Commission Decision of 18 February 2004 on restructuring aid implemented by Germany for Bankgesellschaft Berlin AG (notified under document number C(2004) 327) (Only the German text is authentic) (Text with EEA relevance) (2005/345/EC)

(**1**) OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

(**2**) OJ C 141, 14.6.2002, p. 2.

(**3**) OJ C 130, 1.6.2002, p. 5.

(**4**) See footnote 2.

(**5**) See footnote 2.

(**6**) Parts of this text have been edited to ensure that confidential information is not disclosed: those parts are enclosed in square brackets.

(**7**) Berliner Bank previously formed part of BGB, and Berliner Sparkasse formed part of LBB.

(**8**) See footnote 2 and speech to the general meeting by Mr Vetter, chairman of the managing board, on 4 July 2003 (http://www.bankgesellschaft.de/bankgesellschaft/20_ir/30_hauptversammlung/index.html); see paragraph 298.

(**9**) See http://www.bankgesellschaft.de/bankgesellschaft/50_pk/index.html (private customers, first giro accounts).

(**10**) Answer given by Germany, June 2002; according to 'Eurohypo' decision of 19 June 2002 of the German antitrust authority (Bundeskartellamt), the leaders of the various segments of the real estate financing business in 2001, by portfolio and by new business, were the new firm Eurohypo, the Hypovereinsbank group, the Depfa group, the BHF group, and BayLB. Deutsche Bank itself, without the business it had contributed to the new Eurohypo, was likewise still ranked ahead of BGB, which the decision does not list among the leading competitors.

(**11**) Since 1 May 2002, when banking, insurance and stock exchange supervision were merged, the Federal Institute for Financial Services Supervision (BAFin).

(**12**) OJ C 130, 1.6.2002, p. 5.

(**13**) Published in Gesetz# und Verordnungsblatt für Berlin, 58th year, No 13, 24.4.2002.

(**14**) OJ C 141, 14.6.2002, p. 11.

(**15**) OJ C 239, 4.10.2002, p. 12.

(**16**) Joined Cases C#278/92, C#279/92 and C#280/92 Spain v Commission [1994]* ECR I#4103.

(**17**) OJ C 288, 9. 10. 1999, p. 2.

(**18**) See, for example, Commission Decision 98/490/EC of 20 May 1998 concerning aid granted by France to the Crédit Lyonnais group (OJ L 221, 8.8.1998, p. 28).

(**19**) Commission observation: according to the agreement on German development banks, government assistance is a task for the public sector and does not therefore represent a commercial activity with implications for competition and so cannot be recognised as a compensatory measure. Institutional liability (Anstaltslast) and guarantor liability (Gewährträgerhaftung) can be preserved in the case of government assistance business only if that business is hived off to an independent development bank.

(**20**) OJ C 239, 4.10.2002, p. 12.

(**21**) This theoretical, rounded maximum is arrived at by applying the methodology used in the Commission WestLB decision 2000/392/EC (OJ L 150, 23.6.2000, p. 1) to work out a normal market compensation, taking into consideration the judgment by the Court of First Instance of the European Communities of 6 March 2003 in Joined Cases T#228/99 and T#233/99, Westdeutsche Landesbank Girozentrale and *Land* Nordrhein-Westfalen v Commission, Rec. 2003, p. II-435, and the relevant data for LBB, plus compound interest.

(**22**) See OJ C 146, 19.6.2002, p. 6, and OJ C 150, 22.6.2002, p. 7.

(**23**) OJ C 288, 9.10.1999, p. 2.

(**24**) On the basis of the institutional liability, which is applicable until July 2005, the *Land* of Berlin is, as regards its internal relationship with LBB, required to provide LBB, as a public#law body, with resources in such a way that it is able to perform its tasks. However, if the *Land* decides to terminate the business, the guarantor liability is triggered.

(**25**) In 1993 the *Land* of Berlin issued a statement to the Deposit Guarantee Fund of private German banks regarding Berliner Bank AG, which had in the meantime merged with BGB, to the effect that, according to the German authorities, the risk of liability on the part of the *Land* of Berlin towards the Deposit Guarantee Fund was not, however, ruled out. It is to this case that the estimates refer.

(**26**) This figure also took into account the hiving-off of the public development activities of IBB.

(**27**) See, for example, Decision 98/490/EC.

(**28**) In establishing the own#funds ratio, the amount of additional capital taken into account may not exceed the amount of the available core capital.

(**29**) See OJ C 146, 19.6.2002, p. 6 and OJ C 150, 22.6.2002, p. 7.

(**30**) Under the agreement on German development banks, development/support activities are a public service and not a commercial activity open to competition; they therefore cannot be viewed as compensatory measures. Institutional liability and guarantor liability can be maintained for the development business only if it is hived off as an independent development bank.

(**31**) According to the Federal Cartel Office's decision of 19 June 2002 in Eurohypo, the newly created Eurohypo, the Hypovereinsbank group, the Depfa group, the BHF group and BayLB led the various submarkets in the real estate financing sector in 2001, in terms of both existing and new business. Even Deutsche Bank itself (i.e. without its share in Eurohypo) came before BGB, which in this decision was not listed among the leading competitors with market shares of 5 % or more.

(**32**) In Berlin a bank retains around 75#90 % of its customers in the event of branch closures.

(**33**) Market shares for the Berlin/Brandenburg region (around 14 to 27 % in personal banking and around 18 to 21 % in corporate banking) were submitted subsequently for the sake of completeness. The reason why they are far smaller is that, even before the latest restructuring measures involving divestments and closures of sites in Brandenburg, BGB's presence in Brandenburg was limited. Updated country#wide figures were no longer submitted.

(**34**) Commission Decision of 11 March 1997 declaring the compatibility with the common market of a concentration (Case No IV/M.873 — Bank Austria/Creditanstalt) based on Council Regulation (EEC) No 4064/89 (OJ C 160, 27.5.1997, p. 4).

(**35**) Commission Decision of 11 March 1997 (Case No IV/M.873 — Bank Austria/Creditanstalt); Commission Decision of 25 September 1995 declaring the compatibility with the common market of a concentration (Case No IV/M.628 — Generale Bank/Crédit Lyonnais Bank Nederland) based on Council Regulation (EEC) No 4064/89 (OJ C 289, 31.10.1995, p. 10).

(**36**) Speech at the general meeting on 4 July 2003.

(**37**) The divestment of Berliner Bank has to take effect by 1 February 2007 at the latest. It is possible therefore that the effects will be shown only in the balance sheet for 2007.

Changes to legislation:
There are currently no known outstanding effects for the Commission Decision of 18 February 2004 on restructuring aid implemented by Germany for Bankgesellschaft Berlin AG (notified under document number C(2004) 327) (Only the German text is authentic) (Text with EEA relevance) (2005/345/EC).