EUROPEAN COMMISSION

Brussels, 25.1.2010
C(2010)350 final

Subject: State aid N 194/2009 –United Kingdom
Liquidation aid to Bradford and Bingley plc

Sir,

1 PROCEDURE

(1) By decision of 1 October 2008[1] (hereinafter "the rescue decision") the Commission approved a package of measures in favour of Bradford and Bingley plc (hereinafter "B&B") as rescue aid on the basis of Article 107(3)(b) TFEU.[2] The Commission in its decision also required the submission of a restructuring plan or a liquidation plan by the UK authorities within six months.

(2) On 27 March 2009, the UK authorities notified a liquidation plan for B&B. The Commission sent requests for information to the UK authorities on 20 May, 2 September and 5 November 2009 and for additional clarifications on 14 and 16 October 2009. The UK authorities replied on 6 July, 10, 14 and 22 September, 27 October, 13 November and 10 December 2009 respectively.

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[1] Commission Decision of 1 October 2008 in State aid case NN 41/2008, *Rescue aid to Bradford & Bingley plc*, OJ C 290, 13.11.2008, p. 2.

[2] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

The Rt Hon David MILIBAND
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2 DESCRIPTION OF THE MEASURES

Background

(3) B&B was a medium-sized UK bank, which provided specialist mortgages and savings products. Its three main products were buy-to-let loans to landlords and property investors; self-certified loans for individuals and lifetime products enabling customers to gradually release the equity they had built up in their main residence.

(4) As described in the rescue decision, events in September 2008 in the context of the ongoing financial turmoil had a serious impact on B&B's liquidity position. The UK authorities decided to pursue a wind-down scenario in which the retail deposit book was to be sold while an orderly wind-down of the remainder of the business was to be carried out so as to maximise recoveries and minimise the burden on taxpayers. On 29 September 2008, pursuant to the Transfer Order under the UK Banking Act 2008, B&B was brought into public ownership and its retail deposit book together with the minimum assets and liabilities necessary to attract private investors were transferred to Abbey National plc (hereinafter "Abbey"), a subsidiary of Banco Santander SA. The remaining assets and liabilities of B&B (hereinafter "Rumpco"), remain a regulated entity that principally comprise its mortgage book, personal loan book, headquarters and relevant staff, treasury assets and wholesale liabilities. Rumpco is furthermore liable to the State for the cash transfer of approximately £18.4 billion (hereinafter "the statutory debt") which was necessary to allow the sale of its retail deposit book to be completed.

(5) In the rescue decision the Commission accepted a package of rescue measures consisting of a) the working capital facility; b) the guarantee arrangements to certain wholesale borrowings, derivative transactions and wholesale deposits existing as on 28 September 2008; and c) the public support resulting from the Transfer Order containing two aid elements: firstly, an aid to B&B through the payment of £612 million for the sale of the transfer package, and secondly, an aid to the transferred economic entity, which corresponds to the ability for this entity to remain in the market.

(6) The aid package including the sale to Abbey was found to be compatible rescue aid under Article 107(3)(c) TFEU, in line with the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 2004[3] (hereinafter "the Rescue and Restructuring Guidelines ").

The Measures

(7) The UK authorities consider that the following measures need to be implemented in Rumpco's wind-down.

a) The UK has provided a working capital facility to Rumpco. The main purpose of the facility is to ensure that the debt owed by Rumpco to its creditors is paid. The original working capital facility as approved in the rescue decision has been subsequently replaced with a new working capital facility. […][*] The overall maximum amount may reach £11.7 billion. The new working capital facility will

[3] OJ C 244, 1.10.2004, p. 2.

