EUROPEAN COMMISSION

Brussels, 25.10.2010
C(2010) 7427 final

Subject: **State Aid N 560/2009 – Denmark**
Aid for the liquidation of Fionia Bank

Sir,

1. PROCEDURE

(1) Denmark notified the liquidation aid measures on 15 October 2009.

(2) By Decision of May 2009 the Commission declared the rescue aid measures set out in points 13, 14 and 15 below compatible with the common market. That decision applied until 15 October 2009 and was to be automatically prolonged upon submission of a coherent and substantiated restructuring plan by 15 October 2009 until the Commission took a decision concerning the plan. As before the expiry of the deadline for the submission of a restructuring plan it became clear that Denmark would not proceed with a restructuring but with a winding-up of Fionia Bank, no such plan was submitted.

(3) The Danish authorities submitted further information and updates on 19 January 2010, 16 April 2010, 3 June 2010, 13 July 2010 and 26 August 2010.

(4) Denmark has exceptionally agreed that the authentic language for this decision should be English.

2. DESCRIPTION OF THE BENEFICIARY

(5) Fionia was, before the first State rescue measures in May 2009 (see section 3 below), a regional, full-service bank with a market base on the island of Funen and neighbouring islands in central Denmark. Fionia had 34 branches (after the rescue measures reduced to 31) with approximately 550 employees. As of 31 December 2008 it was the ninth largest

Udenrigsminister Lene ESPERSEN
Asiatisk Plads 2
DK-1448 København K

bank in Denmark with assets of EUR 4,397 million (DKK 32,786.7 million)[1]. Prior to the crisis, Fionia had an estimated 1% market share of loans and deposits on the national Danish market (and about 15% in the relevant regional market). Fionia had approximately 84,000 private customers and more than 7,500 corporate customers. Fionia's capital base as of 31 December 2008 amounted to EUR 24,331,755 (DKK 181,405,200).

(6) Fionia's Markets division counselled and serviced a number of large investment and institutional customers. Fionia also functioned as a niche bank on the wholesale financing market and in the wholesale banking business with respect to local financial institutions.

(7) The bank's shares were held in part by a trust[2], Fionia Fonden, which held 39.9 %; the remaining 60.1 % were spread amongst some 27,000 minority shareholders, most of which were also clients of the bank.

3. THE RESCUE AID DECISION OF MAY 2009

(8) At the end of 2008, Fionia had to make large write-downs on real property exposures and failed to meet the regulatory solvency requirements.

(9) Consequently, Fionia requested the financial assistance of the State’s bail-out fund *Afviklingsselskabet til sikring af finansiel stabilitet A/S* (the "Financial Stability Corporation", hereinafter “FSC”) established under the Danish State aid scheme for the financial sector[3] (hereinafter "the Bank Aid Scheme"), resulting in the following support measures.

A. The Framework Agreement

(10) In February 2009, the State rescue aid was set out in a Framework agreement between the FSC and Fionia. The purpose was to remedy the immediate problems (rescue aid) with a view to a later restructuring to help the bank back on its feet.

(11) As part of the aid setup, Fionia was split in two, the "Old Fionia" and a new company, hereinafter "New Fionia". All of Fionia's assets and liabilities were transferred into New Fionia, except for the subordinate debt and equity which remained with the Old Fionia. The FSC subscribed one share in New Fionia, all other shares being subscribed by Old Fionia. However, under the Framework Agreement, all shares that Old Fionia owns in New Fionia were pledged to the FSC (as collateral for the aid) so that in practice the FSC had all economic and voting rights associated with those shares and thus sole control over New Fionia.

(12) The purpose of Old Fionia was solely to hold (without controlling) the shares of Fionia. Old Fionia was supposed to be eventually wound up.

[1] As per 7 October 2010 1 EUR = 7.455 DKK.

[2] In 1991, Fionia was transformed from a mutual savings bank into a limited liability bank corporation. Danish law required the old ownership to be transferred into a trust that would be commercially active but distribute any returns to social and cultural projects in the region.

[3] See Commission decision of 10 October 2008 in case NN 51/2008, *Guarantee scheme for banks in Denmark* (OJ C 273, 28.10.2008, p. 2).

