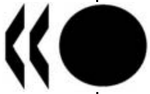

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ROUNDTABLE ON EXIT STRATEGIES

-- Note by the Delegation of the European Union --

This note is submitted by the delegation of the European Union to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16 - 17 June 2010.

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ROUNDTABLE ON EXIT STRATEGIES

-- Note by the European Union--

1. Introduction - The role of the European Commission as competition authority in contributing to the development and implementation of an exit strategy

1. The specific legal architecture of the EU has given the European Commission in its capacity as a competition authority a very special role in dealing with the present global financial and economic crisis. In addition to the usual powers of competition authorities in the areas of merger control (policing potential anti-competitive effects of crisis-induced mergers) and antitrust (combating anti-competitive agreements including crisis cartels), the European Commission is responsible for ensuring and enforcing compliance with the State aid rules. These rules generally prohibit government assistance which threatens to distort competition by bestowing an advantage on certain undertakings unless such support can be recognised as compatible with the common market under the material provisions of the European Treaties[1]. The European Commission occupies the position of a central gatekeeper since no State aid measure can be legally put into effect without its approval. In a single market, the proper functioning of which could be undermined by unrestrained subsidy decisions of 27 national governments or even subsidy races between them, a mechanism requiring the authorisation of state aid by a competition authority on the basis of an ex-ante control of its competitive impact is of crucial importance in order to preserve a level playing field.

2. As EU Member State governments reacted to the crisis by providing support of unprecedented dimensions to the financial sector but also to the real economy, leading in some cases to the nationalisation of financial institutions, State aid control of this assistance made up the lion's share of the workload of the Commission as a competition authority. Unlike in other jurisdictions, emergency decisions to tackle the crisis have not been taken outside the scope of competition rules or in some cases even taking precedence over them but on the basis of and in compliance with State aid rules as an emanation of competition principles. The Commission's powers and responsibilities in this field also entail by definition a significant role in the determination and implementation of exit strategies. This contribution will therefore focus on State aid matters and set out the involvement of the European Commission in this particular context. It will first set out (under II) the Commission's involvement in the measures reacting to the crisis with a particular emphasis on the restructuring conditions that are attached to State assistance. It will then describe (under III) the Commission's ongoing work on the design of an exit strategy and conclude (under IV) with some short remarks on its role as a competition authority in the deliberations on regulation aimed at preventing the re-occurrence of comparable crises in the future.

2. State aid control as a tool to preserve a level playing field during the crisis

3. The systemic nature of the crisis and particularly the danger of an imminent collapse of the global financial system presented tremendous challenges to the system of State aid control in terms of the number and urgency of cases as well as of the amounts involved and the resulting potential impact on competition[2].

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[1] Articles 107 et seq. Of the Treaty on the Functioning of the European Union (TFEU)

[2] In relation to the financial sector, in the period between October 2008 and 31 March 2010, the Commission took 161 decisions on crisis-related measures. Out of these, 78 decisions were taken in relation to some 40

These circumstances led to the approval of support measures on the basis of Article 107 (3) (b) TFEU[3] allowing aid '*to remedy a serious disturbance in the economy of a Member State*', a provision which had hardly ever been used before. As will be set out in more detail below, the recourse to this legal basis facilitated the adjustment of the application of State aid control to the particular circumstances of the crisis. It did not, however, represent a shift in the general principles guiding this process and aimed at preventing distortions of competition.

2.1 The financial sector

4. The self-evident prime objectives of the measures taken to avoid a meltdown of the financial sector as a chain reaction following the Lehman insolvency were to preserve financial stability, deal with the risk of bank failures and keeping open credit channels to the real economy. Yet the role of the Commission in the field of competition policy was not limited to supporting financial stability by providing legal certainty concerning the admissibility of the emergency measures taken by EU Member States. From the very outset the Commission also aimed at limiting distortions of competition, maintaining a level playing field and ensuring that national measures would not simply export problems to other Member States.

