V

(Ogłoszenia)

POSTĘPOWANIA ZWIĄZANE Z REALIZACJĄ POLITYKI KONKURENCJI

KOMISJA EUROPEJSKA

POMOC PAŃSTWA – ZJEDNOCZONE KRÓLESTWO

Pomoc państwa nr SA.47702 (2017/C) (ex 2017/N)

alternatywny pakiet zastępujący zobowiązanie Royal Bank of Scotland do zbycia przedsiębiorstwa Rainbow

Zaproszenie do zgłaszania uwag zgodnie z art. 108 ust. 2 TFUE

(Tekst mający znaczenie dla EOG)

(2017/C 142/03)

Pismem z dnia 4 kwietnia 2017 r. zamieszczonym w autentycznej wersji językowej na stronach następujących po niniejszym streszczeniu, Komisja powiadomiła Zjednoczone Królestwo o swojej decyzji w sprawie wszczęcia postępowania określonego w art. 108 ust. 2 TFUE dotyczącego wyżej wspomnianego środka pomocy.

Zainteresowane strony mogą zgłaszać uwagi na temat środka pomocy, w odniesieniu do którego Komisja wszczyna postępowanie, w terminie jednego miesiąca od daty publikacji niniejszego streszczenia i następującego po nim pisma. Uwagi należy kierować do Kancelarii ds. Pomocy Państwa w Dyrekcji Generalnej ds. Konkurencji Komisji Europejskiej na następujący adres lub numer faksu:

European Commission
Directorate-General for Competition
State Aid Greffe
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Nr faksu: + 32 22961242

Otrzymane uwagi zostaną przekazane władzom Zjednoczonego Królestwa. Zainteresowane strony zgłaszające uwagi mogą wystąpić z odpowiednio uzasadnionym pisemnym wnioskiem o objęcie ich tożsamości klauzulą poufności.

I. **PROCEDURA**

(1) Decyzją z dnia 14 grudnia 2009 r. ([1]) („decyzja o restrukturyzacji") Komisja uznała szereg środków pomocy państwa ([2]) przyznanych Royal Bank of Scotland („RBS") za zgodne z rynkiem wewnętrznym. Wniosek sformułowano na podstawie planu restrukturyzacji („plan restrukturyzacji") oraz zobowiązań („zobowiązania") przedstawionych przez rząd Zjednoczonego Królestwa („władze Zjednoczonego Królestwa").

(2) Decyzją z dnia 9 kwietnia 2014 r. ([3]) („zmieniona decyzja o restrukturyzacji") Komisja uznała, że zgłoszony zmieniony wykaz zobowiązań ([4]) („zmienione zobowiązania") nie stanowi pomocy państwa. Zmienione zobowiązania nie mają

([1]) Decyzja Komisji SA. N422/2009 oraz N621/2009, Dz.U. C 119 z 7.5.2010, s. 1.
([2]) Pełny wykaz zatwierdzonych środków pomocy państwa można znaleźć w motywach 31–77 decyzji o restrukturyzacji.
([3]) Decyzja Komisji SA. 38304 (2014/N), Dz.U. C 24 z 23.1.2015, s. 4.
([4]) Wszystkie zmiany, o które wystąpiono, wymieniono w motywach 27–49 zmienionej decyzji o restrukturyzacji.

również wpływu na wniosek przedstawiony w decyzji o restrukturyzacji stanowiący, że pomoc państwa udzielona RBS jest zgodna z rynkiem wewnętrznym na podstawie art. 107 ust. 3 lit. b) Traktatu o funkcjonowaniu Unii Europejskiej (TFUE).

(3) W dniu 17 lutego 2017 r. władze Zjednoczonego Królestwa ogłosiły publicznie, że będą dążyć do dokonania formalnej zmiany, aby zastąpić zobowiązanie do zbycia tzw. przedsiębiorstwa Rainbow („Rainbow") pakietem środków zmierzających do zwiększenia konkurencji na rynku bankowości korporacji średniej wielkości i MŚP.

(4) W dniu 2 marca 2017 r. władze Zjednoczonego Królestwa zgłosiły Komisji formalny wniosek o zastąpienie zobowiązania do zbycia Rainbow określonego w decyzji o restrukturyzacji ([5]), a następnie zmienionego w zmienionej decyzji o restrukturyzacji ([6]).

II. **OPIS**

(5) Zgłoszony alternatywny pakiet obejmuje szereg środków zaradczych o charakterze behawioralnym i składa się z czterech części:

a) **funduszu na rzecz potencjału skierowanego do MŚP.** Budżet funduszu miałby wynosić 300 mln GBP i wspierać rozwój ukierunkowanego na MŚP potencjału bankowego dostawców usług bankowych, którzy spełniają określone kryteria kwalifikowalności („kwalifikujące się banki"). Do projektów inwestycyjnych, które mogłyby korzystać ze wsparcia, należą np. IT i inne inwestycje w infrastrukturę, rekrutacja wyspecjalizowanego personelu lub wprowadzanie do obrotu produktów dla MŚP;