B. The aid measures

(13) New Fionia received State funding in the form of two distinct measures:

(a) A credit facility in the amount of EUR 684 million (DKK 5.1 billion, corresponding to the sum of senior liabilities in the bank, which was the maximum needed for timely repayment of creditors); and

(b) a capital injection (hybrid core capital) in the amount of EUR 134.1 million (DKK 1 billion) to bring the bank's solvency to a constant level of 11.5% for the rescue aid period covered by the decision, i.e. until 15 October 2009. Finally only EUR 106 million (DKK 790 million) were required and actually used to achieve the level of 11.5%.

(14) The whole operation aimed at stabilising New Fionia's business operations, including reduction of the risk and exposure in respect of the real property segment, as well as the strengthening of deposits.

(15) These measures were approved by the Commission as rescue aid on 20 May 2009 in case NN 23/2009[4]. The Commission accepted that, in the context of the financial crisis, the failure of Fionia Bank would have entailed a serious disturbance of the Danish economy.

4. THE SALES AND LIQUIDATION PROCESS

(16) At the time of the rescue the Danish authorities believed that a restructuring was realistic and thus intended to submit a restructuring plan for the bank. However, according to the Danish authorities, it became clear by mid-June 2009 that – due to the negative market conditions primarily in the real estate sector – the need for write-downs in the first half year of 2009 was much greater than anticipated and that the equity in the Old Bank was lost[5]. Therefore, it was no longer considered a realistic option that New Fionia could be restructured with a view to obtaining long-term viability.

(17) Denmark consequently decided to proceed with a controlled liquidation of the bank by selling off whatever would find a buyer and winding-up the remainder in an orderly fashion.

1. The sales process

(18) The FSC initiated an unconditional and open tender process on 3 August 2009.

(19) As the FSC believed that some potential buyers might be discouraged from bidding (and the sales price thus reduced) if forced to bid for the bank as a package, all credit exposures were categorised according to their risk profile. They were then divided into i) a green part, comprising customers with a normal credit risk profile; ii) a yellow part, comprising customers with an credit risk profile above normal but where no objective evidence of impairment existed; and iii) a red part, comprising customers with credit risk exposures where impairment was suspected and write-downs had been made or where the credit risk exposure was related to property financing, mortgage deed financing etc.

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4 OJ C 151, 03.07.2009, p.17.

5 Fionia Bank posted a loss of EUR 255 million after provisions of EUR 261 million and a negative consolidated equity of EUR 10.6 million at the end of June. The core operating first half-year 2009 result before write-downs was EUR 9.4 million.

(20) The outstanding amount of EUR 147.5 million (DKK 1.1 billion) under the EUR 684 million credit facility put at the disposal of Fionia Bank in the context of the rescue decision was placed into the red portfolio. In the same vein, the credit facility in the amount authorized in the rescue decision was made available to the red part which was transferred to a newly established subsidiary of the FSC, called Nova Bank Fyn (hereinafter the "Rump Bank", see below point 24 ff).

(21) Three bids were made for the green and yellow parts on a going concern basis. Of those, the bid by Nordea for 100% of the shares in Fionia Bank (with the red part being carved out) was the highest by a clear margin. The other, considerably lower, offers were made by […][*] and by […].

(22) The deal with Nordea was closed on 30 November 2009. The transfer of the activities and customers sold to Nordea was fully completed in June 2010.

(23) The purchase price amounting to approximately EUR […] was based mainly on the following appraisal of values in the sold parts:

– the value of the assets as of the cut-off date less the value of the liabilities as of the cut-off date, totalling EUR –[…];

– the value adjustment to take account of the currency risk between the cut-off date and the closing date to be borne by the seller, EUR – […];

– the good will of EUR […];

– the hybrid core capital consideration in the nominal value of EUR […], corresponding to the rescue capital injection described in point 13(b) above;

– a capital increase executed by the FSC in the amount of EUR […][6].

2. The Rump Bank (the winding-up of the red part comprising the customers with high credit risk exposures)

(24) The remainder of New Fionia, i.e. the red part, was transferred to a newly established subsidiary of the FSC, the Rump Bank, which is provided with a banking license. The activities and customers transferred include approximately 2,200 customers with a loan portfolio of EUR 1.4 billion (DKK 10.6 billion)[7]. The remaining customers in the Rump Bank are corporate customers with credit risk exposures where impairment was suspected and write-downs had been made, and a few private customers[8] with direct affiliation to those red part customers.

(25) Initially there were 663 groups of commitments, of which only 55 were larger than DKK 50 million. The largest sectors are real estate (DKK 4.1 billion), mortgage financing (DKK 1.9 billion), vessels (DKK 0.7 billion) and agriculture (DKK 0.6 billion).