2.1.1 The requirements for the approval of aid measures

5. To clarify its role and objectives in the specific circumstances of the financial crisis, the Commission adopted guidance on conditions for the Member States' support to the financial sector, specifically on guarantees, capital injections and impaired assets relief measures.

Box

Banking Communication of 13 October 2008 - exposes conditions under which State aid measures in favour of the banking industry can be considered compatible with the common market under Article 87(3)(b) of the Treaty EC. The particular focus is guarantees on bank liabilities.

Recapitalisation Communication of 8 December 2008 - guidance on conditions for State recapitalisations of banks (adequate remuneration, incentives for State capital redemption); closeness of remuneration to market prices is the best guarantee to limit competition distortions; recapitalisation of banks which are not fundamentally sound subject to the requirement of far-reaching restructuring.

Impaired assets Communication of 25 February 2009 - guidance on conditions for measures taken in order to relief financial institutions from their impaired assets; transparency and ex-ante valuation of assets, adequate remuneration, burden-sharing between the bank/its shareholders and the State.

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financial institutions and 83 decisions in relation to almost 40 schemes (guarantee schemes, recapitalisation schemes, liquidity interventions, asset relief interventions). The maximum volume of Commission-approved measures including schemes and ad hoc interventions set up by Member States in the wake of the financial crisis amount to € 4 131.1 billion or almost 33% of EU 27 GDP.

3 Treaty on the Functioning of the European Union.

6. These guidance documents were based on the same general principles, aiming to provide a framework for assistance to financial institutions that ensures:

- fair competition between Member States - measures taken by one Member State with respect to its own banks should not give them an undue competitive advantage compared to banks in other Member States;

- fair competition between banks - measures must differentiate between beneficiary banks according to their risk profiles, to avoid giving an undue advantage to distressed or less-performing banks;

- a return to normal market functioning - measures must address how to return the financial sector to long-term viability, where banks operate without state support. This process is still ongoing.

7. To ensure that these general principles were properly implemented, the Commission imposed specific conditions. All general support measures need to be well targeted to the objective of remedying a serious disturbance in the economy, proportionate to the challenge faced and designed to minimise spill over effects on competitors. It would go beyond the scope of this contribution to set out these conditions for the different aid measures in detail[4]. It should be emphasised, however, that the combination of pricing rules staying as close to market conditions as possible with additional requirements such as behavioural safeguards was consistently devised with a view to providing sufficiently strong incentives for beneficiaries to exit from State assistance as soon as the economic situation permits. The recapitalisation Communication is particularly explicit on the necessity of inducing banks to redeem State capital swiftly through an adequately high remuneration, possibly increasing over time as a consequence of step-up clauses or similar features encouraging early redemption and possibly by restrictions on dividend payments[5]. This illustrates how the need for the preparation of the exit process already influenced the very design of the conditions measures had to fulfil in order to receive the Commission's authorisation.

2.1.2 Restructuring as the necessary follow-up to aid – an 'exit strategy' for individual beneficiaries

8. In 'normal' circumstances, i.e. outside a systemic crisis, assistance given to (financial and non-financial) firms in difficulty is assessed within the well-established framework of the Commission's guidelines on rescue and restructuring. These guidelines state that rescue operations by Member States keeping firms in business that would have otherwise exited the market belong to the types of State aid that are most distortive of competition and can only be permitted on strict conditions minimising any such undue distortions. In particular, they stipulate that every beneficiary has to undergo a restructuring process which ensures the swift restoration of its long-term viability without State support. In other words, a convincing exit strategy from dependence on State assistance at the level of the individual beneficiary is an intrinsic prerequisite for the very approval of the support measure[6].This exit strategy needs to guarantee that the amount and intensity of aid are kept to the minimum through a significant own contribution of the beneficiary to the restructuring costs[7]. It also needs to include appropriate measures compensating for and

[4] In relation to guarantees and recapitalisation measures these requirements reference can be made to the note of the Commission of 10 February 2009 submitted to the Competition Committee (DAF/COMP/WD(2009)12/ADD1).

