EUROPEAN COMMISSION

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PUBLIC VERSION

WORKING LANGUAGE

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Subject: State Aid N208/2009 – Poland
Support scheme for banks' funding in Poland

Sir,

I. PROCEDURE

1. On 7 April 2009 Poland notified a support scheme for banks' funding in Poland. On 15 May the Commission requested additional information. On 8 June the Polish authorities requested a deadline extension which was approved on 12 June. Poland provided additional information on 26 June. On 19 August the Commission requested further information which was provided on 11 September.

II. DESCRIPTION

1. The objective

2. On 13 March 2009 the Law on the provision of State Treasury support to financial institutions[1] (hereafter the "support scheme" or the "Law on support") came into force. It aims at reinforcing stability in the Polish financial markets with a support scheme in

[1] Ustawa z dnia 12 lutego 2009 r. o udzielaniu przez Skarb Państwa wsparcia instytucjom finansowym (Dz. U. 2009 No 39, item 308.).

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order to address the short and medium term financing needs of financial institutions. The Polish authorities have declared that the scheme has not yet been applied.

2. Beneficiaries

3. The support scheme specifies six categories of financial institutions established in Poland, including subsidiaries of foreign financial institutions established in Poland, that are eligible to benefit from the scheme. These are banks registered in Poland, registered insurance undertakings, brokerage houses, investment funds, pension funds and cooperative savings and credit unions, which are considered as solvent by the Polish authorities.

3. Form and amount of aid

4. The measures provided under the scheme can be subdivided into two following categories: State Treasury guaranties and State Treasury bonds related support measures.

5. Poland will make available a Treasury guarantee for the issuance of new short and medium term debts. Under this scheme, institutions will have the option to enter into an agreement with the Polish State, represented by the Ministry for Finance, which in turn would guarantee the institutions' new issuance of debt instruments in exchange for a fee and collateral. The guarantees provided under the scheme are twofold:

   - State Treasury guarantees for the repayment of a refinancing credit, provided to beneficiary bank by the National Bank of Poland, up to a level of 50% of the outstanding amount of the credit;

   - State Treasury guarantees for the repayment of credit facilities or loans provided within a line of credit provided to the beneficiary bank by another bank and incurred by the beneficiary bank in order to maintain the liquidity ratios required by law, these guarantees may also relate to debt securities, in particular bonds, issued by the beneficiary bank;

6. In addition the scheme foresees support through the issuance of Polish Treasury securities to credit institutions. The Polish Government will, in return for remuneration and appropriate collateral, issue and lend Polish Treasury bonds in order to enable the institutions to obtain immediate liquidity from the markets. The Law on support foresees following Treasury bonds related support measures:

   - Lending of Treasury bonds to eligible financial institutions and

   - Sales of Treasury bonds with deferred payment or with payment arranged into installments (such sale has an effect comparable with a loan).

7. The above mentioned guarantees are accessible to banks only, while the lending and sales of the Treasury bonds apply to all beneficiaries eligible under the scheme.

8. The guarantees will be granted for new issues of the commercial bank debt only, which may not constitute subordinated debt.

9. The lending and sale of Treasury bonds is designed in order to maintain and improve the liquidity of the beneficiary institutions which will get the possibility to sell the bonds or use them as a collateral or enter into a sell-buy transaction with an ex post determined price.

10. Eligible institutions may apply for the support under the scheme until 31 December 2009, but support may be granted later, within the six month period as from the day of the adoption of this decision..

11. The guarantees will be provided to the debt instruments with maturities with three months up to five years. Bank loans guaranteed by the State Treasury, with maturity exceeding 3 years will be restricted to maximum 1/3 of the value of all bank loans of the particular beneficiary covered by State Treasury guarantees and Treasury bonds. Poland has further committed to restrict the term of support related to Treasury bonds (with deferred payment or with payment in installments) to maximum 3 years. The scheme is not subject to any currency restrictions.