(26) In order to meet regulatory requirements, the FSC has capitalised the Rump Bank with EUR 174 million (DKK 1.3 billion) and will thus finance its continued operation until the controlled winding-up process has been completed. Liquidation of all assets should be achieved within five years.

[*] Confidential information.

[6] Prior to the closing, the FSC injected capital in the company by way of a cash capital increase of nominally DKK 100,000,000 at a price of DKK 193.70 per share of DKK 10, corresponding to a total injection of DKK 1,937,000,000 (EUR 260 million).

[7] As of 31 May 2010 the number of corporate customers had been reduced to 1,800 whilst the exposure had decreased to DKK 8.9 billion.

[8] 99% of the private customers were transferred to Nordea.

(27) The credit facility in the amount of EUR 684 million, including the outstanding amount of EUR 147.5 million (in total DKK 5.1 billion) described in point 13(a) above, was made available to the Rump Bank. However, in a worse-case scenario, where all the senior debt will have to be paid off, the FSC estimates that the credit facility might have to be raised to a maximum of EUR 1.14 billion (DKK 8.5 billion). Therefore, the FSC makes this difference of EUR 456 million (DKK 3.4 billion) also available to the Rump Bank which will be used only for the purpose of its liquidation.

ROADMAP FOR THE WINDING-UP

Products and services, new business

(28) The Rump Bank will not engage in any new activities but focus exclusively on winding-up all its existing activities, including all customer relations.

(29) In particular, it will not establish any new customer relations. Furthermore, the customers' business volume within individual products (e.g. deposits or custody accounts) cannot be increased except for purposes of providing collateral. The scope of the banking services offered to each customer cannot be expanded to products or services other than those existing on 30 November 2009. Customers will be actively encouraged to find alternative banking facilities.

(30) The Rump Bank does not provide financial advice regarding investments, pensions, savings, real estate, debt management, assets management, currency speculation, foreign commitments, interest arbitrage, taxation or trade with derivatives. It does not provide a cashier service, thus no cash withdrawals or deposits are possible from its facilities.

Pricing policy, interest rates

(31) The pricing policy of the Rump Bank is deliberately designed to encourage customers to find more attractive alternatives.

(32) Denmark commits that the Rump Bank's interest rates on loans will be within the top 10% band of the interest rates charged by the 30 largest Danish banks (a sample that is monitored by the Danish Central Bank).

(33) Likewise, Denmark commits that the Rump Bank's interest rates on deposits will be within the bottom 10% band of the rates offered by the 30 largest Danish banks.

(34) Denmark commits to check and adapt the interest rates offered by the Rump Bank to existing customers every three months on the basis of the statistics of the 30-bank sample monitored by the Danish Central Bank. Furthermore, Denmark will, on a six-monthly basis, report to the Commission on the level of interest rates to allow the Commission to verify compliance with these commitments.

Further advances on existing loans

(35) The Rump Bank will not offer permanent or large advances, i.e. increases of existing loans and commitments, except where such an increase will preserve or increase the outlook of the Rump Bank being repaid on outstanding loans (i.e. maximize the return of the winding-up operation).

(36) The Rump Bank commits itself that the amount of such advances

1. is capped at the level of the <u>individual</u> corporate customer at 20% of the existing

loan at the date of the present decision,

2. is capped at an aggregate level at 2.5% of the respective corporate loan portfolio[9].

Timeframe

(37) The Rump Bank is expected to wind-up customer commitments first and concurrently to wind-up assets.

(38) All custody accounts and pension accounts held by private customers with direct affiliation to high risk corporate customers being left in the Rump Bank will be transferred to Spar Nord Bank by 31 December 2010. Thus, by 31 December 2010 the Rump Bank will no longer have any private customers. No staff, branches or IT are transferred. As a consequence of that transfer it is expected that the Rump Bank will surrender its security dealer licence in 2010, as soon as the transfer has been fully implemented.

(39) The Rump Bank estimates that all customers will have been transferred to other credit institutions by 31 December 2013. At that point in time the Rump Bank expects to hand in its banking licence, to hold only assets and to have a total balance sheet volume of EUR 335 million (DKK 2.5 billion, primarily related to properties) which corresponds to approximately 23% of the initial loan portfolio.

(40) Denmark expects that the FSC will be able to shut down the Rump Bank in 2014 or 2015. Any remaining capital will be returned to the FSC once the liquidation is completed.

(41) Denmark commits to submit a final monitoring report once the winding-up is completed.