[*] Confidential information

bear interest based on the Official Bank Rate plus [100 to 200] basis points (hereinafter "bps").[4] Upon approval of the Commission, the new rate will have retroactive effect from 1 April 2009. Since most assets of Rumpco are linked to the Official Bank Rate, the new pricing mechanism should reduce its interest rate risk. HM Treasury can increase the interests payable by Rumpco to align them with commercial interest;

b) The UK indicates the possibility of capital injection in the event that Rumpco breaches its regulatory requirements.[5] The Rumpco's recapitalisation is foreseen only in adverse circumstances and it is currently estimated that […];

c) The existing guarantees covering certain wholesale borrowings covering app. £ 7.5 billion as of October 2009[6], derivative transactions and wholesale deposits existing on 28 September 2008 were approved under the rescue decision. They are expected to be in place until the wind-down is complete;

d) […][7][8]

e) Additional guarantees or other arrangements to ensure that the assets of the B&B pension scheme are sufficient to meet its liabilities.

The winding-down process

(8) The liquidation plan assumes that Rumpco will be wound down in an orderly manner in order to maximise the value of the remaining assets and to minimize the amount of necessary State aid. Its objective is also to repay the working capital facility and the statutory debt.[9]

(9) The liquidation plan projects Rumpco's performance from 2009 to 2018.[10] In addition, the UK authorities have provided financial projections beyond 2018 regarding the working capital facility and the statutory debt, the impact of asset sales and the guaranteed bonds and derivatives. In the base case, excluding asset sales, the statutory debt and the working capital facility should be repaid by 2023. The large majority of the guaranteed liabilities and derivatives expire before the end of 2018, although there are some minor guaranteed liabilities stretching up to 2047. However, according to the UK, Rumpco is expected to be wound up before then.

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[4] The interest rate set in the rescue decision was based on i) LIBOR (12-month sterling) plus 30 bps, or ii) the Official Bank Rate, whichever was higher. Currently, however, interest is charged at Libor (12-month sterling) plus [50-200] bps.

[5] Rumpco is to hold capital resources at a level not less [….]

[6] In October 2008 the guarantee on wholesale borrowing applied to app. £13 billion of liabilities.

[7] […]

[8] […]

[9] Under the Transfer Order the retail deposits transferred to Abbey were compensated by the Financial Services Compensation Scheme and HM Treasury. The transferred deposits were subsequently replaced with the statutory debt amounting to c. £18.4 billion.

[10] The liquidation plan is underpinned by "10 Year Business Plan – Due Diligence Report" prepared by Ernst & Young.

(10) The UK will monitor the price at which it can sell Rumpco's remaining assets. Once it considers that […], it will be possible to effect the sale and thus finish the liquidation process. The Commission understands that […].

Counterfactual scenarios

(11) The UK submits that to maintain market confidence and protect taxpayers' value, neither the bank's insolvency nor a sale of Rumpco's assets would be a credible alternative to the chosen winding-down process.

(12) First, for comparing Rumpco's winding-down process to the insolvency procedures the legislation in force when the decision to wind down B&B was taken must be considered. Under this legislation, banks were in principle subject to the same insolvency procedures as other companies without the possibility for the government to intervene.[11]

(13) Under this legislation, there was no strictly defined time–frame for large and complex liquidations such as the liquidation of B&B.[12] Furthermore, if B&B had entered into that uncontrolled insolvency procedure, it would not have obtained the working capital facility. That capital facility is needed in order to pay Rumpco creditors as the debt owed to them falls due so that an uncontrolled insolvency would lead to a liquidity shortfall. However, the statutory debt would still be owed to the State. The UK authorities add that in case of an uncontrolled insolvency the potential liquidation value of the assets would have been lower. Hence, there was a risk that the net value of recoveries from an insolvency procedure would have been lower than is achievable through a wind-down on a solvent basis. Therefore, an uncontrolled insolvency would imperil full recovery of the statutory debt.

(14) The UK authorities maintain that Rumpco's uncontrolled insolvency would have jeopardized financial stability and undermined market confidence.

(15) Second; as regards the counterfactual of orderly selling of loan assets to a viable purchaser within a reasonable period of time, under the base case scenario the UK authorities project that […]. […] The UK authorities' assessment is that sales would currently attract discounts between […], which would increase the risk that the working capital facility and the statutory debt would not be recovered. Selling the assets would also involve further losses from the interest hedges of the loan books (i.e. the books were hedged at swap rates that were higher than they are now). As a consequence, an additional capital injection would be necessary.