b) **programu zachęt do przenoszenia się.** W ramach programu udostępniano by kwalifikującym się bankom środki, aby umożliwić im oferowanie zachęt, które motywowałyby MŚP będące klientami bankowymi RBS do przenoszenia swoich rachunków bieżących dla firm, rachunków depozytowych i pożyczek do kwalifikujących się banków. Mogłoby to przyjąć formę zobowiązania do zapłaty przez RBS 100 mln GBP w formie rekompensat (tj. zachęt pieniężnych) na rzecz kwalifikujących się banków w odniesieniu do wszystkich tych klientów, którzy zgadzają się na przeniesienie swoich rachunków bieżących dla firm;

c) **dostępu do oddziałów RBS.** W ramach tego środka, przy szacowanych wstępnych kosztach w wysokości 45 mln GBP, RBS zapewniałby w swoich oddziałach obsługę gotówkową i obsługę czeków wszystkim klientom kwalifikujących się banków posiadającym rachunek bieżący dla firm, niezależnie od tego, czy przenieśli się z RBS; oraz

d) **funduszu innowacji w dziedzinie usług finansowych.** W ramach funduszu o budżecie w wysokości do 200 mln GBP dostarczano by kapitał na rzecz innowacyjnych usługodawców finansowych (przede wszystkim w branży technologii finansowej, znanej również jako FinTech), którzy (i) świadczą usługi finansowe dla MŚP lub je opracowują lub (ii) dostarczają produkty lub świadczą usługi na rzecz takich przedsiębiorstw.

(6) Według władz Zjednoczonego Królestwa trzy pierwsze części zwiększyłyby zdolności konkurujących dostawców usług bankowych dla MŚP i pomogłyby im przyciągnąć klientów z RBS. Czwarta część służyłaby do dostarczania kapitału przedsiębiorstwom opracowującym innowacyjne usługi finansowe.

(7) Utworzony zostanie niezależny organ do zarządzania i kontrolowania funduszu na rzecz potencjału, nadzorowania programu zachęt do przenoszenia się i wykorzystania oddziałów RBS.

(8) Funduszem innowacji zarządzałby niezależny podmiot zarządzający inwestycjami.

(9) Alternatywny pakiet byłby finansowany przez RBS. Władze Zjednoczonego Królestwa szacują, że całkowity koszt alternatywnego pakietu ponoszony przez RBS będzie mieścić się w przedziale [0,5–1,5] mld GBP, przy uwzględnieniu początkowych kosztów kapitałowych i zmniejszenia wynagrodzenia RBS ([7]).

([5]) Motyw 93 decyzji o restrukturyzacji.
([6]) Motyw 28 i zmienione zobowiązania 3.1 i 3.2. (A) załącznika I do zmienionej decyzji o restrukturyzacji.
([7]) Biorąc pod uwagę początkowe koszty kapitałowe w wysokości około 750 mln GBP, roczne koszty eksploatacji alternatywnego pakietu oraz utratę wynagrodzenia związanego z transferem klientów, kompensowane poprzez uwolnienie kapitału związanego z tymi klientami.

III. **OCENA**

(10) Komisja wyciągnęła wstępny wniosek, że alternatywny pakiet nie wiąże się z pomocą państwa na rzecz RBS, gdyż państwo nie dostarczyłoby RBS żadnych zasobów na finansowanie alternatywnych środków. Komisja wyciągnęła również wstępny wniosek, że nawet jeśli uznano by, że alternatywny pakiet stanowi pomoc państwa na rzecz banków, które skorzystałyby z niego, mógłby on zostać uznany za zgodny z rynkiem wewnętrznym jako niezbędna część zobowiązań, na podstawie których środki pomocy na rzecz RBS zostałyby ostatecznie uznane za zgodne z rynkiem wewnętrznym na podstawie decyzji o restrukturyzacji, zmienionej decyzji o restrukturyzacji oraz ostatecznej decyzji w przedmiotowej sprawie.

(11) Ponadto Komisja musi ocenić, czy alternatywny pakiet nie wpłynąłby na zgodność istniejącej pomocy na rzecz RBS z rynkiem wewnętrznym, w szczególności jeśli chodzi o ograniczanie zakłóceń konkurencji. Decyzje restrukturyzacyjne, takie jak decyzja o restrukturyzacji RBS i zmieniona decyzja o restrukturyzacji, mogą zostać zmienione przez Komisję, jeżeli modyfikacja jest oparta na nowych zobowiązaniach, które można uznać za równoważne w stosunku do pierwotnie przewidzianych.

(12) W myśl zmienionej decyzji o restrukturyzacji głównym celem zobowiązania polegającego na zbyciu Rainbow było ograniczenie zakłócenia konkurencji, jakie mogłaby spowodować pomoc na rzecz RBS. W związku z tym Komisja zamierza ocenić, czy – w kontekście ograniczenia zakłóceń konkurencji wywołanych pomocą – alternatywny pakiet (zarówno na poziomie poszczególnych czterech środków, jak również jako całość) można uznać za równoważny ze zbyciem Rainbow.

(13) Jeżeli chodzi o fundusz na rzecz potencjału skierowanego do MŚP, Komisja zauważa, że udostępnienie środków finansowych na rzecz banków konkurencyjnych („banki konkurencyjne") ([8]), aby zwiększyć ich zdolność do oferowania usług bankowych dla MŚP, prawdopodobnie zwiększy konkurencję na rynku bankowości dla MŚP. Komisja uważa jednak, że trudno jest oszacować z góry skalę pozytywnych skutków. Innymi słowy trudno jest oszacować z góry, czy omawiany alternatywny środek zmniejszy udział RBS w rynku, a jeśli tak, to w jakim stopniu. Komisja wzywa w związku z tym zainteresowane strony do zgłaszania uwag odnośnie do tych kwestii.

