EUROPEAN COMMISSION

Brussels, 20.04.2009
C (2009)3047

Subject: State Aid N 179/2009 – United Kingdom
UK Homeowners Mortgage Support Scheme

Sir,

I. PROCEDURE

1. Following pre-notification contacts on 5 March and 19 March, the UK formally notified the measure on 24 March. The UK submitted replies to the Commission's questions on the same day. The UK sent additional information on 10 April.

II. DESCRIPTION

Aims of the Scheme

2. The Homeowners Mortgage Support Scheme (hereinafter the Scheme) enables households that experience a significant and temporary loss of income (reflecting, for example, redundancy within a two income household), to defer principal repayments and up to 70% of the interest payments on their mortgage for up to two years. This enables eligible borrowers to reduce their monthly payments to a more manageable level. The borrower switches to interest-only terms and defers a proportion of the interest payable. Borrowers will still need to pay a minimum of 30% of the monthly interest that they were paying on entry, for the duration of their participation in the scheme. The government will guarantee 80%of the deferred interest payments in return for the banks' participation in the scheme. There is a 2 year window for eligible borrowers to enter the scheme, reflecting the UK's expectations of the impact of the downturn on employment and on the rate of repossessions.

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3. More precisely, the objectives of the Scheme are to:

   (i) avoid a sudden peak of repossessions, leading to an improvement in both confidence and stability in the housing market;
   (ii) reduce the number (or at least the rate of increase) of borrowers who are unable to meet their mortgage repayments as a result of the economic downturn;
   (iii) extend lenders' existing forbearance procedures prior to borrowers accessing the scheme (i.e. repossession is the last resort);
   (iv) help borrowers in difficulty by ensuring they receive good quality debt advice and to improve the position of those admitted to the scheme.

4. The Scheme is designed to address the social effects of the sharp deterioration of the UK housing market, which could result in 75 000 repossessions and up to 500 000 households in arrears of up of three months over the course of 2009 according to trade estimates (Council for mortgage lenders). This would follow 40 000 repossessions in 2008 and would be in line with the peak registered during the 1991 recession (75 500). The UK Authorities estimate that 84 000 households might join the scheme over the 2 year window and that around [55,000-70,000]* of these households would retain homeownership. The Scheme requires that other forbearance options are explored before households enter the Scheme. Some households sustaining ownership will do so as a direct result of the Scheme. Others may have sustained ownership without the Scheme, but the Scheme will provide them with clear safeguards while they recover their income. The UK estimate at this stage of the repossessions directly prevented by the Scheme is [15,000-25,000].
5. The guarantee on 80 per cent of deferred interest is designed to enhance lender incentives in such a way as to make the policy of forbearance relatively more attractive compared to a policy of repossession. It seeks to alter lender behaviour by encouraging them to forebear in case where they otherwise would not have been prepared to take the risk, particularly in a falling market. The Scheme also provides a set of parameters and safeguards for borrowers. Once accepted onto the Scheme, they will be permitted to stay on a lower level of payment for at least a year provided that they keep to the agreement. The guarantee runs for a period of up to 4 years after the borrower exits the Scheme. This guarantee period was chosen in preference to shorter alternatives so as to avoid any perverse incentive for the lender to repossess before the guarantee expires.
6. The scheme is open to any regulated or unregulated institution offering or holding mortgages in the UK. This includes incorporated banks, including UK subsidiaries of foreign institutions, and building societies. The UK has provided a comprehensive list of all the institutions that have been invited to participate in the scheme. In addition, borrowers whose mortgages have been securitised, which account for one third of mortgages in the UK, should also be eligible to join the scheme, as the terms of securitisation agreements usually allow lenders to adjust repayment terms as a "reasonable and prudent lender".