(16) Moreover, currently Rumpco is constrained from selling most parts of its mortgage book as a significant part of those assets are encumbered under various funding programmes. Therefore, they cannot be sold, transferred, or exchanged with other mortgage collateral unless Rumpco obtains all agreements required under the given programme […]. Most of the unencumbered loan books are, in turn, on average of lower quality than their encumbered equivalents.

[11] The new regulations reflecting sector-specific features have subsequently been added to the existing regime.

[12] For example, the liquidation of the Bank of Credit and Commerce International commenced in 1991 and has not yet been completed.

Requirement to keep some Regulatory Permissions

(17) Rumpco's banking licence (i.e. the permission to accept deposits) has not yet been revoked, so it is consequently formally allowed to accept deposits in the UK.

(18) […][13]

(19) The remaining regulatory permissions held by Rumpco can be split by the type of activities into the following categories: i) permissions regarding mortgage administration; ii) permissions regarding investment activities and insurance mediation activities; and iii) a blanket permission required to enter into agreements to provide the regulated activities set out above.

(20) According to the UK authorities, Rumpco has not yet concluded the process of assessing its ability to surrender and/or limit its regulatory permissions, including risks associated therewith.

Limitation of Activities

(21) B&B stopped giving new loans on 29 September 2008 and committed to lend only where a formal mortgage offer had already been made. However, according to the UK authorities Rumpco will continue entering into new activities with existing customers. These activities would be limited to:

a) Making variations to the terms of existing mortgages which may include i) further advances; ii) a change of deal (e.g. by offering a new fixed rate); iii) transferring existing mortgages to new properties; and iv) transferring equity (e.g. adding a borrower to the mortgage or removing one);

b) Restructuring existing loans (e.g. when the balance of the loan exceeds the value of the property Rumpco may facilitate its redemption through selling off the property by the way of providing additional vendor finance enabling the repayment of the outstanding balance);

c) Insurance activities incorporating two components:

  - Referrals - a series of contracts with third-party intermediaries or general insurers under which Rumpco receives commission income for introducing its customers to the third party;

  - Legacy Insurance Businesses – a series of general insurance books covering Home, Motor, Travel and Protection[14] insurance. For the Legacy Insurance Businesses Rumpco receives commission for the origination of new and renewal policies.

[13] […]

[14] Protection products incorporate the following insurance lines: i) Mortgage Payment Insurance; ii) Accident, Sickness and Unemployment; and iii) a handful of Life insurance policies.

In relation to both Referrals and Legacy Insurance Businesses Rumpco provides also administration services;

d) Transitional services provided to Abbey.

Hybrid Capital Instruments

(22) Rumpco and/or its affiliate Bradford Bingley Capital Funding LP hold several hybrid debt instruments. These instruments can be differentiated, among others, in terms of coupon payments, call options and maturity date.

(23) Under the Transfer Order the payment of interests and principal on hybrid debt instruments with a fixed maturity date will not be required to be made (but may be made voluntarily at Rumpco's discretion) until after the statutory debt has been repaid. Furthermore, all payments on these instruments will be subject to Rumpco remaining solvent after such payments have been made.

(24) In respect of the £150 million undated subordinated notes issued by Bradford Bingley Capital Funding LP (hereinafter "the Capital Funding Notes") by the virtue of a guarantee agreement of 29 May 2002, B&B agreed to guarantee any amounts that Bradford Bingley Capital Funding LP owes to its investors because B&B has ceased to make payments under the Capital Funding Notes. Therefore, according to the UK authorities, even if Rumpco refrains from making any payment set out in the Capital Funding Notes, it will be still contractually obliged to pay out an equivalent amount under the guarantee agreement unless making such payments would result in the breach of its regulatory capital requirements or Rumpco had insufficient adjusted distributable reserves to make the payment under the guarantee.

3 COMMITMENTS OF THE UK AUTHORITIES

(25) The UK authorities commit, within the limits of their respective competences, to use their best endeavours to ensure Rumpco's compliance with the commitments listed below from recitals (26) to (39) inclusive:

New banking activities

(26) The UK authorities commit that Rumpco shall cease lending to new customers.