(14) Jeżeli chodzi o program zachęt do przenoszenia się, Komisja zauważa, że program nie może prowadzić do ograniczenia udziału w rynku RBS o więcej niż 2 punkty procentowe, ponieważ kwota finansowania dostępna w ramach programu jest ograniczona i nie pozwala na zdobycie większej liczby klientów przez banki konkurujące. Komisja wzywa w szczególności wszystkie zainteresowane strony do wypowiedzenia się na temat tego, czy program zachęt do przenoszenia się zawiera elementy niezbędne do osiągnięcia celu, jakim jest zmniejszenie udziału RBS w rynku o 2 punkty procentowe. Komisja zauważa również, że jest jeszcze mniej jasne, jaki ma on wpływ na konkurencję na rynku korporacji średniej wielkości, dlatego też wzywa zainteresowane strony do przedstawienia swoich uwag w tej kwestii.

(15) Jeśli chodzi o dostęp do oddziałów RBS, Komisja zauważa, że wpływ tego środka na konkurencję jest trudny do oszacowania w oderwaniu od innych, ponieważ wpływ tego środka wydaje się nakładać z wpływem funduszu na rzecz potencjału skierowanego do MŚP i programu zachęt do przenoszenia się. W związku z tym Komisja wzywa zainteresowane strony do wypowiedzenia się, czy ich zdaniem dostęp do oddziałów RBS zwiększy skuteczność funduszu na rzecz potencjału skierowanego do MŚP i programu zachęt do przenoszenia się oraz alternatywnego pakietu jako całości.

(16) Jeżeli chodzi o fundusz innowacji w dziedzinie usług finansowych, Komisja zauważa, że środek ten może mieć wpływ na zwiększenie konkurencji na rynku bankowości dla MŚP w perspektywie długoterminowej. Wpływ na wspomniany rynek w perspektywie krótkoterminowej byłby zatem raczej ograniczony. Z uwagi na to, że wpływ na zwiększenie konkurencji na rynku bankowości dla MŚP jest trudny do oszacowania ze względu na długoterminowy charakter środka, Komisja wzywa zainteresowane strony do przedstawienia swoich uwag w tej kwestii.

(17) Komisja wzywa także zainteresowane strony do przedstawienia uwag w sprawie alternatywnego pakietu jako całości.

(18) Komisja odnotowuje, jako aspekt pozytywny, iż władze Zjednoczonego Królestwa przeprowadzą badanie rynku w celu sprawdzenia wykonalności alternatywnego pakietu.

([8]) Niedominujące banki konkurujące o klientów z dużymi, od dawna istniejącymi bankami krajowymi.

PISMO

Sir,

The Commission wishes to inform the United Kingdom that, having examined the information supplied by your authorities on the measures referred to above, it has decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union.

1. PROCEDURE

(1) By decision of 14 December 2009 ([1]) (**'Restructuring Decision'**), the Commission declared a number of State aid measures ([2]) granted to Royal Bank of Scotland (**'RBS'**) compatible with the internal market. The conclusion was reached on the basis of the restructuring plan (**'Restructuring Plan'**) and of the commitments (**'Commitments'**) issued by the UK Government (the '**UK authorities**').

(2) By decision of 9 April 2014 ([3]) (**'Amended Restructuring Decision'**), the Commission declared that the notified amended list of commitments ([4]) (**'Amended Commitments'**) does not constitute State aid. The Amended Commitments also do not affect the conclusion reached in the Restructuring Decision that the State aid provided to RBS is compatible with the internal market on the basis of Article 107(3)(b) of the Treaty on the Functioning of the European Union (TFEU).

(3) Since the Amended Restructuring Decision was adopted, the Commission services, the UK authorities and RBS (directly or via the Monitoring Trustee appointed pursuant to the Restructuring Decision) have had frequent exchanges, in the form of meetings, conference calls and exchanges of emails and documents.

(4) On 17 February 2017, Her Majesty's Treasury (**'HMT'**) announced publicly that it would seek a formal amendment to replace the commitment to divest Rainbow ([5]) (**'Rainbow'**) ([6]) with a package of measures aiming to increase competition in the SME and mid-corporate banking market ([7]) ('**SME and mid-corporate banking market**').

(5) On 2 March 2017, the UK authorities notified to the Commission a formal request to replace the commitment to divest the so-called Rainbow business, as identified in the Restructuring Decision ([8]) and subsequently amended in the Amended Restructuring Decision ([9]).

2. DESCRIPTION

2.1 RBS and the implementation of the Restructuring Plan and the Amended Restructuring Plan

2.1.1 *RBS*

(6) Based in Edinburgh, RBS is one of the largest financial services groups in Europe servicing private, corporate and institutional customers. At the end of 2016 it had a total balance sheet of GBP 799 billion ([10]) and total risk weighed assets (**'RWA'**) ([11]) of GBP 228 billion.