12. According to the State budget adopted for 2009 the limit of all the State Treasury guarantees (also outside this scheme) for 2009 accounts for up to PLN 40 billion [ca. € 9.6 billion[2]]. There is no special limit for guarantees issued under the support scheme for the financial institutions. The budget for the support in the form of lending of the Treasury bonds or sale of Treasury bonds (with deferred payment or with payment in installments) is to be defined in line with the legal provisions on public finance and may amount in 2009 to maximum PLN 10 billion.

4. Conditions for granting the aid

13. Participation in the scheme is voluntary. The Polish authorities have committed to provide guarantees or other forms of support covered by the scheme in question only to solvent institutions which meet Polish capital and solvency requirements, appropriate for the type of institution which is the beneficiary of the scheme.

Guarantee fee

14. The terms of the fees are not addressed in the Law on support. However Poland has committed in the notification to require that fees on the guarantees are based on the Recommendations of the European Central Bank (hereinafter referred to as "ECB Recommendations")[3].

15. The pricing of guarantees on bank debt with maturities of less than or equal to 1 year should be equal to an overall flat fee of 50 basis points. This fee will be paid ex ante.

16. The pricing of guarantees on bank debt with maturities exceeding 1 year should be based on banks' credit default swap (CDS) spreads increased by an add-on fee of 50 basis points. Given that the Polish banks do not have CDS data, according to point 7 and 8 of the ECB Recommendations for banks without CDS data, but with a credit rating, an equivalent CDS spread will be derived from the rating category of the bank concerned, based on a representative sample of euro area large banks.

17. For banks without CDS data and without a credit rating, an equivalent CDS spread will be derived from the relevant data from the lowest rating category (but now lower than A), based on a representative sample of euro area large banks. The total price of the credit guarantee will also include the add-on fee of 50 basis points.

[2] Average NPB exchange rate on 16 September 1 Euro = 4.15 PLN.

[3] Recommendations on Government Guarantees on Bank Debt of the European Central Bank of 20 October 2008.

18. The Law on support requires the beneficiary institution to provide collateral covering the obligation to repay the full amount of the support including interest. Furthermore additional collateral will be requested when the provided collateral does not cover the full amount of the liability together with incidental receivables, in the case where the value of the collateral decreases.

19. A number of conditions will be attached to guarantee agreements, including in any case the ban on advertisements. In addition, the Polish authorities may impose further restrictions, e.g. regarding dividend payments, restrictions with respect to wage increases, bonus payments, board remuneration and bank executives´ severance packages during the guarantee period.

Fee for support related to Treasury bonds

20. As regards the fees on the lending of the Treasury bonds or sale of the Treasury bonds with deferred payment or with payment in instalments the fee cannot be lower than Lombard credit interest rate[4] and will be below the level of a doubled Lombard interest rate. The exact level of the fee will depend on the rating of the financial institution, but for the moment (16 September 2009) the lowest possible fee for the bank with the highest repayment ability amounts to 6,0 % (1.2*5%, Lombard rate for 16 September = 5%). The following table presents the planned fees:

	Standard&Poors Co.	Fitch Ratings	Moody's Investors Service Inc	Minimal fee rate (the multiplying factor of NBP Lombard interest rate)		
Period				Up to 1 year	1-3 years	3-5 years
The highest repayment ability	AAA	AAA	Aaa	1,2	1,24	1,28
Very high repayment ability	AA+ AA AA-	AA+ AA AA-	Aa1 Aa2	1,24	1,28	1,32
High repayment ability	A+ A A-	A+ A A-	A1 A2 A3	1,28	1,32	1,36
Adequate repayment ability	BBB+ BBB BBB-	BBB+ BBB BBB-	Baa1 Baa2 Baa3	1,40	1,44	1,48
Sensitive to unfavourable conditions repayment ability	BB+ BB BB-	BB+ BB BB-	Ba1 Ba2 Ba3	1,84	1,92	2,0

[4] Lombard interest rate is the rate charged to banks by the central bank for collateralized loan obligations. The Lombard interest rate is significantly higher then the central bank reference rate and the Warsaw Interbank Rate (WIBOR). For example on 16 September 2009 the Lombard interest rate was 5 %, the central bank reference rate 3.5% and the 1-month-WIBOR rate 3.54%.

21. In case an institution has no rating it is assumed that its repayment ability is sensitive to unfavourable conditions, i.e. the lowest eligible rating category applies.