[5] Points 31 – 34 of the recapitalisation Communication.

[6] Where no such persuasive restructuring plan can be produced, liquidation aid enabling an orderly winding-up of the company in question would be the only alternative to normal insolvency proceedings.

[7] This contribution is also a sign that markets believe in the feasibility of a return to long-term viability.

proportionate to the distortive effect of the aid such as divestment of assets, reduction in capacity or market presence and the removal of entry barriers on the markets concerned.

9. These principles were adapted to the peculiar features of a systemic financial crisis by the Commission's Restructuring Communication of 22 July 2009 taking into account the systemic role of the banking sector for the whole economy and possible systemic effects arising from the need for a number of European banks to restructure at the same time. In particular, in the context of a general systemic crisis, not every difficulty can be safely attributed to the weakness of the business model of the financial institutions concerned. Some of them are in a position to weather the current crisis with limited adjustments in their operations as a response to shareholders' and market pressures. Others, which have received large amounts of State aid and with unsustainable business models, need to undertake in-depth restructuring in order to restore long-term viability without reliance on State support. None will be able to properly perform their function of lenders to the real economy until this process is undertaken.

10. The main objectives of the Restructuring Communication are ensuring viability in the long-term without state aid, burden sharing and limiting distortions of competition due to state aid.

11. As regards the return to viability the long-term and being able to operate without State support, banks should adjust their business model to reduce systemic risks. A thorough restructuring plan, demonstrating strategies to achieve viability also under adverse economic conditions, needs to be based on rigorous stress testing of the banks' business. The benchmark of long-term viability may imply different solutions across banks, ranging from limited restructuring with no divestments to an orderly winding down of unviable entities. Return to long-term viability is only ensured when the state aid provided during the crisis is either redeemed over time or remunerated according to normal market conditions. [This condition translates the principle that State aid rules apply irrespective of whether a bank is in private or public ownership.]

12. A restructuring plan will also need to ensure that the burden for taxpayers is limited and that the bank and its capital-holders contribute to the costs of restructuring as much as possible with their own resources, in order to address moral hazard and to create appropriate incentives for their future behaviour. This can be achieved through setting an appropriate price for State support, so that the aid cannot be used to finance market-distorting activities not linked to the restructuring process, and through temporary restrictions on payment of dividends and coupon on hybrid capital by loss-making banks. As regards burden sharing, the Commission action aims at striking a balance between financial stability and trust on the one hand and contribution of the bank, its shareholders and senior creditor to the restructuring costs on the other hand. To this end, where the state provided a significant contribution to the bank's loss absorption, temporary limitation to the payment of coupons on hybrid capital instruments or dividends on shares had often to be requested.

13. Lastly, undue distortions of competition caused by restructuring State aid need to be limited. Tailor-made to market circumstances of each case, measures may include divestments, temporary restrictions on acquisitions by beneficiaries and other behavioural safeguards and will tackle competition distortions between banks which have received public support and those which have not, as well as between banks located in different Member States. Attention has in particular being given to the core markets where the aid beneficiary enjoys a strong market presence and care was applied as to the need to ensure the maintenance of lending relations with other geographical areas of the single market. Remedies have also been conceived with a view to reduce barriers to entry into national markets.

2.2 The real economy

14. With the objective of reducing negative effects of the crisis in the real economy, the Commission put in place a temporary State aid framework (hereinafter referred to as 'Temporary Framework'), which is valid until the end of 2010 and provides Member States with additional possibilities to grant State aid on the same legal basis as for the crisis-related measures in the financial sector, Article 107 (3) (b) TFEU.

15. The Temporary Framework aimed at tackling the credit crunch that was triggered by the sudden inability of banks to finance themselves in the market, and widely affected businesses, including previously healthy ones And especially small and medium-sized companies (SMEs).