([1]) Commission Decision N422/2009 and N621/2009, OJ C 119, 07.05.2010, p. 1.
([2]) For a full list of the State aid measures approved, see recitals (31) to (77) of the Restructuring Decision.
([3]) Commission Decision SA. 38304 (2014/N), OJ C 24, 23.01.2015, p. 4.
([4]) For an overview of the amendments requested, see recitals (27) to (49) of the Amended Restructuring Decision.
([5]) Recital (73) of the Restructuring Decision.
([6]) Described in recital (17).
([7]) Pursuant to recital (73) of the Restructuring Decision, SME banking market is defined as the segment of the banking market covering firms with a turnover up to GBP 25 million and mid-corporate as the segment covering firms with a turnover between GBP 25 million and 1 billion.
([8]) Recital (93) of the Restructuring Decision.
([9]) Recital (28) and Amended Commitments 3.1 and 3.2 (A) of Annex I of the Amended Restructuring Decision.
([10]) In the present decision, the Commission uses the results published by RBS in its annual report and accounts for full-year 2016.
([11]) RWA is a measure of the amount of a bank's assets, adjusted for risk. This measure is used in determining the capital requirements.

(7) A detailed description of RBS can be found in the recitals (4) to (11) of the Amended Restructuring Decision. Key pro forma figures ([12]) for end of year from 2008 to 2016 are summarised in Table 1:

Table 1

	2016	2015	2014	2013	2012	2011	2010	2009	2008
Total income (GBP billion)	12,6	12,9	18,2	19,4	25,8	27,8	32,7	29,4	21,2
Operating profit (GBP billion)	(4,1)	(2,7)	2,6	(8,2)	3,5	1,9	1,9	(6,2)	(6)
Loss/profit attributable to ordinary shareholders (GBP billion)	(7)	(2)	(3,5)	(9)	(6)	(2)	(1,1)	(3,6)	(24,1)
Total balance sheet (GBP billion)	799	815	1 051	1 028	1 312	1 507	1 453	1 523	2 219
Funded Assets	552	553	697	740	870	977	1 026	1 084	1 227
Risk-weighted assets (GBP billion)	228	243	356	386	460	439	463	438	578
Core Tier 1 capital ratio (in %)	13,4	15,5	11,1	10,9	10,3	10,6	10,7	11	7,0
Tier 1 capital ratio (in %) (*)	15,2	16,3	13,2	13,1	12,4	13	12,9	14,4	9,9
Total loans/customer deposits (in %)	91	89	95	94	99	110	117	135	151

(*) Tier 1 capital ratios in 2015 and 2016 presented on an end point Capital Requirements Regulation (CRR) basis

(8) RBS has continued to make losses since 2008. The loss has been driven by costs related to legacy issues. This included amongst others litigation and conduct costs and restructuring costs.

(9) RBS has at the same time continued its efforts to restructure the bank. This can be observed in the further reduction of the balance sheet. For example RWAs have reduced by GBP 158 billion since 2013. The Core Tier 1 Capital ratio has strengthened from 10,9 % in 2013 to 13,4 % in 2016.

(10) RBS published its 2016 annual report on 24 February 2017. RBS recorded an attributable loss of GBP 7 billion for 2016 which included amongst others litigation and conduct costs of almost GBP 6 billion and restructuring costs of GBP 2,1 billion. Litigation and conduct costs of GBP 5,9 billion included: a GBP 3,1 billion provision in relation to various investigations and litigation matters relating to RBS's issuance and underwriting of residential mortgage-backed securities (**'RMBS'**) ([13]), an additional charge in respect of the settlement with the National Credit Union Administration Board to resolve two outstanding RMBS lawsuits, a provision in respect of the UK 2008 rights issue shareholder litigation, additional provisions for mis-selling of payment protection insurance (PPI) ([14]), a provision in respect of the Financial Conduct Authority (**'FCA'**) review of RBS's treatment of SMEs and a provision in Ulster Bank RoI in respect of an industry wide examination of tracker mortgages ([15]). Across the core bank, consisting of the Personal & Business Banking, Commercial & Private Banking and NatWest Markets franchises, RBS recorded an adjusted operating profit of GBP 4,2 billion.

([12]) RBS Group Annual Report and Accounts from 2008 to 2016.
([13]) A type of mortgage-backed debt obligation whose cash flows come from residential debt, such as mortgages, home-equity loans and subprime mortgages.
([14]) An insurance product that enables consumers to ensure repayment of credit if the borrower dies, becomes ill or disabled, loses a job, or faces other circumstances that may prevent them from earning income to service the debt.
([15]) A type of variable rate mortgage where the interest rate tracks the base rate at a set margin.

(11) A detailed description of the state aid measures in favour of RBS can be found in recital (31) to (54) of the Restructuring Decision. As described in the Amended Restructuring Decision ([16]), the only not yet terminated or repaid capital aid measure in 2013 was the GBP 45,5 billion recapitalisation in ordinary shares and B shares ([17]), to which the Dividend Access Share (**'DAS'**) held by the State was related. The DAS was created to provide enhanced dividend rights to the UK Government.