22. The Treasury bonds for the purpose of the scheme (to be borrowed or sold to the beneficiary institutions) will be issued at the terms of other Treasury bonds issues at the same time.

23. A number of conditions will be attached to support agreements, including restricting dividend payments, restrictions with respect to wage increases, bonus payments, board remuneration and bank executives´ severance packages during the guarantee period and the ban on advertisements.

III. POSITION OF POLAND

24. The Polish authorities accept that the support scheme contains State aid elements.

25. The Polish authorities claim that the measure is compatible with the common market, because it is necessary to remedy a serious disturbance in the Polish economy pursuant to Article 87(3)(b) of the EC Treaty.

26. The Polish authorities submit that sales of Treasury bonds to eligible financial institutions, which are considered to be safer from the public finance point of view, are addressed to all eligible financial institutions, i.e. registered credit institutions, registered insurance undertakings, brokerage houses, investment funds, pension funds and Polish cooperative savings and credit unions. The State Treasury guarantees may be granted exclusively to domestic banks. In order to give special treatment to banks since they conduct operations consisting mainly of acceptance of deposits and granting loans, which are considered to be activities with pivotal importance for the correct functioning of the economy.

27. The Polish authorities have provided a number of commitments:

- to grant aid measures under the support scheme only to solvent financial institutions. Poland will ensure that adequate legal requirements applicable to particular financial institutions eligible under the scheme are met, i.e. concentration limits, solvency margin, value of net assets, maintenance of a liquid reserve, etc. (see point 11);

- to provide guarantees on the debt instruments with maturities of three months up to five years (for 1/3 of the debts of the bank they can be extended to five years) and to provide support related to the Treasury bonds for up to three years (see point 9);

- to grant the guarantees under the support scheme only for new issues of the commercial bank senior debts (subordinated debt is excluded) (see point 7);

- to attach to the support agreements a ban on advertisements referring to the support provided by the State Treasury;

- to issue the State Treasury bonds under the scheme at the same conditions as State Treasury bonds issued at the same time outside the scheme.

28. In addition the Polish authorities undertook to cease support to financial institutions six months after the Commission approves the support scheme in question (maximum deadline of provision of financial support). That deadline will also be respected as concerns cases in which a financial institution applied for a measure before the deadline for which the Commission approved the scheme expired. If it proves necessary to extend the support scheme, Poland will notify to the European Commission the prolongation of the scheme.

29. The Polish authorities undertook to present every six months reports on the operation of the scheme containing the list of all beneficiary companies indicating for each of them the necessary data to understand the full scope of the support measures.

30. Finally, the Polish authorities have committed to file individual restructuring/liquidation plans, within 6 months, for banks that default on their liabilities and/or which cause the guarantee to be called upon. Poland has also committed to provide within 6 months individual restructuring/liquidation plans, for banks that default their liabilities from the support agreement on State Treasury bonds related support.

IV. Assessment

1. State aid character of the support scheme

31. As set out in Article 87(1) EC, 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 common market.

32. The guarantee on the new issued debt in interbank relations or for the repayment of a refinancing credit provided by the National Bank of Poland, allows the beneficiaries to refinance themselves at advantageous conditions. The acquisition of Treasury bonds provides the beneficiary banks with access to liquidity at preferential terms, which they would not receive on the market. The Commission is convinced that in the current circumstances of financial crisis no private investor would have granted such significant amount of liquidity or guarantee on the senior debt to the participating banks[5]. This gives an economic advantage to the beneficiaries and strengthens the position of these beneficiaries compared to that of their competitors in Poland and other Member States and must therefore be regarded as distorting competition and affecting trade between Member States.

33. The measures therefore constitute State aid within the meaning of Article 87(1) of the EC Treaty. This was not disputed by Poland.

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[5] Cf. Commission decision of 10 October 2008 in case NN 51/2008 *Guarantee scheme for banks in Denmark*, OJ C 273, 28.10.2009, p. 2, point 32.

