- (37) Moreover, the Commission takes note of the view of the Irish authorities that taking the bank into State ownership should have no immediate impact on either the general Government debt or the current public deficit and that nationalising the bank does not add to the risk profile of the State, as credit rating agencies have already priced in the risk associated with the contingent liabilities that the State has already assumed under the terms of the Guarantee scheme which remain unchanged. The Commission acknowledges that nationalisation as such does not entail a transfer of State resources to the bank nor does it represent a burden for the national budget towards the bank over and above the already existing State exposure under the guarantee scheme.

¹⁰ See Case T-442/03, *SIC v. Commission*, ECJ 26 June 2008, and the Commission Decision of 2 April 2008 in Case C 14/2008 *Northern Rock* (OJ C 135, 03.06.2008, p. 21).

- (38) As regards potential aid to shareholders or third parties, the Commission considers that no aid arises if the State provides a compensation that corresponds to the market price of the expropriated shares¹¹. This is the case when the State pays the former shareholders no more for their shares than they would have been worth, had there been no State intervention (and no speculation about such intervention).
- (39) In the case at hand, compensation, if any, will be granted on the basis of principles and through a process likely to ensure that any compensation paid is fair and reasonable. The Commission considers it likely that the potential compensation, if any, would not in itself contain any State aid, but the Commission can only form a final view on the compensation, once determined, in the light of the Assessor's report which the Irish authorities committed to provide to it, in due time.
- (40) Furthermore, no further aid is being granted to Anglo Irish beyond the guarantees already in place under the Irish guarantee scheme, approved by the European Commission on 13 October 2008 under number NN 48/2008. The Commission takes note of the fact that the Irish government has committed to notify any possible State aid measures that it may wish to grant in future¹².
- (41) The Commission recalls that under the terms of the Commission Decision which approved the Guarantee Scheme, Ireland will submit to the Commission a report on the operation of the Guarantee Scheme by the end of March, 2009. In this context, and taking into account all developments in relation to Anglo Irish Bank, in particular the circumstances that led the Irish government to nationalise it, the Commission will examine the situation and risk profile of Anglo Irish Bank to determine the necessity to prepare a restructuring plan in relation to it.

2. Conclusion

- (42) Therefore, the Commission concludes that the change of ownership of Anglo Irish Bank does not provide State aid in the meaning of Article 87 (1) EC Treaty.

V. DECISION

- (43) The Commission comes to the conclusion that the change of ownership of Anglo Irish Bank in the conditions described above does not constitute State aid in the meaning of Article 87(1) EC Treaty. The Commission raises no objection against the notified measure.
- (44) The Commission takes note of Ireland's commitment to notify any further support measures that may become necessary for Anglo Irish Bank in the future.

¹¹ Holding shares as such does not involve an economic activity and does not come under State aid rules, see Case C-222/04, Ministero dell' Economia e delle Finanze V. Cassa di Risparmio di Firenze SpA, §111-113, ECR 2006 p. I-289. However, State aid control applies to the extent that some of the shareholders could be undertakings performing an economic activity.

¹² This is in line with §229 of the Commission decision of 2 August 2004 in Case C 13a/2003, France Telecom (OJ C 57, 12.03.03, p.5).

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Yours faithfully,
For the Commission

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