16. Although Member States already have a wide range of possibilities to grant State aid for different objectives (environmental aid, rescue and restructuring aid, etc.), there was an urgent need for additional short-term measures targeted to the exceptional difficulties in obtaining finance.

17. By adopting a coherent framework applicable to all Member States, the Commission encouraged co-ordinated action to ensure transparency and a level playing field for businesses and Member States. The new measures contained in the Temporary Framework needed to be horizontal in application, limited in time and amount, not discriminatory.

18. The new framework focused on three objectives: first, to immediately unblock bank lending, thereby preserving continuity in companies’ access to finance; second, to ensure that limited amounts of aid reach the recipients in the most rapid and effective way; and third, to encourage companies to continue investing in a sustainable future, including the development of green products.

19. On the basis of the Temporary Framework Member States may:

- Grant up to € 500 000 per undertaking to cover investments and/or working capital over a period of two years.

- Offer State guarantees for loans at a reduced premium. The guarantee may relate to both investment and working capital loans and it may cover up to 90% of the loan. The reduction of the guarantee premium can be applied during a period of 2 years following the granting of the guarantee.

- Offer aid in the form of subsidised interest rate applicable to all type of loans. This reduced interest rate can be applied for interest payments until the end of 2012[8].

- Offer subsidised loans for the production of green products involving the early adaptation to or going beyond future Community product standards.

3. The role of the European Commission as competition authority in the design and implementation of exit strategies

20. The powers of the European Commission under the State aid rules which require its approval for State support automatically imply its decisive position as competition authority in the design and implementation of a strategy for gradually scaling back the availability of crisis-related assistance and

[8] The subsidised interest rate will be calculated on the basis of the central bank overnight rate, instead of the one year inter-bank offered rate which is the usual reference contained in the Commission Communication for setting the reference and discount rates)

returning to normal market operation as financial markets and Member States ' economies at large slowly emerge from crisis conditions.

21. This role can be illustrated by considering the aid schemes the majority of Member States have introduced to standardise the conditions for access to government guarantees and to recapitalisation in the financial sector and for the measures under the Temporary framework in support the real economy. The authorisation of a scheme (rather than of individual aid measures) by the Commission significantly enhances bureaucratic efficiency since an approval is necessary only for the scheme and not for every individual assistance granted under that scheme provided that the conditions set out in the scheme (on pricing, behavioural safeguards etc.) are complied with. Since the current legal basis for aid measures presupposes the existence of a serious disturbance in the economy such schemes cannot be open-ended but are to be maintained only as long as such exceptional circumstances prevail. They are therefore subject to a review at regular intervals[9] which provides the opportunity to assess against the background of the evolution of macro-economic conditions whether it is justified to further extend aid schemes and if so whether the conditions have to be tightened in order to initiate or advance the exit process and to avoid a lasting distortive effect on competition.

3.1 Financial sector

3.1.1 General principles of the phasing out strategy

22. The interventions of Member states in support of the banking sector were necessary and justified in order to safeguard financial stability and prevented a meltdown of the global financial system. The consistent application of State aid rules has succeeded at minimising distortions of competition and preserving a level playing field at least in the short term.

23. At the current juncture, as financial markets appear to progressively stabilise, it is generally agreed that a strategy for withdrawing exceptional assistance has to be devised and implemented. In view of the persistent fragility in financial markets and of the risks of setbacks in the recovery process – such as the current sovereign crisis with its impact on financial institutions - exit has to be a gradual process with sufficient flexibility to take account of the specificity of the situations in different Member States and to allow an adequate reaction to unexpected market developments where necessary.