(27) Regarding existing customers Rumpco will only vary the terms of existing mortgages and/or restructure existing loans in exceptional circumstances (see recital (21)). The pricing shall be aligned with market conditions.

(28) Furthermore, Rumpco shall limit further advances to a maximum of £24 million per annum. This represents approximately 0.06% of mortgage balances outstanding as at 30 September 2009, and is less than 5% of further advances made in 2007 – the last full year before the wind-down commenced.

Ancillary products and services

(29) The UK authorities commit that Rumpco will wind-down its insurance activities. In that respect, the following steps shall be taken by Rumpco:

a. Rumpco will cease referrals within three months of approval of State aid.[15] Administration on referrals business will be terminated in accordance with relevant contractual provisions. Most contracts can be terminated following a twelve-month notice period.

b. Rumpco will endeavour to sell its Legacy Insurance Businesses within […] of State aid approval. Should Rumpco fail to do so:

- in relation to the Home, Travel and Motor insurance businesses, Rumpco shall begin the process of winding down the Legacy Insurance Businesses. This would involve immediately serving notice of termination of the third-party contracts with insurers and associated agreements. The duration of the respective notice periods may come up to 12 months. Upon termination of these contracts, customers policies will not be renewed by Rumpco when their contractual term expires. However, Rumpco will be required to carry out administration of existing customer policies for a further twelve months;

- in relation to the Protection products, because the policies are open-ended Rumpco will continue to honour its obligation under the existing contracts without their termination. It will receive commission and profit share for the original introduction of these customers as long as these policies remain in force.

Restrictive policy on coupon payments and call options on hybrid capital

(30) The UK authorities commit that Rumpco shall not make payments of interest and principal on the hybrid debt instruments indicated by the UK (see recitals 22-24) in the period before the statutory debt has been repaid (by which time it is expected that the working capital facility will have been repaid as well), unless it has a contractual obligation to do so. That exception concerns payments in respect of the Capital Funding Notes which Rumpco is contractually required to make under the guarantee (see recital 24).

(31) Once the statutory debt has been repaid Rumpco will make payments of interest and principal in respect of the hybrid debt instruments from its assets available to meet such liabilities.

Relinquishing of regulatory permissions

[15] The UK authorities made a proviso that Rumpco may continue to seek to protect the security of its mortgage assets by encouraging its mortgage customers to seek insurance in a manner that does not required Rumpco to retain any regulatory permissions.

(32) The UK authorities commit that Rumpco will surrender or limit any permission that is not required for the orderly wind-down of the business.

(33) Rumpco will surrender the following permissions relating to investment activities within twelve months of State aid approval: i) managing investments; ii) safeguarding and administering assets; and iii) arranging the safeguarding and administration of assets.

(34) Rumpco will limit the following permissions to activities relating to non-investment insurance contracts (hereinafter "NIIC") within twelve months of State aid approval, and surrender them subsequently within 24 months of State aid approval: i) dealing in investments as agent; ii) arranging deals in investments; and iii) making arrangements with a view to transactions in investments. As regards permissions regarding advising on investments in relation to NIIC and assisting in the administration and performance of a contract of insurance, they will be retain beyond 24 months only if required to honour customer contracts in relation to Protection insurance until the expiration of those contracts.

(35) Rumpco will limit the permission to deal in investments as principal within twelve months of State aid approval to derivative trading for hedging purposes only.

(36) As regards the banking licence, Rumpco shall not carry out any commercial activity (i.e. accepting new deposits) that requires this permission until its complete wind-down. Furthermore, Rumpco will keep under review the feasibility of relinquishing its permission to accept deposits, taking into account all relevant considerations.

(37) The commitments of the UK authorities described in points (33) to (36) are subject to regulatory or legal constraints.[16]

Capital injection

(38) The UK authorities commit to inject capital into Rumpco only to the extent necessary to meet its minimum regulatory requirements as prescribed by the FSA (with a buffer of 20%).