* […] Confidential information

Eligibility

7. The Government guarantee will only apply to mortgages where the borrowers:

   (i) are natural persons of British citizenship or a person with leave to remain in the UK with recourse to public funds or a national from a member state of the European Economic area or Switzerland;
   (ii) have been placed on interest-only terms as part of being qualified for the scheme. Borrowers seeking such assistance must be willing to switch their loan to such terms, as must the lender;
   (iii) whose mortgage-related residence is located in the UK of Great Britain and Northern Ireland and do not own (in whole or part) any other residential properties, wherever situated ;
   (iv) have total outstanding charges against their home no greater than £400,000 (excluding charging orders as they are ineligible for guarantee under the scheme);
   (v) have demonstrated that they have had a temporary loss of household income from employment or self-employment of a scale which affects the household's ability to make full mortgage payments, but which is not expected to be a permanent loss of income. Evidence of income loss must be provided by borrowers for lenders to validate eligibility;
   (vi) have been making regular payments (but not necessarily in full) in agreement with their lender for at least five months;
   (vii) the lender and borrower must have discussed alternative forbearance options and, where appropriate, exhausted these before the borrower is entered on to the scheme;
   (viii) have received debt advice from an accredited debt advisor. Borrowers should receive a Common Financial Statement or equivalent, confirming basic financial information such as income and expenditures that can be shared with the lender. The advice will encourage the borrower to consider the long-term sustainability of the borrower's financial position, and the impacts and potential risks, including to the value of equity in the property, of entering the scheme;
   (ix) have been assessed as being able to pay at least 30 per cent of the total monthly interest payment at the point of entry on to the scheme. Borrowers will need to continue to pay as much as they can, subject to this minimum amount;
   (x) have no savings in excess of £16,000 (xi) be an owner-occupier with the mortgaged property as their sole residence. Shared ownership or shared equity mortgages are covered by the scheme;
   (xii) have purchased their property with a mortgage before the 1 December 2008. Homeowners however will be able to re-mortgage on their existing property the principal outstanding after this date and will still be eligible for the scheme[1];
   (xiii) are not in receipt of Support for Mortgage Interest (a form of social welfare assistance);
   (xiv) households with a second charge loan or a charge secured against their property may still be eligible for the scheme. The borrower will need to secure the agreement of all lenders with charges against the home (excluding charging orders) to be entered into the scheme.

1 The scheme intends to stay neutral vis-à-vis the way borrowers manage their mortgage during its lifetime. Borrowers that have remortgaged before their initial entry in the scheme (or before re-entry) should remain eligible. However, those that are able to remortgage while on the scheme are clearly no longer in difficulty and should leave the scheme.

8. The final decision on eligibility for acceptance (subject to the criteria set out above) into the scheme remains entirely that of the lender. While lenders are obliged to demonstrate that they have taken all reasonable means to avoid repossession, as set out in point 3 (iii), the lender is best placed to know the borrower and is taking significant risks in deciding to continue to lend and so must be responsible for determining whether it is appropriate for a borrower to be placed on the Scheme, based on their own lending criteria. The lenders must also consider what is in the best interests of the borrower because, in a case where they go before a court to enforce a repossession order, they may be asked to explain their decision either to refuse or accept a borrower onto the scheme.

Scheme Duration:

9. The entry window to join the Scheme shall run for two years subject to review. Participation in the scheme cannot exceed two years. Once the borrower leaves the scheme, the state will guarantee the relevant portion of the deferred interest for 4 years.
10. Upon entry onto the Scheme the deferral period will apply to borrowers for an initial period of up to one year from their point of entry at which point a review of their continuation on the Scheme will be conducted. If during that period, the borrower's circumstances improve in such a way that he is able to resume normal repayments, he will be expected to do so and the lender will be expected to require this.
11. Once interest is no longer being deferred, the borrower leaves the Scheme and there is no guarantee associated with subsequent payments. A borrower would be able to leave the Scheme at any time, pending agreement for a new schedule of payment with his lender.
12. Accurate and full information on their financial circumstances will need to be provided by the borrower to the lender at the one year review point to remain on the Scheme. This review will include consideration of the ongoing temporary nature of the borrower's income drop and the borrower's eligibility. The review must be informed by further advice from an accredited debt advisor, including advice for the borrower about the implications of continuing on the Scheme and potential other options. It is possible for a borrower to come back into the Scheme, having left it, if he falls back into arrears as long as he meets the eligibility criteria and the lender believes he could benefit from the Scheme.
13. As a condition of participation in the Scheme, lenders will need to commit to best practice in forbearance when the borrower exits the Scheme, and agree reasonable and affordable repayment schedules, with the aim of keeping any subsequent repossessions to a minimum. Lenders will also be required to maintain the borrowers' contracted rate of interest when they enter the Scheme at or below the current contracted rate of interest, subject to reasonable changes linked to base rate movements.

