



Brussels, 15.7.2010
C(2010) 4963 final

Subject: State aid N 546/2009 – Restructuring of Bank of Ireland

Sir,

1 PROCEDURE

- (1) By decision of 26 March 2009¹ (State Aid case N 149/2009), the Commission authorised a capital injection of EUR 3.5 billion into Bank of Ireland Group (hereafter also "BOI" or "the bank"), on the basis of several commitments including the submission of a restructuring plan within six months following the recapitalisation.
- (2) By letter of 30 September 2009 the Irish authorities submitted a restructuring plan for BOI.
- (3) The Commission requested information with regard to the restructuring plan on 28 September 2009, 28 October 2009, 6 November 2009, 18 December 2009, 13 and 27 January 2010, 2, 8, 24 and 25 February 2010, 23 March 2010, 7, 8, 9, 10 and 14 April 2010, 21 May 2010 and 3 June 2010. Those requests for information were answered by the Irish authorities on 5, 19, 24, 26 November 2009, 1, 9, 10, 11 December 2009, 8, 9, 14, 15, 26 and 27 January 2010, 3 and 17 February 2010, 23 and 29 March 2010, 7, 8, 9, 10, 14, 15, 28, 29 and 30 April 2010, 27 and 28 May 2010 and 11 June 2010. Further information regarding commitments on the State measures were submitted on 21, 22 and 30 June 2010, 2 and 5 July 2010.
- (4) In addition, the Commission services met with the Irish authorities on 24 February 2010 and 31 March 2010.

2 DESCRIPTION OF THE MEASURE

2.1 The beneficiary

- (5) BOI is the oldest Irish bank, having been established in 1783. It is currently one of the two largest financial services groups in Ireland with a total balance sheet of EUR

¹ *Commission Decision in Case N149/2009, Recapitalisation of Bank of Ireland, OJ C 234, 29.09.2009, p. 4.*

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[170-180]* billion as at 31 March 2010, which represents almost 100% of Ireland's GDP. Risk weighted assets (hereinafter "RWA") amounted to EUR [90-100] billion as at March 2010. BOI operates 276 branches in Ireland and has approximately 13,500 staff. It has approximately 1.3 million retail depositors in Ireland, as well as about 584,000 in the UK. Table 1 provides further information on BOI's key financial metrics for the period 2007-2010.

Table 1: BOI key metrics – 31 March 2009 – Euros

Metrics/year € billion	March 2007	March 2008	March 2009	March 2010
Group profitability				
Profit (loss) before tax	1.958	1.933	(0.007)	[(1,000-2,500)]
Underlying earnings/share (cent)	172.2 c	174.6 c	5.9 c	[(120-220)] c
Group performance				
Cost/income ratio	54%	51%	52.3%	[50-60]%
Return on equity	23%	21%	6.5%	[negative]
Balance sheet				
Balance sheet	188.8	197.4	194	[170-180]
Loan/deposit ratio	180.6%	157%	160%	[150-170]%
Capital ratios				
RWA	112.9	117	105.3	[90-100]
Core Tier 1 ratio	5.2%	5.7%	9.5%	[8-10]%
Tier 1 ratio	8.2%	8.1%	12%	[9-11]%
Total Capital ratio	11.8%	11.1%	15.2%	[12-15]%

Source: BOI - Annual accounts, Preliminary Results Announcements and BOI restructuring plan

- (6) BOI is a diversified financial services group whose operations are essentially focused on Ireland with the vast majority of its revenue being generated there. It is also active in the UK. Outside of Ireland and the UK, BOI has limited itself to niche lending operations in the US, France and Germany.
- (7) It operates mainly in retail banking and corporate banking, but is also active in areas such as investment banking, insurance and pension products. The bank's principal business activities are divided between the residential mortgage sector (44%), lending to the property and construction sector (26%), corporate lending and lending to small- and medium-sized enterprises (25%) and consumer lending, including credit cards, personal loans and motors loans (4%). BOI is mainly exposed to its home market and the UK market, which account for almost 90% of its loan book.
- (8) According to its preliminary results for the year ended 31 December 2009, which were published on 31 March 2010², BOI had total liabilities of approximately EUR 169 billion, which consisted of EUR 85 billion of customer deposits (50%), EUR 61 billion of wholesale funding (36%), EUR 12 billion of capital/subordinated debt (8%) and EUR 11 billion of other funding (6%). As of the same date, BOI's loan book was approximately EUR 135 billion, while its loan to deposit ratio was 152%.
- (9) BOI's loan book, according to the preliminary results, was made up of EUR 61 billion of residential mortgages (45%), EUR 34 billion of non-property corporate and SME loans (25%), EUR 36 billion of property and construction loans (27%) and EUR 4

* Confidential information

² Source: http://www.bankofireland.com/investor/releases_and_presentations/presentation/index.html

billion of consumer loans (3%). According to the preliminary results, impaired loans constituted 9.9% of the loan book.

- (10) BOI shares are quoted on the Dublin, London and New York stock exchange. Its head office is located in Dublin and the Irish Financial Regulator is the lead regulator. As regards its ratings, BOI current ratings are: Moody's A1 and S&P A-, both with a 'Stable' outlook.

2.1.1 Business Activity

- (11) BOI banking products and services fall into four divisions: Retail Ireland, Capital Market, UK Financial Services and Group Manufacturing. BOI provides life insurance and pensions in Ireland through New Ireland Assurance Company plc, operating through the branch banking network.

2.1.1.1 Retail Ireland

- (12) Retail Ireland includes all the branch operations in Ireland, i.e. 248 full-time branches. The products offered are: deposit, lending, current account, other money transmission services, instalment credit and leasing business, credit card operations, commercial finance/factoring, the domestic and US foreign exchange operations of First Rate Enterprises (foreign currency notes and travelers' cheques and foreign currency-related products and services), and the direct telephone and online banking services. It also includes the ICS building society (collection of deposits and making of loans secured by residential properties).
- (13) The life insurance business, New Ireland, provides investments (single premium and regular premium), pension (individual and group) and protection (life, illness, protection).
- (14) Table 2 shows that at March/June 2009, BOI had the following market shares:

Table 2: BOI market shares 2009 – Ireland

Product/market share	Market share 2009
Retail	
Current accounts	[30-40]%
Unsecured personal loans	[15-25]%
Residential mortgages*	[15-25]%
Credit cards	[30-40]%
Deposits	[20-30]%
Commercial	
Current accounts	[30-40]%
Loans	[20-40]%
Credit cards	[30-40]%
Asset Finance	[20-30]%
Insurance	
Life insurance and pensions	[15-20]%

* Includes ICS

Source: BOI Restructuring plan

- (15) Together with Allied Irish Banks (AIB), BOI is the leading retail bank in Ireland. The Irish retail banking sector has a limited number of players, leading to high concentration levels in some markets. Those two largest banks account for more than [60-80]% of market share in the current account product market (personal and business), more than [40-52]% in the deposit market, [60-80]% in the business lending market, [30-40]% in the personal loan market and around [20-30]% in the residential mortgage market.
- (16) Nevertheless before the crises the Irish retail market was considered to be open and competitive: entry barriers were considered very low, switching rates reasonable and market shares contestable.

2.1.1.2 UK Financial Services

- (17) BOI's UK Financial Services unit consists of the retail business in Northern Ireland, the Business Banking unit, the joint venture with the Post Office and its UK mortgage operations called Personal Lending UK (hereinafter "PLUK"), which combine the mortgage books of BOI Home Mortgages and Bristol and West building society.
- (18) The retail business in Northern Ireland (hereinafter "Banking NI") has a branch network of 44 branches and offers deposit, lending, current account and other money transmission services traditionally offered by banks. Banking NI has approximately [150,000-250,000] retail customers and 10,000-15,000 commercial clients (i.e. businesses). BOI's market share in Northern Ireland is estimated at [10-20]% for business and [5-12]% for personal current accounts.
- (19) The Business Banking unit primarily focuses on property development, lending to large and mid-corporate clients and deposit gathering, while also providing international banking, treasury, current account, asset financing, leasing and electronic banking services. The Business Banking unit has approximately [30,000-40,000] clients and an estimated market share of around [0-3]% in Great Britain.
- (20) BOI's joint venture with the Post Office, called Post Office Financial Services (hereinafter "POFS"), sells banking and insurance products directly and through the UK Post Office branch network. The joint between BOI and the Post Office is next due for review in 2020. The banking products and services offered include: ATM services (currently approximately 1,800 machines), foreign exchange cash, deposit products, credit cards, mortgages and motor, home and life insurance. [...] to the Post Office's customers. In Great Britain BOI has around 580,000 credit card customers, 160,000 home insurance customers, 863,000 savings customers, and 440,000 motor insurance customers. Its market share for motor insurance is [1-5]%, for credit cards [0-3]% and for home insurance [0-3]%. BOI has a market share of [5-10]% of savings flows.³
- (21) PLUK used to be a monoline mortgage business with distribution through intermediaries. In early 2009 BOI announced that it would exit from this business. In the future, mortgages should be provided through the BOI joint venture with the UK Post Office and Northern Ireland branch network. The products provided by BOI include standard mortgages, buy-to-let mortgages, self-certification mortgages and

³ *Savings flow - the net increase or decrease of the total of all savings account balances held by a savings institution during a specified period of time.*

motor finance. BOI has around 263,000 mortgage customers and 100,000 motor finance customers. In Great Britain the market shares of BOI for mortgages are [1-5]% share of balances and [0-3]% share of new business. For motor finance, BOI has an estimated market share of 5-10%.

- (22) BOI furthermore has a small network of retail branches in Great Britain which is currently being closed down.

2.1.1.3 Capital markets

- (23) The principal constituents of this division are: Corporate Banking, Global Markets, Asset Management Services and Specialised Finance.
- (24) Corporate Banking Ireland provides integrated relationship banking services to corporate clients. It also has a number of international lending businesses which are focused on acquisition finance, project finance and asset-based financing in the UK, Continental Europe and the US. The products BOI provides to these clients include deposits, term loans, overdrafts, letters of credit, guarantees and acquisition funding. BOI has a relationship with around 34% of the Top 500 companies in Ireland. BOI estimates that its overall share of Irish corporate business is [20-30]%.
- (25) Global Markets is responsible for managing BOI's interest rates and foreign exchange risks and for executing BOI's liquidity and funding requirements. It manages deposits, interest and currency hedging services to customers and a limited amount of proprietary trading. Around 70% of activities are related to customers, 20% relates to its services on behalf of the Group and 10% to proprietary trading.
- (26) BOI's Asset Management Service (hereinafter "BIAM) provides investment management [...] to pension funds and fund managers. BIAM is the number two asset manager in Ireland with assets under management amounting to EUR 25 billion at the end of December 2009, which represents a [20-30]% share of the total assets managed by the asset managers which belong to the Irish Association of Investment Managers.
- (27) Specialised Finance consists of three business lines covering leveraged acquisition finance, [...], project finance and asset-based lending. Products marketed by the leveraged acquisition finance division include private equity fund investments, co-investments and asset management. IBI Corporate Finance provides financial advice to public and private companies on takeovers, mergers and acquisitions, disposals and restructuring, in addition to fund-raising, public flotation and stock exchange listings. The project finance division is active in the financing of projects in the infrastructure and energy sectors, while the asset-based lending division provides facilities on all assets (i.e. inventory, property, plant and machinery).

2.1.1.4 Group manufacturing

- (28) Group manufacturing brings together most of BOI's back office processing and administration area. The division is responsible for deploying and maintaining physical and IT infrastructure either directly or through major outsource arrangements with third party suppliers. The division also has responsibility for payment services and the attendant operating infrastructure.

2.2 The difficulties of Bank of Ireland

- (29) BOI's need for State aid was the result of the impact of the global financial crisis combined with the specific situation of the Irish economy and of the bank's strong reliance on wholesale funding. The global crisis led to the deterioration of BOI's financial position, in particular as a consequence of the sharp reduction in property values in Ireland in a situation where credit growth had previously significantly outpaced the rate of deposits.
- (30) In fact, BOI developed a significant dependence on wholesale funding, with wholesale borrowing increasing from EUR 16.7 billion in 2001 to EUR 73.9 billion in 2009 and the loan-to-deposit ratio increasing from 112% in 2001 to 160% in 2009. When the wholesale funding market dried up in September 2008 following the collapse of Lehman Brothers, BOI, like other Irish banks, faced a liquidity crisis and would not have been able to meet its liabilities without State intervention⁴. Moreover, when the property market, in particular the Irish commercial property market, stalled and values started to fall, BOI's mortgage and commercial loan book also suffered significant impairments.
- (31) Market perceptions concerning the inadequacy of BOI's capital ratio levels in view of the impairments it had to take on its loan book led to a sharp deterioration in investor sentiment with regard to the bank. The bank's shares fell in value from around EUR 4.85 in early October 2008 to EUR 0.61 on February 2009, with a market capitalization of EUR 612.57 million. Twelve months earlier the bank's shares had traded as high as EUR 10.21, with a market capitalisation of EUR 10,209.89 million. As a result, BOI's shares lost more than 94% of their value over 12 months.
- (32) The degradation of the financial situation of BOI triggered an intervention from the Irish State.

2.3 The measures

- (33) As one of the two main banks in Ireland, BOI was of critical importance to the entire Irish financial system. BOI has, as a result, benefitted from several aid measures including a State guarantee on most of its liabilities, a State guarantee on issued debt, a recapitalisation and the transfer of its impaired commercial property loan assets to the National Asset Management Agency (hereinafter "NAMA").

2.3.1 The State guarantee schemes

- (34) BOI is one of the financial institutions covered by the Irish Guarantee Scheme for financial institutions ("the CIFS Scheme"), which was adopted under the Credit Institutions (Financial Support) Act 2008 (hereafter the "Act"). That scheme was approved by the Commission as compatible State aid on 13 October 2008 and covers a) all retail and corporate deposits (to the extent not covered by existing deposit protection schemes in the State or any other jurisdiction); b) interbank deposits; c) senior unsecured debt; d) asset covered securities and e) dated subordinated debt (Lower Tier 2); excluding any intra-group borrowing and any debt due to the European Central Bank arising from Eurosystem monetary operations.⁵

⁴ On 30 September 2008, the Irish Minister for Finance announced a government decision to guarantee all deposits and debts of six Irish banks, including BOI, and their subsidiaries located abroad.

⁵ Commission Decision in Case NN48/2008, Guarantee scheme for banks in Ireland, OJ C 132, 06.12.2008, p. 2.

- (35) BOI joined the newly established Eligible Liabilities Guarantee Scheme ("the ELG Scheme") on 11 January 2010⁶. This scheme provides a guarantee on newly issued liabilities.
- (36) According to the Commission decision on the ELG Scheme, the fee applicable to any eligible guaranteed liabilities of a participating institution with a maturity of one month or less newly issued within a period of three months from the commencement date (the "transitional period") shall be based on an overall flat fee of 25 basis points per annum. Moreover, Ireland committed that any additional aid that may be received under the ELG Scheme transitional period would be taken into account in the context of the restructuring and viability plans of the participating institutions that have been recapitalised or that will participate in NAMA or which will be recapitalised or which will be subject to restructuring.
- (37) BOI began issuing liabilities under the transitional pricing arrangements on 1 February 2010. The total amount of liabilities which benefitted from the 25bp charge was EUR [...] billion and the fee paid was EUR [...]million.
- (38) The total liabilities covered, as at 31 March 2010, by the ELG and the CIFS Schemes are showed in Table 3 below:

Table 3: Liabilities covered by the ELG and CIFS Schemes - as at 31 March 2010⁷

Liabilities covered by ELG and CIFS Schemes - Data as at 31 March 2010, in EUR millions

	Retail deposits	Corporate deposits	Total retail & corporate deposits	Of which covered by DPS	Net retail & corporate deposits	Interbank deposits	Senior unsecured debt	Asset covered securities	Derivatives	Total
ELG	[...]	[...]	[...]	[...]	[...]	[...]	[...]			[...]
CIFS	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Total	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (39) Between the commencement of the ELG Scheme and 14 April 2010, BOI issued unguaranteed funding totalling EUR [0-500] million, mostly in Euro Commercial Paper with a duration of less than three months. Prior to the commencement of the ELG Scheme, one unguaranteed unsecured issuance was transacted in Quarter 4 2009 amounting to EUR [0-3] billion (3.5 year maturity) at the price of [200-300] bps.
- (40) As regards the planned issuance of debt liabilities under the ELG Scheme over the coming months, according to the information submitted on 2 July 2010, BOI expects to issue a further c. EUR [...] billion of guaranteed long-term (i.e > 1 year to maturity) wholesale funding ahead of the expiry of the ELG Scheme. The bank expects to issue

⁶ Commission Decision in Case N349/2009, Eligible Liabilities Guarantee Scheme, OJ C 72, 20.03.2010, p. 6. The ELG scheme was subsequently prolonged with changed conditions on 31.05.2010 by Commission Decision in Case N198/2010, Prolongation of the Eligible Liabilities Guarantee Scheme, not yet published and on 29.06.2010 by Commission Decision in Case N254/2010, Second prolongation of the Eligible Liabilities Guarantee Scheme, not yet published.

⁷ DPS is the general Deposit Protection Scheme covering deposits up to EUR 100,000.

a further c. EUR [...] billion of guaranteed wholesale funding with a maturity of up to 1 year before the ELG Scheme expired.

2.3.2 The capital injection

- (41) The capital injection received by the bank is part of a wider Government Bank recapitalisation programme announced by the Irish government on December 2008. That programme's objective is to ensure that the financial system in Ireland is capitalised to meet the financial needs of individuals, businesses and the overall economy.
- (42) On 11 February 2009, the Irish government announced the intention to inject EUR 3.5 billion into BOI. The main objective of the capital injection was to ensure that the bank is adequately capitalised to preserve financial stability and to ensure that its capital ratio levels meet the expectations of international investors. A further objective pursued by the State was to facilitate lending to the real economy.
- (43) The recapitalisation was approved by the Commission as a compatible aid on 26 March 2009⁸ in line with Article 107(3)(b) of the Treaty on the Functioning of the European Union⁹ (TFEU). The Commission approved the aid for six months as an emergency intervention in the face of the financial crisis. The Commission took note that Ireland committed to submit a restructuring plan for BOI within six months from the recapitalisation.
- (44) The capital injection was in the form of Core Tier 1 New Preference Shares, which are non-cumulative perpetual preference shares and have a fixed dividend of 8% - or the right to shares in lieu - plus detachable warrant. The dividend is payable annually in cash at the discretion of the bank. If no cash dividend is paid, then ordinary shares are issued in lieu at a time no later than the date on which the bank subsequently pays a cash dividend in Core Tier 1 capital. Redemption is at the discretion of the bank. The bank can repurchase the New Preference Shares at par in the first five years and at 125% thereafter.
- (45) The size of the capital increase represented 3.3% of BOI's RWA.

2.3.3 NAMA

- (46) In order to restore stability to the Irish banking system in the context of the financial crisis, the Irish authorities notified their intention to establish the National Assets Management Agency (hereinafter "NAMA"), which acquires and manages impaired commercial property loans and associated loan assets from participating financial institutions.
- (47) The establishment of NAMA intends to address the issue of asset quality in the Irish banking system by allowing participating financial institutions to sell to NAMA assets whose declining and uncertain value prevents the longer-term shoring-up of bank capital and the return to a normally functioning financial market.
- (48) NAMA is to arrange and supervise the purchase of approximately EUR 83.5 billion worth of land, development property and associated commercial loans from certain

⁸ *Commission Decision in Case N149/2009, Recapitalisation of Bank of Ireland, OJ C 234, 29.09.2009, p. 4.*

⁹ *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.*

financial institutions in Ireland for an estimated purchase price of around EUR 54 billion. The purchase price will be paid through the issuance by NAMA of State-guaranteed senior debt securities for 95% of the purchase price and the issuance of (non State-guaranteed) subordinated debt securities for 5%. The issued securities will be held by the participating credit institutions pro rata to their share in the assets transferred to NAMA. It is anticipated that the State-guaranteed debt securities will be used by the participating credit institutions as collateral to receive financing from the European Central Bank, helping improve the liquidity position of these banks.

- (49) The methodology established to value the loans being transferred to NAMA was approved by the Commission on 26 February 2010.¹⁰
- (50) BOI formally applied to join NAMA in January 2010. It is anticipated that BOI will transfer EUR 12.2 billion of loans to NAMA at an estimated overall discount of [35-40]%. The first tranche of loans consisting of EUR 1.9 billion of land and development loans (EUR 900 million) and associated loans (EUR 1 billion) was transferred to NAMA on 2 April 2010 at a discount of 35%.

2.4 The restructuring plan

- (51) The Irish authorities submitted a restructuring plan for the bank on 30 September 2009. The plan was, after discussion with the Commission services, amended and updated and resubmitted by the Irish authorities on 27 May 2010 (hereinafter the "final restructuring plan"). The information used for the description of the restructuring plan in this chapter is based on the final restructuring plan.
- (52) The final restructuring plan addresses the substantive issues of viability, burden-sharing and limiting distortion of competition. According to the final restructuring plan, BOI will refocus on its core viable business, being its activities related to retail and commercial customers in Ireland and Northern Ireland and its activities in the UK. BOI will furthermore continue to develop selected niche corporate lending businesses within Europe and certain international markets.

2.4.1 Description of the final restructuring plan

- (53) Ireland considers that the restructuring of BOI will ensure its return by March 2014 to being a solid, well-funded bank with sound capital ratios which can maintain its role as a supplier of credit to the real economy. This is achieved through:
 - (i) deleveraging of the balance sheet by winding down loan books and exiting non-core businesses;
 - (ii) improvement of the funding strategy, i.e. reducing dependence on wholesale funding;
 - (iii) strengthening BOI's capital position;
 - (iv) improvement of the risk management.

(i) Deleveraging of the balance sheet

- (54) BOI will deleverage its balance sheet through the divestment of several of its businesses, the restructuring of its UK business including the run off of two [...] loan books and the transfer of assets to NAMA. This will lead to a reduction of BOI's total

¹⁰ Commission Decision in Case N725/2009, Irish asset relief – NAMA, OJ C 94, 14.04.2010, p. 10.

assets of at least EUR [40-50] billion, i.e. [30-40]% [...] (and at maximum of EUR [50-60] billion i.e. [35-40]%), while BOI's total RWA will decrease by EUR [10-20] billion (or [10-20]%). As a result of the deleveraging, BOI's profit before tax will decrease by EUR [...] million ([...]%) in 2014.