24. The correct timing of the different steps in the exit process is of pivotal importance. They can only be taken when macro-economic conditions and financial markets have developed enough resilience to absorb them without resurgent stress. Yet, keeping support to the financial sector at current levels in place for too long – apart from being untenable from the perspective of public finances - would enable banks with structural problems to unduly postpone necessary restructuring processes and lead to growing competitive imbalances and distortions. The resulting delay of a return to normal market conditions would turn into an obstacle to the recovery process itself.

25. In order to properly address these crucial timing issues and also to ensure an adequate co-ordination of measures that is key for fostering a smooth exit process the Commission co-operates closely with the ECB and Member States in order to determine when and how State aid has to be withdrawn. The decision on the requirements for the approval of aid measures such as the extension of aid schemes lies exclusively with the European Commission as competition authority but it is based on the

[9] With regard to the financial sector guarantee and recapitalisation schemes are approved for periods of six months and require a new authorisation for each prolongation. The Temporary framework expires on 31 December 2010.

insight gathered in an exchange of views with these interlocutors and on solid economic analysis with their input.

3.1.2 Phasing out of government guarantees covering bank liabilities as a first step of exit

26. The first step of this exit process based on the above principles has just been accomplished in May 2010 when the Commission announced the stricter terms on which schemes for government guarantees on bank liabilities can be maintained for the second half of 2010.

27. Government guarantees were chosen by the Commission as the first exit target with the endorsement of EU Member States[10] since banks' severe problems in access to funding appear to have been a relatively short-term transitional phenomenon that has largely subsided since the summer 2009. By contrast, recapitalisation and asset relief as the two other main tools of State support for banks address problems that will hopefully continue to reduce in seriousness but are more structural in nature and more persistent as banks may still have to reinforce their capital base in the view of the possible surge of bad assets linked to the real economic downturn.

28. The Commission first carried out a thorough review of the patterns and trends in the use of government guarantees since the beginning of the crisis on the one hand and of the economic benefits of their use in comparison with unsecured market funding on the other. This exercise yielded the result that the issuance of unsecured bonds has rebounded and that at the same time the use of guarantees has considerably declined since the peak in the first half of 2009 in terms of both numbers of issues of guaranteed bank debt and volume of issuances. As a consequence of the improved funding environment four Member States have already discontinued their schemes altogether and one has carried out the most recent extension until June 2010 only in combination with a significant increase in the guarantee fee.

29. Evidence further shows that the number of banks resorting to government guarantees is shrinking. While sound institutions have largely withdrawn from the issuance of guaranteed debt this instrument is now essentially used by banks that are already under restructuring obligations and/or have a low rating. The analysis also demonstrated that, taking into account the current guarantee fees, the cost of funding with guarantees is considerably reduced relative to the cost of funding via unsecured debt in particular for banks with a lower estimated creditworthiness which enjoy a significant economic advantage.

30. As a consequence of the stabilisation that has occurred in most of the funding markets, the risks for financial stability at large have subsided, and the distortions of competition between those banks that issue guaranteed bonds and those that issue strictly under market conditions has become greater[11].

31. These findings confirmed the necessity to initiate the phasing-out of state aid in such a way as to incentivise banks to refrain from State support whenever possible and to ensure that banks, which have difficulties in accessing funding not because of general crisis conditions but because of structural shortcomings in their business models, have to confront these weaknesses.

32. On this basis, the Commission will apply two new sets of requirements for the extension of guarantee schemes for the second half of 2010, an increase in the guarantee fee and an obligation to undergo a viability review requiring banks that continue to heavily rely on government guarantees to

[10] ECOFIN and European Council Conclusions December 2009.

[11] This is not the case for banks that have already come under restructuring obligations and for which distortions of competitions can be avoided or compensated for in the context of the measures taken in the restructuring context.

demonstrate their long-term viability to the Commission on the other. These new conditions were publicly announced one month ago and have been endorsed by the ECOFIN Council of 18 May 2010.