3. Old Fionia

(42) As set out in point 11, all shares but one in New Fionia were held by Old Fionia which had pledged its shares to the FSC in respect of the credit facility. As Old Fionia's sole purpose was to hold the shares, the Articles of Association did not provide a basis for selling the shares and had therefore to be changed to allow for a transfer of the shares to the FSC which in turn sold them to Nordea. To facilitate that transfer, the FSC offered the shareholders in Old Fionia an "Earn-Out possibility".

(43) The Earn-Out possibility means that if the winding-up of the Rump Bank generates a profit, that profit will be distributed in the following order:

1. Repayment to the FSC of all aid received, including an interest payment (annual interest of 10%).

2. After repayment of the aid to the FSC (with interest) any remaining funds be distributed to the creditors and shareholders of Old Fionia.

(44) The Earn-Out possibility makes it technically necessary for Old Fionia to remain in existence as a potential recipient of the Earn-Out (in a purely legal sense, without any commercial activity) until the result of the Earn-Out possibility can be finally established at the end of the liquidation. There is therefore a need for some minimum funds to allow Old Fionia to meet the requirements of corporate law to remain in existence (shareholders' meetings, reports etc.) In the absence of any other funding, the FSC will provide Old Fionia with the funds that are strictly necessary to meet these requirements with a

[9] All customers are placed in one of eight portfolios – real estate under liquidation, real estate going concern, corporates under liquidation, corporates going concern, real estate in limited partnerships, real estate mortgage, vessels, agriculture.

maximum of EUR 1.6 million until 31 December 2012. The FSC will not provide any funding to Old Fionia beyond 31 December 2012.

(45) The subordinated debt remains in Old Fionia. Denmark has submitted that the subordinated debt holders will only be eligible to receive payments out of the liquidation of the Rump Bank if there are remaining funds after the payment of all the more senior creditors and after payment of the State for the aid provided including a market-based remuneration.

(46) *Summary of aid measures in the liquidation process:*

Rump Bank:

– capital injection in the amount of EUR 174 million (DKK 1.3 billion);

– transfer of the credit facility of EUR 684 million stemming from the rescue decision including the outstanding amount of EUR 147.5 million (in total DKK 5.1 billion);

– increase of the credit facility from EUR 684 million to EUR 1.14 billion (DKK 8.5 billion).

Old Fionia:

– capital injection in the amount of EUR 1.6 million (DKK 12 million)

5. DENMARK'S POSITION

(47) The Danish government submits that only the continued operation of the red part in the form of the Rump Bank and the continued operation of Old Fionia involve State aid whilst the sale to Nordea does not.

(48) As to the Rump Bank, Denmark submits that the liquidation aid aiming at a controlled winding-up falls within the scope of the Bank Aid Scheme.

(49) Denmark furthermore considers the continued financing of Old Fionia to be compatible with Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU) as it constitutes a part of the controlled winding-up of the remainder of Fionia.

(50) As to the sale of the yellow and green parts to Nordea, Denmark is of the opinion that, since the hybrid core capital in the amount of EUR […] (DKK […]) (corresponding to the rescue capital injection described in point 13(b) above) has been paid back, Nordea has not received State aid. Denmark further argues that as Nordea is viable and has only taken over the viable business, the integrated entity will be viable.

6. ASSESSMENT

A. Existence of aid and potential beneficiaries

(51) As set out in Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(52) The measures are provided through the FSC, which is a key component of the existing State aid scheme for banks in Denmark as a vehicle set up by the Danish authorities to provide aid for the orderly winding-up of insolvent banks. The measures therefore stem from State resources.

(53) Given that Fionia was active in the financial sector, which is open to intense international competition, any advantage from State resources would have the potential to affect intra-Union trade and to distort competition.

(54) The Commission identifies five parties that could potentially benefit from the aid: i) the purchaser of the green and yellow parts, Nordea; ii) the business transferred to Nordea; (iii) the Rump Bank; (iv) the purchaser of the accounts held by private customers being left in the Rump Bank, Spar Nord Bank and v) Old Fionia.

1. *The sale of the green and yellow parts to Nordea*

Potential aid to the buyer

(55) As regards the acquisition of the green and yellow parts, an advantage for the buyer could only exist if the price paid was too low. As the sale was carried out in an open, transparent and unconditional tender procedure which triggered three bids and the bank was sold to the highest bidder, there is no reason to consider that the price paid does not reflect the market price. Consequently, in line with paragraph 20 of the Restructuring Communication, Nordea did not benefit from aid.