2. Compatibility of the scheme

Application of Article 87(3)(b) EC

34. Poland intends to provide aid under a support scheme by assisting banks, which have problems accessing liquidity. Given the present circumstances in the financial market, the Commission considers that it may be acceptable to examine this measure directly under the Treaty rules and in particular under Article 87 (3) (b) EC Treaty.

35. Article 87 (3) (b) EC Treaty enables the European Commission to declare aid compatible with the Common Market if it is "to remedy a serious disturbance in the economy of a Member State". The Commission recalls that the Court of First Instance has stressed that Article 87 (3) (b) EC Treaty needs to be applied restrictively and must tackle a disturbance in the entire economy of a Member State[6].

36. The Commission notes that the present scheme concerns the entire Polish banking sector and financial institutions such as registered insurance undertakings, brokerage houses, investment funds, pension funds and Polish cooperative savings and credit unions, which are considered as solvent by the Polish authorities. The current global financial crisis has made access to liquidity more difficult for financial institutions across the board and has also eroded confidence in the creditworthiness of counterparties. In these circumstances, even fundamentally sound financial institutions are facing the prospect of going out of business. The Commission considers that if the issues of lack of liquidity and lack of confidence are not addressed, it will result not only in difficulties for the banking sector but, due to that sector's essential role in providing financing to the rest of the economy, will also have a systemic effect on the Polish economy as a whole. The Commission does not dispute that the present scheme is designed to address the problems of the lack of liquidity and lack of confidence that have reached also Polish banks. Therefore it finds that the scheme aims at remedying a serious disturbance in Polish economy.

Conditions for compatibility under Article 87 (3) (b)

37. In line with the Commission 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", in order for an aid or aid scheme to be compatible under Article 87(3)(b) of the EC Treaty, it must comply with general criteria for compatibility under Article 87(3) of the EC Treaty, viewed in the light of the general objectives of the Treaty and in particular Articles 3(1)(g) and 4(2), which imply compliance with the following conditions[7]:

    a. *Appropriateness*: The aid has to be well targeted to its objective, i.e. in this case to remedy a serious disturbance in the entire economy. This would not be the case if

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6 Cf. in principle case Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Volkswagen AG Commission* [1999] ECR II-3663, para. 167. Confirmed in Commission Decision in case C 47/1996, *Crédit Lyonnais*, OJ 1998 L 221/28, point 10.1, Commission Decision in Case C28/2002 *Bankgesellschaft Berlin*, OJ 2005 L 116, page 1, points 153 *et seq* and Commission Decision in Case C50/2006 *BAWAG*, not yet published, points 166. See Commission Decision of 5 December 2007 in case NN 70/2007, *Northern Rock*, OJ C 43 of 16.2.2008, p. 1, Commission Decision of 30 April 2008 in case NN 25/2008, *Rescue aid to WestLB*, OJ C 189 of 26.7.2008, p. 3, Commission Decision of 4 June 2008 in Case C9/2008 *SachsenLB*, OJ L 104, 24.4.2009, p. 34.

7 Cf. Commission decision of 10 October 2008 in case NN 51/2008 *Guarantee scheme for banks in Denmark*, OJ C 273, 28.10.2009, p. 2, at point 41.

the disturbance would also disappear in the absence of the measure or if the measure is not appropriate to remedy the disturbance.

b. *Necessity*: The aid measure must, in its amount and form, be necessary to achieve the objective. That implies that it must be of the minimum amount necessary to reach the objective, and take the form most appropriate to remedy the disturbance. In other words, if a lesser amount of aid or a measure in a less distortive form (e.g. a guarantee instead of a capital injection) were sufficient to remedy a serious disturbance in the entire economy, the measures in question would not be necessary. This is confirmed by settled case law of the Court of Justice[8].

c. *Proportionality*: The positive effects of the measures must be properly balanced against the distortions of competition, in order for the distortions to be limited to the minimum necessary to reach the measures' objectives. This follows from Article 3 (1) g EC and Article 4 (1) and (2) EC, which provide that the Community shall ensure the proper functioning of an internal market with free competition. Therefore, Article 87 (1) EC prohibits all selective public measures that are capable of distorting trade between Member States. Any derogation under Article 87(3)(b) of the EC Treaty which authorises State aid must ensure that such aid must be limited to what is necessary to achieve its stated objective.