The Government Guarantee:

14. The UK Government will guarantee a maximum of 80 per cent of the total interest deferred.[2] There is no guarantee on the deferred principal repayments, which remain the lenders' own risk. Furthermore, participating banks will have to continue to set aside regulatory capital against these mortgages, as per normal capital adequacy rules.[3]

15. The UK Government will impose an interest rate cap of 8 per cent benchmarked appropriately to the base rate. Mortgages at rates in excess of this cap could still be included in the Scheme but the guarantee would only apply up to the capped rate of interest.[4]

16. A cap on the amount of potential liabilities to the UK Government and eventual claims has been built into the Scheme in total and for each individual lender. The UK Government intends to limit the potential liabilities it is willing to guarantee. The cap is set at £500m but initially only £225m are allocated. Allocations to individual lenders would be made with reference to their overall market share of outstanding loans and on their level of arrears. The UK Government will initially allocate 70 per cent according to market share and the remaining 30 per cent related to their level of arrears. A lender which has reached its cap will not be able to put more borrowers onto the Scheme. If a lender were to exceed its cap for any reason, the guarantee would not cover the excess. The operation of the cap is intended to ensure the widest coverage possible for borrowers by giving all lenders a reasonable opportunity to participate.

17. The amount of deferred interest is calculated at the time the borrower comes off the Scheme. The period in which claims can be made under the guarantee will last for 4 years after this date. The UK Government will only accept a claim on a property that has been repossessed and sold. It will only pay out if the proceeds of the sale are insufficient, once the original unpaid principal is repaid, to repay the adjusted deferred interest amount and the additional interest amount ("interest on the interest") according to an agreed formula. The UK Government would then pay the lender 80% of any shortfall. Furthermore, the deferred interest amount will be reduced on a straight line basis over the 4 year period to a maximum of 50 per cent, or by the repayments that the borrower may have made after leaving the Scheme, whichever is the greater. This means that if a lender makes a claim to the UK

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2 The guarantee will in fact cover only 56% of the total interest that accrues on the mortgage, since the borrower must pay at least 30% of the normal interest (i.e. guarantee at maximum 70% * 80% = 56%)

3 The rescheduling of mortgages under the Scheme allows them to be treated as performing for capital adequacy rules, and thus subject to normal capital requirements. The FSA confirms that where a non-performing loan is restructured such that it becomes a performing loan then under the standardised approach there will be a regulatory benefit. This could also be the case for firms subject to the advanced ratings based approach (IRB) provided that it can be adequately evidenced that the relevant risk factors (e.g. probability of default, exposure at default and loss given default) have changed such that a fall in regulatory capital is justified. The FSA confirms this is the sole source of lower risk-weighting as none flows from the guarantee (see § 30 infra).

4 The UK estimates from market sources that just under 10% of first charge mortgages in the UK currently have interest rates of over 8%. Second charge mortgages will ordinarily have higher interest rates. Most interest rates are much lower. The higher rates offered by these lenders reflects the risk of the borrowers concerned. The UK considers that, as part of the risk sharing arrangements with lenders, it would not extend the guarantee to the higher rates of interest. The cap does not exclude mortgages with higher interest rates, but the lender is required to take on extra risk himself (just as he has done in taking these customers on in the first place). The UK does not consider that the level of the interest rate cap would affect the decision of a lender to participate. The guarantee offered by the UK gives all lenders an incentive to participate. Nor does the UK consider that there would be a material impact on the number of borrowers entered into the scheme. Borrowers at the highest rates of interest are unlikely to be good candidates for the scheme as it involves deferring interest and so it is less likely they would ever get onto the scheme.