Aid to the sold economic activity/entity

(56) With regard to the parts of Fionia which were sold, the Commission has to investigate whether the purchased undertaking's functional identity continues to exist, and the economic activity of the sold business is preserved. The sale took place in the form of a share deal, transferring ownership of the green and yellow parts to Nordea, with a carve-out of the red part. Thereby, a significant portion of Fionia, approximately 37%, including infrastructures, office network, personnel and IT was transferred to Nordea on a going concern basis. 99% of the private customers were taken over. The Commission therefore considers that the functional identity of the sold economic entity continues to exist. Consequently the sold “good part” of Fionia (the green and yellow parts) is considered as a commercial entity that perpetuates the commercial activity of Fionia and is thus a beneficiary of State aid.

(57) It has to be stressed that the result of the tender – the sale of approximately 37% of Fionia's business as a going concern to one bidder – stems from the objective of profit-maximization (similar to a liquidation) rather than from the intention to preserve the activity in its entirety.

(58) The purchase price for the yellow and green parts comprised as an additional element the nominal value of the hybrid core capital as authorised by the rescue decision. Whilst the hybrid core capital could therefore considered to have been (partly) paid back it still constitutes a benefit to the sold parts as without the injection of the capital Fionia would have ceased to exist.

(59) The amount of EUR 147.5 million drawn from the credit facility was entirely placed into the red part, i.e. the Rump Bank. That drawn amount allows the transferred “good” parts to continue in business since it allowed the “good” parts to be relieved from the liabilities which were allocated to the red part. The sold parts of the business would not have existed

as such without the measure. The fact that the measure was granted in another context, namely the rescue of Fionia Bank, does not alter that assessment. The measure thus constitutes a benefit to the green and yellow parts (as do the measures set out in point 60 below, which likewise enable the orderly winding-up of the red part without which the economic activity could not have been sold and would probably have ceased to exist). The Commission therefore considers that the amount drawn from the credit facility (as well as the aid granted to the Rump Bank, see point 60 below) confer an advantage to the green and yellow parts and therefore constitute aid for these parts.

2. Aid to the Rump Bank (red part)

(60) Although it is ultimately to be liquidated, the Rump Bank will still carry out some economic activities, albeit limited to those necessary for an orderly winding-up within a limited period of time. Such activities include the sale of its assets and management of its portfolio. The Rump Bank will furthermore– albeit on a small scale and in a running-down objective – hold deposits and offer banking services to its remaining customers. As such activities are also carried out by other operators on the market, the Rump Bank will potentially compete with them. It is therefore considered that the State measures, i.e. the capitalization to finance the Rump Bank's continued operation and the transfer of the outstanding amount drawn of the credit facility, confer a selective advantage on the Rump Bank. The Rump Bank is therefore to be considered a beneficiary of State aid.

3. The sale of accounts to Spar Nord Bank

(61) Some remaining accounts of private customers (retail deposits) will be transferred from the Rump Bank to Spar Nord Bank by 31 December 2010 (see point 38). These accounts originally belonged to the red part which was put on sale in an open and unconditional tender, but for which no bid was made. The accounts are now taken over by Spar Nord Bank on commercial terms. Transferring the customers remaining in the Rump Bank as quickly as possible to other banks forms part of the winding-up strategy (see point 28). As the red part and the accounts in question were put up for sale in an open tender but attracted no interest from buyers, the Commission has no reason to believe that they will be transferred to Spar Nord Bank at a price below the market value. Therefore, the Commission concludes that the transfer of the accounts to Spar Nord Bank does not constitute State aid.

(62) As regards the accounts to be transferred, the Commission notes that Spar Nord Bank merely takes over some parts of the liabilities which were allocated to the Rump Bank (deposits), whilst no staff, branches or IT are transferred (unlike the transfer of the green and yellow parts to Nordea). Such a transfer of liabilities only, without any assets and infrastructure, does not allow for the offering of bank services on the market. The transferred accounts will be immediately integrated in the existing structures of Spar Nord Bank. For these reasons and in line with its decision in Kaupthing Luxemburg[10], the Commission considers that the transferred accounts do not constitute the continuation of an economic activity which could have benefitted from aid.