Application of the criteria to the support scheme

38. As regards appropriateness, the Commission acknowledges that the objective of the liquidity scheme is to provide sufficient access to liquidity to participating financial institutions. The Commission considers that this should help to establish the conditions for the revival of the interbank lending market and regards it therefore as an appropriate means[9]. Even if the scheme has not been put into effect so far, the Commission would accept that the existence of the schemes without banks actually making use of it contributes to the stability of the financial markets because it provides a safety net for the financial sector by ensuring the access to liquidity in case of urgency.

39. The scheme is also targeted at the appropriate beneficiaries as the eligibility of participating financial institutions is limited in principle to solvent financial institutions. The support scheme comprises in principle all the banks incorporated in Poland, including the subsidiaries of foreign banks established in Poland. Furthermore the support scheme is accessible to other categories of financial instituitions relevant to functioning of the Polish financial market.

40. The support scheme is also necessary, because it is limited to the minimum necessary in material scope and time.

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8 Cf. Case 730/79, *Philip Morris* [1980] ECR 2671. This line of authority has recently been reaffirmed by the Court of Justice in. Case C-390/06, *Nuova Agricast v Ministero delle Attività Produttive* of 15 April 2008, where the Court held that, "As is clear from Case 730/79 […], aid which improves the financial situation of the recipient undertaking without being necessary for the attainment of the objectives specified in Article 87(3) EC cannot be considered compatible with the common market […]."

9 See Commission Decision of 10 October 2008 in case NN 51/2008 *Guarantee scheme for banks in Denmark*, OJ C 273, 28.10.2009, p. 2, point 42, Commission Decision of 13 October 2008 in case N 507/2008 *Financial Support Measures to the Banking Industry in the UK*, OJ C 290, 13.11.2008, p. 4, point 56, and Commission decision of 13 October 2008 in case NN 48/2008 *Guarantee scheme for banks in Ireland*, OJ C 312, 6.12.2008, p.2, point 59.

41. As regards material scope, the Commission notes positively that Poland is in principle limiting the guarantee to the forms of financing that are considered a specific source of difficulties, i.e. short to medium term interbank lending and the credits by the NBP. The scheme excludes from its scope subordinated debt and covers only newly issued debt.

42. The State Treasury guarantees for the repayment of refinancing credits or the repayment of credit facilities or loans provided within a line of credit are accessible only to banks in order to facilitate their ability to seek funding and to lend on. This typically is also an issue for banks and the reason why some guarantee schemes are limited to credit institutions. For these reasons the Commission does not oppose the special treatment of banks.

43. Furthermore, the Commission accepts that additional liquidity support will be provided in the form of lending and sale of Treasury bonds with deferred payment or payments in instalments, which have to be seen as loans to beneficiary financial institutions and which will give all financial institutions (not only banks) additional liquidity.

44. As regards temporal scope, the guarantee applies to the newly issued debt for up to three years, and only in justified cases up to five years. In general, the Commission is of the view that the duration of a guarantee should be as short as possible. The Polish guarantee will apply in principle to new liabilities for up to three years. In justified exceptional cases the guarantee will also apply for five years. However, the Polish authorities have given an assurance that this may occur only up to a certain amount (up to one third of the debts of the bank). In addition, the six-monthly reports must include an update on the granting of such guarantees and the justification in each case. Since extending the guarantee to five years remains the exception, the necessity of such a scheme is reasonable also in the light of earlier decisions[10]. In this regard, the Commission notes positively an additional safeguard in the present scheme in so far as it has a limited issuance period of six months. The temporal scope is thus justified.

45. As regards proportionality, the distortions of competition is minimised by various safeguards. Above all, the aid amount is minimised through market orientated premiums.

46. It is first observed that the banks pay on average an adequate premium for the guarantees. The pricing of the guarantee for debts with maturity exceeding one year will be based on the relevant CDS data and increased by an add-on fee of 50 bps. The fee for short term debts (maturity up to one year) will be equal to 50 bps on liable amount. In addition the beneficiaries of all support measures under the scheme are required to provide high quality collaterals. This pricing can be considered proportionate and consistent with the recent practice of the Commission[11]. In addition, the Commission notes that this is also in line with the ECB Recommendations, which aim at the establishment of an appropriate framework for premiums on guarantees.