Divestments

- (55) As part of the final restructuring plan, BOI will divest its life assurance business New Ireland, BIAM, ICS Building Society (hereinafter "ICS") and its stake in the Irish Credit Bureau ("ICB") in Ireland. BOI will furthermore divest its stakes in the asset management business Paul Capital and the foreign exchange services business FCE in the US (hereinafter also "Divestment Business(es)").
- (56) The life assurance business, New Ireland, is a manufacturer of pension, life assurance and related products for individuals as well as SMEs. New Ireland is the second player in the Irish market for life assurance products, with a market share of approximately [15-20]%. BOI estimates that it contributes [5-15]% of BOI's profitability. The sale will include the New Ireland brand, the broker distribution channel of around 1600 registered relationships, its direct sales force, IT, physical infrastructure, employees and contracts. The divestment will include EUR 12 billion of life assets (as at 31 December 2009). As a result of the divestment, BOI's RWA will decrease by EUR [...] billion.¹¹
- (57) BOI plans to divest New Ireland by [...]. After the divestment, BOI will cease to manufacture life assurance products for the duration [...]. BOI will continue to distribute life assurance products through its distribution channel.
- (58) BOI will furthermore divest ICS. Its business comprises a mortgage loan book of EUR 6.7 billion (24% of BOI's total Irish mortgage book), a deposits book of EUR 4.4 billion, the ICS distribution platform which contains the brand, broker contacts and contracts, customer lists, marketing and product design, IT, and sales infrastructure, IT, eight broker outlets established in commercial centres in Ireland and staff.
- (59) BOI will divest the ICS business as described in paragraph (58) by [...]. As regards the mortgage loan book, however, BOI has indicated that [...]. BOI will therefore undertake to sell as much of the mortgage loan book as possible, with a minimum of EUR [...] billion of [...], to the acquirer of the business. BOI will furthermore provide, at the option of the acquirer, a liquidity and credit protection measure [...]. The divestment of ICS, assuming the entire loan book will be included in the sale, will lead to a RWA reduction of around EUR [0,5-2] billion.
- (60) BIAM is BOI's asset management company with assets under management (AUM) amounting to EUR 25 billion (as at December 2009). BOI will divest BIAM by [...]. The divestment will include AUM, manufacturing and sourcing capability, supporting intellectual property, physical infrastructure, employees and contracts. The divestment of BIAM will not lead to a reduction of RWA as BOI does not own the assets it manages.
- (61) According to the final restructuring plan, BOI will also divest its 16.8% stake in ICB. ICB operates an electronic database that contains information on the performance of credit agreements and credit history between financial institutions and borrowers. ICB is owned and financed by its members which are typically banks and building societies.

¹¹ This is an approximation made by the Commission by dividing BOI's required solvency margin by [...]%.

- (62) In the US, BOI will divest its 50% stake in Paul Capital, a private equity fund of funds business with around USD 1.6 billion AUM by [...]. BOI will furthermore divest its foreign exchange business FCE by [...].

Restructuring of the UK business and run-off of [...] loan books

- (63) BOI is currently present in the UK through several businesses which operate as a branch of BOI. These businesses include its consumer lending business, Business Banking Great-Britain, Banking Northern Ireland and the joint venture (hereinafter "JV") with the UK Post Office. BOI furthermore has a GBP 27 billion Intermediary Mortgage Portfolio that BOI acquired through the acquisitions of BankAmerica Finance (renamed BOI Home Mortgages) and Bristol & West building society and a [...] 4 billion Corporate loan portfolio as at 31 December 2009.
- (64) As part of the final restructuring plan, BOI proposes to incorporate a UK subsidiary bank with a full banking license which will contain [...] businesses currently operating as a branch in the UK. This will enable it to build and expand its relationship with the Post Office, thereby further developing the financial services that could be provided through this channel. The new bank will be a low risk subsidiary and will focus on consumer lending and business banking.
- (65) The subsidiary will be self-funding [...] . As a result of the incorporation of the subsidiary, BOI's UK activities as a whole will be more balanced as BOI will match the EUR [...] billion deposits (liabilities) [...] with assets from the UK businesses and the Intermediary Mortgage book. Furthermore, the loan-to-deposit ratio (hereinafter "LDR") of the UK activities as a whole, which is estimated to be around [...] % over the period of the final restructuring plan, will improve. The transfer of part of the Intermediary Mortgage Book, estimated to be EUR [10-15] billion over the period of the plan, to the subsidiary will also deleverage BOI's balance sheet.
- (66) The Intermediary Mortgage Book, excluding the mortgage loans that will be transferred to the UK subsidiary, has been put in run off by BOI, which completely exited the UK intermediary mortgage market from January 2009 onwards. BOI intends to run off the book through encouraging their customers to refinance their mortgages elsewhere and selling (parts of) it at book value. By 2014 the remaining Intermediary Mortgage Book will, including the transfer of loans to the UK subsidiary, amount to GBP [...] billion.¹² If BOI does not reach this target, it will increase its term funding to such a level that the ratio of BOI group's customer loans over BOI group deposits plus wholesale funding > 1 year on a consolidated basis is less than 100%.
- (67) In addition, BOI will run off its Corporate Loan Portfolio of EUR 4 billion, which will lead to a RWA reduction of EUR [500-1500] million over the restructuring period. BOI will seek to accelerate the run-off of this portfolio through sale of the assets at book value. According to the information provided by BOI, most loans in the Corporate Loan Portfolio will, if they are not sold beforehand, mature before the end of the restructuring period.
- (68) As a result of the run-off of both loan portfolios, BOI will reduce the combined total of the portfolios from EUR 34 billion in 2009 to EUR [15-25] billion in 2014, see Table 4.

¹² The RWA associated with the loan book will decrease by EUR [...] billion over the period.

Table 4: Run off BOI loan portfolios

BOI loan portfolio run off, EUR bln		
Portfolio	balance Dec 2009	balance March 2014
UK Intermediary mortgage book	30 (GBP 27)	[...]
Corporate loan portfolio	4	[...]
Total	34	[15-25]

Transfer of assets to NAMA

- (69) As described in paragraph (50), BOI will transfer EUR 12.2 billion of commercial property and associated loans to NAMA at an estimated haircut of [35-40]%. This will result in a substantial reduction of BOI's balance sheet and a reduction of EUR [5-15] billion of RWA at March 2014.

Table 5: Overview effects of divestments, run-down UK loan portfolios and NAMA

Metric/business	Life assurance	ICS	BIAM	FCE	Paul (\$)	ICB	UK mortgage portfolios (over restructuring period)	NAMA	Total reduction	Reduction as a % of Group's total
Figures below in EUR billion, data for end 2009										
assets reduction (max)	12	6,7	n/a	n/a	n/a	0.008	[10-15]	12,2	[...]	[]%
assets reduction (min)*	12	2	n/a	n/a	n/a	0.008	[10-15]	12,2	[...]	[]%
RWA (max reduction)	[...]**	1	n/a	none	none	none	[0-3]	[5-15]	[...]	[]%
RWA (min reduction)	[...]**	0,3	n/a	none	none	none	[0-3]	[5-15]	[...]	[]%
Figures below in EUR million, forecast 2014 results										
PBT (plan, reduction 2014)	[...]	[...]	[...]	[...]	[...]	[...]	[...]	-	[...]	[...]%

* minimal asset reduction, taking into account less mortgages transferred in sale ICS

** approximation based on regulatory solvency margin

- (70) As a result of the divestments, the run-down of the [...] portfolios and the transfer of assets to NAMA, BOI's total asset reduction will be [20-30]% or [10-20]% of its RWA. If BOI were to transfer only the minimum amount of mortgages in ICS to its purchaser (i.e. EUR 2 billion), the total asset reduction would be [...] % or [...] % of its RWA (see Table 5).

(ii) Improvements in the funding strategy

- (71) As part of the final restructuring plan, BOI will make changes to its funding structure with a view to reducing its dependence on wholesale funding to finance its activities. The final restructuring plan also addresses BOI's LDR and the quality and maturity of wholesale funding.
- (72) BOI will increase its deposit base in Ireland and the UK over the period of the final restructuring plan from EUR [70-90] billion as at March 2010 to EUR [90-110] billion in 2014 (see Table 6). In the final restructuring plan it is assumed that in Ireland the deposit base will grow [...]. As regards UK the plan assumes that the deposit growth [...] will be [...] ([...] per year over the period 2010-2014). This assumption is based on the past experience of the bank which shows that deposits increased from GBP [...] billion in March 2008 to GBP [...] billion in March 2010 despite the crisis.

- (73) BOI will furthermore reduce the share of short-term wholesale funding in its funding mix over the period of the final restructuring plan by increasing the maturity of, and diversifying sources of, wholesale funding. According to the final restructuring plan, the percentage of wholesale funding with a maturity greater than one year will increase from [30-40]% as at March 2010 to [...] % in 2014 (see Table 6). In its assumptions regarding the operation of the Government guarantee on issued debt through the ELG scheme, BOI has assumed that the guarantee will be released by 30 June 2010 and has reflected this assumption in its projections and funding strategy.
- (74) The LDR of BOI is [...] to decrease from [150-170]% as at March 2010 to [110-130]% at the end of the final restructuring plan. This is to be achieved through the growth in deposits and the deleveraging of the balance sheet through the transfer of commercial property loans to NAMA and the run-off of the UK Intermediary mortgage book and the [...] Corporate loan book.

Table 6: BOI funding metrics 2010-2014

Funding metrics BOI 2010-2014	31 March 2010	31 March 2011	31 March 2012	31 March 2011	31 March 2012
Customer deposits (€ bln)	[70-90]	[...]	[...]	[...]	[...]
LDR (%)	[150-170]%	[...]%	[...]%	[...]%	[...]%
Wholesale funding (%)	[35-45]%	[...]%	[...]%	[...]%	[...]%
Term funding > 1 year (%)	[30-40]%	[...]%	[...]%	[...]%	[...]%

- (75) As consideration for the transfer of assets to NAMA, BOI will receive an amount equal to the value of the loans transferred less the discount from NAMA in the form of NAMA government guaranteed bonds (95%) and non-guaranteed subordinated bonds (5%). Assuming a discount of [35-40]%, BOI would receive around EUR [6.5-8] billion. The government guaranteed bonds are designed to be marketable instruments that are capable of being pledged as funding collateral to debt market investors and monetary authorities such as the ECB. BOI will use the government guaranteed bonds to obtain liquidity.

(iii) Strengthening of BOI's capital position

- (76) As part of the final restructuring plan, BOI aims to improve its capital position so it can absorb the losses associated with the transfer of commercial property loans to NAMA and impairments on its non-NAMA loans. By improving its capital position, BOI will be able to pay back the State. BOI also needs to ensure that its capital position is in line with the new requirements set by the Financial Regulator.
- (77) The Financial Regulator has carried out a Prudential Capital Assessment Review (PCAR) for BOI for the period 2009-2012. During this process, the capital requirements for Irish financial institutions, including BOI, were assessed in a base and a stress case. The requirement for passing the base case test was to be capitalised to a level of 8% Core Tier 1, after taking into account forecasted loan losses through to 2012. As a further prudential requirement, the capital used to meet the base case target must be principally in the form of equity, with 7% equity as the target level. The test for the stress case was designed to ensure that the credit institutions have a sufficient capital buffer of at least 4% Core Tier 1 capital to withstand losses under an adverse scenario.

- (78) As part of its preparation for the PCAR, BOI undertook a review of its loan book in order to project the impairments on the loans not transferred to NAMA. BOI projects that over the period of the final restructuring plan loan losses will amount to EUR [...] billion. These losses are split between property and construction ([...]%), corporate and SME lending ([...]%), mortgages ([...]%) and consumer lending ([...]%). As regards the development of BOI's lending over the same period, the absolute amount of lending will increase from EUR [...] billion as at March 2010 to EUR [...] billion in March 2014. Total gross lending per year will increase from EUR [...] billion as at March 2010 to EUR [...] billion (see Table 7).
- (79) The structure of the loan book will change with an increase in the retail and SME lending from [...]% to [...]% and discontinued loan books falling from [...]% to [...]% of the total loan book. The retail and SME loan book in the UK increases from [...]% to [...]% and the corporate loan book increases from [...]% to [...]% over the period.

Table 7: BOI lending projections 2010-2014

BOI Lending, EUR bln	March 2010	March 2011	March 2012	March 2013	March 2014
Total Group customer lending	[...]	[...]	[...]	[...]	[...]
Gross new lending					
Retail	[...]	[...]	[...]	[...]	[...]
UK	[...]	[...]	[...]	[...]	[...]
Capital markets	[...]	[...]	[...]	[...]	[...]
Total gross new lending	[...]	[...]	[...]	[...]	[...]

- (80) On the basis of the PCAR, the Financial Regulator has determined that BOI needs additional EUR 2.66 billion of Core Tier 1 capital in order to fulfil its requirements in the base case by the end of 2010.
- (81) In order to meet its new regulatory capital requirements, in April 2010 BOI announced and implemented carried out a capital raising exercise with a view to raising EUR 3.56 billion of capital. BOI raised capital from both private investors and the government. The capital-raising exercise consisted of the following steps: (i) a firm placing of ordinary shares to private investors of EUR 500 million, (ii) a firm placing of ordinary shares to the State of EUR 1.04 billion through conversion of part of the preference shares held by the government, (iii) a EUR 290 million debt-for-equity swap, (iv) a rights issue to the State of EUR 630 million through conversion of a further part of the preference shares held by the government and (v) a fully underwritten rights issue to stockholders of EUR 1.1 billion. As part of the exercise, BOI bought back the warrants it issued to the government at the time of the capital injection in June 2009 with a total consideration to the government of EUR 491 million.
- (82) By the end of the capital-raising exercise, the stake of incumbent shareholdings in BOI will be around 30% (compared with 100% just after the EUR 3.5 billion rescue recapitalisation in March 2009 and 84% following the payment of coupons on the government's preference shares in February 2010). The stake of the State will increase from 0% to 35.8%, which includes the payment of a dividend over 2009 to the Irish authorities in the form of ordinary shares. Together with the ordinary shares acquired by the State in the capital-raising, the government will own EUR 1.8 billion of remaining preference shares. The coupon payable to the State on these preference shares will, after the capital raise is completed, increase from 8% to 10.25%.

- (83) BOI has furthermore carried out three liability management exercises: (i) a buy-back of non Core Tier 1 securities with a nominal value of EUR 1.7 billion at an average discount of 59% with a capital gain of approximately EUR 1 billion in June 2009, (ii) a debt for equity swap of non Core Tier 1 and Upper Tier 2 securities with a nominal value of EUR 900 million at an average discount of 27% with a capital gain of approximately EUR 200 million and (iii) a debt for debt swap of Lower Tier 2 securities with a nominal value of EUR 1.2 billion and a capital gain of approximately 400 million. The total capital gain as a result of the liability management exercises was around EUR 1.6 billion, representing an average discount of 39%. This was used to increase BOI's Core Tier 1 capital.
- (84) In addition to the capital-raising exercise and the liability management exercises, BOI expects to improve its capital position through the reduction of RWA associated with the transfer of assets to NAMA and the run-off of both the UK Intermediary mortgage portfolio and the [...] Corporate loan portfolio. Furthermore, BOI will increase profits through its efficiency and cost management programme, and it will use those profits to increase its retained earnings.
- (85) As a result of the measures undertaken by BOI to improve its capital position, BOI's Core Tier 1 ratio will remain above 8% over the period of the final restructuring plan, while its Equity Tier 1 ratio will increase from [4-7]% as at March 2010 to [...] in 2014, in line with the Financial Regulator's regulatory capital requirements. BOI's Tier 1 ratio fluctuates over the same period, but stays above 8%. The same is true for the Total Capital ratio, which will be [...] at the end of that period (see Table 8).

Table 8: Evolution of BOI's capital ratios – base case

BOI capital ratio evolution March 2010- March 2014					
Capital/year	2010	2011	2012	2013	2014
Core Tier 1 ratio	[8-10]%	[...]%	[...]%	[...]%	[...]%
Equity Tier 1 ratio	[4-7]%	[...]%	[...]%	[...]%	[...]%
Tier 1 ratio	[9-11]%	[...]%	[...]%	[...]%	[...]%
Total capital ratio	[12-15]%	[...]%	[...]%	[...]%	[...]%

(iv) Improvement risk management

- (86) BOI in the final restructuring plan proposes several changes to its risk management. On an organisational level, BOI has established a Group Risk Framework which clarifies the risk appetite of BOI. BOI has also introduced a Board Risk Committee comprising only non-executive directors which is responsible for monitoring risk governance and risk identification, reporting and assessment. BOI has furthermore split the functions of the Chief Risk Officer into a Chief Credit and Market Risk Officer and Chief Governance Risk Officer, the former being responsible for managing BOI's credit and market risk while the latter is responsible for compliance and regulatory risk. As regards remuneration of the management, BOI has adopted a more restrictive policy on bonuses in order to avoid excessive risk-taking.
- (87) With regard to credit risk, BOI will improve the management of its loan portfolios mainly by refocusing and increasing its review of and its reporting on its loan exposures, tightening and modifying the lending criteria for certain sectors and enhancing the collections and recoveries process.

2.4.2 Ability to reach viability under a base and stress scenario

- (88) The Irish authorities have submitted a base and a stress scenario for both Ireland and the UK for the period March 2010-2014 with the aim of demonstrating BOI's ability to achieve long-term viability.
- (89) The final restructuring plan, for both scenarios, also takes into account: (i) the effect of the divestments and other commitments entered into by BOI (see Chapter 2.5), (ii) the reduction of the assets transferred to NAMA from the initially planned amount of EUR 15.5 billion to EUR 12.2 billion and the increase of the haircut from [20-30]% as initially foreseen to [35-40]%, (iii) the withdrawal of the CIFS guarantee by the end of September 2010 and the withdrawal of the ELG scheme by the end of June 2010, (iv) the increase of the costs of wholesale funding associated with the increase in the maturity of, and diversification of the sources of, this type of funding, (v) growth of deposits in Ireland and the UK in line with GDP, (vi) the future impairments on non-NAMA loans as calculated by a third-party advisor, (vii) the capital requirements set by the Financial Regulator including the effects of the capital-raising exercise, (viii) the impact of a recent one notch downgrade by a ratings' agency and its effect on deposits and (ix) the repayment of the outstanding EUR 1.8 billion in Government's preference shares by [...].
- (90) The assumptions for both the base case and the stress case in Ireland have been provided by the Financial Regulator (for the period 2009-2012), while the UK Financial Services Authority has set the stress case for the UK for the period 2010-2014.

2.4.2.1 The base case scenario

- (91) In the base case, it is assumed that GDP will contract sharply in Ireland by [...]% in 2009 and by [...]% in 2010, followed by a relatively quick recovery in 2011 when GDP is expected to grow by [...]%. In the period 2012-2014, GDP growth is expected to [...] at [...]%. Unemployment in the base case will peak in 2011 at [...]% and will thereafter decrease to [...]% in 2014.
- (92) The projections for the UK show that after a considerable decline in 2009 of 4.6%, GDP will start growing in 2010 when GDP is expected to grow by [...]%. Growth will continue in 2011-2014, although it is expected to [...] at [...]% between 2012 and 2014. Unemployment in the base case is expected to peak in 2010 at [...]%, steadily decreasing afterwards to [...]% in 2014.
- (93) BOI's operating income is projected in the base case to decrease from around EUR 3.9 billion in March 2009 to EUR [...] billion in March 2011, rising thereafter but staying below [...] in 2014. BOI has posted a loss before tax of around EUR 1.8 billion for 2009. BOI will return to profitability in [...]. Net profits will [...] levels at the end of the restructuring period, mainly due to higher impairment charges throughout the restructuring period which, however, will decrease from EUR [4-6] billion as at March 2010 to EUR [...] million in March 2014.
- (94) BOI expects to meet its capital ratios in the base case throughout the projection period (2010-2014), with Core Tier 1 at [8-10]% in March 2010, increasing to [...]% in 2014 and its Equity Tier 1 ratio rising from [4-7]% in 2010 to [...]% in 2014. As a result of the Financial Regulator's requirement that 7% of BOI's Core Tier 1 capital should consist of equity, the capital composition of BOI will increasingly consist of equity. According to the final restructuring plan, BOI will start to repay the State by buying back the outstanding preference shares from [...] onwards.

2.4.2.2 The stress case scenario

- (95) The Irish authorities have also submitted a stress scenario. Similar to the base case, GDP in Ireland will sharply contract in 2009 ([...])% and 2010 ([...])%, rising thereafter. However, the subsequent economic recovery will be very weak with an estimated [...])% GDP growth in 2011 and [...])% growth in 2012. GDP in the stress case will not reach 2008 levels by 2014. Unemployment in the stress case is expected to peak in 2010 at [...])% after which it will decrease to [...])% in 2014.
- (96) For the UK, BOI has used the stress case provided by the FSA in the context of BOI's request for permission to incorporate a UK subsidiary as a basis for its projections. In the stress case, UK GDP will contract by [...])% as at March 2010 and by [...])% in March 2011, thereafter growing from 2012 to 2014 (cumulatively by [...])%. Unemployment in this scenario is expected to increase in the period 2010-2012 and will peak in March 2013 at [...])%.
- (97) BOI's operating income in the stress case also decreases by EUR [...] billion from March 2009 to March 2011. However, the increase in the period [...] is lower than in the base case, not reaching pre-crisis levels by the end of the forecast period. BOI returns to profit in [...] but profit growth is slow and remains well below pre-crisis levels throughout the forecast period.
- (98) In the stress scenario, BOI expects to be able to meet its internal capital targets in the throughout the projection period. Its Core Tier 1 ratio will be [...])% in 2010 and is projected to be [...])% in 2014, which is above the 4% Core Tier 1 ratio set by the Financial Regulator for the stress case. BOI's Equity Tier 1 ratio will rise moderately from [...])% in 2010 to [...])% in 2014. In the stress case, the repayment of the State will be delayed by [...].

2.4.2.3 Exit strategy/repayment of the State

- (99) In the final restructuring plan, BOI describes the different options for redemption of the remaining preference shares of the State and the assumptions underpinning the repayment. Assuming that BOI will return to profitability in [...], BOI will redeem EUR [...] million of the preference shares by [...] and EUR [...] billion by [...], thus redeeming all the outstanding preference shares.
- (100) BOI has also submitted information on how it will disengage from the government guarantees ELG/CIFS scheme. BOI in its projections expects the ELG scheme to end by 30 June 2010, while it expects the CIFS to end by 30 September 2010. BOI plans to issue EUR [...] billion of guaranteed term debt with a maturity > 1 year from January 2010 onwards and intends to begin issuing un-guaranteed short-term debt as of the first half of 2010. BOI will seek to lengthen the duration of its wholesale funding, while its short-term funding will be covered by liquid assets and contingent liquidity.
- (101) The ELG scheme has recently been prolonged by the Commission. The scheme will cover bank liabilities with a maturity of less than three months until 30 September 2010. Bank liabilities with a maturity longer than three months and retail deposits will be covered until 31 December 2010. Although the BOI's restructuring plan has been prepared on the assumption that all guarantees in all jurisdictions would expire by 29 September 2010, the Irish authorities have indicated that if the difficult funding market conditions continue BOI may receive, if it so chooses, additional aid to the maximum amount of the liabilities currently covered under the ELG Scheme and for no longer than the time period outlined above for the specific classes of liabilities (liabilities of less than 3 months duration to 30 September 2010 and liabilities in

excess of 3 months duration to 31 December 2010). According to the information submitted on 2 July 2010, BOI expects to issue further guaranteed long term (i.e. > 1 year to maturity) wholesale funding up to a maximum of EUR [...] billion ahead of the expiry of the ELG Scheme. The Bank expects to issue further guaranteed wholesale funding with a maturity of up to 1 year up to a maximum of EUR [...] billion in advance of the expiry of the ELG Scheme.