4. Potential Aid to Old Fionia

(63) According to the Danish authorities it is necessary for Old Fionia to continue its operation until it becomes clear whether or not the Earn-Out possibility leads to a profit for the creditors and shareholders of the Old Bank. State funds are given to Old Fionia in order to fulfill its legal obligations such as the submission of the annual report, organizing the

[10] Cases N 344/2009 and N 380/2009, Commission decision of 9 July 2009, point 47.

annual general meetings etc.

(64) However, Old Fionia, which is now reduced to a simple vehicle for the Earn-Out option, does not carry out any economic activity since it does not offer goods or services on the market. Therefore, the support it may receive from the State does not constitute State aid. Old Fionia is thus not a beneficiary of the liquidation aid.

(65) The funds necessary for the continued existence of Old Fionia were required to establish the Earn-Out possibility. The Earn-Out was a means of convincing shareholders to agree to the legally required change of Fionia's Articles of Association without which those parts could not have been transferred. The Commission therefore considers that the funds provided to Old Fionia confer a selective advantage on the green and yellow parts and thus constitute (indirect) aid to the sold green and yellow parts.

B. Compatibility of the aid

Legal basis for the compatibility assessment

(66) Article 107(3)(b) TFEU provides that State aid may be considered to be compatible with the internal market where it is intended to "*remedy a serious disturbance in the economy of a Member State*".

(67) Given the present circumstances in the financial markets, the Commission considers that the measures may be examined under that provision.

(68) The Commission accepts that the financial crisis has created exceptional circumstances in which the bankruptcy of one bank may undermine trust in the financial system at large, both at national and international level. That may be the case even for a bank of moderate size, such as Fionia, and particularly so in the case of a small economy such as Denmark where counterparts may tend not to distinguish between individual banks, thus extending the lack of confidence generated by the failure of one bank to the whole sector. Given the great uncertainty due to the financial crisis and the necessity of external funding for the Danish banking sector, a lack of confidence in the Danish financial system could severely affect the whole Danish economy.

(69) Further to the May 2009 rescue decision which recognized that the failure of Fionia Bank would pose a threat to the Danish economy, the Commission therefore accepts that in the present turmoil failure of Fionia Bank could have entailed a serious disturbance of the Danish economy.

(70) The Restructuring Communication[11] 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 or demonstrate how it can be wound-up in an orderly fashion;

(ii) include sufficient own contribution by the beneficiary (burden-sharing);

(iii) contain sufficient measures limiting the distortion of competition.

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

1. *Aid to the economic activity perpetuated in the sold "yellow and green parts"*

(71) In line with the May 2009 rescue decision it is acknowledged that the transfer and controlled winding-up of Fionia is an appropriate means to preserve stability in Denmark's economy. Denmark showed that selling the yellow and green parts jointly by means of a transfer of shares to the highest bidder was more profitable than selling the two parts separately. Furthermore, Denmark confirms that the sales process was carried out in a transparent, objective and non-discriminatory manner. The yellow and green parts were sold at the highest price possible, thereby limiting the aid to the minimum necessary.

Viability

(72) Since the Commission has established that the business transferred to Nordea continues to carry out an economic activity and has benefited from aid, it has to verify whether the restructuring will ensure long-term viability of the business. The Restructuring Communication states in paragraph 17 that the sale can contribute to the restoration of long-term viability if the purchaser is viable and capable of absorbing the transfer. To this end, the purchaser should demonstrate that the integrated entity will be viable.

(73) Nordea had, as of September 2009, an Aa2 rating by Moody's and has not been particularly affected by the crisis. As of 31 December 2009 Nordea had a balance sheet of EUR 507 billion and recorded a net profit of EUR 2.3 billion over the previous financial year. Nordea took over EUR […] of assets from Fionia. The impact of the acquisition of the yellow and green portfolios on Nordea's balance sheet was thus less than […]%. Given that proportion and the fact that only the viable, less risky parts were transferred to Nordea (Nordea explicitly selecting the parts purchased according to their risk profile and purchasing only the parts where no evidence of impairment existed), the Commission is satisfied that the integrated entity will be viable as requested by paragraph 17 of the Restructuring Communication.

Burden-sharing

(74) Old Fionia's continued existence allows for upholding the Earn-Out possibility in favour of Old Fionia's shareholders, which might be detrimental to the burden-sharing principle.

(75) It is, however, considered that the Earn-Out possibility was an incentive for the shareholders to vote in favour of changing Fionia's Articles of Association which was a prerequisite for the share deal. The funds which allow for the continued existence of Old Fionia do not constitute a direct benefit to the shareholders but merely preserve the possibility for them to recover a remaining profit on the winding-up of the Red Portfolio, if any.