Government under the guarantee 2 years after a borrower left the Scheme, the adjusted deferred interest amount the lender would base its claim upon would be only 75 per cent of the original deferred interest amount.

18. According to the UK Authorities, the guarantee granted by the Government is not compliant with the criteria defined by the credit risk mitigation (CRM) rules, consequently the banks participating in the Scheme cannot apply a more favourable risk weighing factor[5].

19. Once the Scheme is in operation, the Government will monitor performance and keep the Scheme's design under review every six months. Any changes would not apply retrospectively.

III. POSITION OF THE UK

20. The UK Authorities acknowledge that the Scheme contains state aid elements. However, the UK considers that the Scheme can be justified in view of Article 87(2)(a) of the Treaty as it provides aid of a social character to individuals affected by a temporary income shock and at risk of losing their home.

21. The UK Authorities commit they will submit a report every six months on:

    (i) the effectiveness of the Scheme in increasing mortgage rescheduling and lowering repossessions, compared to what would have happened in the absence of the Scheme, at an aggregate and individual bank level;
    (ii) estimations of the effect the Scheme may have on the capital requirements of participating lenders (e.g. on the risk weighing factor of the relevant mortgages).

22. On the basis of the above mentioned reports and estimations, the UK Authorities commit, in agreement with the Commission, that they will reduce the support extended to individual institutions, where the six month reviews reveal a material failure to contribute to the objective of the Scheme.

23. The UK Authorities also acknowledge that the Commission will take into account the impact of the Scheme, in terms of total amount of aid, on banks that have benefitted from other aid measures and need to present viability and restructuring plans.

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5 According to the FSA, the guarantee does not comply with BIPRU requirements so will have no CRM impact in terms of regulatory capital, in particular because the credit protection is not incontrovertible. The credit risk mitigation requirements for a guarantee are set out in BIPRU 4 and 5. Examples of the key requirements are:
(i) the extent of the credit protection must be clearly defined and incontrovertible;
(ii) the credit protection contract must not contain any clause, the fulfilment of which is outside the direct control of the lender, that:
(a) would allow the protection provider unilaterally to cancel the protection;
(b) would increase the effective cost of protection as a result of deteriorating credit quality of the protected exposure;
(c) could prevent the protection provider from being obliged to pay out in a timely manner in the event that the original obligor fails to make any payments due; or
(d) could allow the maturity of the credit protection to be reduced by the protection provider.

IV. ASSESSMENT

1. State aid character of Scheme

24. By virtue of Article 87(1) of the Treaty "any aid granted by a Member State through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain good shall, in so far as it affects trade between Member States, be incompatible with the common market".

25. There are two possible groups of beneficiaries of this measure, namely mortgage borrowers in difficulty and the financial institutions that provide or hold these mortgages.

26. As regards the mortgage borrowers, only those who are owner occupiers and do not own more than one property are eligible for the Scheme. Therefore they can not be considered as undertakings and as result they fall outside the scope of state aid rules.

27. As regards the financial institutions, they are undertakings and thus fall within the scope of state aid rules.

28. The Government is guaranteeing the banks that they will receive payment for 80% of the interest deferred under the Scheme. Therefore state resources are involved.

29. As regards selective advantage, there is a potential capital benefit for participating banks in this scheme. The guarantee encourages lenders to enter troubled borrowers onto the Scheme, thus restructuring more loans than they would otherwise have done. Lenders must restructure mortgages as part of the scheme, which means that an otherwise non-performing mortgage is restructured such that it can be classified as a performing loan.[6] This avoids the lender (at least for the borrowers' time on the Scheme) having to treat some of the loans as non-performing (with a higher risk-weighting), which would require them to set aside more regulatory capital against the loans, which entails additional costs and could prove difficult in the current period of financial stress.