(12) In August 2015 the UK Government sold 5,4 % of the bank ([18]), which was the first sale of the government shares in RBS group. All the B shares were converted into ordinary shares in October 2015 ([19]). Regarding the DAS, RBS paid to the UK Government a final dividend in March 2016 and the DAS was subsequently retired ([20]). The share conversion and DAS retirement led to a further normalisation of RBS's capital structure. As a consequence of those actions, the UK Government currently holds 8.4 billion ordinary shares in RBS ([21]), representing 71,3 % of the company's ordinary share capital.

(13) The 7 March 2017 closing share price of 238,90p implied a market value of GBP 20,1 billion of the UK Government's shareholding.

2.1.2 *Implementation of the Commitments and Amended Commitments*

(14) The implementation of the divestment and behavioural Commitments leading up to the Amended Restructuring Decision is described in detail in recitals (12) to (22) of the Amended Restructuring Decision.

(15) The Amended Restructuring Decision included an amended list of commitments ([22]). According to the Amended Commitments, RBS is to divest the entire interest in the Rainbow business, RBS Insurance (rebranded as DirectLine) and RBS Citizens. The Amended Restructuring Decision authorised the extension of the deadline to divest the Rainbow business from 31 December 2013 to 31 December 2017. The Amended Commitments also included a new commitment to divest RBS Citizens. The Amended Commitments moreover contained restrictions on further acquisitions and business activities and references to State support.

(16) Table 2 provides an overview of the divestments committed in the Commitments and in the Amended Commitments. Table 2 illustrates how they relate to RBS' balance sheet. RBS completed these divestments ahead of the committed deadlines with the exception of Rainbow.

Table 2 (source: UK authorities)

Divestment	**FY 2008 Assets**	**Share of RBS Funded Assets**	**FY 2008 Income**	**Share of RBS Income**
	£bn	%	*£m*	%
Insurance	11	0,9 %	4 430	21,5 %
Global Merchant Services	1	0,1 %	552	2,7 %
Rainbow	20	1,6 %	944	4,6 %
RBS Sempra	18	1,5 %	765	3,7 %
Asia Retail & Commercial	8	0,7 %	761	3,7 %
US Retail and Commercial (Citizens)	104	8,5 %	3 010	14,6 %
Total	**162**	**13,2 %**	**10 462**	**50,8 %**

([16]) Recital (11) of the Amended Restructuring Decision.
([17]) Non-voting Core Tier 1 capital, as further described in recital (38) of the Restructuring Decision.
([18]) HMT press release: https://www.gov.uk/government/news/government-begins-sale-of-its-shares-in-the-royal-bank-of-scotland.
([19]) RBS press release: http://otp.investis.com/clients/uk/rbs1/rns1/regulatorystory.aspx?cid=365&newsid=580941.
([20]) RBS press release: http://otp.investis.com/clients/uk/rbs1/rns1/regulatory-story.aspx?cid=365&newsid=687910.
([21]) UK Financial Investments Ltd Annual Report and Accounts 2015/2016.
([22]) See Annex I of the Amended Restructuring Decision.

2.2 **The commitment to divest Rainbow**

(17) The Commitments included the divestment of several businesses, including of the RBS branch-based retail and SME business in England and Wales, and the NatWest branches in Scotland (this is referred to as Rainbow). The deadline included in the Restructuring Decision was 31 December 2013.

(18) In its assessment of the compatibility of the aid to RBS, the Commission noted that the commitment to divest Rainbow contributed to limit the distortions of competition created by the aid in the UK SME and mid-corporate banking market ([23]).

(19) RBS started a trade sale process for Rainbow shortly after the Restructuring Decision of December 2009. A Sale Purchase Agreement (**'SPA'**) was signed with a trade buyer in mid-2010. This trade sale process was unsuccessful as the investor pulled out of the transaction in 2012. As a result RBS had to look for other options to divest Rainbow. RBS announced in 2013 that it would pursue the option to divest Rainbow through an Initial Public Offering (**'IPO'**). The IPO could not be implemented within the deadline committed in the Commitments and this lead to the request for extension from the UK authorities.

(20) On 6 February 2014, the UK authorities notified to the Commission a formal request to amend the Commitments, notably to extend the divestment deadline for the Rainbow business.

(21) In the Amended Restructuring Decision ([24]), the Commission observed that RBS had genuinely tried to divest Rainbow but had not succeeded in respecting the commitment to divest Rainbow by 31 December 2013.

(22) In the Amended Restructuring Decision of April 2014, the Commission agreed that the committed deadline for the divestment of Rainbow is extended to 31 December 2017 ([25]).

(23) Subsequently to the Amended Restructuring Decision, RBS pursued the IPO preparation and succeeded in 2014 to attract a consortium of investors including a large private equity group as anchor investor for the forthcoming IPO.

(24) However the IPO option was abandoned in August 2016 when it had become apparent that an IPO is not a viable divestment strategy. This was due to significant operational and financial impediments, including complex and costly IT systems issues and a changed and challenging macroeconomic environment. These and other factors meant that it was not expected that Rainbow would be able to obtain a standalone banking licence and would therefore not be able to operate as a standalone banking business.

(25) Given the problems associated with the IPO option, from April 2016 onwards a new trade sale was pursued in order to divest Rainbow within the committed timeline. However, RBS did not receive any bid which comprised the full Rainbow perimeter as envisaged in the Amended Restructuring Decision, nor any bid which could be completed before the 31 December 2017 deadline referred to above.