Monitoring

(39) The UK authorities commit to submit to the Commission a detailed report on the progress of the wind-down within two years from the date of the decision. The report will cover, *inter alia,* the progress achieved in selling assets from Rumpco's portfolio, and explain why running down the portfolio remains a financially more attractive solution than selling it in full or in parts, as the case may be. In addition, the UK authorities will submit to the Commission a yearly report, starting one year after the date of the decision, providing basic information on the run-down process, such as assets sold, any further State aid measures, and an update on the permissions retained by Rumpco, including a justification of why the permission to accept deposits is still necessary.

[16] According to the UK authorities, The FSA has indicated broadly that […].

4 ASSESSMENT OF THE AID

4.1 Existence of aid

(40) The assessment deals with the measures required for the winding down process of Rumpco. The UK proposes to convert the measures initially approved as rescue measures, which are now prolonged or extended into measures required for the liquidation of Rumpco. Those measures are supplemented by a commitment to provide a capital injection if necessary to ensure that Rumpco continues to meet the minimum capital regulatory requirements throughout the regulatory process. The measures related to the transfer of the deposit book of B&B are not subject to this assessment given that they were already finally approved in the rescue decision as urgent for structural reasons, i.e. restructuring measures due to their irreversible nature pursuant to point 6 of the Rescue and Restructuring Guidelines.

(41) In line with the rescue decision the measures constitute State aid pursuant to Article 107(1) TFEU. According to this provision State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, insofar as it affects trade between Member States.

(42) The Commission agrees with the position of the UK that also the State measures provided to Rumpco in the context of its liquidation in the form of guarantee arrangements, the working capital facility and the potential recapitalisation constitute State aid.

(43) Despite the ultimate aim of liquidation, Rumpco still conducts economic activities even though they are limited both in scope and in time (see recitals 8 and 24-27). It manages its debt portfolio through activities that include, among others, granting further advances to existing customers as well as conducts some limited insurance activities. Given that these activities are still facing international competition the Commission considers that these measures have the potential to distort competition and thus affect trade between the Member States.

4.2 Compatibility of the aid

Legal basis for the compatibility assessment

(44) The rescue measures were found compatible on the basis of Article 87(3)(c) EC and in particular the Rescue and Restructuring Guidelines. The rescue decision concluded that it was not considered necessary to assess whether Article 107(3)(b) TFEU would apply.

(45) However, since then, it has been widely acknowledged that the global financial crisis created a serious disturbance in the economy of Member States and that measures supporting banks are appropriate to remedy this disturbance. This has been confirmed in various Commission communications such as the *Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the*

current global financial crisis[17] (hereinafter "the Banking Communication"), its *Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition*[18] (hereinafter "the Recapitalisation Communication"), and its *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* (hereinafter "the Restructuring Communication").[19]

(46) Against that background and taking account of the objective of the proposed aid measures, which is to support Rumpco's wind-down, the legal basis for the assessment of these measures should be Article 107(3)(b) TFEU.

(47) The Commission already accepted in the rescue decision that the rescue measures described were necessary to maintain confidence in the UK financial system. Indeed an insolvency of Rumpco could have a disproportionate effect on financial stability. Therefore, the aid measures envisaged are necessary to preserve the confidence of creditors in the financial system and to avoid a serious disturbance in the UK economy.

Compatibility assessment of the aid measures

(48) The continuation of all previous rescue aid measures must now be assessed as liquidation aid. The aim to pursue the solvent wind-down strategy was already accepted as appropriate by the Commission in the rescue decision.[20] As set out in point 21 of the Restructuring Communication the compatibility of the liquidation aid must therefore be assessed in the light of points 43 to 50 of the Banking Communication.[21]

(49) The Banking Communication sets out the State aid rules applicable to the liquidation of financial institutions in the current crisis. In order to be compatible with Article 107(3)(b) TFEU, the liquidation aid has to satisfy the following conditions:

