RESPONSE BY GMAC-RFC LIMITED TO
THE COMMISSION OF THE EUROPEAN COMMUNITIES' GREEN PAPER:
MORTGAGE CREDIT IN THE EU

INTRODUCTION

GMAC-RFC Limited ("GMAC-RFC") is a subsidiary of Residential Capital Corporation ("ResCap"), which is itself a subsidiary of GMAC Financial Services, one of the largest financial services companies in the world. ResCap is one of the world's leading mortgage lenders. GMAC-RFC launched in the UK in 1998.

GMAC-RFC initially entered the UK mortgage market in the non-conforming sector, but has since established itself equally successfully in the prime mortgage market. A creator and trader of financial assets, GMAC-RFC is active in both the securitisation market and in the whole loan sale market, and is currently the UK's joint 10th largest lender measured by gross advances[1].

We welcome the opportunity to comment on this Green Paper, which we do from the perspective of a UK lender. It is worth noting, however, that in addition to its presence in the UK market, ResCap, through its International Business Group ("IBG"), also has a presence in continental Europe, having established lending operations in the Netherlands, Germany and, most recently, Spain. We will therefore also comment briefly on the experiences encountered in establishing operations in these markets.

Our response follows the structure of the Green Paper in addressing the issues raised. We will also comment briefly on the findings of the London Economics study into the costs and benefits of integration in the mortgage market.

Before responding to specific points, however, we would point out that we believe the Commission should focus on removing barriers to cross-border entry into mortgage markets, and to integration in the mortgage funding markets, rather than focusing on the detail of consumer protection issues. It is our view that such measures could encourage greater lender participation in foreign markets, thereby creating opportunities for consumers as a greater range of products is brought to market. Consumer protection measures, however, are unlikely to encourage cross-border shopping around and in some markets, such as the UK, could lead to customer detriment, as innovation is stifled and costs increase.

CONSUMER PROTECTION

Information

It is our view that the Code of Conduct should remain voluntary. We would not wish to see further changes to the disclosure regime already in place in the UK as a result of Financial Services Authority ("FSA") regulation of the mortgage industry. This regime was subject to considerable consultation, and was deemed to provide sufficient information to enable consumers to make informed decisions. In addition, compliance with this regime in the UK has involved lenders in substantial cost, and we do not believe it is proportionate, or indeed will benefit consumers, to subject the industry to further costs.

With regards the question as to whether an information provision regime should apply only to lenders, or to intermediaries also, the Commission should look to the FSA model, that is, it should apply equally to intermediaries and lenders. To apply the regime only to lenders would be inequitable, as not all lenders deal directly with consumers during the sales phase of the transaction, and are thus not in a position to provide pre-contractual information at a sufficiently early stage in the process. Furthermore, to require such lenders to be responsible for the provision of such information would impact upon their business model and involve them in greater cost, which would inevitably be transferred to the consumer.

[1] Source: Council of Mortgage Lenders, Largest Mortgage Lenders 2004

Advice Provision and Credit Intermediation

We do not believe there is a case for making the provision of advice compulsory. Whilst we agree that the purchase of a mortgage is a complex financial transaction, there are numerous consumers who are sufficiently financially aware to make their own arrangements without requiring advice. Enforcing compulsory advice would limit their freedom of choice and potentially involve them in additional cost.

With regards the application of conditions to the provision of advice, whilst re-iterating our view that these measures are unlikely to aid market integration, we would suggest that, if these are to be applied, the Commission should again look to the FSA model, which was the subject of extensive consultation.

Early Repayment

It is our view that a consumer should have the right to repay a loan before the end of the term, but, equally importantly, that the lender should also have the right to compensation by way of an early repayment charge.

We are of the opinion that there is no justification for Commission intervention in respect of the level of charges applied. Early repayment charges form part of product pricing, and intervention in this area could restrict product choice, resulting in detriment rather than benefit to the consumer. Provided the level of charges is proportionate, can be justified, and does not constitute an unfair contract term, such charges should remain a commercial decision to be taken by the lender. In a competitive market, market forces are likely to determine what is acceptable, without any regulatory intervention. We do not, therefore, see any need for a cap on early repayment charges.

With regards informing the consumer about early repayment, we would expect that this would be included in any pre-sale disclosure, as is currently the case in the UK.

Annual Percentage Rate

The Green Paper poses the question: what is the purpose of an APR? Information? Comparison? Both?

We would suggest that, if the APR has any practical application, it is in the realm of aiding comparison. It follows, therefore, that, for it to be meaningful, the elements to be included and the means of calculation should be consistent. Having said this, however, we would not wish to see any changes in the short to medium term which would involve UK lenders in additional costs.

In connection with the separate disclosure of other costs not included in the APR, and the presentation of the effects of the APR in concrete terms, whilst we agree that a consumer should know the extent of his commitment, we would suggest that too much information, i.e. information overload, is as detrimental to the consumer as too little information. The Commission should be wary of creating any disclosure regime which actually mitigates against the consumer focusing on the more important aspects of the transaction.

Usury Rules and Interest Rate Variations

It is our opinion that usury rules and caps on interest rate variations are a hindrance to market integration. Their existence could impede product innovation and restrict availability, e.g. in the credit impaired market, truly individual risk-based pricing could be threatened, resulting in less choice for the consumer. In the interests of market integration, therefore, we would suggest that the Commission should seek to remove such restrictive practices where they currently exist.