(26) The UK authorities approached the Commission in December 2016 with a proposal to replace the commitment to divest Rainbow with a package of alternative measures.

(27) On 17 February 2017, the UK authorities publicly announced that they were seeking an amendment to the Amended Commitments and more specifically to replace the divestment commitment of Rainbow with a package of alternative measures.

2.3 **The alternative package proposed by the UK authorities**

(28) According to the UK authorities, the objective of the proposed alternative package is to find an alternative equivalent to the original commitment to divest the Rainbow business in terms of scope and impact and that also: (i) has a faster impact and thus more effectively mitigates any distortion of competition; (ii) takes into account current market circumstances and the specific needs of challenger banks (**'Challenger Banks'**) ([26]) and other potential entrants in the UK SME and mid-corporate banking market; and (iii) does not jeopardise RBS's viability.

(29) The proposed alternative package includes a range of behavioural remedies and consists of four elements (**'Measures'**):

(a) the SME Capability Fund (**'Measure A'**);

(b) the Incentivised Switching Scheme (**'Measure B'**);

(c) access to RBS Branches (**'Measure C'**); and

(d) the Financial Services Innovation Fund (**'Measure D'**).

([23]) Recital (13) of the Amended Restructuring Decision.
([24]) Recital (84) of the Amended Restructuring Decision
([25]) Annex 1 Term sheet for UK aid commitments in respect of RBS, Paragraph 3.2. of the Amended Restructuring Decision.
([26]) Non-incumbent banks competing for business with large, long-established national banks.

(30) According to the UK authorities, Measures A, B and C would increase the capabilities of competing providers of banking services to SMEs and would help them attract customers from RBS. Measure D would serve to provide capital to innovative financial services businesses (including FinTech) that provide or are developing financial services to be supplied to SMEs, or provide products or services to such businesses.

(31) An independent body (**'the Body'**) would be established to manage and control the SME Capability Fund, oversee the Incentivised Switching Scheme and the use of RBS branches.

(32) The alternative package would be funded by RBS. The UK authorities estimate the overall cost of the package to RBS will be in the range of GBP [0,5 – 1,5] billion, taking into account upfront capital cost and an ongoing reduction in RBS' earnings ([27]).

(33) The UK authorities intend to carry out further market testing in order to confirm their initial analysis of the alternative package, the speed with which the elements of the alternative package might have an impact on the SME banking market, and refine the detailed requirements of the alternative package, to maximise its impact. The alternative package outlined below is subject to refinements following such market testing.

2.3.1 *SME Capability Fund ('Measure A')*

(34) The SME Capability Fund would have a size of GBP 300 million. The SME Capability Fund is intended to support the development of SME banking capabilities by Challenger Banks that meet a number of eligibility criteria (**'Eligible Banks'**). The investment projects that could benefit from support need to target permitted purposes (**'Permitted Purposes'**) ([28]). The Body would manage and control the SME Capability Fund. RBS would have no involvement in the disbursement of the fund. There may be limited involvement of HMT in relation to establishing the guidelines under which the fund is to be distributed.

(35) The Capability Fund would be divided into two pools:

(a) the first pool would be for banks with an established business current account (**'BCA'**) ([29]) capability (**'Pool 1'**); and

(b) the second pool would be for banks with an established SME lending capability, but with less BCA offering (**'Pool 2'**).

(36) The intention is that the majority of the funds are allocated to Pool 1 who is best placed to make an impact on competition in the near term.

(37) The ability of banks to apply for funds from the SME Capability Fund would be based on objective eligibility criteria, which will be determined following market testing. It will likely broadly follow the criteria outlined below:

(38) The eligibility criteria for Pool 1:

(a) This pool would be open to banks that have an established business current account capability. This is estimated at an excess of 5 000 active BCA customers (not counting customers in nations of the UK in which the bank in question has a >10 % market share in that nation) ([30]);

(b) authorised by the Prudential Regulation Authority (**'PRA'**) to accept deposits;

(c) the bank's ultimate parent entity (which would need to be a bank or financial holding company) should be domiciled in the EU, EEA or Switzerland;

(d) the bank would need to have consolidated total assets in the UK of less than GBP 350 billion as at its last reporting date;

(e) the bank's income in the UK would need to relate primarily to the provision of deposit taking, lending or payments services to individuals and businesses in the UK;

(f) the bank would need to display an intention to expand in the SME banking market; and

(g) the bank should already have at least GBP 50 million of loans or leases to businesses (excluding lending whose purpose is to finance the purchase of or investment in residential property).

(39) The eligibility criteria for Pool 2: The same eligibility criteria as for Pool 1 as set out in recital (38) would apply, except for recital (38) (a). Pool 2 will be open to banks targeting a business banking offering. It is estimated these banks will have fewer than 5,000 active BCA customers.

([27]) Taking into account the upfront capital cost of around GBP 750 million, the annual costs of operating the alternative package, and the loss of earnings associated with customers transferring as a result of Measure B, offset by the release of capital associated with such customers.
([28]) Described in recital (40).
([29]) A current account service for business customers.
([30]) The term 'UK nations' refers nations comprising the UK: England, Scotland, Wales and Northern Ireland.