30. On the other hand, the FSA confirm that the restructuring by participating banks themselves is the sole source of lower risk-weighting as none flows from the Government guarantee. According to the UK Authorities the guarantee will have no CRM (credit risk mitigation) impact in terms of regulatory capital, as it does not comply with BIPRU (the prudential sourcebook for banks, building societies and investment firms) requirements. The FSA also confirms the principle that a non-participating bank that rescheduled an identical loan in an identical way would have the same capital treatment as a bank participating on the Scheme.. In addition, since the principal is not guaranteed, the lender has to carry the capital risk in delaying repossession by up to 2 years, which could involve significant risk in a housing market characterised by falling prices. This commitment to delay foreclosure beyond that which they would normally do exposes them to greater potential loss. Lenders could thus view mortgages covered by the Scheme as riskier, thus resulting in an increase in risk weights and provisions. On balance however, it cannot be excluded that a side effect of participation in the Scheme could be to indirectly favour lenders by helping them avoid having to increase the amount of regulatory capital that they must hold.

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6 As per footnote 3

31. In any case, the Scheme provides a selective advantage to mortgage lenders in the UK that issued mortgages before 1 December 2008, in that a part of the interest that they defer is guaranteed. This could allow them to recover some of the interest payments that they would otherwise have to write off. Furthermore, section 2.3.1 of the Guarantees Notice which indicates that "if a state guarantee is given ex post in respect of a loan or other financial obligation already entered into without the terms of this loan or financial obligation being adjusted (…) then there may also be aid to the lender, in so far as the security of the loan is increased", has some relevance to this Scheme. Although the principal is not guaranteed, a part of the interest is (56% maximum[7]), without the terms of the loans being adjusted or the lender paying any fee. Therefore there is an advantage to the participating banks.

32. Following from the above, the Scheme gives an economic advantage to the beneficiaries (lenders entering the Scheme) and strengthens the position of these beneficiaries compared to that of competitors in other Member States and must therefore be regarded as distorting competition and affecting trade between Member States.

33. Therefore as the measure involves public financing, is directed at certain beneficiaries engaged in an economic activity affecting trade between Member States and distorts or threatens to distort competition inside the common market it is to be considered State aid within the meaning of Article 87(1) of the Treaty.

2. Compatibility of the aid

34. It is therefore necessary to examine this measures' compatibility in the light of Article 87 of the Treaty.

35. Article 87(2)(a) of the Treaty states that "aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned" shall be compatible with the common market.

36. The essence of the Scheme is to help borrowers avoid repossession. As such, it provides aid of a social character to individuals affected by a temporary income shock and who are at risk of falling behind on their mortgage payments.[8] Although these individuals may not previously have been considered as disadvantaged, given that they had sufficient resources to fund the purchase of their own home, the worsening economic climate means that many of them have suffered unemployment and now face the prospect of losing their home.

37. According to the UK authorities, the effect of a falling property market increases the incentive for lenders to re-possess earlier to minimise their losses. At the same time,

7 80% of the 70% deferred interest

8 So far the concept of disadvantaged people has been applied mostly in the air transport sector. On the basis of the Commission's practice, it seems possible to argue that the definition of the eligible categories does not constitute a numerus clausus. According to the Commission, "the aid must have a social character, that is, it must, in principle, only cover certain categories of passengers travelling on a route such as children, handicapped people, people with low income, etc. However in the case "where the route concerned links an underprivileged region the aid could cover the entire population of this region" (cfr. State aid N. 27/2008 - United Kingdom. Aid of a social character Air Services in the Highlands and the Islands of Scotland, dated 14 November 2008 C(2008)685, p. 6). For a broader illustration of the application of article 87(2) (a) see joined cases C-442/03 P and C-471/03 and also cases NN 25/2005, N 656/2006, N 912/2006, N 421/2008, N 546/2006, N 236/2006, N 13/2007.

borrowers under pressure to keep up their mortgage payments often do not act rationally: some simply hand their keys back rather than seek ways through their problems, increasing the risk of homelessness. Since the Scheme is aimed at encouraging an extended forbearance process and thus reducing foreclosures in these types of situations, it can be considered a measure of social protection and solidarity, for those who do not qualify for other forms of assistance. Therefore the social character requirement is fulfilled.

