

Brussels, 23 October 2009

State aid: Commission opens in-depth investigation into aid package for German HSH Nordbank AG

The European Commission has opened, under EC Treaty state aid rules, an in-depth investigation into the €10 billion risk shield and €3 billion recapitalisation provided by the German Länder of Hamburg and Schleswig-Holstein to HSH Nordbank AG. The Commission initially authorised the risk shield for six months for reasons of financial stability on 29 May 2009 (see [IP/09/854](#)). During its investigation, the Commission will analyse the complex measures in the light of its recent Communications on the restructuring of financial institutions during the crisis (see [IP/09/1180](#) and [MEMO/09/350](#)) and on the treatment of impaired assets (see [IP/09/322](#)). On the basis of the information provided so far, the Commission has doubts as to the compatibility of the measures with the impaired assets Communication, in particular as regards the eligibility and valuation of assets covered by the risk shield and remuneration of the Länder for the risk shield provided. Furthermore, the Commission must verify whether the measures are liable to restore the long-term viability of the bank. The opening of an investigation is not unusual for state interventions of this magnitude. It will ensure legal certainty for stakeholders and give interested third parties the possibility to submit their views. The opening of such an investigation is without prejudice to its final outcome.

Competition Commissioner Neelie Kroes said: "The Commission has to ensure that Member States' efforts to stabilise financial markets by tackling the issue of impaired assets solve the banks' long-term problems without giving undue short-term advantages to them. During its in-depth investigation, the Commission will explore further with the German authorities whether the rescue measures are capable of restoring the long-term viability of HSH Nordbank and whether they are compatible with the Commission's state aid rules on impaired asset relief. We are continuing our constructive dialogue with the German authorities and I am confident that we will arrive at a satisfactory outcome."

HSH Nordbank is the fifth largest German Landesbank and is active in corporate and private banking. It acts as central bank for the savings bank in its region and is a global provider of financing for shipbuilding, transportation, real estate and renewable energy projects.

Following the six-month temporary approval of the measures by the Commission, the Hamburg and Schleswig-Holstein Länder implemented a €3 billion recapitalisation and a €10 billion risk shield in favour of HSH Nordbank. In September, the bank submitted a restructuring plan to the Commission and the Commission will now assess the compatibility of the risk shield and the restructuring plan under its guidance Communications on restructuring and the treatment of asset relief measures.

Impaired assets are categories of assets on which banks are likely to incur losses (e.g. US sub-prime mortgage backed securities, Alt-A loans). The Communication defines impaired asset relief as all measures where a bank is dispensed from the need to make severe downward value adjustments to the assets in question but leaves the details regarding the design of such measures to Member States. The guidance Communication was designed to ensure that foreseeable losses were disclosed and that impaired assets were valued properly with the help of an independent expert using a commonly accepted valuation methodology. The aim of the valuation is to establish the real economic value of the illiquid assets, which may be significantly above the fair (market) value.

Furthermore, the Commission will evaluate in detail whether the measures are capable of restoring the long-term viability of HSH Nordbank, whether the state support is limited to the minimum necessary, and whether measures should be put in place to minimise potential distortions of competition created by the aid.

In addition, the Commission will verify the conditions of the recapitalisation measure, in particular whether the issue price of the new shares was too high and whether the bank owners not participating in the rescue measures, namely the savings banks and the nine trusts advised by J.C. Flowers & Co. LLC, did not disproportionately benefit from the recapitalisation.

The opening of a formal investigation procedure does not prejudice whether the measures concerned are in line with the EU state aid rules. It is a necessary step to ensure legal certainty for the aid beneficiaries and their business partners and provides an opportunity to take account of comments from interested parties to improve the measures.

The non-confidential version of this decision will be made available under the case number N503/2009 in the [state aid register](#) on the [DG Competition website](#) once all confidentiality issues have been resolved. New publications of state aid decisions on the internet and in the Official Journal are listed in the online newsletter [State aid Weekly e-News](#)).