(76) In line with the *Kaupthing Luxemburg*[12] and *Northern Rock*[13] decisions, the Commission considers burden-sharing to be sufficient as the old shareholders lost control of the bank and all financial stakes therein without any compensation (except for the theoretical Earn-Out facility, which is deemed justified as being necessary and proportionate to ensure the quick and smooth implementation of the liquidation).

(77) As regards the indirect aid to the sold, green and yellow parts, conferred by the Earn-Out facility (see point 64) the Commission considers that a quick sale was crucial in enabling a quick and smooth transfer of the shares. As the funds provided to Old Fionia are targeted

[12] See FN 10.
[13] Case C 14/2008, Commission decision of 28 October 2009.

to fulfil Old Fionia's legal obligations and as no funds will be allocated beyond 2012 the Commission considers that the aid to the sold green and yellow parts is proportionate and limited to the minimum necessary.

(78) The Commission therefore considers that there has been a sufficient own contribution by Fionia's former shareholders, thus limiting the aid to minimum necessary.

(79) Furthermore, the subordinated debt remains in Old Fionia. Subordinated debtholders will only be eligible to receive payments out of the profit of the winding-up of the Rump Bank after repayment of the State including a market-based annual interest of 10% and thus provide an appropriate own contribution to the restructuring.

Distortion of competition

(80) As regards the measures limiting the distortion of competition, the Restructuring Communication states in its paragraph 30 that the Commission has to take into account in its assessment the amount of the aid and the conditions and circumstances under which that aid was granted and the effects of the position the financial institution will have on the market. On the basis of that analysis, the Commission should verify that the potential distortion of competition arising from the aid is not disproportionate.

(81) The Commission notes that the sale of the yellow and green parts was undertaken in an open, transparent and non-discriminatory tender procedure, where all competitors had the chance to bid. The bank was not offered as a whole package, which might have attracted fewer potential buyers, but in smaller pieces, the three portfolios. The fact that in the end the yellow and green parts were sold jointly by means of a transfer of shares is due to the purchaser's decision. The sale of the separate portfolios in the framework of an open sale process constitutes a form of mitigation of potential distortions of competition[14]. Indeed, such a sales process gave a large number of market players an opportunity to acquire the bank or parts thereof. The timely sales process instigated three months after the rescue measures has the effect of limiting the distortions of competition, the State funds having been partially "redeemed" and the integrated parts continuing to operate on the same conditions as other banks established in Denmark.

(82) For the above reasons, whilst it has to be acknowledged that the sold activity owes its existence to State aid, the Commission notes that the amount of aid and period of time during which it benefitted from the State aid are limited.

(83) The sale was conducted through a competitive tender initiated in a timely manner, which provided all competitors with the opportunity to acquire the businesses.

(84) Nordea took over EUR […] of assets with a total loan portfolio of approximately EUR […]. Both in terms of balance sheet and national market shares Fionia does not add much to Nordea.

(85) Taking into account the above and the fact of the reduction of the economic activity to less than 40% of its former size, the small size of the sold activities in absolute terms, the fact that the former Fionia bank had a market share of a mere 1% in Denmark and 15% in the Funen region, and the rapid re-privatisation, the Commission considers that the distortions of competition resulting from the aid are satisfactorily addressed.

[14] Cf. Case C 9/2008 Sachsen LB, Commission decision of 4 June 2008; Case C 10/2008, IKB Commission decision of 21 October 2008; Case NN 42/2008, NN 46/2008 and NN/53/A/2008, Fortis Banque & Fortis Banque Luxembourg, Commission decision of 3 December 2008, point 95.

2. *Aid to the Rump Bank*

(86) The Restructuring Communication provides in points 9 and 10 that the Member State should provide a comprehensive and detailed restructuring plan which should include a comparison with alternative options. Where a financial institution cannot be restored to viability, the restructuring plan should indicate how it can be wound up in an orderly fashion. The plan should furthermore also identify the causes of the difficulties faced by a financial institution.

(87) The Danish authorities have chosen to embark on a winding-up of the bank. The Danish authorities made clear that they had considered various options before they decided to pursue a winding-up of the business. An analysis of the troubles faced by the former Fionia Bank is set out in the Rescue Decision (see in particular points 4ff). The Commission therefore considers the conditions of points 9 and 10 of the Restructuring Communication to be met.