38. Following from the preceding paragraph, the primary beneficiaries of the measure are individual consumers. The guarantee is only given when an individual borrower is placed on the Scheme. In this way it can be assured that the each time a guarantee is granted on deferred interest, an individual, who might otherwise face a real prospect of repossession of his home, is given an opportunity to regularise his financial position. In addition, the requirement to access independent money advice means that only individuals that are suitable for the Scheme join it. Therefore the individual character of the measure is fulfilled.

39. Although the primary beneficiaries of the Scheme are the individual borrowers, there is also an aid to the lenders, as described in points 28 and 30 supra. However, several features of the Scheme are designed so that the minimal level of advantage, commensurate with inducing lenders to participate in the Scheme, is granted to the lenders.

40. Firstly, lenders are required to extend the forbearance process for much longer than they would under normal market conditions (usually six months). As a result, they are taking on additional costs and risks, for example there is a risk of further losses from delaying repossessions in an environment of falling house prices. Secondly, part of the deferred interest will not be guaranteed by the Government. The element of the mortgage principal will not be guaranteed either, meaning that significant risks remain with the lender. Thirdly, the interest rate cap limits the advantage that lenders who provided high interest rate loans to high risk borrowers will gain from the measure. In addition lenders cannot increase the rate of interest contracted with the borrower at the time of entry into the Scheme (other than for example where the rate is linked to changes in the base rate). Fourthly, in order to avoid moral hazard, the Scheme is limited to historic lending, since a borrower must have purchased the mortgaged property before 1 December 2008. Moreover, the duration of the claim period for the guarantee is limited to 4 years, the amount guaranteed is reduced by the greater of borrower repayments or the amortisation calculation during this period (described in point 17 supra) and the guarantee is only paid when the proceeds of repossession are insufficient to cover the adjusted guaranteed amount. Finally, the UK Authorities acknowledge that they will, in agreement with the Commission, limit the support extended to individual institutions in case of material failure to contribute to the objective of the Scheme. This is to ensure that the guarantee contributes to increasing the number of distressed borrowers that are placed on extended forbearance procedures and is not simply applied to borrowers that would also have had their mortgage renegotiated in the absence of the Scheme. Taking into account these points, it can be considered that any aid to the lenders is limited to the minimum and can be considered necessary for the functioning of the Scheme.

41. The final condition under Article 87 (2)(a) of the Treaty is that the aid is granted without discrimination related to the origin of the products concerned. In this case, this should mean that there is no discrimination with regard to the origin of the services or service provider.

42. The rules are designed to help eligible borrowers whose home is at risk as a result of an income shock. There are only limited exclusions aimed at ensuring the borrower does not have alternative resources such as significant savings or a second home that they might rely on or that they are not already receiving Government support to meet their interest payments.[9]

43. As regards the lenders, practically all mortgage lenders will be able to access the Scheme, irrespective of the legal form of their UK establishment or of persons they are lending to. The UK authorities have provided a list of all the institutions that have been contacted about the Scheme. Many features of the Scheme have been included to ensure that as many lenders as possible enter the Scheme so that it is open to their borrowers[10]. The interest rate cap is set at 8 per cent to encourage secondary lenders to participate. This is important as many of those individuals in difficulty have taken out secondary loans on their property. In addition, given that many loans are securitised in the UK, the Scheme is designed so that the involvement of these loans is facilitated. Thus, the aid is provided[11] on non-discriminatory basis.[12]

44. The aid is granted for a limited period: the Scheme will be open to borrowers for 2 years and once admitted they may stay on it for up to 2 years, but are expected to exit it sooner by resuming the payment of the guaranteed amount. Total life expectancy of the Scheme is limited to eight years (when taking into account the four years claim window).