2.5 Commitments by the Irish authorities

- (102) The Irish authorities have undertaken a number of commitments related to the scope of the divested and run-off entities by BOI as well as regarding behavioural measures to ensure the preservation of the value of these activities and to specifically address the limitation of the distortion of competition resulting from the State support. These commitments are supposed to ensure that the planned measures would be meaningful and that they will be implemented in the most efficient way and as quickly as possible, without harming the viability of BOI. The commitments are attached to the present decision in their entirety in Annexes I and II. For the purposes of the decision, the Commission has provided a non-exhaustive summary in Chapter 2.5.1 and 2.5.5 below.

2.5.1 Commitments related to divested businesses

a) New Ireland

- (103) The Irish authorities commit that BOI will sell its Life Assurance Business "New Ireland". The sale of the business will include its brand, broker distribution channel, direct sales force, life assets, supporting intellectual property, physical infrastructure, employees and contracts.
- (104) At the option of the acquirer and on reasonable commercial terms, the Irish authorities commit that BOI will put in place appropriate arrangements (e.g. product distribution agreement) with the acquirer of New Ireland. If required by the acquirer, a transitional services agreement on incremental cost recovery terms shall be negotiated between BOI and the acquirer of New Ireland to cover the provisions of services and functions for a period [...].
- (105) After the sale of New Ireland, the Irish authorities commit that BOI will not manufacture life insurance and related products until [...]. Prior to and after the sale of New Ireland, BOI will continue to distribute pension, life assurance and related products.
- (106) The Irish authorities commit that BOI will sell New Ireland by [...] (hereinafter "Divestment Period"). The Divestment Period may be extended by the Commission by [...] in accordance with paragraph (129) of the present decision (hereinafter "Extension Period"). During the [...] Extension Period, the bank will not be obliged to sell the business below the net book value. If no such sale takes place during the extension period, then the sale will be managed and effected by the Divestiture Trustee at no minimum price.

b) ICS

- (107) The Irish authorities commit that BOI will sell its Irish broker mortgage business, the ICS Building Society. The ICS business comprises three constituent elements: (i) the ICS distribution platform which is comprised of the brand, broker contacts marketing

and product design, IT platform and eight brokers outlets; (ii) customer deposits of EUR 4.4 billion euro at 31 December 2009; and (iii) a mortgage portfolio of EUR 6.7 billion at 31 December 2009.

- (108) The Irish authorities commit that BOI will sell the ICS platform, subject to a minimum consideration of EUR [...].
- (109) The Irish authorities commit that BOI will transfer (as part of the sale) the EUR [...] billion customer deposits.
- (110) The Irish authorities commit that BOI will undertake all reasonable effort to sell as much of the mortgage book as possible to the acquirer of the divestment business. A reduction of the mortgage book can only take place at the request of the acquirer. In case the assets transferred from the mortgage book exceed the liabilities (i.e. the deposits), the Irish authorities commit that BOI will provide funding arrangements to the acquirer at its request subject to standard credit and regulatory approval.
- (111) In order to facilitate an attractive sale, BOI [...]selling a minimum of EUR [...] ¹³ [...] billion of mortgages [...].
- (112) In addition, BOI is prepared to provide a liquidity credit protection of up to EUR [...] billion for one year post sale.
- (113) The Irish authorities commit that BOI will sell this business by [...]. The Divestment Period may be extended by the Commission in accordance with paragraph (129) by [...].
- (114) The sale of ICS will involve significant separation issues including potentially the requirement for legislative changes for Ireland. The Irish authorities commit to enact by no later than 31 December 2011 appropriate legislation to enable the fulfilment of this measure.

c) BIAM

- (115) The Irish authorities commit that BOI will sell BIAM (Bank of Ireland Asset management). The sale will include assets under management (at least [...]% of EUR 27 billion), manufacturing/sourcing capability, supporting intellectual property, physical infrastructure, employees and contracts.
- (116) The Irish authorities also commit that BOI will use reasonable endeavours, subject ultimately to customer preference, to seek to keep assets under management currently in BIAM for [...] years post-sale of the divesture to the extent within its control if the Monitoring Trustee finds that it is necessary to preserve the viability and attractiveness of the business.
- (117) At the option of the acquirer and on fair, reasonable and non-discriminatory terms, the Irish authorities commit that BOI will put in place appropriate term arrangements¹⁴ (i.e. a product distribution agreement) between the acquirer and BOI. They also commit that BOI will refrain from advertising to its clients any competing asset management business until [...].
- (118) If required by the acquirer, a transitional services agreement on incremental cost recovery terms shall be negotiated between BOI and the acquirer of BIAM to cover the provision of services and functions for a period of up to [...] years.

¹³ [...]

¹⁴ Term arrangement in this context are arrangements that are intended to have a limited duration, normally an agreed number of years.

- (119) The Irish authorities commit that BOI will sell the business by [...]. The Divestment Period may be extended by the Commission in accordance with paragraph (129) by [...]. During the Extension Period the bank will not be obliged to sell the business below the net book value. If no such sale takes place during that further extended period, then the sale will be managed and effected by the Divestiture Trustee at no minimum price.

d) FCE

- (120) The Irish authorities commit that BOI will sell its shares in FCE (Foreign Currency Exchange Corporation) based in the USA.
- (121) The Irish authorities commit that BOI will enter into transitional services agreements with the acquirer for the provision of core operational and processing functions in order to facilitate the transfer of the business to the acquirer. The Irish authorities furthermore commit that BOI, at the request of the acquirer, will also enter into terms arrangements (i.e. product distribution, product manufacturing or other commercial agreements).
- (122) The Irish authorities commit that BOI will sell the business by [...]. The Divestment Period may be extended by the Commission in accordance with paragraph (129) by [...]. During the Extension Period the bank will not be obliged to sell the business below the net book value. If no such sale takes place during that further extended period, then the sale will be managed and effected by the Divestiture Trustee at no minimum price

e) Paul Capital

- (123) The Irish authorities commit that BOI will sell its shares in Paul Capital, a US-based fund of funds asset management business which has assets under management of US\$ 1.6bn. BOI owns 50% of Paul Capital.
- (124) The Irish authorities commit that BOI will enter into transitional services agreements with the acquirer for the provision of core operational and processing functions in order to facilitate the transfer of the business to the acquirer. The Irish authorities furthermore commit that BOI, at the request of the acquirer, will also enter into terms arrangements (i.e. product distribution, product manufacturing or other commercial agreements).
- (125) The Irish authorities commit that BOI will sell the business by the [...]. The Divestment Period may be extended by the Commission in accordance with paragraph (129) by [...]. During this period the Bank will not be obliged to sell the business below the net book value. If no such sale takes place during the Extension Period, then the sale will be managed and effected by the Divestiture Trustee at no minimum price.

f) ICB

- (126) The Irish authorities commit that BOI will sell its shares in ICB. ICB has an estimated valuation of EUR [...] million. The value of BOI shares is around EUR [...] million.
- (127) The Irish authorities commit that BOI will enter into transitional services agreements with the acquirer for the provision of core operational and processing functions in order to facilitate the transfer of the business to the acquirer. The Irish authorities furthermore commit that BOI, at the request of the acquirer, will also to enter into

terms arrangements (i.e. product distribution, product manufacturing or other commercial agreements).

- (128) The Irish authorities commit that BOI will sell the business by [...]. The Divestment Period may be extended by the Commission in accordance with paragraph (129) by [...]. During this period the bank will not be obliged to sell the business below the net book value. If no such sale takes place during the Extension Period, then the sale will be

Timetable divestments BOI		
Business	Divestment Period	Extension Period
New Ireland Life assurance business	[...]	[...]
BOI Asset Management	[...]	[...]
ICS building society	[...]	[...]
BOI's stake in Paul Capital	[...]	[...]
BOI's stake in FCE	[...]	[...]
BOI's stake in Irish Credit Bureau	[...]	[...]

managed and effected by the Divestiture Trustee at no minimum price.

Table 9: Overview Divestment Periods and Potential Extension Periods

Extension of the target dates

- (129) The Commission may extend the target dates (see Table 9) mentioned with regard to New Ireland (paragraph (106)), ICS (paragraph (113)), BIAM (paragraph (119)), FCE (paragraph (122)), Paul Capital (paragraph (125)) and ICB (paragraph 0) for implementation of the sale when appropriate and on the basis of a sufficiently reasoned request from Ireland and BOI and taking into consideration the views of the Monitoring Trustee. That extension may be granted in particular when the divestments will not be implemented by these dates through no fault of BOI. If no sale takes place during the extension of the Divestment Period or if the Commission decides not to grant an extension to a target date, then the relevant sale will be managed and effected by the Divestiture Trustee who will divest the Divestment Business at no minimum price.

2.5.2 Commitments related to portfolios in run-off

- (130) The Irish authorities commit that BOI will run off the EUR 32 billion UK mortgage portfolio. BOI will also attempt to accelerate the run-off of the Portfolio by way of sale of all or part of the portfolio but not at less than the book value, considering that a sale at less than book value could imply a huge decrease in the bank's capital. If the portfolio is not reduced to GBP [...] billion (equivalent of EUR [...] billion) by [...], then the Irish authorities commit that BOI will meet by 31 December 2013 a Group customer loans over Group customer deposits + BOI group wholesale funding (with maturity > 1 year) ratio of no more than 100%.¹⁵

¹⁵ *Group Customer Loans/Group Customer deposits + Group wholesale funding >1 year ≤ 100%.*

- (131) The Irish authorities commit that BOI will run-off EUR 5 billion of Corporate Loan Portfolio over the restructuring period. BOI will also attempt to accelerate the run-off of the Portfolio by way of sale of all or part of the portfolio but not at less than the book value, considering that a sale at less than book value could imply substantial decrease in the bank's capital.
- (132) The Irish authorities commit that BOI will not to enter into any new lending for the UK mortgage portfolio and the Corporate Loan portfolio, unless this is necessary for credit mitigation purposes. BOI's management decisions with regard to the portfolio can only have a neutral or decreasing effect on the amount of risk weighted assets attributed to the portfolio.

2.5.3 Commitments related to behavioural measures

- (133) The Irish authorities commit that BOI will not make discretionary payments of coupons or exercise voluntary call options on hybrid capital securities from 1 February 2010 to 31 January 2011. The Irish authorities commit that BOI will not pay dividends on its ordinary stock until the earlier of: (i) 30 September 2012, or (ii) the date of the full repayment of the preference shares held by the government.
- (134) The Irish authorities commit that BOI until the earlier of: (i) 31 December [...]; or (ii) the date by which the preference shares held by the government will be repaid in full or are no longer owned by Ireland for any reason whatsoever [...] will not make any acquisition of any financial institutions. However, BOI may make such an acquisition where the cumulative purchasing price excluding the assumption of debt paid by BOI for all acquisitions by [...] is less than EUR [20-100] million per fiscal year or a total cumulative amount of EUR [50-300] million.
- (135) The Irish authorities commit that BOI will cap its expenditure on marketing, advertising and sponsorship in Ireland at the same level as it was for its financial year ended dated 31 March 2008 for [...] starting on the date of the present decision. The Irish authorities also commits that BOI will not refer in its advertising to any State support enjoyed by BOI.
- (136) The Irish authorities commit that BOI will operate the following two market opening measures:
- a) Service package; and
 - b) Customer mobility package.
- (137) Both measures aim at decreasing the cost of entry of new competitors, or the cost of expansion of small competitors, in Ireland. Both measures apply from 1 January 2012 to 31 December 2014. Competitors with market shares lower than 15% in at least one of the four markets for the "Relevant Products" where BOI's market share is higher than 30% are eligible to benefit from the measures. The Relevant Products are (i) personal current accounts in Ireland; (ii) personal credit cards in Ireland; (iii) business current accounts in Ireland; and (iv) business credit cards in Ireland. The eligible competitors who benefit from the market opening measures will be referred to as the "Relevant Competitors".

a) Service package

- (138) The Irish authorities commit that BOI will provide to Relevant Competitors the following services:

- (i) Access to the bank clearing system [...], including full treatment of paper transactions;
 - (ii) Debit card access to BOI's ATM network;
 - (iii) Provision of market intelligence (for instance rate of default of customers, macro economic data, etc.);
 - (iv) Cash supply and distribution services;
 - (v) Foreign exchange supply and distribution services [...]
- (139) The Irish authorities commit that BOI will offer these services on fair, reasonable, and non-discriminatory terms which recoup BOI's incremental costs.¹⁶

b) Customer mobility package

- (140) This measure applies as long as BOI's market share is above 30% in one of the four markets for the Relevant Products. When the market share of BOI falls below 30% in one of the market for a Relevant Product, the measure is not applicable to this Relevant Product anymore.
- (141) The measure permits a Relevant Competitor to mail marketing information to BOI's customers with regard to the Relevant Products concerned. A Relevant Competitor shall not mail specific marketing information concerning other products than the Relevant Products, but is entitled to make general references to other product ranges. In particular the Relevant Competitor may point out the possibility for customers to fully or partly switch their banking relationship.
- (142) The marketing information is prepared by the Relevant Competitor and is mailed by BOI to a set of its customers corresponding to up to one-third of its customer base randomly selected and maybe to a subset based on selection criteria provided by the eligible competitor. The cost of mailing is borne by the Relevant Competitor who benefits from the measure. For the purpose of the commitment, the mailing will be divided over six mailing periods of six months starting on 1 January 2012. The material of no more than two Relevant Competitors for each Relevant Product will be mailed by BOI in each of the six mailing periods. A Relevant Competitor can benefit from three successive mailing periods, where BOI will select the three different thirds of its customers.
- (143) The Irish authorities commit that BOI will not contact a customer selected to receive the advertising material from a Relevant Competitor for a period of six months. If a customer decides to switch to a Relevant Competitor, BOI commits not to contact this customer for an additional one year. Finally BOI commits not to impede the switching of a customer in any way.

2.5.4 Commitments regarding the divestments

- (144) The Irish authorities commit that BOI will divest, or procure the divestiture of New Ireland, ICS, BIAM, FCE, Paul Capital and ICB by the periods set out in Table 9 and paragraphs (106), (113), (119), (122), (125) and 0 respectively to a purchaser and on

¹⁶ For the purpose of the present decision, the term "Incremental Cost" means additional costs incurred by BOI as a direct consequence of the provision of services to Relevant Competitors in application of the Measures. In particular, Incremental Costs do not cover any fixed or variable costs that BOI would bear in the absence of the Measures.

terms of sale approved by the Commission in accordance with paragraphs (144) and (145). To carry out the divestiture, BOI commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the Divestment Period (or as may be extended by the Commission). If BOI has not entered into such an agreement at the end of the Divestment Period (as may be extended by the Commission), BOI shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business at no minimum price. BOI shall provide sufficient information as regards the Divestment Business and provide access to its personnel during the sale process.

- (145) The Irish authorities commit that the final binding sale and purchase agreement shall be subject to the Commission's approval. When BOI has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. BOI must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements set out in paragraph (146) and that the Divestment Business is being sold in a manner consistent with the commitments. For the approval, the Commission shall verify that the purchaser fulfils those Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Measures.
- (146) In order to be approved by the Commission, the purchaser must meet the Purchaser Requirements i.e.: (i) be independent of and unconnected to BOI; (ii) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with BOI and other competitors; (iii) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Measures will be delayed, and (iv) must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
- (147) The Irish authorities have committed that BOI shall use reasonable efforts to preserve the economic viability, marketability and competitiveness of the Divestment Businesses (BIAM, FCE, BOI shares in ICB, ICS, New Ireland and BOI shares in Paul). In particular BOI will keep separate the business it is retaining and the Divestment Business until a sale is completed. To this end, BOI will nominate one or several Hold Separate Managers in charge of the relevant entities in the Divestment Business, and will ensure that this (these) Hold Separate Manager(s) will have no involvement in any business retained by BOI. BOI however may undertake a reorganisation or restructuring of the Divestment Business in order to prepare it for a sale, subject to the condition that the commitments of the Irish authorities regarding the preservation of the economic viability, marketability and competitiveness are respected.
- (148) In addition, BOI will ensure that the key personnel in the Divestment Business will have no involvement in any business retained by BOI, and will not solicit key personnel transferred with the Divestment Business for two years after closing of the divestment transaction.
- (149) The Irish authorities have furthermore committed that BOI, together with the monitoring trustee, will implement measures to ensure that the bank does not obtain any business secrets, know-how, commercial information or any other information of a confidential or proprietary nature.
- (150) The Irish authorities have committed that BOI shall appoint, subject to Commission's approval, a monitoring trustee in charge of the overall task of monitoring and of ensuring, under the Commission's instructions, compliance with the commitments. For that purpose the Irish authorities shall propose to the Commission for approval, no

later than one month from the date of this decision, a list of at least two persons whom it proposes to appoint as monitoring trustee. The Commission can approve or reject the proposal of the Irish authorities. If the Commission rejects the proposal, the Irish authorities shall submit a new proposal within one week of being informed of the rejection. If the Commission again rejects the proposal, the Commission shall nominate a monitoring trustee which BOI will appoint or cause to appoint. The same procedure will be followed in case of the appointment of a divestiture trustee. The monitoring trustee and the divestiture trustee shall perform the duties laid down in Annex I.

- (151) BOI shall provide and cause its advisors to provide to the monitoring trustee all such cooperation, assistance and information as it may reasonably require to perform its tasks, including the possibility to appoint advisors. The monitoring trustee shall be remunerated by BOI in a way that does not impede the independence and effective fulfilment of its mandate.
- (152) The monitoring trustee will first propose a detailed work plan describing how it intends to conduct its tasks. It will then oversee the on-going management of the Divestment Business, propose to BOI such measures as considered necessary to ensure BOI's compliance with the commitments, review and assess potential purchasers of the Divestment Business and report to the Commission regularly on the progress in the application of the commitments. With regard to the customer mobility package, any dispute between BOI and the Relevant Competitor will be referred to the monitoring trustee who will mediate a solution. If no solution is found, the monitoring trustee will refer the matter for resolution to the Commission.
- (153) The Irish authorities have committed that BOI will submit regular reports on the sale process of the Divestment Businesses and potential purchasers to the Commission and the monitoring trustee.
- (154) For each entity of the Divestment Business, if BOI has not entered into a binding sales and purchase agreement one month before the end of the period foreseen for divestment, or if the Commission has rejected a purchaser proposed by BOI at that time or thereafter, BOI will appoint a divestiture trustee. The divestiture trustee will be approved by the Commission and will sell the Divestment Business at no minimum price.

2.5.5 Commitments regarding State measures

- (155) Ireland has committed to undertake a package of alternative measures in order to restore the competition in the Irish banking market by facilitating entry and expansion of competitors and enhancing the consumer protection in the financial sector. In particular, Ireland committed to carry out specific measures in order to enhance:
 - (a) Customer mobility and protection (provision of information; transparency to facilitate consumer decision making; financial inclusion);
 - (b) Entry of competitors (electronic banking, SEPA migration, quality and availability of credit history information and reporting by banks);
 - (c) Corporate governance.

a) Customer mobility and protection

a.1) Customer mobility

Specific Commitments	Implementation Date	Lead Responsibility
a. The IBF switching codes for personal and business customers will be placed on a statutory footing immediately, and it will be accompanied by an information campaign.	Q3 2010	Financial Regulator (FR). Information campaign will be done by National Competition Authority (NCA) and Irish Banking Federation (IBF)
b. A review of the provisions contained in the switching codes with a view to making any necessary enhancements will be carried out as part of the Financial Regulator's review of the Consumer Protection Code, which is expected to conclude in Q2 2011	By end-Q2 2011	FR
c. The Competition Authority will consult with the National Consumer Agency and the Financial Regulator on whether competition in the retail banking market has sufficiently improved and the interests of consumers are adequately safeguarded to support its recommendation that existing price regulation of fees and charges under Section 149 of the Consumer Credit Act 1995 be removed. If the assessment of the Competition Authority is such that the competitive environment does not support its abolition, Section 149 of the Consumer Credit Act, 1995 will not be applied to new entrants in their first 3 years of commencing business in Ireland.	by the end of 2010	Department of Finance (DoF)
d. The Government will implement the following measures unless the review of the Consumer Protection Code -by the FR shows that they are not beneficial for the consumers <ul style="list-style-type: none"> i. A prohibition on bundling unless it can be demonstrated that there is a cost saving for consumers ii. Consumers will be informed on the overall cost of the bundle and the cost of each item separately as well as the cost of exiting the bundle 	By end-Q2 2011	FR

<p>iii. Where one or more financial products are sold in a bundle customers will be able to switch one or more of the products without penalty (apart from the loss of any 'loyalty' discount), they will be provided with easy access to information about switching out of one product in the bundle and they will be allowed to retain any product that they wish to keep with clear information of the costs involved.</p>		
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a.2) Provision of information

Proposed Measure	Implementation Date	Lead Responsibility
<p>a. The NCA will redevelop the banking cost comparisons on its "itsyourmoney.ie" website to provide more and better information on available banking products. A mortgage rate comparison will be added. The site will be more interactive and will allow users to link to switching tips and to providers' websites for follow up.</p>	Q4 2010	NCA
<p>b. A user testing exercise will be carried out after six months of the implementation in order to assess the effectiveness of the NCA project and introduce any changes required.</p>	Q2 2011	NCA
<p>c. Banks will no longer be prohibited from using independent cost comparisons done by the National Consumer Agency when promoting their products.</p>	Immediately	NCA
<p>d. The National Consumer Agency will run a "shop and switch" public awareness campaign in relation to banking products and services</p>	Q4 2010	NCA

a.3) Improved transparency to facilitate consumer decision making

Proposed Measure	Implementation Date	Lead Responsibility
<p>a. Better information on fees and interest rates:-</p> <p>i. Information on fees and charges should be presented in separate, easy to understand one page summary sheets for each type of personal current account. These summary sheets should be collated into a brochure format with</p>	(i) and (ii) will be implemented as part of the review of the Consumer Code (Q2 2011)	FR

<p>the full list of fees and charges included</p> <p>ii. On the bank's website, information equivalent to that contained in the summary sheets should be linked to the relevant personal current account</p> <p>iii. The provision of this information and the ease of accessibility will be reviewed by way of independent usability testing commissioned by banks with reports made public and recommendations implemented.</p>	<p>Q2 2011</p>	<p>IBF</p>
<p>b. Improvements in annual statements and notifications of changes in fees and interest charges¹⁷:</p> <p>i. Banks shall provide customers who have current accounts with separate annual statements of total fees/interest paid.</p> <p>ii. Banks shall provide deposit account customers with separate annual statements of interest earned.</p> <p>iii. Banks when informing customers on changes in interest rates and charges shall include details of the old rate / charge, the new rate / charge and the difference in monetary terms (in the case of rate changes for loans and mortgages)¹⁸.</p>	<p>Will be implemented as part of the review of the Consumer Code (Q2 2011)</p>	<p>FR</p>
<p>c. Improved access to account histories for customers:-</p> <p>i. Banks will provide SMEs 3 years of current account history without charge</p> <p>ii. Banks will provide personal customers with 12 months of current account statements without charge.</p>	<p>Will be implemented as part of the review of the Consumer Code (Q2 2011)</p>	<p>FR</p>

¹⁷ The Consumer Protection Code currently contains a number of provisions relevant to this area, however, these proposals represent refinements which will improve transparency for consumers.