33. The fee increase should induce banks - in particular the lower rated institutions - to seek private sector funding instead of government supported funding. Therefore, pricing of government support is gradually being brought closer to current market conditions and better reflects individual banks' current creditworthiness. Fees for guarantees granted after 30 June 2010 will therefore have to be higher than under the current pricing formula[12] at least by 20 basis points for banks with a rating of A+ or A, by 30 basis points for banks rated A- and by 40 basis points for banks rated below A-.

34. The second new element is the obligation to undergo a viability review for banks that still depend heavily on government debt guarantees. A persistent failure to obtain a considerable proportion of the funding without government guarantees may indicate a lack of confidence in the viability of a bank's business model. It should be avoided that heavy reliance on guarantee schemes results in a postponement of necessary structural adjustments by banks that are not capable of obtaining sufficient liquidity in stabilised funding markets. The granting of new guarantees which takes or maintains the ratio of total guaranteed liabilities outstanding over total liabilities of a bank beyond 5% and the absolute amount of guaranteed liabilities beyond € 500 million will trigger the requirement of a viability review. A viability review is an instrument already widely used in the context of recapitalisations which consists in an analysis of a bank's long-term viability without State support that duly takes into consideration the specific circumstances of the beneficiary as well as the macro-economic conditions in the Member State concerned that have a bearing on a bank's access to financing. The review will either confirm long-term viability or point to a need for structural adjustments of varying degrees again depending on the circumstances of the individual case[13].

35. This approach sends the clear signal that banks have to get ready to secure their funding without State support. At the same time it is sufficiently flexible to find appropriate solutions for Member States and banks under circumstances that may vary considerably.

3.1.3 Next steps

36. This is the very first stage of exit in the financial sector that will have to be followed by other steps – in relation to government guarantees as well as to recapitalisation and asset relief measures – as soon as the macro-economic situation permits. Given the fragility of the current situation it is too early to determine when and how the exit can be further advanced; this will depend on the state of recovery and the degree of stabilisation of financial markets which will be continuously reviewed by the Commission. The reporting obligations on the use of support schemes that Member States have to undertake are an important tool in the monitoring process in that respect.

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[12] Based on Recommendations of the Governing Council of the European Central Bank on government guarantees for bank debt of 20 October 2008, available at http://www.ecb.int/pub/pdf/other/recommendations_on_guaranteesen.pdf. The credit risk element in this pricing model is based upon data that predates the most acute phase of the crisis which followed the bankruptcy of Lehman Brothers in September 2008 and does not reflect the significantly higher risk perception since the beginning of the crisis and the increased discrepancy between funding conditions of banks at the different ends of the spectrum.

[13] Where a bank is already subject to restructuring obligations or to a pending viability review due to other forms of assistance the award of additional government guarantees after 1 July 2010 will be taken into account within the framework of the ongoing restructuring/viability review process.

37. In addition to the need for further policy measures in order to gradually withdraw the availability of State support to financial institutions in general, it will be a challenge for the Commission in the foreseeable future to deal with the multitude of individual cases in which such support has been granted to individual banks. It is and will remain an intricate task to consistently apply the principles applicable to restructuring set out above in an environment characterised by an unprecedented obligation for a sizeable segment of the European financial market players to restructure simultaneously, and this under circumstances that may vary significantly across Member States. It is the responsibility of the Commission as a competition authority to assess the restructuring plans for banks, to adopt decisions on the conformity of these plans with the State aid rules on the basis of coherent criteria and to monitor over the whole restructuring period (which can last several years) whether Member States honour the commitments they have made with regard to the restructuring process. The complexity of these tasks (and more in particular the divestment of assets, a process that cannot be followed up in detail by a competition authority on a daily basis) has led the Commission to use monitoring trustees, an innovation in the field of state aid inspired by a more common practice in relation to mergers.

38. In some cases restructuring will not be limited to the divestment of assets or subsidiaries but include the sale of parts of the beneficiary or even the beneficiary in its entirety. The latter situation will occur in particular where a bank was nationalised during the crisis and the restructuring process includes the return to, private ownership[14]. Such a re-privatisation presents specific challenges in terms of making sure it takes place in an open and transparent process and does not create or maintain imbalances or distortions with a lasting negative impact on competition in the banking sector.