(i) It should be demonstrated that the aid enables the bank to be effectively wound up in an orderly fashion, while limiting the aid amount to the minimum necessary in view of the objective pursued, taking account of the fact that the protection of financial stability within the current financial turmoil may imply the necessity to reimburse certain creditors of the liquidated bank through aid measures (point 48 of the Banking Communication). Point 9 of the Restructuring Communication puts an emphasis on choosing a solution for a distressed bank consistent with maintaining financial stability which at the same time is more market-oriented, less costly or less distortive compared to others. This can be showed by comparing the liquidation plan with alternative options, including a break-up or

[17] OJ C 270, 25.10.2008, p. 8.
[18] OJ C 10, 15.1.2009, p. 2.
[19] OJ C 195, 19.08.2009, p. 9.
[20] See points 39, 53 and 54 of the rescue decision.
[21] Even if previous decision made reference to the Rescue and Restructuring Guidelines the Commission has clarified in recital 49 of the Restructuring Communication that all aid notified to the Commission before 31 December 2009 will be assed pursuant to the Restructuring Communication instead of the Rescue and Restructuring Guidelines.

absorption by another bank.;

(ii) Appropriate burden sharing should be ensured, in particular by excluding shareholders and possibly certain types of creditors from receiving the benefit of any aid in the context of the controlled winding-up procedure (point 46 of the Banking Communication);

(iii) In order to avoid undue distortions of competition, the liquidation phase should be limited to the period strictly necessary for the orderly winding-up. As long as the beneficiary financial institution continues to operate it should not pursue any new activities, but merely continue the ongoing ones. The banking licence should be withdrawn as soon as possible (point 47 of the Banking Communication).

Demonstration of an orderly wind-down

(50) First, the UK has submitted a liquidation plan for Rumpco which allows the Commission to assess Rumpco's wind-down process and the potential competitive impact of the State measures involved therein. The due diligence report confirms that the liquidation plan is based on prudent assumptions.

(51) According to the UK, the liquidation could take up to 10 years or more. While point 21 of the Restructuring Communication envisages that governments may allow for the exit process to take place within an appropriate time frame that preserves financial stability, point 47 of the Banking Communication is clear that the liquidation phase should be limited to the period strictly necessary in view of the objective pursued. At first sight, the plan to wind down Rumpco in more than 10 years seems to be very long. However, the UK authorities submit that a swifter liquidation would not maximise recoveries from Rumpco's remaining assets, which would lead in effect to more State aid. Moreover, once the bank is no longer active in the market, competitive distortions are limited. Nonetheless, the UK has undertaken to ensure that all possible measures are to be implemented to accelerate Rumpco's winding-down process. In particular, the following measures may produce such acceleration: i) relinquishing the banking licence and other regulatory permissions; ii) selling off all or some of the assets; iii) providing incentives to existing customers to remortgage or to accelerate repayments.

(52) The notification includes a comparison with alternative options, namely an uncontrolled insolvency or the sale of Rumpco's assets as indicated above in recitals (11) to (16). Their assessment confirms that no other less costly or less distortive, market-oriented solutions are available which are consistent with maintaining financial stability. First, an uncontrolled liquidation procedure would pose a threat to financial stability and would not allow, among others, for creditor protection. Second, regarding potential asset disposals, under current market conditions a sale of assets, if possible at all, would be at an excessive discount and would not reflect the real value of assets. Moreover, the UK authorities indicate that they will continue efforts to realise Rumpco's assets in the future when market conditions improve.

(53) The Commission therefore concludes that the liquidation plan is able to ensure an orderly winding down of Rumpco in a manner which maintains financial stability.

Own Contribution and burden sharing

(54) The liquidation plan indicates that the aid granted to Rumpco is kept to the minimum necessary for the orderly wind-down.