¹⁸ This will not apply in the case of credit agreements falling within the scope of the EC (Consumer Credit Agreements) Regulations 2010 under which creditors are required to provide information concerning changes in the borrowing rate as set out in regulation 14 of those Regulations.

a.4) Financial inclusion

Proposed Measure	Implementation Date	Lead Responsibility
a. A review will be undertaken of the options available to achieve financial inclusion in Ireland, drawing on best practice international approaches to resolving this issue. The objective of the study will be to identify recommended actions to achieve a substantial reduction in financial exclusion over a 3-5 year period	By end-2010 at the latest	DoF
b. The domestic banking sector will be required to support and promote the availability of a basic bank account in the context of the implementation of the strategy agreed by Government for addressing financial exclusion.	By end-2010 at the latest	DoF

b) Entry of competitors

b.1) Electronic banking

Proposed Measure	Implementation Date	Lead Responsibility
a. Changes to the Consumer Credit Act		
i. Section 45 will be amended to recognise electronic communications relating to credit agreements in the same way as written, i.e., hard copy paper communications, are currently recognised	end-2010 at the latest	DoF
ii. Sections 30-35 will be amended (as it interacts with the Electronic Commerce Act 2000) to no longer prohibit the use of electronic signatures with respect to credit agreements	end-2010 at the latest	DoF

b.2) SEPA migration

Proposed Measure	Implementation Date	Lead Responsibility
a. A SEPA Migration Plan will be prepared for the public sector and implemented, covering all the transactions involved in the public sector.	Q4 2010 at the latest (preparation of the plan) Q3 2011 at the latest (implementation of the plan)	DoF

b.3) Improved quality and availability of credit history information and reporting by banks

Proposed Measure	Implementation Date	Lead Responsibility
<p>a. Institutional arrangements for the provision of information on credit histories will be restructured to conform to best international practice for the provision of high quality credit history information. This will be aligned with the proposal on credit registers set out in section 6.3 of the Financial Regulator’s strategy paper “Banking Supervision: Our New Approach” published on 21 June 2010.</p> <p>i. As a first step a review will be carried out to assess, among other things the rules and compliance with the rules governing the availability and type of information held by the Irish Credit Bureau, the ownership structure of the Irish Credit Bureau, and regulatory models for credit histories in other countries. The Financial Regulator will undertake an assessment on the quality and availability of the credit history information.</p> <p>ii. The recommendations of the review will be implemented.</p> <p>Implementation will be aligned with bank specific proposals outlined in the restructuring plans.</p>	<p>Q2 2011</p> <p>Q4 2011 at the latest</p>	<p>DoF, FR</p> <p>DoF</p>
<p>b. Banks will be required – when making reports to credit bureaux - to distinguish between those customers who engage positively with lenders in relation to arrears and especially those with whom the institution has agreed a re-scheduled arrangement to allow new entrants to assess credit risk on a more granular level</p>	<p>Q4 2010</p>	<p>FR/DoF</p>

<p>Legislation or regulatory code will give force of law to this direction to credit institutions.</p> <p>iii. Consistent with Government objectives for promoting competition, strengthening financial regulation and promoting the interests of consumers, the empowerment of the Irish Competition Authority, Financial Regulator the National Consumer Agency, with respect to the financial sector, shall be reinforced (e.g. envisaging additional financial and human resources or the enhancement of the power of sanctioning).</p>		
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d) Reporting and implementation

- (156) Ireland has committed to provide the competent bodies with adequate resources to implement each measure and to enhance the empowerment (e.g envisaging additional financial and human resources or the enhancement of the power of sanctioning).
- (157) No requirement for additional legal, regulatory or sanctioning powers or organisational resources has been identified by the bodies assigned responsibility to ensure implementation of the above measures. If any requirement for additional organisational (i.e. financial and human) resources or the provision of additional legal or regulatory powers, including the enhancement of sanctioning powers, arises for any of the competent bodies during the implementation process these requirements will be addressed by the appropriate national authority to ensure the implementation of each of the above commitments.
- (158) A steering group comprising senior representatives of the Department of Finance, the Financial Regulator, the Competition Authority and the National Consumer Agency will review and report to the Commission on progress in implementing the above commitments on an annual basis.

3 ASSESSMENT

3.1 Existence of State Aid

(159) The Commission first has to assess whether the measures constitute State aid within the meaning of 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, in so far as it affects trade between Member States.

Already approved aid measures

(160) With regard to the measures already approved by the Commission in its decisions pertaining to the recapitalisation of BOI²⁰, the CIFS²¹ and ELG²² guarantee schemes in which BOI participates, and NAMA²³, the Commission has already concluded that those measures constitute State aid in favour of BOI specifically or of the schemes' participating institutions, which include BOI. The Commission notes that Ireland has acknowledged that these measures constitute State aid.

(161) The Commission also observes that BOI, after the adoption of the present decision, may have access to the amended ELG scheme which has recently been approved by the Commission²⁴. In its decision approving that scheme the Commission also concluded that the amended ELG scheme constituted aid to the participating institutions.

State participation in the capital raise

(162) The Commission observes that the Irish authorities have participated in the EUR 3.56 billion capital raise undertaken by BOI. It therefore has to investigate, in line with its final decision on the *Restructuring of Lloyds Banking Group*²⁵, whether this participation can be qualified as State aid.

(163) As regards the participation of the Irish authorities in the capital raise undertaken by BOI, which is described in paragraphs (81)-(85), the Commission notes that out of the EUR 3.56 billion capital raise, the Irish authorities committed to contribute EUR 1.67 billion through the conversion of preference shares in ordinary shares at the firm placement.

(164) The Commission notes that the State's involvement does not bring new capital to the bank, but only changes the form of its shareholding. Following the exercise the State's preference shares of EUR 1.67 billion have been converted into ordinary shares. The principal value of these shares has already been considered in full as State aid for BOI at the time of the rescue recapitalisation in March 2009. The conversion as such does not bring new State resources into the bank.

(165) Nevertheless, the Commission observes that government's involvement in the conversion may give rise to State aid. As regards the presence of State resources, the State foregoes advantages related to the preference shares which do not exist for the

²⁰ See footnote 1. Recitals 43 to 48 of the decision.

²¹ See footnote 5. Recitals 43 to 53 of the decision.

²² See footnote 6. Recitals 43 to 46 of the decision.

²³ See footnote 10. Recitals 79 to 84 of the decision.

²⁴ See footnote 6.

²⁵ Commission decision in Case N428/2009, *Restructuring of Lloyds Banking Group*, OJ C 46, 24.02.2010, p.2.

ordinary shares, namely the guaranteed coupon payment of 8%, which clearly originates from State resources.

- (166) As regards the existence of an advantage stemming from the State participation in the capital raising exercise the Commission observes that first, the increased payment on the remaining preference shares will be lower than the total coupon that would have had to be paid without the conversion. It needs to be noted that according to the financial projections of BOI, the bank does not envisage [...]. [...]. The Commission notes that as remuneration for the foregone coupons on the converted shares, the coupon on the remaining preference shares increased from 8% to 10.25%. Thus the State foregoes an 8% coupon on the converted shares of EUR 1.67 billion receiving in exchange an extra 2.25% coupon on the remaining preference stake of EUR 1.8 billion. The Commission considers that the increase in the coupons may not fully compensate for the foregone State resources and thus the State participation in the capital-raising exercise may confer an advantage to BOI. Second, in the current market circumstances the State participation will significantly facilitate or even make possible the raising of capital on the market. Without the State participation, most probably the private investors would not be willing to participate in the capital raising considering the situation on the financial markets and the economic situation in Ireland in particular. In that context, the Commission notes that BOI had to avail itself of several instruments in order to raise the capital and that it was able to find underwriters to cover only the EUR [...] billion rights issue that was part of the capital raise package. This illustrates the need for government participation in order to successfully complete the capital raise.
- (167) In order to determine whether the measure confers an advantage to BOI and thus constitutes State aid, it is also necessary to verify whether the State acted as a market economy investor. The Commission in this context notes that the State's participation in the capital raise follows other aid measures granted to BOI shortly beforehand, in particular the EUR 3.5 billion capital injection of June 2009. As established in the case-law of the Union courts²⁶, when assessing the support provided by the State the Commission should take into account any earlier aid measures provided by the State to the same beneficiary. The Commission considers that the State participation in the capital raise cannot fulfil the market economy operator principle. The State participation in the capital raise was intended to ensure that the capital raise would be successful and cannot be considered as free of aid, because the opportunity to convert the preference shares into ordinary shares results from an aid measure granted in the prior months, i.e. the EUR 3.5 billion recapitalisation. Thus, the Commission considers that the conversion of shares must be seen in the context of the earlier State aid granted to the bank. In other words, a private investor would not find itself in the situation of the State since it would not have granted the EUR 3.5 billion recapitalisation in the first place.
- (168) On the basis of the above analysis the Commission concludes that the participation of the State represents an advantage to BOI.
- (169) The Commission observes that this advantage to BOI distorts competition and affects the trade conditions among Member States, since BOI is present in other Member States than Ireland and since several of its competitors on the Irish market are subsidiaries of banks of other Member States.

²⁶ Case T-11/95, BP Chemicals Ltd v Commission, ECR [1998] II-3235.

- (170) The Commission therefore considers that the State participation in the capital raise may entail new aid for BOI. However, the Commission observes that the potential aid amount is much more limited than the total advantage BOI drew from the capital raising exercise since the potential new aid consist mainly in the possible under-compensation received by the State for the conversion of shares.

3.2 Amount of aid

- (171) Regarding the amount of aid, the Commission observes that BOI has received an individual aid in the form of a recapitalisation of EUR 3.5 billion. This represents 3.3% of BOI's RWA. This level is already above the 2% threshold as indicated in the Recapitalisation Communication²⁷ and the Impaired Assets Communication (hereinafter "IAC")²⁸. Moreover, BOI benefited from several aid measures. As a result, an in-depth restructuring of BOI is required.
- (172) BOI will furthermore participate in NAMA and will transfer EUR 12.2 billion of its impaired land and property development loans and associated loans to NAMA at an estimated discount of [35-40]%.
- (173) As regards the aid amount included in the impaired asset measure, i.e. the transfer of assets to NAMA, the Commission notes that footnote 2 to paragraph 20(a) of IAC defines the aid amount in an asset relief measure as the difference between the transfer value of the assets and the market price. The Commission observes that it is very difficult to estimate the market value of the covered assets as most of them are loans which are not traded. The Irish authorities estimate the market value of all the impaired assets which are to be transferred to NAMA at roughly [50-60]% of their nominal value. Applying this average level to the impaired assets of BOI, the market value of this portfolio is estimated at an amount of EUR [6-8] billion. Taking into consideration the transfer value of EUR [6.5-9] billion ([35-40]% discount applied to portfolio of EUR [10-15] billion), the estimated aid amount embedded in this aid measure is approximately EUR [500-1000] million (approximately 1% of BOI's RWA). The Commission observes furthermore that the first tranche of loans were transferred to NAMA at a discount of 35%. If the discount remains at this level for all the remaining tranches, the transfer value of the loans would be EUR [6.5-9] billion and the aid involved with the measure would consequently increase to EUR [0-2] billion (approximately 1.5% of BOI's RWA).
- (174) The figures relating to the transfer value and the market value of the loans transferred to NAMA will be subject to verification following evaluations of concrete asset portfolios and asset tranches by the Commission in line with the Commission's decision in Case N725/2009²⁹ which will lead to final conclusions regarding the amount of aid involved. On the basis of the information it currently has, the Commission concludes that the maximum amount of aid involved is EUR [0-3]billion, assuming that the discount will be at least [30-40]%.
- (175) BOI furthermore has participated in the CIFS and ELG guarantee schemes. As a result EUR [...] billion of its liabilities are guaranteed under the CIFS scheme and EUR [...] billion under the ELG scheme (as at 31 March 2010, see Table 3), resulting in a total

²⁷ *Communication from the Commission 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, OJ C 10, 15.1.2009, p. 2*

²⁸ *Communication from the Commission on the Treatment of Impaired Assets in the Community Banking Sector, OJ C 72, 26.3.2009, p.1.*

²⁹ *Commission Decision in Case N725/2009, Irish asset relief – NAMA, OJ C 94, 14.04.2010, p. 10..*

amount of EUR [...] billion of guaranteed liabilities as stated in recitals (38) and (101). The Commission notes that, as for companies in financial difficulty, if a bank is not able to raise sufficient non-guaranteed debt to cover all its funding needs, the aid element of such guarantees might go up to the level of their nominal value.³⁰ This was manifestly the case when BOI started to use the CIFS in 2008 and the ELG in 2010. Furthermore, the Commission notes that BOI benefitted from a reduced fee under the transitional pricing arrangement when it entered the ELG scheme on 1 February 2010. However, the Commission recalls that the participation of banks in State guarantee schemes is not taken into account for the calculation of the amount of aid relative to the bank's RWA in order to establish whether an in-depth restructuring is necessary.³¹ On the other hand, the Commission will take the aid element in the guarantees into account in the context of the restructuring.

- (176) On that basis the Commission concludes that BOI has received aid of at least EUR [4-5] billion ([4-5]% RWA), possibly going up to as high as EUR [...] billion if the guarantees are taken into account. The fact that the aid amounts to at least [4-5]% of RWA confirms the need for in-depth restructuring and gives an indication of the extent of the restructuring required.

3.3 Compatibility of the aid

- (177) When assessing the compatibility of BOI's restructuring plan, the Commission will first assess whether Article 107(3)(b) TFEU is applicable before assessing whether the restructuring plan fulfils the requirements of the Restructuring Communication.

3.3.1 Legal basis for the compatibility assessment

- (178) Article 107(3)(b) TFEU empowers the Commission to declare aid compatible with the common market if it is intended "to remedy a serious disturbance in the economy of a Member State". The Commission observes that market conditions have been difficult throughout the world since the last quarter of 2008. The Commission notes that Ireland in particular has been severely hit by the financial and economic crisis. The economic downturn combined with the fall in property prices and the exposure of the Irish banks to land and property development loans have led to significant impairments for Irish banks. Irish banks have furthermore been faced with difficulties in obtaining funding and capital from the markets due to the uncertainty associated with the property market in Ireland.
- (179) The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy this disturbance. This has been confirmed in the Banking Communication³², Recapitalisation Communication, IAC³³ and Restructuring

³⁰ Commission decision *Commission Decision in Case C 9/2008*, Restructuring aid to SachsenLB, *OJ L 104*, 24.04.2009, p.34, *Commission Decision in Case N 264/2009*, Recapitalisation and asset relief for HSH Nordbank AG, *OJ C 179*, 1.8.2009, p. 1 and *Commission Decision in Case N 244/2009*, Capital injection into Commerzbank, *OJ C 147*, 27.6.2009, p. 4.

³¹ See footnote 4 of the Commission's 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 "Restructuring Communication"*), *OJ C 195*, 19.08.2009, p. 9.

³² *Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis*, *OJ C 270*, 25.10.2008, p. 8.

Communication. In respect of the Irish economy this was confirmed in the Commission's various approvals of the measures undertaken by the Irish authorities to combat the financial crisis³⁴

- (180) Given the specific circumstances in Ireland combined with the current situation on the financial markets, the Commission considers that the measures may be examined under Article 107(3)(b) TFEU.

3.3.2 Compatibility assessment

3.3.2.1 Compatibility with the Restructuring Communication

The application of the Restructuring Communication

- (181) The Restructuring Communication sets out the State aid rules applicable to the restructuring of financial institutions in the current crisis. According to the Restructuring Communication, in order to be compatible with Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis has to:

- (i) Lead to a restoration of the viability of the bank;
- (i) Include sufficient own contribution by the beneficiary (burden-sharing);
- (ii) Contain sufficient measures limiting the distortion of competition.

i) Restoration of long-term viability

- (182) Section 2 of the Restructuring Communication sets out that the Member State should provide a comprehensive and detailed restructuring plan which provides complete information on the business model and which restores the bank's long-term viability.
- (183) Point 10 of the Restructuring Communication requires that the restructuring plan identifies the causes of the bank's difficulties and the bank's own weaknesses, and outlines how the proposed restructuring measures remedy the bank's underlying problems. In its restructuring plan, BOI spells out the causes of its difficulties, in particular its risky lending, especially land and property development loans and its high dependence on wholesale funding to fund its operations. Furthermore the speculative property bubble in the Irish construction sector resulted in serious impairments in the bank's portfolio of assets.
- (184) The main initiatives of BOI's final restructuring plan address the bank's weaknesses. The bank will revert to a more traditional banking model where the bank will substantially fund its core loan portfolios through customer deposits, so that the loan to deposit ratio stays below 125%. The plan envisages a substantial deleveraging of the bank's balance sheet by reducing the assets in the non-core loan portfolios through a process of run-off and disposals. As set out in Table 5, BOI's total asset reduction will be [20-30]% or [10-20]% of its RWA. As a result of the deleveraging and the funding of its core loan portfolios with retail deposits, BOI's dependence on wholesale funding will reduce.
- (185) Furthermore, the final restructuring plan aims at ensuring that BOI fulfils its regulatory capital requirements, i.e. a minimum of 8% Core Tier 1 in the base case and

³³ *Communication from the Commission on the Treatment of Impaired Assets in the Community Banking Sector, OJ C 72, 26.3.2009, p.1.*

³⁴ *See amongst others Commission Decisions as set out in footnotes 1, 5, 6 and 10.*

a minimum of 4% Core Tier 1 capital in the stress case as imposed by the Irish Financial Regulator following the PCAR. The Commission observes that BOI meets these minimum capital requirements in both the base and the stress case.

- (186) As regards the deleveraging of the balance sheet the Commission notes positively the measures envisaged by the final restructuring plan.
- (187) The final restructuring plan indicates that BOI will restructure its UK business. On 31 December 2009 it has decided to put EUR 30 billion of its UK Intermediary Mortgage Portfolio in run-off, therefore withdrawing from the intermediary sourced mortgage market there. BOI will then re-balance lending towards BOI's consumer franchises (through the UK Post Office and the BOI branches in Northern Ireland) which deliver both lending and saving flows by transferring part of the Intermediary Mortgage Portfolio (estimated at EUR [...] billion at the end of the restructuring period) to these businesses. These operations will lead to [...] a loan to deposit ratio of less than [...] % over the final restructuring plan. The remainder of the Intermediary Mortgage Portfolio will be run off completely. As a result, the reliance on wholesale funding to fund the Intermediary Mortgage Portfolio will be reduced and BOI's RWA decrease by around EUR [...] billion during the restructuring period.
- (188) In addition to this commitment to run off the UK Intermediary Mortgage Portfolio, BOI will run off its Corporate loan portfolio of EUR 4 billion, which will lead to a RWA reduction of EUR [1000-1500] million over the restructuring period.
- (189) As a result of the run-off of both loan portfolios over the restructuring period, BOI will reduce the combined total of the portfolios from EUR 34 billion in 2009 to EUR [15-25] billion in 2014 (which amounts to a EUR [0-4] billion RWA reduction), thus considerably reducing its risky position and the wholesale funding-to-deposit ratio.
- (190) Furthermore, the transfer of EUR 12.2 billion of commercial property and associated loans to NAMA will result in a substantial reduction of BOI's balance sheet and a reduction of EUR [5-15] billion of the most risky RWA at March 2014. The Commission recognises that the Irish financial system and domestic economy have been affected by the burst of a real estate bubble. As a consequence loans to the real estate sector are at the source of the principal uncertainties in relation to the asset quality and potential impairments of BOI. The transfer of those assets to NAMA will allow a stable activity of the bank without uncertainties regarding potential impairments in the portfolio.
- (191) Furthermore the Commission notes that the bank's non-NAMA loan book has been subject to ongoing review. The last analyses presented in the [...] report of [...] confirm that the BOI's non-NAMA impairments estimates seem to be reasonable.
- (192) The Commission considers that the transfer of assets to NAMA and the restructuring of its UK Intermediary Mortgage and Corporate loan portfolios will succeed in addressing the main weaknesses that led to the difficulties of BOI. BOI will furthermore improve its risk management through changes in its corporate governance and by amending its management of the risk associated with its lending practices. The restructuring plan thus illustrates that BOI is adapting to the lessons learned from the crisis, in line with point 11 of the Restructuring Communication.
- (193) These restructuring measures also illustrate that, as envisaged by point 12 of the Restructuring Communication, BOI's plan is mainly based on internal measures and includes withdrawal from activities which would remain structurally loss-making in the medium-term.
- (194) The Restructuring Communication also provides that the restructuring plan should demonstrate how the bank will restore its long-term viability without State aid as soon

as possible. In particular, the bank should be able to generate appropriate return on equity, while covering all costs of its normal operation and complying with the relevant regulatory requirements. In particular, point 13 of the Restructuring Communication indicates that long-term viability is achieved when a bank is able to cover all its costs including depreciation and financial charges and provide an appropriate return on equity, taking account of the risk profile of the bank.

- (195) The Commission considers that BOI will show adequate profitability, based on the final restructuring plan, which includes capital projection over the restructuring period under base case as well as under stress scenario, and the participation of BOI in NAMA as well as the Prudential Capital Assessment Review undertaken by the Financial Regulator. That profitability should allow the bank to cover all its costs and provide an appropriate return on equity, taking account of its risk profile, while complying with the regulatory requirements.
- (196) According to the final restructuring plan, BOI will increase its deposits during the restructuring period, which will contribute to improve its funding position. The Commission considers that the analysis and arguments presented by BOI to justify the growing trend in deposits are convincing. The financial projections take into account the impact of the BOI's downgrade of short and long-term counterparty ratings by Standard & Poors and the assumed removal of the State guarantees by the end of June (ELG) and September 2010 (CIFS). Subsequently, as of [...] the plan envisages an increase in deposits [...]. The Commission considers that these assumptions are prudent given investors' feedback in reaction to the capital raise that BOI carried out in May 2010. In fact, the level of capital market deposits in March 2010 was already higher than the level assumed in the plan (EUR [...] billion versus originally assumed EUR [...] billion in the final restructuring plan).
- (197) The Commission positively notes that BOI undertook in May 2010 a EUR 3.56 billion capital raise, where 50% of the capital was provided by private investors and 50% raised through the conversion of Government preference shares. The Commission considers that this support proves that the investors believe that BOI will show adequate profitability in the coming years.
- (198) The Commission notes that the economic projections underpinning the final restructuring plan are based on reasonable underlying macroeconomic assumptions. The projections presented in the final restructuring plan will allow BOI to comply with the relevant regulatory requirements even in a stress scenario with a protracted global recession in line with point 13 of the Restructuring Communication. The Commission considers that the assumptions for these analyses are sufficiently prudent to allow the conclusion that the restructuring measures undertaken by the bank will be sufficient to ensure its long-term viability
- (199) A comparison of the key economic indicators under the base case with other independent projections shows that BOI's own forecasts are relatively conservative. As regard the stress test macroeconomic assumptions used, they are deemed to be sufficiently severe. Therefore, the Commission considers that the stress scenario presented (as described in part 2.4.2.2) indeed demonstrates that the bank will be able to compete on the market without State support even if the situation on the market deteriorates as compared to generally assumed market conditions.
- (200) Finally, the Commission notices that BOI still relies significantly on the Irish CIFS and ELG schemes. As the ELG scheme has been extended by the Commission until 31 December 2010, BOI can continue to benefit from guarantees under this scheme. The Commission observes that the final restructuring plan is based on the assumption that the CIFS scheme will expire by 30 September 2010 and the ELG scheme expires on 30 June 2010. BOI have provided information on how this will affect the liabilities'

side of its balance sheet and how it will deal with the consequences of the release of the guarantees by these dates. [...]. BOI has furthermore indicated that it will take measures including the issuing of EUR [...] billion of debt under the ELG scheme to ensure there will be sufficient funding after the release of the guarantees. BOI will furthermore be able to use the NAMA bonds it receives as consideration for the transfer of loans as collateral with the ECB, which will enable it to access further liquidity.