3.2 Real economy

39. Aid measures for the real economy are directly linked to the financial crisis in that the objective of the Temporary Framework was to unblock bank lending to companies and thereby guarantee continuity in their access to finance. The withdrawal of measures to ease financing constraints depends on the capacity of financial institutions to re-establish the supply of adequate credit to the creditworthy corporate sector. Consequently, when the financial situation normalises, the Temporary Framework should expire. The Temporary Framework is not an instrument to tackle the manifold effects of the recession as such, and may delay the necessary adaptation and restructuring if prolonged beyond necessity.

40. The Temporary Framework in its current form expires on 31 December 2010. In deciding on the specific design of its phasing-out, consideration will be given on the one hand to the evolution of the economic situation, and the capacity of financial institutions and markets to supply adequate funds to the creditworthy corporate sector and, on the other hand, to the appropriateness of the Temporary Framework as an instrument to sustain the economic recovery in the longer term, its effects on competition between firms and across Member States and the need to sustain Member States' efforts towards fiscal consolidation and higher quality and effectiveness of public spending.

41. The Commission is currently in the process of gathering and analysing information on the use and impact of the Temporary Framework as well as on the state of credit supply to creditworthy companies the in order to take an informed view on the phasing–out from crisis-related support to the real economy.

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14 Pursuant to Article 345 TFEU the EU Treaties shall in no way prejudice the rules in Member States governing the system of property ownership. They are thus neutral as to the public or private ownership of banks. Experience during the crisis shows, however, that Member States which nationalised banks during the crisis see this as a transitional crisis-related intervention and have no intention to keep them in public ownership.

4. The role of competition concerns in devising new regulation

42. The current multiple regulatory efforts to prevent future systemic crises in the financial sector - be it through amended capital requirements, the introduction of new tools for resolution and crisis management or by other means - fall within the responsibility of the European Commission not in its capacity as a competition authority but in its role as the institution holding the exclusive right to propose internal market legislation

43. Nevertheless, the institutional set-up of the Commission guarantees that competition concerns will be duly taken into consideration in the decision-making process and will influence the thrust of the Commission's initiatives. The requirement of a consultation of other interested Commission services prior to any new proposal provides a platform for the competition directorate-general to advocate solutions that are designed in full compliance with competition principles at the administrative level. Ultimately, political decisions are taken by the Commission as a collegiate body including the Commissioner for competition. In addition to this political mandate, where specific envisaged measures have a direct bearing on matters squarely falling within the scope of application of the competition rules of the Treaties the Commission is under the obligation to ensure compliance with competition law. For example, the creation of crisis resolution funds that is presently under discussions may have State aid implications since payments out of such funds administered by Member States constitute State aid if certain conditions are fulfilled. The Commission will have to see to it that these aspects are adequately reflected in the design of such funds to avoid any potential breach of the material competition provisions by their operation.

5. Conclusion

44. The Commission as a competition authority occupies a key position in defining and implementing strategies for the exit from exceptional crisis-related support to the financial sector and to the real economy. It determines the terms on which such support can be provided in conformity with EU competition law, the necessary follow-up to such assistance in terms of restructuring to minimise distortions of competition and it is also responsible for deciding when and how the availability of extraordinary support tools is to be gradually withdrawn in order to return to normal market operation. The exit process has been initiated by tightening the conditions for government guarantees covering bank liabilities. It will be instrumental for the ultimate success of this process to properly calibrate the timing and the sequencing of its different steps in a way that is commensurate with the improvement of macro-economic conditions and ensures that exit is sufficiently well co-ordinated across the European Union to prevent discrepancies with adverse repercussions for competition while taking account of the specific circumstances which may vary considerably between Member States.