(88) In the present case the Commission observes that the Danish authorities have chosen an orderly winding-up through the sale of parts to a third party and the liquidation of the Rump Bank.

(89) The Danish Bank Aid scheme provides for the creation of a company which establishes subsidiary companies with the purpose of winding-up of insolvent banks in order to minimise the losses for the State stemming from the guarantee to depositors and other ordinary creditors granted in the context of the scheme. Although the present aid was notified for individual assessment by the Commission (under point 28 of Decision NN 51/2008 on the Danish bank aid scheme), the Commission notes that the mechanism chosen is in line with the general principles of the Bank Aid scheme.

(90) The continuation of all previous rescue aid measures must be assessed as aid to assist the orderly winding-up of Fionia. Likewise, the difference between the rescue aid authorized in the amount of EUR 684 million (DKK 5.1 billion) and the total credit facility in the amount of EUR 1.14 billion (DKK 8.5 billion) made available to the Rump Bank must be regarded as liquidation aid.

(91) Already in the rescue decision it was recognized that a failure of Fionia Bank would have posed a threat to financial stability. Similarly, an uncontrolled failure of New Fionia could harm the financial stability.

(92) The transfer of the red part into the Rump Bank as the only part that could not be sold to a market investor constitutes an *a priori* private sector solution and thus respects the minimum necessary principle.

Measures to limit distortion of competition

(93) The Danish authorities have provided a liquidation plan providing for the orderly winding-up of the Rump Bank.

(94) The Rump Bank will not pursue any new activities but merely phase out the ongoing operations. Denmark offered commitments restricting the products and services the Rump Bank will offer.

(95) Denmark's declared objective is that the liquidation will be finalized within a maximum of five years. The amount for capitalisation of the Rump Bank is, according to Denmark, necessary (and any surplus will be returned to the FSC).

(96) The Commission takes note that the amount of the capitalisation of the Rump Bank is necessary in order to meet the regulatory solvency requirements. It takes further note that the transfer of the green and yellow parts has left a funding deficit in the Rump Bank. The Commission considers therefore that the credit facility is needed for purposes of liquidating the Rump Bank.

(97) The Commission takes note of the timeframe, milestones and benchmarks set out in the winding-up plan. In particular, the Commission notes the that the Rump Bank will not engage in new business and Denmark's commitments as to the interest rates and to advances on existing loans will further contribute to limit distortions of competition.

(98) In view of the above, the Commission considers that distortions of competition are sufficiently limited.

(99) Following from the above, the Commission concludes that the liquidation including the sale of the biggest part possible of the former Fionia Bank allows for an orderly winding-up in order to maximize the value of the remaining assets and to minimize the amount of necessary State aid.

Limiting restructuring costs

(100) The credit facility in the amount of EUR 1.14 billion will be used for the sole purpose of liquidating the Rump Bank. No other commercial activities will be financed with the facility. It will not enable the Rump Bank to engage in new business activities. Denmark submits that this is the amount necessary to cover the funding deficit which could arise in the Rump Bank after the transfer of the green and yellow parts to Nordea.

(101) Any potential Earn-Out amount will be paid only after payment of the aid to the FSC including interest of 10%.

(102) The Commission notes that the State in any case will retain priority on the proceeds from the winding-up of the Rump Bank, which means that the State is in the position to maximise the recovery of any State aid granted.

Limited amount of aid/Own contribution

(103) The Restructuring Communication sets out in paragraph 24 that companies should use their own resources to finance restructuring, for instance through the sale of assets. In addition the costs of the restructuring should also be borne by investors, loss absorption with available capital and by paying an adequate remuneration.

(104) The split of New Fionia in three parts according to the risk associated therewith and to put them for sale separately aimed at attracting as many potential bidders as possible and selling the biggest part possible. As a result, a substantial part (37%) was sold to a competitor through an open tender process.

(105) For the above reasons, the Commission concludes that the restructuring costs are limited to the minimum necessary. It also considers, that there has been a sufficient own contribution by the bank, its shareholders and its subordinated debt holders, thus limiting the aid to minimum necessary.

(106) The Commission concludes that the measures described above constitute State aid that can be considered compatible with Article 107(3)(b) TFEU in light of the Restructuring Communication.

7. CONCLUSION

(107) The Commission accordingly finds the aid compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union.

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

European Commission
Directorate-General for Competition
State Aid Greffe
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: +32-2-296 12 42

Yours faithfully
For the Commission

Joaquín ALMUNIA
Vice-President of the Commission