- (201) Taking into account the above elements, the Commission considers that the restructuring plan of BOI is necessary and sufficient to ensure the restoration of the long-term viability of the bank.

(ii) Own contribution of the beneficiary

- (202) The Restructuring Communication indicates that an appropriate contribution by the beneficiary is necessary in order to limit the aid to a minimum and to address distortions of competition and moral hazard. In particular, it provides that (i) the restructuring costs should be limited while (ii) the aid amount should be limited and a significant own contribution is necessary.

Limitation of the restructuring costs

- (203) The Restructuring Communication indicates in point 23 that the restructuring aid should be limited to cover the costs which are necessary for the restoration of viability.
- (204) The Commission considers that this requirement is satisfied in the present case for the reasons set out below.
- (205) In its decision of 26 March 2009³⁵ the Commission concluded that the recapitalisation of BOI was indeed a necessary and appropriate means to strengthen the bank's capital base with the aim of restoring market confidence in the Irish financial sector, thus avoiding the risk of a serious disturbance of the entire Irish economy. Furthermore, the Commission concluded that taking into account, in particular, the bank's exposure to the property market, this capital injection of EUR 3.5 billion was the minimum necessary to remedy concerns about the stability of BOI and thus the Irish financial system.
- (206) As regards NAMA the Commission in its decision of 26 February 2010³⁶ approved the conditions of the scheme; in particular, it concluded that the scope of assets to be included in the NAMA Scheme is in line with the eligibility requirements of the IAC. Thus, to the extent that the transfer of impaired assets to NAMA complies with the conditions approved by the Commission, it is ensured that in this respect the restructuring costs are limited to the necessary minimum.
- (207) In addition, the Commission notes that BOI will also run off much of its past risky activities (including the [...] Corporate loan portfolio and the Intermediary Mortgage Portfolio) and will divest several businesses, reducing the need for capital and liquidity in the future, i.e. it reduces the resources needed to restore viability over the long-term. Table 5 in paragraph 69 presents an overview of the quantitative effects of those commitments.

³⁵ See footnote 8.

³⁶ See footnote 10

- (208) Furthermore, the Commission also notes positively the commitment of the Irish authorities that the beneficiary will not acquire any financial institutions until the earlier of: (i) 31 December 2014; or (ii) the date by which the preference shares held by the government will be repaid in full (but in any case not before 31 December 2013)³⁷. This acquisition ban gives additional assurance that the restructuring plan and costs will be focused on restoring the viability of the core existing activities and that the bank will not use its own resources or the State support for external growth.
- (209) On the basis of the above elements, the Commission concludes that the restructuring costs are limited to the minimum necessary.

Limitation of the amount of aid, significant own contribution

- (210) The Restructuring Communication indicates that, in order to keep the aid limited to a minimum, the banks should first use their own resources to finance the restructuring. The costs associated with the restructuring should not only be borne by the State but also by those who invested in the bank. This objective is achieved by absorbing losses with available capital and by paying an adequate remuneration for State interventions.
- (211) First, the Commission has to verify whether the aid amount is limited to the minimum necessary.
- (212) As regards the recapitalisation of EUR 3.5 billion the Commission recalls its conclusion that this intervention was necessary and appropriate in the circumstance at the time (see paragraph (205)). The Commission further notes that to a significant extent the need for additional State aid has been limited by the liability management exercises carried out in June 2009, February 2010 and May 2010, while new capital has been raised on the market in line with the recommendations of the Financial Regulator (as described in paragraphs (81) to (85) and the following).
- (213) The Commission notes that BOI intends to repay the remaining EUR 1.8 billion of Government preference shares, if it is possible for the bank to do so, in the following way: EUR [...] billion is intended to be repaid by [...] and the balance of EUR [...] billion in the year ending [...]. This envisaged exit strategy for the State is a favourable factor aiming at limiting the aid to the strict minimum. Furthermore, the Commission notes that the coupon on the outstanding EUR 1.8 billion of the State's preference shares increased from 8% to 10.25% following the conversion of EUR 1.7 billion of those shares into equity. The Commission considers that increased coupon to be adequate and fairly high, providing additional incentive for the bank to repay the State as soon as possible.
- (214) As regards the contribution of BOI to the financing of the restructuring costs, the Commission observes that BOI has undertaken or has committed to undertake several measures to maximise the contribution of the bank and its stakeholders to the restructuring costs. The Irish authorities have committed to a divest BOI's life insurance business New Ireland and a number of other divestments in BOI's corporate and wholesale activities (BIAM and Paul). In addition, as regards its retail activities, the bank will sell ICS as described previously in paragraphs (55) to (62). The Commission considers that these measures contribute to compliance with point 24 of the Restructuring Communication, which requires that banks should first use their own resources to finance restructuring, by, for instance, the sale of assets. Table 5 in paragraph 69 presents an overview of the quantitative effects of those commitments.
- (215) Furthermore, the liability management exercises carried out by BOI in June 2009, February 2010 and May 2010 in respect of non Core Tier 1 and Upper and Lower Tier 2 capital instruments, resulted in crystallised losses to bond holders of circa EUR 1.6

³⁷ See recital (102) referring to the term sheet listing the commitments by the Irish authorities.

billion. Therefore, the Commission considers that the holders of these securities have contributed to the financing of the restructuring costs.

- (216) As regards the existing shareholders, they have been significantly diluted by the participation of the State and private investors in the capital raising exercise described in paragraphs (81)-(85) and the following. In that way, they bore the consequence of the losses registered by BOI.
- (217) Finally, as regards the subordinated debt holders, the Commission notes positively that BOI complies with the Commission's policy on Tier 1 and Tier 2 capital instruments set out in point 26 of the Restructuring Communication³⁸. By virtue of its participation in the CIFS and ELG scheme, BOI was already subject to a ban on the payment of discretionary hybrid coupons in line with the Commission's guidance. For the future, BOI will continue to apply the coupon ban until 31 January 2011 when it has to pay a coupon to the State on the latter's remaining preference shares. The ban cannot be extended further without endangering the capital raising exercise, as outside investors would not accept further dilution as would occur if the coupon on the government preference shares were to be paid in common stock again. Furthermore BOI commits not to pay discretionary dividends on its ordinary stock until the earlier of: (i) 30 September 2012, or (ii) the date of the full repayment of the government preference shares.
- (218) On the basis of the above elements, the Commission concludes that the beneficiary, its shareholders and its debt holders provide a significant own contribution to the restructuring costs.
- (219) As regards the adequacy of the remuneration of the State interventions, the Commission has reached the following conclusions.
- (220) First, the Commission considers that the State will receive an adequate remuneration for the capital injected in the bank. This assessment was carried out in the decision of 26 March 2009³⁹ approving the rescue aid for BOI. The State purchased the shares⁴⁰ [...].
- (221) Second, as regards NAMA, the principle of burden-sharing as set out in the IAC requires that banks ought to bear the losses associated with impaired assets to the maximum extent. Therefore, the assets should be transferred at a price that matches or stays below the real economic value. In the case of NAMA, as described in the Commission's decision of 26 February 2010⁴¹, it is planned that the assets will be transferred at a price which is no greater than their long-term economic value. Further, the remuneration of the State is embedded in that purchase price as a margin added to the risk-free rate (Irish government bond yield for the relevant maturity) used to discount the assets' expected long-term cash flows.
- (222) Since BOI's assets will be transferred to NAMA in line with the conditions approved by the Commission and to the extent that the transfer of assets to NAMA will have been approved by the Commission, the Commission considers that the support for BOI inherent in the bank's participation in NAMA complies with principles of burden-sharing.
- (223) Third, the Commission also considers that, as concluded in the decision of 13 October 2008⁴² approving the CIFS scheme and then in the decision of 20 November 2009

³⁸ Cf. MEMO/09/441 of 8 October 2009 - Commission recalls rules concerning Tier 1 and Tier 2 capital transactions for banks subject to a restructuring aid investigation.

³⁹ See footnote 1, recitals 66-76 of the decision.

⁴⁰ Purchase price net of the underwriting fee received by the State.

⁴¹ See footnote 10, recitals 98 to 104 of the decision.

⁴² See footnote 5, recital 68 of the decision.

regarding ELG guarantee scheme⁴³, BOI pays an adequate remuneration for the State guarantees on medium-term liabilities. This fee is also in line with the requirements laid down in the Recapitalisation Communication. As regards the short-term liabilities, the Commission recalls that the Irish scheme temporarily (in a three-month transitional period) provided for lower fees for guaranteed liabilities with maturities of up to one month (i.e. 25 basis point). This additional aid amounts for the bank granted during the transitional period, i.e. the difference between 50 basis point and 25 basis point, has been taken into account in the current assessment.

- (224) The Commission concludes that the State interventions are adequately remunerated. This contributes to ensuring that the aid is limited to the minimum and that the bank and the existing shareholders bear the largest part possible of the restructuring costs.
- (225) On the basis of the above elements, the Commission concludes that the restructuring plan of BOI ensures that the restructuring costs are limited to the minimum necessary, that the aid is limited to the minimum (notably because it is adequately remunerated) and that the beneficiary, its shareholders and its debt holders provide for a significant own contribution to the restructuring costs. The plan thus complies with section 3 of the Restructuring Communication.

iii) Measures limiting the distortion of competition

- (226) Points 30 to 33 of the Restructuring Communication set out the criteria the Commission will apply when assessing the effectiveness of measures limiting the distortion of competition. These measures should be tailor-made, taking into account the need for such measures and the size, scale and scope of the bank's activities after the implementation of the restructuring plan (point 30). In its assessment the Commission will take into account the amount of aid received and the likely effects of the aid on the markets where the beneficiary bank, once it is viable, will operate. The measures will be tailored to the market characteristics to make sure that effective competition is preserved. In that context, the Commission can take into account that divestments may have adverse consequences on the market and may therefore not be necessary (point 32). Furthermore, the Commission will pay attention to the risk that restructuring measures may undermine the internal market and will view positively measures that help to ensure that national markets remain open and contestable (point 33).
- (227) The Commission observes that, given the particular situation on the Irish financial markets (a deep recession combined with a dramatic fall in property prices, high unemployment and foreign competitors that are retrenching), a careful assessment is necessary of the market conditions and the competitive environment. The measures limiting the distortion of competition should reflect the difficult circumstances in Ireland in the short-term, while ensuring that the distortion of competition is limited to a minimum both in the short-term and the long-term. The Commission will therefore first assess the position of BOI on the Irish market and the particular situation in Ireland before assessing the proposed measures limiting the distortion of competition.

Position of BOI on the Irish market

- (228) As regards the position of BOI on the Irish market, the Commission notes that BOI is one of the two market leaders in the Irish banking sector with very significant market shares in various segments of the market: in retail banking ([30-40]%), in personal

⁴³ See footnote 6, recitals 61 to 66 of the decision.

mortgages ([15-20]%), personal credit cards ([30-40]%), business current accounts ([30-45]%) and business lending ([35-45]%). The Commission therefore concludes that the position of BOI on the Irish market is very significant.

- (229) As set out in point 28 of the Restructuring Communication, where banks compete on the merits of their products and services, those which accumulate excessive risk or rely on unsustainable business models will ultimately lose market share and, possibly, exit the market while more efficient competitors expand on or enter the markets concerned. State aid prolongs past distortions of competition created by excessive risk-taking and unsustainable business models by artificially supporting the market power of beneficiaries. In this way it may create moral hazard for the beneficiaries, while weakening the incentives of the non-beneficiaries to compete, invest and innovate. In this context, measures to limit competition distortions due to State aid play an important role.
- (230) The Commission observes that BOI took [...] risks in the past. This is illustrated by a significant dependence on wholesale funding, high loan-to-deposit ratios and the significant volume of assets to be transferred to NAMA that currently have a low market value. Thanks to the aid measures, BOI was able to survive and keep its leading position on many markets. The aid therefore goes against the normal functioning of the market and against the principles of competition, thereby providing the wrong incentives.
- (231) The Commission therefore considers that measures are necessary to limit the distortions of competition. This is particularly the case on markets where the aid allows the bank to keep its leading position.

Particular situation in Ireland

- (232) Although the aid granted to BOI has very directly affected competition in the banking sector in Ireland, the Commission must take into consideration the particular situation in this Member State to assess the measures aiming at limiting the distortion of competition.

a) Irish banks have been particularly affected by the financial crisis

- (233) Ireland has been severely affected by the financial crisis, with in particular the combined collapse of house prices and the restricted access to wholesale funding. In addition, before the financial crisis Irish banks used to grant commercial property loans with high loan-to-value ratios and lent to fragile borrowers or to borrowers that were already very much exposed to that sector. Those banks were thus very exposed to the property market.
- (234) House prices have increased from between 4 and 5 average annual industrial wages in 1995 to 10-times in 2006 (and 17-times for second-hand houses in Dublin).⁴⁴ This increase resulted in growing demand for loans (from house developers and families), which could not be funded by domestic deposits. Consequently Irish banks increased the proportion of (short-term) wholesale funding in their liabilities and decreased the proportion of customer deposits (for instance in BOI customer accounts accounted for 60% of the bank's liabilities in 2000 as against 38% in 2007).
- (235) While wholesale funding was readily available and cheap, Irish banks could fund their loans easily and on economically sound terms. The financial crisis made this source of funding substantially more costly, weakening the Irish banking model. In parallel,

⁴⁴ www.cepr.org – Discussion paper series N° 7811. "Whatever happened to Ireland?"

house prices collapsed, with some estimations indicating that Irish house prices have fallen from peak by 40% between 2007 and 2009. As a consequence many house developers became insolvent, which triggered high impairments in Irish banks.

- (236) Banks highly exposed to the Irish market thus rapidly needed State support to reconstitute their capital (recapitalisations), to borrow on the wholesale market (guarantee schemes) and to clean their balance sheets (impaired asset schemes).

b) Limited appetite from banks to enter/expand in the Irish market

- (237) The financial crisis has severely affected all banks active in Ireland. In particular, most foreign banks present in Ireland temporarily stopped their activities in the country. For instance in summer 2009 ACC Bank, subsidiary of Rabobank, announced closure of 16 of its 25 branches in Ireland to be implemented between October 2009 and April 2010. Similarly Bank of Scotland (Ireland) – the Irish subsidiary of Halifax, which is part of Lloyds Banking Group – announced on 9 February 2010 its withdrawal from retail and intermediary banking in Ireland.
- (238) The Irish authorities have tried to address this reduction of activities by foreign banks by imposing lending obligations on banks which received State aid from Ireland. For instance, BOI has committed to at least an additional 10% capacity for lending to SMEs and an additional 30% capacity for first-time buyers. This demand from the Irish authorities is a direct result of the substantial reduction of appetite of banks to develop their activities in Ireland.
- (239) Similarly, several banks which publicly announced that they would consider purchasing bank assets in Europe showed little interest in investing in Ireland in the short-term either because of the uncertain economic outlook or because it was not part of their strategic planning.
- (240) When assessing the measures addressing distortion of competition associated to the restructuring of BOI, the Commission has therefore to take into consideration the lack of potential investors on the short-term, and the retrenching of several foreign banks from Ireland.

c) Objective of measures addressing distortion of competition in Ireland

- (241) Pre-crisis, the Irish banking sector was characterised by the presence of two large banks (Allied Irish Banks (AIB) and BOI), four middle-size banks (Ulster Bank, Permanent TSB, Bank of Scotland (Ireland) and Anglo Irish Bank), and several smaller banks (National Irish Bank, ACC Bank, KBC Ireland, INBS, EBS). Table 10 provides information on the size of the banks operating in Ireland.

Table 10: Banks operating in Ireland by size of total assets

Institution	Total assets (2008) – EUR billion
Bank of Ireland	194.1
Allied Irish Banks	179.5
Anglo Irish Bank	88.5
Permanent TSB	74.3
Bank of Scotland (Ireland) – Lloyds	54.1
Ulster Bank – RBS	48.7
National Irish Bank – Danske	28.2
EBS – building society	21.4
KBC Ireland	21.1
INBS – building society	14.4
ACC Bank – Rabobank	8.4
Others (credit unions, PostBank, etc)	

Source: BOI

- (242) Many of the smaller banks entered the Irish market in the last ten years and reinvigorated competition between banks. For instance, in 1995 there were 8 providers of credit cards and 9 providers of personal loans, whereas in 2006 there were respectively 12 and 14 providers of such services.
- (243) Although the smaller banks did not threaten the leading position of BOI and AIB, they introduced a number of innovative features and contributed to strengthen competition in the market. In particular the large banks reacted to such developments. For instance, Permanent TSB introduced free current accounts for retail customers in January 2005. This initiative was rapidly copied by BOI and AIB. Similarly, tracker mortgages were first introduced in Ireland by Bank of Scotland (Ireland) in 2001 and subsequently followed by other banks including BOI and AIB.
- (244) Overall the pre-crisis Irish banking market, although clearly led by BOI and AIB, was competitive and the largest banks reacted to competition stimulus brought by smaller actors.
- (245) The situation in the Irish banking market has been deeply modified by the financial crisis, with larger banks seriously reducing their balance sheets and smaller players retrenching from the market. The measures addressing distortion of competition described below will aim at facilitating the entry and expansion of new or small competitors in Ireland, so as to reinvigorate competition. Although the measures will not restore the pre-crisis situation, they will aim at creating the conditions for competition in Ireland, where small competitors have been a source of innovation and efficiency for customers.

Measures specific to BOI

- (246) Against the background described in paragraphs (228)-(245), the Commission considers that the restructuring plan by BOI combined with the measures to be implemented at national level by the Irish authorities entail sufficient structural and behaviour measures to address the distortions of competition and tackle the issue of moral hazard.
- (247) Several measures specifically target BOI specifically, namely (i) the reduction of its presence in several markets due to transfer or winding-down of assets; (ii) its divestment of subsidiaries or participations; and (iii) the market opening measures targeted at small and new competitors.

(i) Reduction of its market presence

- (248) BOI will reduce its balance sheet and its market presence through the divestment of several of its businesses, the restructuring of its UK business including the run-off of two [...] loan portfolios and the transfer of assets to NAMA (see Chapter 2.5.1). BOI's balance sheet will be reduced by [20-30]% and BOI will as a result reduce its market presence in several markets, in particular in Ireland and in the UK. Notably, BOI will exit from the Irish insurance market, will reduce its presence in the Irish broker mortgage business by [...], divest its 25% share of Irish residents' asset management and significantly decrease the UK mortgage activity.
- (249) Considering the limited market share of BOI in the UK, the Commission considers that the run off of the UK loan portfolios is sufficient to address the distortion of competition in that Member State.

(ii) Divestments

- (250) BOI plans to sell several subsidiaries and participations.
- (251) Firstly, BOI will sell its Irish broker mortgage business, the ICS Building Society. ICS is an attractive acquisition for a bank willing to set up a new business in Ireland, or willing to expand its existing business. ICS has a strong funding base with customer deposits of EUR 4.4. billion (at 31 December 2009), and has consistently generated revenues through the financial crisis period. This illustrates the resilience of its business model (granting of mortgages and collection of deposits via brokers). The amount of mortgages that the purchaser will decide to buy is discretionary, implying that the purchaser can transfer an amount of mortgages matching ICS deposits, and therefore acquire a franchise presenting a strong liquidity profile. Ultimately, ICS can facilitate entry into the Irish banking market by a competitor willing to create or expand banking activities. BOI commits to sell this business by end [...] with a possible extension of [...], which constitutes an appropriate time-frame considering the lack of interest by investors at the present time.
- (252) Secondly, BOI will sell its shares in ICB (Irish Credit Bureau). ICB is an electronic database that contains information on the performance of credit agreements and history between financial institutions and borrowers. The ICB database is available to all banks who request access. The purchaser of BOI's stakes in ICB will therefore not benefit from privileged access to history data. However acquiring the shares of BOI may be a means for a bank to influence the activity of ICB and improve its capabilities.
- (253) Thirdly, BOI will sell the life assurance business New Ireland, BIAM, its stake in Paul Capital and FCE. These subsidiaries are active in banking sectors or in associated sectors (life insurance). The withdrawal of BOI from these sectors will facilitate entry or expansion of banks, which may then be in a position to more easily enter or expand their core banking activities in Ireland.

(iii) Market-opening measures

- (254) BOI will offer to new entrants or to small banks already active in Ireland a Service Package and a Customer Mobility Package.
- (255) The Service Package will aim at reducing the cost of entry or the cost of expansion of a competitor. The services will be provided at incremental cost by BOI (costs directly incurred by the provision of this service). In particular the beneficiary of the Service Package will receive support for several back-up functions (such as clearing, treatment

of paper transactions) at incremental cost, and may then decide to invest in its own infrastructure only at a later stage when its customer base is large enough to absorb fixed costs. The beneficiary will also access the ATM network of BOI at incremental cost, immediately offering a national coverage to its customers.

- (256) The Customer Mobility Package will reduce the costs of customer acquisition for its beneficiaries. The beneficiaries will contact BOI customers, via BOI, and will present them with alternative products for their current accounts or their credit card products. Although it is difficult to predict how many BOI customers will decide to switch their banking products to the beneficiaries of the measure, the Commission considers that this customer approach is more targeted and less costly than general advertisement measures.

Measures to be implemented by the Irish authorities

- (257) The Commission notes that the Irish authorities have provided the commitment to undertake several actions in order to improve competition on the Irish markets.
- (258) The Commission considers that the adoption of alternative measures is necessary considering the current difficulties in the Irish economy and the financial markets. The Commission notes that limited options are available regarding direct restructuring of the large institutions in their domestic market, since these banks currently play a vital role in the provision of lending to the Irish economy, as confirmed by the Irish authorities.
- (259) The proposed general measures aim at restoring the competition and enhancing consumer protection in the Irish financial sector, by improving: (a) customer mobility and protection; (b) entry of competitors; (c) corporate governance.

a) Customer mobility and protection

a.1) Customer mobility

- (260) The Commission notes positively the measures enhancing **customer mobility** and considers them as a key element of a competitive banking market. The Commission shares the view of the Irish authorities that measures promoting customer mobility between banks would be expected to have a high impact in safeguarding competition notwithstanding the retrenchment that is occurring in the banking sector in Ireland.
- (261) The Commission notes that placing the Irish Banking Federation's **switching codes on a statutory basis** will benefit consumers⁴⁵. The establishment of a requirement for mandatory compliance with the switching codes will ensure that consumers and businesses are fully supported in choosing providers of banking services in the Irish market. The Commission positively takes into consideration the communication programme which will support the measure. In the Commission's view, a strong communication of the message that switching is easy is essential to combat inertia and

⁴⁵ *Two voluntary switching codes are currently in place – they have been developed and implemented by the Irish Banking Federation and its members for switching personal and business bank accounts. When the codes are adhered to, the authorities' assessment is that the switching codes make the switching process simple and straightforward for the customer. However, a mystery shopping exercise conducted by the Financial Regulator in November 2008 showed that only 59% of branches visited satisfactorily complied with the personal account switching code.*

resistance to change among consumers. The Commission notes positively that the measure together with the information campaign will be implemented by Q3 2010.