Credit Contract

We are not convinced regarding the feasibility of a '26th regime' sitting alongside national rules and available as an option to the parties to the contract. Given the complexity of and differences between national legal systems, we do not consider standardisation to be a viable option. Furthermore, offering the choice of national law or a 26th regime is likely to result in confusion.

Enforcement and Redress

We note the Commission's comments regarding both traditional judicial redress mechanisms and alternative redress mechanisms. We agree that in principle alternative redress mechanisms should be available to consumers, as is the case in the UK, but we are of the view that it is for individual Member States to determine their own requirements rather than for the Commission to impose.

LEGAL ISSUES

Applicable Law

It is our opinion that the law applicable to the country in which the consumer resides is the most appropriate for mortgage credit contracts. The Commission's own research has indicated that a very small minority of consumers is likely to buy a mortgage cross-border, although they are more likely to purchase from a foreign-based lender with a presence in their country. It follows, therefore, that consumers would also be more comfortable entering into a contract on familiar terms.

Client Credit Worthiness

We agree that a pre-requisite for successful cross-border trade, whether by consumers purchasing from a foreign provider or by lenders establishing operations in countries other than their home state, is the provision of adequate and comparable credit information. Action to ensure cross-border access to databases on a non-discriminatory basis could prove beneficial, with the proviso that we would not wish to see any lowering of the standards of credit data from those currently available in the UK.

Property Valuation

We see merit in both options, that is, a single EU standard for both valuation processes and valuers, and mutual recognition of national valuation standards. In either case, however, the Commission should ensure that the standard is sufficiently high.

Forced Sale Procedures

Given the diverse procedures in place across Member States, we support the gradual approach to encourage improvements put forward by the Commission.

Tax

In general, we support the view that taxation is a matter of national concern rather than the purview of the Commission. Having said this, however, action to enable cross-border sales of mortgage portfolios would be welcomed, as, at the present time, the ability to sell such portfolios is restricted, by the imposition of withholding tax, to UK taxpayers. We would also support an initiative which provided for equal treatment of foreign and domestic lenders.

MORTGAGE COLLATERAL

Land Registers

We agree that effective land registration is fundamental to cross-border mortgage credit activity. Standardisation of registers is to be encouraged as an aid to such activity, and it is suggested that the EULIS Programme should be broadened to encompass all Member States.

With regards future funding of such a programme, this should be the subject of further consultation..

Euromortgage

Given the diversity of the mortgage credit market across the EU, we doubt that a Euromortgage is a viable option. We would suggest that a considerable amount of further research and analysis is required in this area.

FUNDING OF MORTGAGE CREDIT

We are of the opinion that action in this area would do more to create opportunities for cross-border lending than any action in the area of consumer protection.

With regards the issue of Mortgage Backed Securities, we would welcome any initiative which enabled the pooling of securities originated in different jurisdictions into one bond, together with the legal framework to facilitate cross-border activity. Any further action by the Commission in this area is, however, believed to be unnecessary. The players in the securitisation/covered bond markets are highly sophisticated and experienced in these fields. Provided the framework is in place, the market itself will drive forward with innovation and efficiencies, and we do not believe that the Commission could add value in this respect.

Commission action to enable cross-border whole loan portfolio trading, however, could be of benefit.

In connection with the question as to whether mortgage lending should necessarily be an activity which is restricted to credit institutions, we are of the opinion that this is a restrictive practice which should be discontinued. The entry of central lenders into the UK mortgage market resulted in considerable consumer benefit. Innovative products were brought to market, leading to increased choice. Likewise, increased competition led to lower-priced mortgage products. Creating a level playing field for the entry of non-credit institutions should therefore be a primary focus for the Commission.

LONDON ECONOMICS COST BENEFIT REPORT

We believe it appropriate, in this response to the Green Paper, to comment briefly on the associated report from London Economics.

We welcome the Commission's move towards a cost-benefit review, and note the report's conclusions, but believe that extensive further research is required to support the findings, both in respect of perceived benefits and the probable costs. In particular, we would question the estimate of costs to the industry, based on an extrapolation of the FSA's estimate of costs to the UK market in implementing statutory mortgage regulation. This figure was grossly understated, and it follows, therefore, that any extrapolation is likely to be flawed.

THE EUROPEAN EXPERIENCE

As noted in the introduction, ResCap's International Business Group has established operations in the Netherlands, Germany and Spain. Whilst relatively easy to establish the Netherlands operation, issues were encountered in both Germany and Spain which might have been avoided had there been a level playing field for entry to these markets. National differences also restrict the ability to bring liquidity to the market through secondary trading.

In Germany, whilst not being a deposit taker, the operation was forced to establish itself as a bank in order to undertake mortgage lending. This involved a considerable lead-in time from the IBG determining that the market was viable until the time that the operation could commence. Likewise, Germany's data protection laws constitute a hindrance to secondary trading.

In Spain, whilst lending is not a reserved activity, in practice a lending operation needs to be licensed as a credit institution in order to be able to trade in the secondary market Again, this leads to considerable delays in setting up a new operation, and can constitute a barrier to secondary trading, which restricts liquidity in the market.

These brief examples illustrate areas in which Commission intervention could aid in facilitating lender entry to new markets, thus creating choice for consumers.

CONCLUSION

In conclusion, we would reiterate our belief that any action on the part of the Commission should be focused on removing barriers to cross-border entry to mortgage markets, and to integration in the mortgage funding market. Notwithstanding this, however, we also believe that substantial work remains to be undertaken, in order to determine if such action is appropriate.

GMAC-RFC Limited
November 2005