(40) The UK Government's current intention is that the Permitted Purposes would include the funding of operating expenses or capital expenditure that relate to:

(a) The development of any systems or other infrastructure required to expand the firm's SME banking or lending businesses;

(b) the recruitment and pay of any individuals required to expand or operate the firm's SME banking or lending businesses; and

(c) the marketing of the firm's SME banking or lending products.

Recipient banks would not be able to use funds to pay for temporary price cuts.

(41) The intention is that the deployment of the SME Capability Fund would be overseen by the Body. The intention is that it will be independent of both RBS and the UK Government and that there will be three groups of safeguards as to the deployment of the funds by recipient banks which would operate through the lifecycle of the fund: (i) safeguards before disbursement, (ii) ongoing reporting and monitoring by the Body and (iii) the Body's right of audit.

(42) The first group of safeguards occurs before disbursement:

(a) Pool 1 banks will be required to submit to the Body a business plan setting out, in a reasonable level of detail, how the bank proposes to deploy any funds awarded, and to certify that each element of the plan is incremental to its existing business-as-usual intentions. This would need to be approved by their Boards and they would be required to disclose their drawings on the fund and their plans for the use of such funding. The Body will then assess each element of the plan to determine whether it meets a number of Permitted Purposes, before releasing funding in respect of that element. It is intended that Pool 1 funding would be divided equally between those Eligible Banks that apply to the Body, save to the extent that they are unable to demonstrate adequate plans to the Body; and

(b) similarly, Pool 2 banks will be required to submit proposals to the Body as to how they intend to deploy any funds allocated to them. It is intended that the Body will have discretion as to whether or not to fund any proposals made by Pool 2 banks. In making these decisions the Body would be required to take into account its assessment of each proposal's:

i. likely impact on competition in the BCA market;

ii. likely impact on competition in the SME lending market;

iii. deliverability;

iv. innovation; and

v. other factors that the Body deems appropriate and has notified to eligible banks.

(43) The second group of safeguards consist in the ongoing reporting and monitoring by the Body: recipient banks will report to the Body on an annual basis until they have fully deployed any funds received (and it is anticipated that the Body will produce its own report on its administration of the fund). Each Eligible Bank's annual report will include as a minimum:

(a) A brief account of the developments in the bank's SME business over the preceding year;

(b) an overview and quantification of investments made in the bank's SME business over the preceding year;

(c) details of the bank's SME business volumes, including customer numbers, BCA numbers, lending and deposit balances;

(d) confirmation that drawings on the SME Capability Fund have been used for the Permitted Purposes; and

(e) other items agreed between the Body and the recipient bank.

(44) The third group of safeguards is the Body's right of audit. In order to investigate and audit the use of funds by recipient banks in circumstances where the Body had cause to doubt that the bank was properly or fully deploying funds received under the scheme, the Body would have the contractual ability to appoint a 'skilled person' (in a similar way to regulatory appointments under Section 166 of the Financial Services and Markets Act 2000).

(45) The SME Capability Fund would be open for applications for around eighteen months. The Body would enjoy contractual rights for a further period of up to three years to oversee the deployment of funds by the recipient banks ([31]). At the end of the initial eighteen months, any funding that has not been awarded to recipient banks will not return to RBS but will be distributed elsewhere (for example, to charity).

(46) The cost to RBS of measure A comprises the GBP 300 million upfront capital cost plus the present value of the Body's operating costs, which would be paid for by RBS ([32]).

2.3.2 *Incentivised Switching Scheme ('Measure B')*

(47) The Incentivised Switching Scheme funded by RBS would provide funding to Eligible Banks to enable them to offer incentives to encourage RBS's SME banking customers to switch their BCAs, deposit accounts and loans to the Eligible Banks. This would take the form of a commitment by RBS to pay up to GBP 100 million in dowries (i.e. a monetary incentive) to Eligible Banks in relation to any customers that agree to transfer their BCAs. RBS has ear-marked an additional GBP 75 million of its costs which would also be available to help facilitate the transfer of loan balances by these customers. The UK authorities expect the Incentivised Switching Scheme to encourage significant numbers of RBS' SME customers to switch banks, such that the total RBS market share reduction since Q4 2011 for SMEs will exceed 5 %. According to the UK authorities, the Incentivised Switching Scheme and the SME Capability Fund would provide an integrated solution whereby competitor banks can both invest in capability and grow their customer numbers.

(48) These dowries will enable the Eligible Banks to fund attractive price offers or other incentives to RBS's customers and convince RBS's SME customers to switch bank. The dowries paid by RBS to recipient banks would be steeply tiered such that recipient banks are more incentivised to target larger customers and can make larger incentives available to such customers.

(49) RBS would target a defined pool of its customers who would be provided with information on the benefits of switching and potential alternative banks that they may wish to consider. RBS would not have the ability to select the customer base that is targeted through the Incentivised Switching Scheme, with the pool of customers instead being defined according to specific criteria agreed with the Body. Initially, it is proposed that the current Rainbow customer base is targeted (**'Eligible SME Banking Customers'**).

(50) This process of distributing dowries would be repeated quarterly for as long as dowries are available. Dowries would cease when a maximum of GBP 100 million is paid by RBS in respect of the Incentivised Switching Scheme or, in the event that this has not occurred earlier, on the 18 month anniversary of the dowries being made available or the anniversary of the first disbursement made by the SME Capability Fund to Eligible Banks.