- (262) The Commission positively acknowledges **the commitment to review the provisions contained in the switching codes**. A major review of this code by the Financial Regulator is expected to be implemented by Q2 2011. Part of the remit of the review will be to consider measures to enhance the switching code and the competitive landscape in general, in order to facilitate competition by encouraging a level playing field in the marketplace.
- (263) The Commission notes positively the **measures regarding bundling** of the financial products which will help remove impediments to customer switching. The Commission considers that the review of the Consumer Protection Code in this respect will constitute an additional measure to support a competitive market environment.

a.2) Provision of information

- (264) The Commission positively acknowledges the commitment to improve **the provision of information** in the banking sector which will help the retail banking market in Ireland function effectively, since the consumers will be given the tools to seek value in the provision of banking services. The commitment to undertake major development of the cost comparisons to support consumer decision-making will improve consumer protection and competition. The Commission shares the view with Ireland that is essential that banks are able to use the objective and independent information gathered by the National Consumer Agency (NCA) to inform consumers regarding their offerings relative to those of others. Information currently available on bank websites in respect of banking products is not always easily accessible and it is often difficult to compare the offerings of the different providers. Therefore the Commission considers the proposed provisions as an important tool to improve the current situation.
- (265) The Commission notes positively that the provision of adequate resources to the NCA will be prioritised to make this specific project effective, taking into consideration the future reductions in public expenditure envisaged in 2010 and 2011.

a.3) Improved transparency to facilitate consumer decision making

- (266) The Commission notes positively the commitment to improve the **transparency and the quality of information** on fees and interest rates. Supporting the decision-making process for consumers by enhancing transparency will have a significant impact on competition. An informed customer base could be an attractive prospect for any new entrant and it could support competitive behaviour on the part of incumbents. New entrants should also be encouraged by the measures as they provide a platform of comparable information on which to base customer recruitment and marketing campaigns. Comparable information is necessary for switching decisions. If consumers perceive that not enough is to be gained by switching or too much time is involved in working out what their accounts are costing them, then this will discourage them from taking action.
- (267) The Commission notes positively that providing better quality information constitutes an important improvement of the current situation in the Irish market. According to

the Irish authorities, at present it can be quite difficult for a bank customer to work out how much their current account is costing them or how much interest they earn on deposit, owing to the nature and the format in which the information is provided in bank statements. The Commission considers that the proposed changes are expected to improve the availability of information on fees and charges for consumers. Increasing transparency and comparability of costs and products could encourage consumers to seek better value.

a.4) Financial inclusion

- (268) The Commission notes positively the commitment to promote **financial inclusion** and to support the availability of a basic bank account. The Commission shares the view of the Irish authorities that it is essential to address the issue of financial exclusion, whereby certain segments of the population do not have access to basic financial services and products. Basic banking services are increasingly similar to utilities – necessary for living in a modern economy - and the detrimental effects of financial exclusion are well documented both in Ireland and internationally.

b) Entry of competitors

b.1) Electronic banking

- (269) The Commission acknowledges positively the commitment to enhance **electronic banking**. Electronic banking is a key element in promoting competition in the Irish financial services market. The requirement to build and maintain a costly branch distribution network is a significant barrier to entry which can be substantially mitigated through the use of electronic banking. The implementation of a comprehensive online banking platform by banks in the Irish market is currently restricted by a number of provisions in Irish legislation which prevent the provision of certain legal agreements and associated correspondence in electronic format.
- (270) Therefore, the Commission takes into account positively the initiatives to promote electronic banking which are expected to make a significant contribution to modernising the payments system in Ireland.
- (271) The Commission shares the view of the Irish authorities that it is vital that smaller banks and potential new entrants into the market are able to exploit electronic banking effectively to compete with larger banking operations. This will also be underpinned by progress in the Single Europe Payment Area (SEPA) initiative which enables cross-border provision of banking services.

b.2) SEPA migration

- (272) The Commission considers that the commitment to prepare a **SEPA⁴⁶ migration plan for the public sector** by the end of 2010 and to implement it by the third quarter of 2011 as a significant effort by Ireland. The Commission notes in this respect that many Member States have not yet fully implemented the SEPA migration plan. Implementation of this SEPA migration plan should enhance competition in the payments market leading to technological innovation, while enabling customers to live and work in any EU Member State and continue to operate a single bank account.

b.3) Improved quality and availability of credit history information and reporting by banks

- (273) The Commission is of the view that improving the **quality of availability of the credit history** is an important step to improve competition, since a well functioning credit history market could support competition in lending. Access to high quality credit history information facilitates entry into the market which in turn promotes consumer choice and competition in the banking sector. In addition, improved quality of credit history information should enable banks to better assess the credit risk of customers and to thereby contribute to a more efficient allocation and distribution of credit, including to small and medium enterprises.
- (274) The Commission shares the view of the Irish authorities that improved provision of information on credit histories is essential to conform to international best practice standards and to underpin a properly functioning competitive market taking fully into account legal confidentiality and data protection requirements.

c) Corporate governance

Strengthening corporate governance in the financial sector

- (275) The Commission notes positively the commitment to introduce **corporate governance measures**. The failure of corporate governance at a number of Irish-authorized credit institutions in recent years is to be considered one of the most important causes of Ireland's banking crisis. In particular, the Commission considers positively the provision mandatorily limiting to one the interlocking directorship of credit institutions and insurance undertakings held by a director, thus addressing one

⁴⁶ The Single Euro Payment Area (SEPA) project aims to create a technical payments framework where euro payments can be made and received throughout the euro area, whether domestically or cross-border, under the same basic conditions, rights and obligations. The key components of SEPA are a single set of payment instruments – credit transfers, direct debits and card payments - based on common technical standards. SEPA instruments are underpinned by a harmonised legal basis provided by the Directive 2007/64/EC of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ L 319, 5.12.2007, p.1). While the various building blocks of SEPA (viz, legal basis, common technical standards, infrastructure) are now largely in place, SEPA products – credit transfer, direct debits, cards – have not yet materialised in the marketplace to any significant degree. A European Commission communication, published in September 2009, envisages that SEPA migration would be completed by 2012. Operationally, the key requirements for SEPA migration - which could form the basis of a national migration plan - include the need for banks to make SEPA-compliant payment products available in the marketplace; provide sufficient information to their customers about migration; and provide migration support to their larger customers to assist them in planning for the necessary adaptations to their existing systems, especially those with large credit transfer and direct debit operations such as public bodies, employers and utilities.

of the main sources of difficulties in the Irish financial sector in the years before the crisis. The Commission notes positively that the Financial Regulator and the Government have drawn up a set of proposals which will set exacting standards of corporate governance for boards of directors of banks and insurers. Those proposals include requirements for boards to set the risk appetite of an institution and monitor adherence to it on an ongoing basis. Breaches of these standards will be punishable under the administrative sanctions framework.

(276) The Commission considers the **improved empowerment of the national independent authorities** as an important tool enabling them to act best in the interest of competition and consumers, by different provisions such as additional financial and human resources or increased power of sanctioning.

(277) In the Commission's view the proposed general measures put forward by the Irish authorities are adequate to address the relative dearth of compensatory measures to be undertaken by the bank, which have been one of the main features in comparable restructuring plans.

Conclusion

(278) Taking into account the particular situation in Ireland and the reduction of scale of the bank, the Commission considers that the measures proposed by BOI and the Irish authorities are sufficient and adequate to address possible distortions of competition.

3.3.3 Monitoring

(279) The Irish authorities have committed to submit regular reports on the measures taken to comply with this decision. The first report will be submitted to the Commission not later than six months after the adoption of this decision, as sought by point 46 of the Restructuring Communication. Thereafter, the Irish authorities will report at six monthly intervals.

CONCLUSION

- The Commission concludes that the EUR 3.5 billion recapitalisation, the transfer of EUR 12.2 billion of impaired loans to NAMA (with an aid amount of EUR 1.1 billion), the participation of the Irish authorities in BOI's capital raise and all guarantees granted in relation to BOI under the CIFS and ELG schemes constitute State aid pursuant to Article 107(1) TFEU.
- In the light of the restructuring plan submitted by the Irish authorities for BOI the Commission raises no objection to the aid measures as restructuring aid as they are compatible with the internal market pursuant to Article 107(3)(b) TFEU subject to Ireland and BOI adhering to the commitments as set out in Annex I and II.

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/community_law/state_aids/state_aids_texts_en.htm

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

European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II 70
B-1049 Brussels
Fax No: (+32)-2-296.12.42

Formatted: French (France)

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission

ANNEX I

Commitments Ireland and BOI concerning the divestments and behavioural measures

1. Definitions

In this document, unless the context requires otherwise, the singular shall include the plural (and vice versa) and the capitalised terms used herein have the following meanings:

- 1.1. "Acquisition" means a concentration within the meaning of Article 3 of Regulation 139/2004 whether with or without a Community dimension within the meaning of Article 1 thereof.
- 1.2. "BIAM" means the asset management business of Bank of Ireland Asset Management Limited as described further in Schedule 2 herein.
- 1.3. "BOI" means the Governor and Company of Bank of Ireland, including its subsidiary and associated companies (Irish Company C-1).
- 1.4. "Book Value" means the value of assets of the Corporate Loan Portfolio and UK Intermediary Mortgage Portfolio as recorded in financial statements of BOI.
- 1.5. "Business Day" means a day between and including Monday to Friday but does not include any public holiday in Ireland.
- 1.6. "Capital Raising Exercise" means the capital raising plan as set out in the prospectus issued or to be issued by BOI in April 2010 which includes the proposed placing of ordinary shares and a rights issue, conversion of NPRFC Investment, purchase of Warrants and Liability Management Exercise.
- 1.7. "Clause" means a clause in this document only and such a clause forms part of the document. However, headings to Clauses are for convenience only and are not binding.
- 1.8. "Corporate Loan Portfolio" means the certain corporate banking loan portfolios as identified in the Restructuring Plan which are closed to new business and placed in Run-Off.
- 1.9. "Customer Mobility Package" means the package of measures described in Clause 10 herein.
- 1.10. "Date of the Final Decision" means the day on which the European Commission adopts the final Decision with regard to BOI's Restructuring Plan.
- 1.11. "Date of the Request" means the day on which a Relevant Competitor requests validly in writing to BOI in connection with the Customer Mobility package set out in Clause 10 herein.
- 1.12. "Recapitalisation Decision" means the decision by which the European Commission approved rescue State Aid for BOI (i.e., in Case N149/2009).
- 1.13. "Final Decision" means the decision in which the European Commission takes a decision regarding the restructuring plan and all the State aid granted to BOI (i.e. in Case N546/2009).
- 1.14. "Divestment Business" means, as described herein, any one or all of: (i) BIAM; (ii) FCE; (iii) BOI's shares in ICB; (iv) ICS; (v) New Ireland; and (vi) BOI shares in Paul.
- 1.15. "Divestment Period" means the time period specified in Clause 3 herein during which BOI must Sell the respective Divestment Business. Such period of time may be extended as set out in Clause 3.
- 1.16. "Divestiture Trustee" means one or more natural or legal person(s), independent from BOI, who is approved by the Commission and appointed by BOI and who has received from BOI the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price and whose role is more fully described in Schedule 10 herein.
- 1.17. "FCE" means Foreign Currency Exchange Corporation which is a Florida corporation (owned by BancIreland (US) Holdings, Inc. which is in turn owned by BOI) as described further in Schedule 6 herein.
- 1.18. "Financial Institution" means any undertaking whose principal activities include any banking business.
- 1.19. "Financial Regulator" means the Financial Regulator of Ireland.

- 1.20. "Financial Services Authority" means the Financial Services Authority of the United Kingdom.
- 1.21. "FRAND" means fair, reasonable and non-discriminatory.
- 1.22. "FTE" means full time equivalent employee.
- 1.23. "Hold Separate Manager" means the person appointed by BOI for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee and whose role is more fully described in Schedule 7 herein.
- 1.24. "ICB" means Irish Credit Bureau Limited (including subsidiaries) as described further in Schedule 4 herein.
- 1.25. "ICS" means the ICS Building Society as described further in Schedule 3 herein.
- 1.26. "Incremental Cost" means additional costs incurred by BOI as a direct consequence of the provision of services to Relevant Competitors in application of the Measures. In particular, Incremental Costs do not cover any fixed or variable costs that BOI would bear in the absence of the Measures.
- 1.27. "Ireland" means the Republic of Ireland and includes Irish governmental authorities from time to time including, without limitation, the Department of Foreign Affairs, the Department of Finance and the Financial Regulator.
- 1.28. "Liability Management Exercise" means the liability management exercise announced or to be announced by BOI in April 2010.
- 1.29. "Life Assurance Business" means the life assurance business of New Ireland as described further in Schedule 1 herein.
- 1.30. "Life Assurance Measure" means BOI Selling New Ireland.
- 1.31. "Mailing Date" shall have the meaning ascribed to it in Clause 10 herein.
- 1.32. "Market Share" means the proportion of the market, expressed in percentage terms, held by an undertaking in any particular market (as defined by MORI) (being a market for a Relevant Product) and as determined by the most recent MORI survey available before the Date of Request.
- 1.33. "Marketing, Advertising and Sponsorship" means the promotion of the business (or part of the business) of BOI by means of communication means such as television, radio, newsprint, internet and other similar means of communication.
- 1.34. "Material" shall have the meaning ascribed to it in Clause 10 herein.
- 1.35. "Measure" means the obligations imposed on BOI by virtue of Clauses 3 to 10 herein.
- 1.36. "Monitoring Trustee" means one or more natural or legal person(s), independent from BOI who is approved by the Commission and appointed by BOI, and who has the duty to monitor BOI's compliance with the conditions and obligations attached to the Final Decision and whose role is more fully described in Schedule 9 herein.
- 1.37. "MORI" is a research company which conducts market surveys from time to time. An alternative service provider (other than MORI) may be used and such service provider shall be approved by the Monitoring Trustee, after consultation with the Commission, and BOI. MORI shall mean Ipsos MORI and MORI MFS for the purposes of this term sheet.
- 1.38. "NAMA" means the National Asset Management Agency established pursuant to the National Asset Management Agency Act 2009.
- 1.39. "Net Book Value" means the value of assets less liabilities of the Divestment Business as recorded in financial statements of BOI.
- 1.40. "New Ireland" means New Ireland Assurance Company plc (including subsidiaries) as described further in Schedule 1 herein.
- 1.41. "Notification Date" shall mean the date on which BOI notifies the Relevant Competitor that the latter's advertising literature is to be mailed by BOI.

- 1.42. "NPRFC" means the National Pension Reserve Fund Commission.
- 1.43. "NPRFC Preference Shares" means the preference stock arising from the NPRFC Investment.
- 1.44. "NPRFC Investment" means the subscription by the NPRFC for €3.5bn of preference stock in BOI and the issue of Warrants for ordinary stock completed on 31 March 2009.
- 1.45. "Paul" means Paul Capital Top Tier Investments, LLC as described further in Schedule 5 herein.
- 1.46. "Preparation Time" means the gap in time between the Notification Date and the day on which BOI mails the advertising literature for the Relevant Competitor.
- 1.47. "Purchaser Requirement" means the criteria for European Commission approval of a purchaser of a Divestment Business as set out in more detail in Schedule 8.
- 1.48. "Regulatory Approval" means for the purposes of Clause 3.5.4 herein any appropriate regulatory approval including from the Financial Regulator.
- 1.49. "Relevant Competitor" means an undertaking licensed in Ireland or elsewhere to operate as a credit institution in Ireland and which has (including by virtue of all related undertakings) at the Date of the Request a Market Share of less than 15 per cent of the Relevant Product markets (as defined by MORI) relating to the Relevant Products as determined by the most recent MORI survey.
- 1.50. "Relevant Product" means: (i) personal current accounts; (ii) personal credit cards; (iii) business current accounts; and (iv) business credit cards.
- 1.51. "Restructuring Plan" means the plan submitted by BOI to the European Commission, via Ireland, on 30 September 2009 as amended and supplemented from time to time by written communications.
- 1.52. "Run-off" means the wind-down or cessation of new business in a lending portfolio. The portfolio or business will naturally shrink (and not expand) over time as loans are redeemed and repaid by borrowers.
- 1.53. "Schedule" means a schedule to this document only and such a schedule forms part of the document. The Schedules are an integral part of the term sheet and equally binding. However, headings to Schedules are for convenience only and are not binding.
- 1.54. "Sell" or "Selling", "Sale" or "Sold" means a transaction as described in the implementation procedures as set out in Schedule 11.
- 1.55. "State Aid" shall, for the purposes of this term sheet, have the meaning ascribed to it in Clause 2.1 herein.
- 1.56. "Surplus Cash" means surplus reserves and/or surplus liquid assets over regulatory requirements.
- 1.57. "UK Intermediary Mortgage Portfolio" means that mortgage portfolio in the UK which was introduced to BOI by intermediaries, which BOI announced in January 2009, is closed to new business and is now in Run-off. As at March 2009, the UK Intermediary Mortgage Portfolio stood at approximately €32 billion.
- 1.58. "UK Subsidiary" means that subsidiary of BOI which has been incorporated in the UK by BOI with the approval of the Financial Services Authority and into which certain activities of BOI in the UK will be placed including BOI's Northern Ireland branch and business banking activities, its UK post office joint venture activities, business banking activities in England and Wales and an element which is not expected to exceed € [...] billion of its UK Intermediary Mortgage Portfolio.
- 1.59. "Valid Application" means an application made by an undertaking who is a Relevant Competitor who is, on the day of that application, a Relevant Competitor for a service contained in Clause 10 and which sets out in reasonable detail sufficient information to enable BOI to provide the service
- 1.60. "Warrants" means the detachable warrants issued to the NPRFC as part of the NPRFC Investment.

2. Basis of the Measures

- 2.1. The Measures set out below are conditional on the European Commission adopting a Final Decision that the State aid received by BOI comprising the State aid element of Ireland's 2008 and 2009 bank guarantee schemes, the recapitalisation by Ireland of BOI as described in the Recapitalisation Decision of 26 March 2009 relating thereto, the State aid provided to BOI as a result of NAMA as well as the State aid that may be provided to BOI in connection with the Capital Raising Exercise (all such aid is referred to herein as

”State Aid”) are compatible with the internal market in accordance with Articles 107 to 109 of the Treaty on the Functioning of the European Union.

- 2.2. For the avoidance of doubt, the only businesses which BOI has committed to Sell as part of the Measures herein are the Divestment Businesses as described herein. All statistics and figures quoted herein are those as believed by BOI to be applicable as at a particular point in time and such statistics and figures may be subject to change.
- 2.3. BOI may undertake reorganisation and/or restructuring of certain or all of the Divestment Businesses because of, for example, the integrated nature of BOI and to prepare the Divestment Business for Sale to a third party. In this regard, nothing shall undermine BOI’s fundamental commitment to Sell the Divestment Business or to use reasonable efforts to preserve the economic viability, marketability and competitiveness of the Divestment Business in line with the value preservation commitment in Schedule 7 and subject to review of the Monitoring Trustee. On the condition that such reorganisation will not affect the economic viability, marketability and competitiveness of the Divestment Business, it may include, but is not limited to: (i) the extraction of Surplus Cash; and (ii) the intra-group transfer of legal entities, assets, processes and/or operations that belong to BOI but which for various reasons including for example, historic legal structures or legacy business/operating reasons are housed in the Divestment Business. The sole purpose of any such reorganisation and/or restructuring is to avoid any unintended consequence that any asset of BOI that is required for the continuing operation of the BOI business will transfer with the Divestment Business or where the continuing existence of such continuing BOI operations in the Divestment Business complicates the clean Sale of such Divestment Business. BOI will consult the Monitoring Trustee before undertaking any reorganisation, who shall be able to propose a different solution in case the value preservation obligations are not met. In case no solution is found, the Monitoring Trustee will refer the matter to the Commission for resolution.
- 2.4. BOI shall use all reasonable endeavours to effect these Measures (including seeking and receiving all necessary approvals).
- 2.5. In relation to the implementation of these Measures, BOI shall not be obliged to breach any of its legal obligations. In case of a conflict between the obligation in the Term Sheet and BOI’s legal obligations, BOI will inform the Monitoring Trustee and will undertake to propose an alternative solution that will enable BOI to fulfil its obligations. The Monitoring Trustee, in consultation with the Commission, will verify whether the proposed solution is in line with the commitments in the Term Sheet and BOI’s legal obligations.

3. Divestment Business

- 3.1. Where appropriate and on the basis of a sufficiently reasoned request from Ireland and BOI and taking into consideration the views of the Monitoring Trustee, the Commission may extend the target dates for implementation of the Sale of the Divestment Business for the Divestment Periods set out in Clause 3 herein. Such extension may be granted in particular when the divestments will not be implemented by these dates through no fault of BOI. If no such Sale takes place during the extension of the Divestment Period or in case the Commission decides not to grant an extension to the target dates, then the Sale will be managed and effected by the Divestiture Trustee who will divest the Divestment Business at no minimum price.

3.2. BOI commits to sell its Life Assurance Business

- 3.2.1. Business Description: BOI commits to Sell New Ireland which is the BOI's manufacturer of pension, life assurance and related products for individuals as well as small and medium-sized enterprises. The Sale of New Ireland will include its brand, broker distribution channel, direct sales force, life assets, supporting intellectual property, physical infrastructure, employees and contracts. Prior to and after the Sale of New Ireland, BOI will continue to distribute pension, life assurance and related products. After BOI Sells New Ireland, BOI shall not be entitled to manufacture life assurance and related products until [...]. At the request of the acquirer, BOI will enter into term arrangements (e.g. product distribution agreement) with an acquirer of New Ireland on commercial terms that are consistent with an arms-length transaction. BOI shall not be obliged to enter into exclusive arrangements with such an acquirer nor will such an acquirer be obliged to enter into an exclusive arrangement with BOI. A further description of this Measure is set out in Schedule 1 herein. The acquirer of this business is subject to the prior approval of the European Commission.
- 3.2.2. Divestment Period: by [...].
- 3.2.3. The Divestment Period may be extended by a period of [...] as outlined in Clause 3.1 above.
- 3.2.4. Implementation of Measure: in the Divestment Period and, if relevant, in the extended period BOI will not be obliged to sell at less than Net Book Value. The Measure will be implemented subject to the conditions set out herein and in accordance the implementation procedures set out in Schedule 11 herein.

3.3. BOI commits to sell BIAM

- 3.3.1. Business Description: BOI commits to Sell BIAM, an investment management business headquartered in Dublin which manages balanced and specialist mandates on behalf of institutional clients by manufacturing / sourcing relevant products. The Sale will include assets under management, manufacturing /sourcing capability, supporting intellectual property, physical infrastructure, employees and contracts or such other assets as will be negotiated between BOI and the acquirer. BOI, at the option of the acquirer and on reasonable commercial terms will put in place appropriate arrangements (e.g., a product distribution agreement) between BOI and the acquirer of BIAM. A further description of this Measure is set out in Schedule 2 herein.
- 3.3.2. Divestment Period: by [...].
- 3.3.3. The Divestment Period may be extended by a period of [...]months as outlined in Clause 3.1 above.
- 3.3.4. Implementation of Measure: the Measure will be implemented subject to the conditions set out herein and in accordance the implementation procedures set out in Schedule 11 herein.