45. The Commission notes that the UK Authorities have given a commitment to report to the Commission on the support measures every six months. In particular, they will report on:

(i) the effectiveness of the Scheme in increasing mortgage rescheduling and lowering repossessions at an aggregate and individual bank level;
(ii) estimations of the effect of the Scheme may have on the capital requirements of participating lenders.
Moreover, the UK Authorities, in agreement with the Commission, will limit the support extended to individual institutions where the reports reveal a material failure to contribute to the objective of the Scheme

9 The most vulnerable already benefit from other schemes. For instance, those entitled to social security may qualify for Support for Mortgage Interest and receive payments for mortgage interest.

10 Regarding the allocation of potential liabilities, the UK authorities envisage a split between market share and level of arrears in order to ensure that all lenders will be able to participate in the scheme, since the initial allocation is based on the overall share of mortgage lending which should ensure a proportionate distribution among lenders. Moreover, in order to ensure that not too much of the scheme cap is taken up by lenders with large market shares but few arrears, the lower proportion allocated to arrears relates to concerns not to design a scheme rewarding riskier lending strategies that have led to significant numbers of under-performing loans from receiving a taxpayer guarantee.

11 The terms of the scheme state that the lender is ultimately responsible for determining whether it is appropriate for a borrower to be placed on the scheme. Given that the lender is taking significant risks, it is appropriate that he considers whether the borrower applying to scheme has a realistic prospect to repay his deferred mortgage payments at the end of the deferral period. However, this discretion of the lender in determining entry to the scheme does not the change the non-discriminatory nature of the aid. If the lender decides not to allow an eligible borrower join the scheme, he received no guarantee and therefore no aid.

12 In Joined Cases C-442/03 P and C-471/03 P, para. 163, 164 the Court stated that "in order to determine whether aid is granted without discrimination related to the origin of the product concerned, it must be ascertained whether consumers benefit from the aid in question irrespective of the economic operator supplying the product or service capable of fulfilling the social objective relied on by the member State concerned" and "the aid was intended for individual consumers inasmuch as they could benefit from the aid irrespective of which airlines was providing the service on the routes concerned". This could be, mutatis mutandis, applied to the Case under examination.

46. Furthermore, in conformity with the principles of the Community guidelines on state aid for rescuing and restructuring firms in difficulty[13] and the Banking Communications[14], aid received under this Scheme shall be taken into account on a systematic basis in the assessment of the restructuring aid and the restructuring and viability plans to be presented by relevant participating mortgage institutions.

47. On the basis of the above considerations, it can be considered that the Scheme is an appropriate, necessary and proportionate measure to help individual consumers affected by financial difficulties, particularly in this period of financial turmoil in the UK economy, while adequately limiting the distortion on competition created by the aid. It is non-discriminatory, limited in time and it aims at social protection and solidarity.

V. DECISION

48. The European Commission has therefore decided not to raise objections to the measure in question on the grounds that the aid is compatible with the Common Market on the basis of Article 87(2)(a) of the Treaty.

49. The Commission authorises this measure for 2 years from the date of its first implementation.

50. If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt.

51. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:
http://ec.europa.eu/community_law/state_aids/index.htm

Your request specifying the relevant information 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

Neelie Kroes
Member of the Commission

13 OJ 244 of 1.10.2004 ; p2, see in particular § 68.

14 Communication from the Commission on the treatment of impaired assets in the Community banking sector (OJ 72 of 23.32009); Communication from the Commission – The recapitalisation of the financial institutions in the current financial crisis (OJ 10 of 15.1.2009); Communication from the Commission- The application of State aid rules to measures taken in relation to financial institution in the context of the current global financial crisis (OJ 270 of 25.10.2008)