(55) Moreover, the UK has taken measures to minimise moral hazard, notably by excluding shareholders and possibly certain types of creditors from receiving the benefit of any aid in the context of the controlled winding-up procedure. This was achieved through the nationalisation of B&B by which its former shareholders were wiped-out under the Transfer Order. As regards B&B's hybrid debt holders who remained with Rumpco, the Commission notes positively that the UK undertook to conduct a restrictive policy on coupon payments and call options on hybrid capital. In particular, Rumpco will not make payments of interest and principal on the hybrids before the statutory debt will have been repaid with the exception of payments under the Capital Funding Notes. In addition, the Commission notes that Rumpco shall not be recapitalised in order to prevent a breach of minimum regulatory capital requirements upon such payments.

Measures to limit the distortion of competition

(56) In order to avoid competitive distortions resulting from the granting of State aid, B&B closed its doors to new customers on 29 September 2008. Therefore, its remainder Rumpco will not be competing on financial markets where B&B was previously active. The exit of a failed entity which engaged in excessive risk-taking is a clear indication that moral hazard is addressed, in that commercial failure results in liquidation. As a result, the distortion of competition resulting from the State aid is greatly reduced.

(57) […]

(58) Rumpco will surrender or limit any permission that is not required for the orderly wind-down of the business. In addition, the UK authorities have listed a number of its regulatory permissions that in their current view are not required for the orderly wind-down of the business and that will be limited or surrendered (see points (33) to (36) above) subject to regulatory or legal constrains. The Commission understands that the process of assessing Rumpco's ability to surrender and/or limit its regulatory permissions is well advanced and will only not be carried out if doing so would impede the wind-down foreseen in the liquidation plan. In any event, the Commission understands that the reservation in question relates only to the specific commitments and therefore does not apply to the general commitment stating that Rumpco will surrender or limit any permission that is not required for the orderly wind-down of the business (see point (32) above). In light of the above, the Commission can accept that the requirement to surrender regulatory permissions is sufficiently satisfied.

(59) The applicable period for surrender or limitation will range from 12 to 24 months depending on the regulatory permission. However, the Commission notes that the remaining regulatory permissions are retained for reasons related to the orderly wind-down of Rumpco. As soon as the aforementioned conditions no longer apply, Rumpco will be obliged to relinquish the remaining regulatory permissions. With respect to Rumpco's banking licence, in view of the risks associated with its immediate relinquishing (see paragraph 16 above), the Commission notes the commitment of the UK authorities to justify on a yearly basis (in the report mentioned in paragraph 37 above) why Rumpco's permission to accept deposits is still necessary.

(60) Furthermore, Rumpco will continue to carry out only some limited banking activities with existing clients. Such activities will be allowed during the liquidation phase only insofar as they are strictly necessary to accelerate the liquidation process and minimise impairments while treating customers fairly. They will also be carried out under market conditions. The activities described in the UK submission (see recitals (21)(a) and (b) above) meet those conditions. In addition, the aggregated value of all further advances underwritten by Rumpco in any year will be limited appropriately by the reference to the advances given in 2007 to an annual maximum of £24 million.

(61) As regards the insurance businesses, the Commission considers that Rumpco should stop all new insurance activities since offering them may have a negative competitive impact on the insurance market. The existing books in turn should be sold or run off. Therefore, the Commission views positively that the UK authorities committed to cease Referrals within 3 months and to sell or, if not feasible to sell, to run off the Legacy Insurance Businesses within the period not exceeding all together 24 months.

Monitoring

(62) Within two years from the date of the decision, the UK will review the wind-down process, with particular regard to progress achieved in selling Rumpco's assets and explaining why running down the portfolio remains a financially more attractive solution than selling it, as the case may be. In addition, the UK will submit a report on a yearly basis, which will provide information on the run-down process in which the UK authorities will revise, among others, the need for Rumpco to keep the remaining regulatory permissions as well as the fulfilment of the rest of their commitments. The outcomes of these revisions will be subsequently reported to the Commission and will allow it to monitor the progress of the wind-down process, its impact on competition and the fulfilment of the aforementioned commitments.

5 Decision

(63) The Commission has decided, on the basis of the preceding assessment, not to raise any objections to the aid measures in the form of the working capital facility, the guarantees and the possible capital injection on the ground that they constitute State aid which is compatible with Article 107(3)(b) TFEU.

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Yours faithfully,
For the Commission

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