3.4. Sell BoI's Shares in Paul

- 3.4.1. Business Description: BOI commits to Sell its shares in Paul, a US-fund of funds based asset management business. A further description of this Measure is set out in Schedule 5 herein.
- 3.4.2. Divestment Period: by [...].
- 3.4.3. The Divestment Period may be extended by a period of [...]months as outlined in Clause 3.1 above.
- 3.4.4. Implementation of Measure: the Measure will be implemented subject to the conditions set out herein and in accordance the Implementation Procedures set out in Schedule 11.

3.5. BOI commits to Sell ICS

- 3.5.1. Business Description: the ICS business comprises three constituent elements: (i) the ICS distribution platform which is comprised of the brand, broker contacts and contracts, customer lists, broker relationship staff, marketing and product design, front of house IT platform and eight broker outlets to be established in eight commercial centres; (ii) customer deposits of €4.4 billion at 31 December 2009; and (iii) a mortgage portfolio of €6.7 billion at 31 December 2009.
- 3.5.2. BOI commits to Sell the ICS platform, subject to a minimum consideration of [...].
- 3.5.3. BOI commits to transfer (as part of the Sale) the €4.4 billion customer deposits.
- 3.5.4. The €6.7 billion mortgage book as at 31 December 2009 (of which €[...] billion was securitised) comprised tracker mortgages of approximately €[...] billion, non-performing loans and unimpaired non tracker mortgages. BOI will undertake all reasonable efforts to Sell as much of the mortgage book as possible to the acquirer of the Divestment Business. A reduction of the mortgage book can only take place at the request of the acquirer. In case the assets transferred from the mortgage book exceed the liabilities (i.e. the deposits), BOI commits to provide funding arrangements to the acquirer at its request subject to standard credit criteria and Regulatory Approval.
- 3.5.5. [...], BOI commits to Selling the [...].
- 3.5.6. In addition, to further increase the attractiveness of the proposition to potential acquirers, BOI is prepared to provide a liquidity and credit protection measure of up to €[0-2] billion to the buyer for a year post Sale, as follows:
 - 3.5.6.1. For one year post-Sale, BOI is prepared to [...]per quarter of the [...].
 - 3.5.6.2. BOI will [...].
- 3.5.7. The Sale of ICS will involve significant separation issues including potentially the requirement for legislative changes by Ireland. In particular the entire mortgage processing infrastructure (including but not limited to) the following: (a) mortgage origination systems; (b) mortgage administration and bookkeeping systems; and (c) deposit taking administration and bookkeeping systems) of BOI which currently resides within ICS will be retained by BOI. If required by the acquirer, a transitional services agreement on Incremental Cost recovery terms on the same basis as clause 10.4.1 below in regard to the service package to cover the provision of core operational and processing functions for a defined period will be concluded between BOI and the acquirer
- 3.5.8. For the avoidance of doubt, BOI commits to sell the ICS business as described above and in Schedule 3 or parts of it, all at the option of the acquirer.
- 3.5.9. Divestment Period: by [...].
- 3.5.10. Ireland commits to enact appropriate legislation to enable the fulfilment of this Measure by no later than [...].
- 3.5.11. The Divestment Period may be extended by a period of [...] as outlined in Clause 3.1 above.
- 3.5.12. Implementation of Measure: the measure will be implemented subject to the conditions set out herein and in accordance the implementation procedures set out in Schedule 11

3.6. Sell BoI's Shares in ICB

- 3.6.1. Business Description: BOI commits to Sell its shares in ICB. ICB operates an electronic database that contains information on the performance of credit agreements and history between financial institutions (principally, banks and building societies) and borrowers. A further description of this Measure is set out in Schedule 4 herein.
- 3.6.2. Divestment Period: by [...].
- 3.6.3. The Divestment Period may be extended by a period of [...] as outlined in Clause 3.1 above.
- 3.6.4. Implementation of Measure: the Measure will be implemented subject to the conditions set out herein and in accordance the implementation procedures set out in Schedule 11.

3.7. Sell BoI's Shares in FCE

- 3.7.1. Business Description: BOI commits to Sell FCE a US based business engaged in providing foreign exchange services. A further description of this Measure is set out in Schedule 6 herein.
- 3.7.2. Divestment Period: by [...].
- 3.7.3. The Divestment Period may be extended by a period of [...] as outlined in Clause 3.1 above.
- 3.7.4. Implementation of measure: the measure will be implemented subject to the conditions set out herein and in accordance the Implementation Procedures set out in Schedule 11.

4. UK Intermediary Mortgage Portfolio

- 4.1. BOI will Run-off the UK Intermediary Mortgage Portfolio.
- 4.2. BOI will not enter into any new lending for the UK Intermediary Mortgage Portfolio except in so far as is necessary for credit mitigation purposes. BOI's management decisions with regard to the portfolio can only have a neutral or decreasing effect on the amount of risk weighted assets attributed to the portfolio at the time of the Final Decision.
- 4.3. BOI will also attempt to accelerate the Run-off of the UK Intermediary Mortgage Portfolio by way of a Sale of all or part of the portfolio but at no less than book value.
- 4.4. If BOI has not run-off or sold that part of its UK Intermediary Mortgage Portfolio which is not booked in UK Subsidiary to below Stg[...]billion (equivalent to approximately €[...] using the sterling / euro exchange rate of [...] as provided in the Restructuring Plan) by [...], then BOI will on a consolidated basis meet the following target from 31 December 2013 until the end of the restructuring period (31 December 2014):

$$\frac{\text{BOI group customer loans}}{\text{BOI group customer deposits plus BOI group wholesale funding >1 year}} \leq 100\%$$

5. Corporate Loan Portfolio

- 5.1. BOI will Run-off the Corporate Loan Portfolio.
- 5.2. BOI will not enter into any new lending in regard to the Corporate Loan Portfolio except in so far as is necessary for credit mitigation purposes. BOI's management decisions with regard to the portfolio can only have a neutral or decreasing effect on the amount of risk weighted assets attributed to the portfolio at the time of the Final Decision.

5.3. BOI will also attempt to accelerate the Run-off of the Corporate Loan Portfolio by way of a Sale of the portfolio but not at less than Book Value.

6. Liability Management Exercise

6.1. By way of background under the proposed debt for equity offers, holders of certain of BOI's tier 1 securities and upper tier 2 securities will be given the opportunity to exchange these securities for shares or cash.

6.2. BOI has already executed liability management exercises in respect of non core tier 1 and lower tier 2 securities resulting in losses to bond holders of circa €1.4bn. BOI announced a further Liability Management Exercise on 26 April 2010 and published the outcome on 10 May 2010.

7. BOI commits to a cap on BOI's expenditure on Marketing, Advertising and Sponsorship in Ireland

7.1. BOI commits to cap the nominal level of its expenditure externally on Marketing, Advertising and Sponsorship in Ireland at the same level as it was for its financial year ended dated 31 March 2008 for three years commencing on the Date of the Final Decision (i.e., €[...] million for each year for the [...] years commencing on the Date of the Final Decision). BOI also commits not to refer in its advertising campaigns to any State support enjoyed by BOI. This cap on expenditure shall not apply to any expenditure: (a) required or recommended by any regulatory or governmental authority; and/or (b) related to any Measure herein; and/or (c) expenditure related to charities; and/or (d) any initiative reasonably necessary to advise customers and others of issues such as fraud, criminal acts (e.g., forged banknotes or bank robberies, changes in terms and conditions in products) or greater exposure to risk.

8. BOI commits to making no Acquisitions and accepts restrictions on the scope of BOI's business for a period of time

8.1. BOI commits, from the Date of the Final Decision until the earlier of: (i) 31 December 2014; or (ii) the date by which the NPRFC shares shall have been repaid in full or are no longer owned by Ireland for any reason whatsoever ([...]) not to make any acquisition of any Financial Institution. However, BOI may make such an Acquisition where: the cumulative purchase price excluding the assumption of debt paid by BOI for all Acquisitions during the period between the Date of the Final Decision and 31 December 2014 is less than €[...] per fiscal year or a total cumulative amount of €[...].

9. Commitments in respect of dividends on hybrid securities and ordinary stock

9.1. BOI commits not to make discretionary payments of coupons or to exercise voluntary call options on hybrid capital securities from 1 February 2010 to 31 January 2011.

9.2. BOI commits not to pay dividends on its ordinary stock until the earlier of: (i) 30 September 2012 (i.e., three years from the date of the recapitalisation plan of BOI); or (ii) the date on which NPRFC Preference Shares are repaid in full or are no longer owned by Ireland for any reason whatsoever.

10. BOI commits to operate certain competition measures

10.1. BOI commits to operate certain competition measures, namely, the provision between 1 January 2012 and 31 December 2014 (i.e., three years) to Relevant Competitors of: (a) a Services Package; and (b) a Customer Mobility Package. Nothing in this Measure commits BOI to the provision of either package to anyone before 1 January 2012 or after 31 December 2014.

10.2. BOI also commits to actively raise further awareness, and promotion of, customer switching and, to that end, BOI will contribute or spend [...] per annum to a dedicated public awareness campaign related to switching commencing on 1 January 2012 and ending on 31 December 2013 as agreed with the Monitoring Trustee

10.3. Any dispute between BOI and a Relevant Competitor relating to this Clause will be referred by BOI and the Relevant Competitor to the Monitoring Trustee, who shall mediate a solution. In case no solution is found, the Monitoring Trustee will refer the matter for resolution to the Commission, whose decision shall be binding.

Services Package

10.4. BOI commits to operate a Services Package for Relevant Competitors who seek to avail of such package.

- 10.4.1. BOI shall provide, on FRAND terms and on terms which recoup BOI's Incremental Costs (including the relevant cost of capital and cost of capital means the cost of BOI's funds (e.g., debt and equity) to support this business), to Relevant Competitors access to:
- 10.4.1.1. Ireland's bank clearing system (both servicing paper and electronic transactions);
 - 10.4.1.2. debit card access to any automated teller machine network in Ireland of which BOI is a member;
 - 10.4.1.3. market intelligence (e.g., rate of default of customers generally and macro/micro-economic data generally) but such access shall be subject to compliance with all laws, codes and practices including, without limitation, those relating to confidentiality, intellectual property, contract and competition;
 - 10.4.1.4. cash supply and distribution services; and
 - 10.4.1.5. foreign exchange supply and distribution services.

BOI will give due consideration to all reasonable requests from a Relevant Competitor via the Monitoring Trustee for a change in the services to be provided. For the avoidance of doubt, the provision of such services shall be in compliance with all applicable laws, codes and practices generally (including, without limitation, the EU's Payment Service Directive) and BOI shall only be obliged to provide such services as are within its control and power.

Customer Mobility Package

- 10.5. BOI commits to provide a Customer Mobility Package for Relevant Competitors who seek to avail of this package.
- 10.5.1. The Customer Mobility Package will enable a Relevant Competitor to have its advertising material relating to a Relevant Product to be mailed to BOI's customers provided that all of the following conditions in this Clause are satisfied in full including:
- 10.5.1.1. BOI has received a Valid Application from the Relevant Competitor;
 - 10.5.1.2. the Relevant Competitor qualifies as a Relevant Competitor on the Date of the Request;
 - 10.5.1.3. BOI has Market Share of more than 30% in respect of that Relevant Product as at the Date of the Request;
 - 10.5.1.4. the Relevant Competitor will reimburse BOI on commercial terms for all costs directly involved with mailing the Relevant Competitor's material concerning the Relevant Product ("Material") to BOI customers (including, where relevant, printing, packaging and posting such material). Relevant Competitors will be responsible for all costs involved with the production of the relevant materials, delivery and related costs of the same to BOI and the cost of mailing. The costs of customer selection in relation to the Customer Mobility Package will be borne by BOI. Other costs not directly involved with mailing the Relevant Competitor's Material to BOI customers will be borne by BOI.
 - 10.5.1.5. the Relevant Competitor takes full responsibility for the lawfulness, accuracy and appropriateness of the Material and provides to BOI in advance a written indemnity from and against all and any loss or damage caused or suffered by BOI in connection with the mailing. For the avoidance of doubt, BOI shall not be obliged to review the Materials, and BOI shall bear no responsibility or liability whatsoever for the Material distributed pursuant to this Measure or the fulfilment of this Measure generally; if there is any dispute in this regard between BOI and the Relevant Competitor then it will be referred to the Monitoring Trustee, who shall mediate a solution. In case no solution is found, the Monitoring Trustee will refer the matter to the Commission for resolution; and
 - 10.5.1.6. sufficient copies of the Material to be distributed hereunder shall be received by BOI from the Relevant Competitor no later than a reasonable number of days taking into account normal business practices (i.e., the Preparation Time) after the date on which BOI notifies the Relevant Competitor that the latter's material is to be mailed by BOI (the "Notification Date") and the Material shall comply in all respects with all applicable laws, codes and practices. Any dispute

shall be referred to the Monitoring Trustee, who shall mediate a solution. In case no solution is found, the Monitoring Trustee will refer the matter to the Commission for resolution.

10.5.2. The mailing undertaken by BOI will:

10.5.2.1. For the purposes of the commitment, the mailings will be divided over six periods of six months, the first period starting on 1 January 2012. During these periods, Relevant Competitors may submit an application for a mailing to BOI. Each Relevant Competitor is allowed to approach BOI once in each six-month mailing period.

10.5.2.2. For each six months period, the mailings shall be made on three predetermined dates (the "Mailing Dates") taking into account the interest of the Relevant Competitors and the mailing schedule of BOI, with the Date of the Request by the Relevant Competitors being a reasonable number of days before the Mailing Dates to enable BOI to prepare for such voluminous mailings respectively for each of the Mailing Dates and such requests to be received by BOI no later than 17.00 (Dublin time) on such dates. BOI will ensure that the Mailing Dates are made public on BOI's website in advance, in order to allow interested Relevant Competitors a reasonable time to prepare an application. Any dispute shall be referred to the Monitoring Trustee, who shall mediate a solution. In case no solution is found, the Monitoring Trustee will refer the matter to the Commission for resolution.

10.5.2.3. For the purposes of the mailing, BOI shall randomly select, at the request of the Relevant Competitor, up to one-third of its customer base for each mailing taking place in the first, six months period; such customer base being BOI's customers for the Relevant Product to be advertised by the Relevant Competitor in that mailing. BOI will select a different third of its customer base in the second, six months period and the final third of its customer base in the third period. The same process will be repeated in the successive three six months periods. The Monitoring Trustee will verify the selection of the customers by BOI. At the request of the Relevant Competitor, the number of customers contacted during a six month period may be reduced, on the basis of filtering criteria that can be easily implemented by BOI (the instruments necessary to conduct this filtering are readily available to BOI, or are easily computable in BOI). In accordance with Irish data protection law, no customer shall be sent material where the customer has not given consent to BOI to receive such materials.

10.5.2.4. In the interests of ensuring that consumers are not inundated unreasonably with advertising literature and in order to maximise the chances of the Material supplied by Relevant Competitors to be read, the Material of no more than two Relevant Competitors per Relevant Product will be mailed on each Mailing Date by BOI in each of the 6 month mailing periods as part of this Measure.

10.5.2.5. For the avoidance of doubt, the unused mailing opportunities shall be forfeited and not carried forward.

10.5.3. The mailing will be managed, processed and completed by BOI (or its agent) on behalf of, and for the account of, the Relevant Competitor without any input or involvement of the Relevant Competitor. For the avoidance of doubt, the Relevant Competitor shall not have access to the names and addresses or other details of BOI's customer base.

10.5.4. BOI shall be obliged to send Material on behalf of no more than two Relevant Competitors per Relevant Product on each Mailing Date and those two Relevant Competitors per Relevant Product shall be selected in the order in which they apply to BOI or, in the event of more than two Relevant Competitors per Relevant Product apply simultaneously for each Mailing Date then the two Relevant Competitors per Relevant Product will be selected by lot by the Monitoring Trustee. In order for an application to be valid, the Relevant Competitor must qualify as a Relevant Competitor on the date of the Request and have satisfied all of the conditions set out in Clause 10.5.1 (a "Valid Application"). BOI will notify the Relevant Competitor in writing whether it has been successful in its application and that its Material is going to be mailed by BOI (the "Notification Date").

10.5.5. A Relevant Competitor may request Material to be mailed in respect of one or more Relevant Products but no other products. Furthermore, the Relevant Competitor may point out the possibility for customers to fully or partially switch their banking relationship and make general references to other banking products. A request will be otherwise valid notwithstanding that it has requested the benefit of this Customer Mobility Measure where BOI has less than thirty per cent Market Share in relation to a Relevant Product provided the request also seeks a mailing in respect of those Relevant Products where

BOI has a Market Share of more than thirty per cent. If the marketing materials received from the Relevant Competitor include materials for products other than the Relevant Products, (except for general references to fully or partly switching their banking relationship and general references to other banking products), then BOI shall not be obliged to mail such materials but will notify the Relevant Competitor of its decision, where practicable and possible, in a timely manner to afford the Relevant Competitor the opportunity to re-submit amended materials. Any dispute in this regard shall be referred to the Monitoring Trustee, who shall mediate a solution. In case no solution is found, the Monitoring Trustee will refer the matter to the Commission for resolution. BOI will be under no obligation to mail the resubmitted materials unless they are received by 5pm five clear Business Days prior to the Mailing Date and provided that such re-submitted materials are in compliance with the terms of this Clause.

- 10.6. BOI commits not to contact a customer with advertising literature relating to the Relevant Product where that customer has been one selected for contact and contacted on behalf of a Relevant Competitor during the six months following such contact on behalf of the Relevant Competitor. If such a customer switches to the Relevant Competitor and BOI knows that such a customer has switched then BOI commits to not contacting that customer for an additional one year following the switch to the competitor of that customer under this Measure. For the avoidance of doubt, BOI shall remain free to contact such customers for regulatory reasons and as part of any initiative reasonably necessary to advise customers and others of issues such as fraud, criminal acts (e.g., forged banknotes or bank robberies, changes in terms and conditions in products) or greater exposure to risk.
- 10.7. BOI commits that in case a BOI customer pursuant to the mailing of the Materials of the Relevant Competitor decides to switch part or all of its business (including both Relevant Products and other products) to the Relevant Competitor, BOI will not impede the switching in any way, nor charge any (penal) switching fees unless required by law or legal obligation or which are part of BOI's product terms and conditions.

SCHEDULES

In these Schedules, the capitalised terms have the same meaning as provided in Clause 1 above.

Schedule 1. : Further Description of the Life Assurance Measure

S1.1. New Ireland Assurance Company plc is an Irish incorporated company. Its registered number is 7336.

S1.2. As at 31 December 2009, New Ireland had:

- a. a broker distribution channel (with circa [...] registered relationships);
- b. a direct sales force (with circa [...] professional sales representatives);
- c. supporting information technology;
- d. physical infrastructure;
- e. 850 employees;
- f. life assets (of circa €10 billion); and
- g. embedded value of €1 billion (measured as at September 2009).

S1.3. BOI distributes and will continue to distribute third party pension, life assurance and related products and will retain the BOI Life brand. After BOI Sells New Ireland, BOI shall not be entitled to manufacture such products until [...].

S1.4. After BOI Sells New Ireland, BOI is not obliged to distribute the products of New Ireland but may choose to do so at its discretion. . At the request of the acquirer, BOI will enter into term arrangements (e.g. product distribution agreement) with an acquirer of New Ireland on commercial terms that are consistent with an arms-length transaction. BOI shall not be obliged to enter into exclusive arrangements with such an acquirer nor will such an acquirer be obliged to enter into an exclusive arrangement with BOI. If required by the acquirer, a transitional services agreement on Incremental Cost recovery terms (on the same basis as clause 10.4.1 herein) shall be negotiated between the BOI and the acquirer of New Ireland to cover the provision of services and functions for a period of up to [...].

Schedule 2. : Further Description of the BIAM Measure

S2.1. BIAM is an Irish incorporated company.

S2.2. The business of BIAM is located in BIAM but some assets of BOI generally are housed, as a matter of law, in BIAM but do not relate to the business of BIAM and so those additional assets would not be sold as part of this Measure.

S2.3. BIAM is the number 2 asset manager in Ireland with €27 billion worth of assets under management (measured as at March 2009). It is the current in-house asset manager for most of BOI's investment products – circa 50% of BIAM's assets under management are "in house" (i.e., BIAM provides services to New Ireland and for BOI's insurance products, pension funds). BOI also commits to use reasonable endeavours, subject ultimately to customer preference, to seek to keep assets under management currently in BIAM for three years post-Sale of the divestiture to the extent within its control if the Monitoring Trustee finds that it is necessary to preserve the viability and attractiveness of the business.

S2.4. By Selling BIAM, BOI will thereby open up access to its distribution platform to outside asset managers. BOI, at the option of the acquirer and on FRAND terms, will put in place appropriate term arrangements (e.g., a product distribution agreement) between the acquirer and BOI. BOI commits not to establish, acquire or advertise an asset management business that competes with BIAM [...].

S2.5. If required by the acquirer, a transitional services agreement on Incremental Cost recovery terms (on the same basis as clause 10.4.1 herein) shall be negotiated between BOI and the acquirer of BIAM to cover the provision of services and functions for a period of up to three years.

Schedule 3. : Further Description of the ICS Measure

S3.1. ICS is a building society. Its business comprising a mortgage loan book, a deposits book, the ICS brand, and its sales infrastructure including sales staff.

S3.2. The ICS package would include;

- a. Origination & Sales Platform:
 - ICS Building Society is positioned to originate new mortgage business through two principal channels:
 - Broker intermediary channel – ICS currently originates new mortgage business through [...] independent brokers supported by a regionally based ICS sales team ([...] FTE).
 - At the option of the acquirer, ICS operated [...] Mortgage Stores [...] (the FTE requirement for the store network is c. [...] FTE).
- b. Processing, Underwriting, Servicing & Deeds Management:
 - Circa [...] FTE – Processing ([...]), Underwriting ([...]) and Servicing ([...]). FTE numbers for Processing, Underwriting, Servicing and Deeds Management are low, considering current volumes, and may need to increase if volumes increase.
- c. Commercial Management: Product Management, Risk Policy, Customer Management, Planning, Marketing, Business Development, Sales & Business Reporting, etc. ([...] FTE).
- d. Collections:
 - Circa [...] FTE – this number is high given current arrears volumes, but could be reduced to more normalised levels of circa [...].
- e. Finance & Treasury:
 - Treasury, Structured Finance, Asset/Liability Mgmt & Back-office Support ([...] FTE);
 - Head of Finance ([...] FTE);
 - Reporting, Planning & Business Analytics ([...] FTE);
 - Financial control, procurement, payments, etc. ([...] FTE);
 - Tax ([...] FTE); and
 - Pensions Administration ([...] FTE).
- f. Legal, Compliance & Secretarial ([...] FTE).
- g. HR ([...] FTE).
- h. IT/Outsource Management ([...] FTE)
- i. MD Office ([...] FTE).

S3.3. For information purposes only, ICS had at 31 December 2009; a deposits of approximately €4.4 billion; and mortgages of approximately €6.7 billion of which €[...]billion is securitised.