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[10] See Commission Decision of 29 Oktober in case N 533/2008 *Guarantee scheme for banks in Schweden*, point 44.

[11] A similar approach is taken in the Commission decision of 20 March 2009 in case N637/2008 *Slovenian liquidity scheme to the financial sector*, OJ C 143, 24.6.2009, p. 1, Commission Decision of 22 June 2009 in case N 330/2009 *Prolongation of the German bank rescue scheme*, OJ C 160, 14.7.2009, p. 4, Commission Decision of 3 September 2009 in case N 355/2009 *Prolongation and modification of the Hungarian Bank Support scheme*.

47. Also the Treasury bonds are given in exchange for a market-oriented premium. As in the case of the guarantee scheme, the objective of lending or sale of State Treasury bonds, which can be used in refinancing transactions with the Central Bank or in interbank lending, is to ensure that financial institutions have sufficient access to liquidity and can fund their business more easily. The risk assumption of this measure is comparable to a guarantee, the only difference being that the beneficiary receives also liquidity. The premium for support in the form of lending or sale of Treasury bonds is based on the Lombard credit rate, which is significantly higher[12] than the reference rate and the WIBOR rate plus 50 bps plus CDS spreads. That is in line with the Commission's decision practice[13] where it asked remuneration based on EURIBOR plus 50 bps plus CDS. In this case the financial institutions will pay for State loans a credit risk premium which is equal or above the fees set in ECB Recommendations plus an appropriate base rate covering the funding costs, i.e. the EURIBOR. That ensures that the State is remunerated for both its provision of liquidity and for the risk of lending. Moreover, because the premium for liquidity is higher than that of guarantees it ensures that such a means is only used when a financial institutions has no access to a guarantee or the State guarantee is not sufficient to raise liquidity.

48. Moreover, the scheme includes several behavioural constraints such as the ban on advertisements which help to ensure that the participating banks do not use the received State support to expand their activities.

49. Furthermore, the Commission acknowledges that Poland has committed to provide a restructuring or liquidation plan, within six months, for any institution that default on its liabilities or that causes the guarantee be drawn[14].

50. Finally, the Commission would like to reiterate that the window to avail of financial support measures is limited to six months. Should Poland wish to extend the application of this scheme, it needs to notify this to the Commission as new State aid under Article 88(3) of the EC Treaty, in due time before that date.

51. On the basis of the above, the support scheme can be considered compatible with the Common market.

V. DECISION

The Commission concludes that the notified support scheme is compatible with the Common market and has accordingly decided not to raise objections against the notified scheme, since it fulfils the conditions to be considered compatible with the EC Treaty.

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12 As shown in point 20 for the moment (16 September 2009) the lowest possible fee for the bank with the highest repayment ability amounts to 7,2 % (1.2*5%, Lombard rate for 16 September = 5%).

13 See Commission Decision of 27 October 2008 in case N512/2008 *German bank rescue scheme*, OJ C 293, 15.11.2008, p. 2, point 84, Commission Decision of 22 June 2009 in case N 330/2009 *Prolongation of the German bank* rescue *scheme*, OJ C 160, 14.7.2009, p. 4, Commission Decision of 19.11.2008 in case N560/2008 *Support Measures for the Credit Institutions in Greece*, OJ C 125, 5.6.2009, p. 6, Commission decision of 20 March 2009 in case N637/2008 *Slovenian liquidity scheme to the financial sector*, OJ C 143, 24.6.2009, p. 1, point 42.

14 Such plans are the cornerstone of the Rescuing and Restructuring Guidelines and the 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, 19.8.2009, p. 9.

The Commission would recall that the compatibility of the scheme is restricted to six months and any extension must be notified to the Commission in due time.

If this letter contains confidential information which should not be published, please inform the Commission within five 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 publication of the full text of this letter. Your request specifying the relevant information should be sent by registered letter or fax to:

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Yours faithfully,

For the Commission

Neelie Kroes
Member of the Commission