Schedule 4. : Further Description of the ICB Measure

S4.1. Irish Credit Bureau Limited is an Irish incorporated company. Its registered number is 144535. ICB is owned and financed by its members which are principally various institutions and bodies involved in the provision of credit. BOI has a 16.8% shareholding in ICB.

Schedule 5. : Further Description of the Paul Measure

S5.1. Paul is a U.S private equity firm, providing private equity fund of funds products and advisory services to institutional and other investors worldwide. BOI owns 50% of PCI which had assets under management of US€1.6bn (March 2009). PCI is based in San Francisco, California. PCI employs a total of 12 FTE's.

Schedule 6. : Further Description of the FCE Measure

S6.1. Foreign Currency Exchange Corporation (or FCE) is a Florida corporation (owned by BancIreland (US) Holdings, Inc. which is in turn owned by BOI). FCE provides outsourced FX services to US banks servicing over 40,000 bank branches/outlets throughout the US and Canada.

- a. Products and Services:
- The purchase and sale of currency bank notes, travellers checks and foreign drafts.
 - Check collection and cash letter services utilising established relationships with over 300 global banking companies.
 - International wire transfer system for the processing of incoming and outgoing foreign wire payments.
- b. Technology:
- Currency Teller (CT) is FCE's proprietary technology which enables rapid deployment of foreign exchange services to its client bank branches.
- c. FTEs:
- 53 FTEs based in Orlando, Florida.

Schedule 7. : Value Preservation Obligations and Hold Separate Obligations

(i) Value Preservation Obligations

S7.1. From the date of the Final Decision until a Sale is completed, BOI shall use reasonable efforts to preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular BOI undertakes:

(a) not to carry out any act upon its own authority that might reasonably be deemed to have a significant adverse impact on the value, profitability, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business; and

(b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans

(c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all key personnel to remain with the Divestment Business.

(ii) Hold Separate Obligations

S7.2. BOI commits until a Sale is completed to keep the Divestment Business separate from the businesses it is retaining and to ensure that key personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. BOI shall also ensure that the personnel do not report to any individual outside the Divestment Business except where necessary to do so for prudential, regulatory, accounting, risk, compliance, funding / treasury management or other related reasons.

S7.3. Until a Sale is completed, BOI shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by BOI. BOI shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to using reasonable efforts to ensure its continued economic viability, marketability and competitiveness and its independence from the businesses retained by BOI.

Ring-fencing

S7.4. BOI shall implement all necessary measures to ensure that it does not after the Date of the Final Decision obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible,

without compromising the viability of the Divestment Business. BOI may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to BOI is required by law, accounting consolidation, stock exchange, regulatory reporting, or common practice reasons.

Non-Solicitation Clause

S7.5. BOI undertakes, subject to customary limitations, not to solicit, key personnel transferred with the Divestment Business for two years after closing unless otherwise agreed with the acquirer..

Due Diligence

S7.6. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, BOI shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:

- (a) provide to potential acquirers sufficient information as regards the Divestment Business; and
- (b) provide to potential acquirers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

S7.7. BOI shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee within an agreed period of time (or otherwise at the Commission's request).

S7.8. BOI shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Schedule 8. : Divestment Obligations

S8.1. 1. BOI commits to divest, or procure the divestiture of the Divestment Business by the periods set out Clause 3 herein to a purchaser and on terms of Sale approved by the Commission. To carry out the divestiture, BOI commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the Divestment Period (or as may be extended by the Commission). If BOI has not entered into such an agreement at the end of the Divestment Period (as may be extended by the Commission), BOI shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business.

S8.2. BOI shall be deemed to have complied with this commitment if: (i) by the end of the Divestiture Period (or as may be extended by the Commission), BOI has entered into a final binding sale and purchase agreement; (ii) if the Commission approves the Purchaser and the terms in accordance with the procedure described in Schedule 8 herein and (iii) if the closing of the sale of the Divestment Business takes place within an agreed period of time after the approval of the purchaser and the terms of sale by the Commission.

S8.3. The Divestment Business, described in appropriate detail in Schedules 1 to 6, includes where relevant:

- (a) all main tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business; all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
- (b) all main contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as "Assets");
- (c) key personnel; and
- (d) the benefit, at the option of the acquirer for a reasonable transitional period in line with commercial practice and on [...]of all current arrangements under which BOI including its subsidiaries and

affiliated undertakings supply products or services to the Divestment Business, as detailed in the relevant Schedule unless otherwise agreed with the acquirer.

- S8.4. In order to maintain the structural effect of the Measures, the Parties shall, from the date of the Final Decision, not acquire direct or indirect influence over the whole or part of the Divestment Business until the end of the restructuring period (31 December 2014), unless the Commission has previously found that the structure of the Product Market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary in the context of the Restructuring Plan.
- S8.5. The final binding sale and purchase agreement shall be subject to the Commission's approval. When BOI has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. BOI must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements (i.e. S8.8) and that the Divestment Business is being sold in a manner consistent with the Measures. For the approval, the Commission shall verify that the purchaser fulfils such Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Measures. The Commission may approve the sale of the Divestment Business without one or more assets or parts of the personnel, if this does not affect the viability and competitiveness of the Divestment Business after the Sale, taking account of the proposed purchaser.
- S8.6. Sales of Divestment Businesses will be subject to all relevant legal, regulatory, accounting and financial requirements and consents (including where required the consent of the shareholders or the board of directors of the Divestment Business or BOI). Nothing herein shall oblige BOI to abstain from taking any step or to act in breach of any applicable law, code or practice including, but without limitation, data protection, consumer protection, competition, taxation, communications or other applicable laws.
- S8.7. In respect of any service provided to any third party, BOI shall not be responsible for monitoring or ensuring compliance with applicable laws, codes or practices by such third party and BOI shall be entitled to recover damages for any loss or damage caused to BOI by any act or omission by such third party.
- S8.8. In order to be approved by the Commission, the purchaser must meet the Purchaser Requirements i.e.: (i) be independent of and unconnected to BOI; (ii) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with BOI and other competitors; (c) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Measures will be delayed, and (d) must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.
- S8.9. If there is any conflict between the obligations of BOI which are set out herein then it is the Commission, acting on the advice of the Monitoring Trustee that shall decide which obligation shall prevail.
- S8.10. Ireland shall do all in its power to assist BOI in fulfilling these obligations and, in particular, shall assist BOI if the fulfilment of these obligations were to be or will be unreasonable or difficult through no fault of BOI, including if necessary enabling legislation to facilitate the Sale of ICS.

Schedule 9 : Monitoring Trustee

- S9.1. BOI shall, at its own expense, appoint a Monitoring Trustee to carry out the functions specified in the Measures for a Monitoring Trustee. If BOI has not entered into a binding sales and purchase agreement one month before the end of the Divestment Period (as may be extended under Clause 3 herein) or if the Commission has rejected a purchaser proposed by BOI at that time or thereafter, BOI shall appoint a Divestiture Trustee to carry out the functions specified in the Measures for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect at the expiry of the Divestment Period (as may be extended under Clause 3 herein).
- S9.2. The Monitoring Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by the Parties in a way that does not impede the independent and effective fulfilment of its mandate.
- S9.3. No later than one month after the Date of the Final Decision, BOI shall submit to Ireland, which will transmit to the Commission, a list of at least two persons whom BOI proposes to appoint as a Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the

Commission to verify that the Monitoring Trustee fulfils the requirements set out in paragraph S9.2 herein and shall include: (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Measures; (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

S9.4. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, BOI shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, BOI shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within an agreed period of the Commission's approval, in accordance with the mandate approved by the Commission.

Alternative proposal by BOI

S9.5. If all the proposed Monitoring Trustees are rejected, BOI shall submit the names of at least two more individuals or institutions to Ireland, which will transmit them to the Commission, within one week of being informed of the rejection, in accordance with the requirements and the procedure set out above.

Trustee nominated by the Commission

S9.6. If all further proposed Monitoring Trustees pursuant to S9.5 are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom BOI shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

Co-operation

S9.7. BOI shall provide and cause its advisors to provide to the Monitoring Trustee all such cooperation, assistance and information as it may reasonably require to perform its tasks, including the possibility to appoint advisors. The Monitoring Trustee shall be remunerated in a way that does not impede the independent and effective fulfilment of its mandate.

S9.8. BOI must provide the Monitoring Trustee(s) with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform his tasks.

Duties and obligations of the Monitoring Trustee

S9.9. The Monitoring Trustee shall with regard to the Divestment Businesses:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Final Decision.

(ii) oversee the on-going management of the Divestment Business with a view to using reasonable efforts to ensure its continued economic viability, marketability and competitiveness and monitor compliance by BOI with the conditions and obligations attached to the Final Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties;

(b) supervise the management of the Divestment Business as a distinct and saleable entity;

(c) in consultation with BOI:

(i) determine all necessary measures to ensure that BOI does not after the Date of the Final Decision obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and

(ii) decide whether such information may be disclosed to BOI as the disclosure is reasonably necessary to allow BOI to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and BOI;

(iv) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Final Decision;

(v) propose to BOI such measures as the Monitoring Trustee considers necessary to ensure BOI's compliance with the conditions and obligations attached to the Final Decision, in particular its reasonable efforts to maintain the economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(vi) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and relevant personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to relevant personnel;

(vii) provide to the Commission, sending BOI and Ireland a non-confidential copy at the same time, a written report within an agreed period. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Measures and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending BOI a non-confidential copy at the same time, if it concludes on reasonable grounds that BOI is failing to comply with these Measures;

(viii) submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Final Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

S9.10. The Monitoring Trustee shall furthermore monitor the commitments provided by BOI as set out in Clauses 4-10. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Final Decision;

(ii) provide the Commission, sending BOI a non-confidential copy at the same time, a written report within an agreed period. The report shall cover the application of clauses 4-10 by BOI so that the Commission can assess whether BOI respects the Commitments. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending BOI a non-confidential copy at the same time, if it concludes on reasonable grounds that BOI is failing to comply with these Measures;

(iii) submit to the Commission a reasoned opinion as to whether Clauses 4-10 are applied by in a manner consistent with the conditions and obligations attached to the Final Decision, and in particular, if relevant, whether Clause 10 is applied diligently and whether Relevant Competitors do not suffer unjustified burden from BOI in the application of this Clause.

(iv) Concerning Clause 10, the Monitoring Trustee shall ensure that any dispute between BOI and a Relevant Competitor will be referred by BOI and the Relevant Competitor to the Monitoring Trustee, who shall mediate a solution. In case no solution is found, the Monitoring Trustee will refer the matter for resolution to the Commission, whose decision shall be binding. In the event of more than two Relevant Competitors per Relevant Product for each Mailing Date apply simultaneously then the two Relevant Competitors per Relevant Product for each Mailing Date to be chosen will be selected by lot by the Monitoring Trustee .

Schedule 10. Divestiture Trustee

- S10.1. The Divestiture Trustee shall sell the Divestment Business at no minimum price to a purchaser in the period of time allocated for Sale by the Divestiture Trustee, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the period of time allocated for Sale by the Divestiture Trustee. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of BOI, subject to BOI's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- S10.2. The Divestment Trustee shall be appointed at the expense of BOI and in an equivalent way and applying equivalent criteria regarding the appointment of the Monitoring Trustee as set out in Schedule 9 above *mutatis mutandis*.
- S10.3. In the period of time allocated for Sale by the Divestiture Trustee (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within an agreed period with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to BOI.
- S10.4. BOI must provide the Divestiture Trustee with all such co-operation, assistance and information as the Divestiture Trustee may reasonably require to perform his tasks.
- S10.5. BOI shall grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the Sale, the closing and all actions and declarations which the Divestiture Trustee reasonably considers necessary or appropriate to achieve the Sale and the closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, BOI shall cause the documents required for effecting the Sale and the closing to be duly executed.

Schedule 11. : Implementation Procedures

S11.1. Commercial Procedures

- a. As part of its reorganisation and/or restructuring of the Divestment Business to prepare it for Sale, BOI may conclude or restructure intra-company agreements/arrangements for the reasons set out in and subject to Clause 2.3. For the avoidance of doubt, the preparation of the Divestment Business is monitored by the Monitoring Trustee who advises the European Commission as set out in the Monitoring Trustee provisions.
- b. Transitional services agreements between BOI and an acquirer of a Divestment Business may be entered into for the provision of core operational and processing functions. BOI will seek to enter into reasonable transition agreements to facilitate a Sale. At the request of the acquirer, BOI may enter into term arrangements (e.g., product distribution, product manufacturing or other commercial agreements) with an acquirer of a Divestment Business on a FRAND basis provided BOI shall not be obliged to enter into exclusive arrangements with such an acquirer nor will such an acquirer be obliged to enter into an exclusive arrangement with BOI.
- c. BOI will not be compelled to sell any trading name that includes "Bank of Ireland" or any derivative or abbreviation of the "Bank of Ireland" name or any derivative or abbreviation thereof.
- d. After Selling a Divestment Business, BOI may not use the brands or trading name of the Divestment Business except, for the avoidance of doubt, BOI shall retain the right to use the name "Bank of Ireland" or "BOI".

S11.2. Transaction Procedure

- a. BOI will seek to dispose of its entire interest of a Divestment Business. In this context and with regard to the Sale of the Divestment Businesses, BOI may explore and consider different Sales opportunities and structures in order to determine the appropriate structure for the Sale of a particular Divestment. The Sale process will be transparent, open and non-discriminatory. In addition, the Monitoring Trustee will monitor the Sale according to the Monitoring Trustee provisions.

- b. Provided it is not adverse to the interest of the Divestiture Business and subject to the review of the Monitoring Trustee, BOI will retain the right (but not the obligation) to provide financing arrangements to the acquirer on terms and conditions to be determined on an arms length basis between BOI and the acquirer.
- c. Provided it is not adverse to the interest of the Divestiture Business and subject to the review of the Monitoring Trustee, BOI will retain the right (but not the obligation) to structure the Sale in a way that maximises the value received (e.g., including claw-back, earn-out and other similar purchase price adjustment structures) on terms and conditions to be determined on an arms length basis between BOI and the acquirer.
- d. Provided it is not adverse to the interest of the Divestiture Business and subject to the review of the Monitoring Trustee, BOI will retain the right to utilise the most optimum structure and process so as to maximise capital enhancement and/or minimise liability to taxation or other costs and other liabilities (including contingent liabilities) to BOI.
- e. It is intended that a Divestment Business will be Sold in its entirety. However BOI, in consultation with the Monitoring Trustee, retains the right to Sell a Divestment Business in parts or to package some or all of the Divestment Businesses into a single Sale provided it is not adverse to the interest of the Divestiture Business.

ANNEX II

Ireland's Commitment to Enhance Further Competition in the Irish Banking Sector

Ireland committed to undertake a package of alternative measures in order to restore the competition in the Irish banking market by facilitating entry and expansion of competitors and enhancing the consumer protection in the financial sector. In particular, Ireland committed to carry out specific measures in order to enhance:

- (a) Customer mobility and protection (provision of information; transparency to facilitate consumer decision making; financial inclusion);
- (b) Entry of competitors (electronic banking, SEPA migration, quality and availability of credit history information and reporting by banks);
- (c) Corporate governance.

a) Customer mobility and protection

a.1) Customer mobility

Specific Commitments	Implementation Date	Lead Responsibility
a. The IBF switching codes for personal and business customers will be placed on a statutory footing immediately, and it will be accompanied by an information campaign.	Q3 2010	Financial Regulator (FR). Information campaign will be done by National Competition Authority (NCA) and Irish Banking Federation (IBF)
b. A review of the provisions contained in the switching codes with a view to making any necessary enhancements will be carried out as part of the Financial Regulator's review of the Consumer Protection Code, which is expected to conclude in Q2 2011	By end-Q2 2011	FR
c. The Competition Authority will consult with the National Consumer Agency and the Financial Regulator on whether competition in the retail banking market has sufficiently improved and the interests of consumers are adequately safeguarded to support its recommendation that existing price regulation of fees and charges under Section 149 of the Consumer Credit Act 1995 be removed. If the assessment of the Competition Authority is such that the competitive environment does not support its abolition, Section 149 of the Consumer Credit Act, 1995 will not be applied to new entrants in their first 3 years of commencing business in Ireland.	by the end of 2010	Department of Finance (DoF)
d. The Government will implement the following measures unless the review of the Consumer Protection Code -by the FR shows that they are not beneficial for the consumers <ul style="list-style-type: none"> iv. A prohibition on bundling unless it can be demonstrated that there is a cost saving for consumers v. Consumers will be informed on the overall cost of the bundle and the cost of each item separately as well as the cost of exiting the bundle vi. Where one or more financial products are sold in a bundle customers will be able to switch one or 	By end-Q2 2011	FR

<p>b. Improvements in annual statements and notifications of changes in fees and interest charges⁴⁷:-</p> <p>i. Banks shall provide customers who have current accounts with separate annual statements of total fees/interest paid.</p> <p>ii. Banks shall provide deposit account customers with separate annual statements of interest earned.</p> <p>iii. Banks when informing customers on changes in interest rates and charges shall include details of the old rate / charge, the new rate / charge and the difference in monetary terms (in the case of rate changes for loans and mortgages)⁴⁸.</p>	<p>Will be implemented as part of the review of the Consumer Code (Q2 2011)</p>	<p>FR</p>
<p>c. Improved access to account histories for customers:-</p> <p>iii. Banks will provide SMEs 3 years of current account history without charge</p> <p>iv. Banks will provide personal customers with 12 months of current account statements without charge.</p>	<p>Will be implemented as part of the review of the Consumer Code (Q2 2011)</p>	<p>FR</p>

a.4) Financial inclusion

Proposed Measure	Implementation Date	Lead Responsibility
<p>a. A review will be undertaken of the options available to achieve financial inclusion in Ireland, drawing on best practice international approaches to resolving this issue. The objective of the study will be to identify recommended actions to achieve a substantial reduction in financial exclusion over a 3-5 year period</p>	<p>By end-2010 at the latest</p>	<p>DoF</p>
<p>b. The domestic banking sector will be required to support and promote the availability of a basic bank account in the context of the implementation of the strategy agreed by Government for addressing financial exclusion.</p>	<p>By end-2010 at the latest</p>	<p>DoF</p>

b) Entry of competitors

b.1) Electronic banking

Proposed Measure	Implementation Date	Lead Responsibility
<p>a. Changes to the Consumer Credit Act</p> <p>iii. Section 45 will be amended to recognise electronic communications relating to credit agreements in the same way as written, i.e., hard copy paper communications, are currently recognised</p>	<p>end-2010 at the latest</p>	<p>DoF</p>

⁴⁷ The Consumer Protection Code currently contains a number of provisions relevant to this area, however, these proposals represent refinements which will improve transparency for consumers.

⁴⁸ This will not apply in the case of credit agreements falling within the scope of the EC (Consumer Credit Agreements) Regulations 2010 under which creditors are required to provide information concerning changes in the borrowing rate as set out in regulation 14 of those Regulations.

iv. Sections 30-35 will be amended (as it interacts with the Electronic Commerce Act 2000) to no longer prohibit the use of electronic signatures with respect to credit agreements	end-2010 at the latest	DoF
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b.2) SEPA migration

Proposed Measure	Implementation Date	Lead Responsibility
a. A SEPA Migration Plan will be prepared for the public sector and implemented, covering all the transactions involved in the public sector.	Q4 2010 at the latest (preparation of the plan) Q3 2011 at the latest (implementation of the plan)	DoF

b.3) Improved quality and availability of credit history information and reporting by banks

Proposed Measure	Implementation Date	Lead Responsibility
a. Institutional arrangements for the provision of information on credit histories will be restructured to conform to best international practice for the provision of high quality credit history information. This will be aligned with the proposal on credit registers set out in section 6.3 of the Financial Regulator's strategy paper "Banking Supervision: Our New Approach" published on 21 June 2010.		
iii. As a first step a review will be carried out to assess, among other things the rules and compliance with the rules governing the availability and type of information held by the Irish Credit Bureau, the ownership structure of the Irish Credit Bureau, and regulatory models for credit histories in other countries. The Financial Regulator will undertake an assessment on the quality and availability of the credit history information.	Q2 2011	DoF, FR
iv. The recommendations of the review will be implemented. Implementation will be aligned with bank specific proposals outlined in the restructuring plans.	Q4 2011 at the latest	DoF
b. Banks will be required – when making reports to credit bureaux - to distinguish between those customers who engage positively with lenders in relation to arrears and especially those with whom the institution has agreed a re-scheduled arrangement to allow new entrants to assess credit risk on a more granular level	Q4 2010	FR/DoF

c) Corporate governance

Strengthening corporate governance in the financial sector

Proposed Measure	Implementation Date	Lead Responsibility
<p>a. The Financial Regulator's recommendations for the reform of corporate governance arrangements for boards of credit institutions as set out in Consultation Paper CP 41 on Corporate Governance Requirements for Credit Institutions and Insurance Undertakings will be implemented⁴⁹.</p>	Q4 2010	FR
<p>In particular.</p> <p>iv. Credit institutions with a significant retail customer presence in Ireland will be required to ensure that no director becomes or remains a director of any other credit institution or insurance undertaking except where such entities are within their group. This commitment will be adopted at this time in the first instance for the institutions participating in the Eligible Liabilities Guarantee Scheme which are in scope through the issuance of a direction by the Minister under paragraph 22 of the ELG Scheme (referencing para. 34 of the CIFS Scheme). The commitment will be implemented for all credit institutions with a substantial retail customer presence in Ireland through appropriate legislative or regulatory change by end-2010.</p> <p>v. Credit institutions will be strictly regulated in any lending to companies of which the credit institution's own directors are also directors. Such companies in which credit institutions' directors hold cross-directorships shall be expressly designated as related party lending and will be made subject to the same rigorous controls as are proposed in the case of lending to directors' family members or companies owned by them. Legislation or regulatory code will give force of law to this direction to credit institutions."</p>	Q4 2010	FR/ DoF
<p>vi. Consistent with Government objectives for promoting competition, strengthening financial regulation and promoting the interests of consumers, the empowerment of the Irish Competition Authority, Financial Regulator the National Consumer Agency, with respect to the financial sector, shall be reinforced (e.g envisaging additional financial and human resources or the enhancement of the power of sanctioning).</p>	Q4 2010	FR/ DoF

d) Reporting and implementation

⁴⁹ See <http://www.financialregulator.ie/consultation-papers/Documents/CP41%20-%20Corporate%20Governance%20Requirements/Corporate%20Gov%20Requirements.pdf>.

Ireland committed to provide the competent bodies with adequate resources to implement each measure and to enhance the empowerment (e.g envisaging additional financial and human resources or the enhancement of the power of sanctioning).

No requirement for additional legal / regulatory / sanctioning powers or organisational resources has been identified by the bodies assigned responsibility to ensure implementation of the above measures. If any requirement for either additional organizational (i.e. financial and human) resources or the provision of additional legal or regulatory powers, including the enhancement of sanctioning powers, arises for any of the competent bodies during the implementation process these requirements will be addressed by the appropriate national authority to ensure the implementation of each of the above commitments.

A steering group comprising senior representatives of the Department of Finance, the Financial Regulator, the Competition Authority and the National Consumer Agency will review and report on progress in implementing the above commitments on an annual basis.