(51) The Body would also have responsibility for managing and controlling the Incentivised Switching Scheme, in addition to the Capability Fund, and would monitor RBS's behaviour towards and interaction with customers on an ongoing basis. This would include enabling the Body, subject to applicable laws and data protection requirements, to:

(a) approve any and all marketing communications sent by RBS to its SME customers in relation to the Incentivised Switching Scheme;

(b) require RBS to increase the frequency of such communications;

(c) require RBS to extend the customer base to which it sends such communications if a given volume of switchers is not achieved in a given timeframe;

(d) if necessary, extend the period for which dowries are available by up to 12 months if take-up does not reach a defined threshold within the original 18 month period; and

(e) if necessary, approve requests from RBS to restructure the dowries after a period of time in order to improve the efficacy of the scheme and reduce the probability of it incurring a penalty.

(52) In the event that there is an underspend in the dowries by the end of the 18-month period (or, in the event the Body decides to extend the relevant period, the date when the extended period ends), RBS would be required to transfer a pre-defined multiple (**'Multiplier'**) of this underspend to the SME Capability Fund ([33]).

([31]) At the end of the initial eighteen months, any funding that has not been awarded to recipient banks will not return to RBS but will be distributed elsewhere (for example, to charity).

([32]) The UK authorities estimate the net present value of these costs to be GBP [0 – 50] million

([33]) The Multiplier could be set at up to 1,5 times, and this penalty would be subject to the condition that as the success of the incentivised switching scheme will be dependent on the ability of recipient banks to build attractive propositions for RBS' SME customers, the Body would have the power to reduce the Multiplier to the extent that it was reasonably satisfied that any underspend was a result of factors beyond the control of RBS.

(53) The UK Government intends to consult with potential recipient banks on how the Incentivised Switching Scheme could be best implemented. It is proposed that RBS would pay a dowry based on a percentage of SME's turnover, and that the percentage applied would depend on the size of the SME's turnover.

(54) The upfront capital cost of Measure B is GBP 193 million plus the ongoing loss of future earnings ([34]).

2.3.3 *Access to RBS branches ('Measure C')*

(55) Under Measure C, RBS would provide cash and cheque handling services in its branches to customers of the Pool 1 banks and those Pool 2 banks with a BCA product, irrespective of whether they switched from RBS. Customers whose own bank has a branch in the immediate vicinity of the RBS branch would be restricted from taking up this offer. This measure is aimed at addressing the barriers to entry and expansion that are associated with the absence, or limited availability, of a branch network under traditional business models.

(56) In the current proposal RBS, will maintain free access for the longer of at least three years from launch of the scheme or until an agreed number of transactions have taken place. A 'long stop' date will be required to avoid placing an open-ended commitment on RBS.

(57) RBS would be required to inform its Eligible SME Banking Customers about the availability of branches following their switch, and marketing of the availability of RBS branches to business customers of Challenger Banks would otherwise be the responsibility of each Eligible Bank. In this context, RBS would commit not to solicit directly the business of any customers of the Eligible Banks in RBS branches.

(58) Access to the RBS branches would be subject to Eligible Banks entering into an appropriate inter-bank agency agreement with RBS.

(59) The Body having a governance role in Measures A and B would also maintain oversight of the implementation of this measure.

(60) Any additional investment in systems and operational capacity that is required to meet anticipated levels of demand will be at RBS's expense and will be a 'sunk cost' to RBS.

(61) The UK authorities estimate the upfront capital cost of Measure C at GBP 45 million plus the ongoing loss of future earnings ([35]).

2.3.4 *Financial Services Innovation Fund ('Measure D')*

(62) RBS would provide funds (of up to GBP 200 million) for the establishment of a Financial Services Innovation Fund which would provide capital to innovative financial services businesses (mainly the financial technology industry, also known as FinTech) that either (i) provide or are developing financial services to be supplied to SMEs, or (ii) provide products or services to such businesses. The Financial Services Innovation Fund would be managed by an independent investment manager. Gains would be largely reinvested and the remainder would be distributed to charities.

(63) In order to ensure that it focuses on larger opportunities that have the potential materially to affect competition in the provision of financial services, the Innovation Fund would have a specified minimum investment size, would not be able to provide seed capital to start-up businesses and would be restricted to investing in innovative businesses rather than those that replicate existing products and services.

(64) The purpose of the fund, its investment objectives and the range of business propositions in which it is capable of investing are still to be finalised but are proposed to include provision of capital to businesses that:

(a) provide financial services to SMEs or infrastructure that supports the provision of financial services to SMEs;

(b) demonstrate the customer benefit of the development of the provision of their services;

(c) are generating revenue or have demonstrated the technical feasibility and scalability of their product/service; and

(d) require a certain level of capital investment.

(65) The intention is that the Financial Services Innovation Fund would be managed by an independent investment manager who would make all investment decisions and have effective control of the fund. The fund would be run on commercial lines and make equity and/or debt investments in eligible investees as appropriate.

([34]) The UK Government estimates that RBS would lose in excess of GBP [0 – 150] million per annum of income associated with customers switching away from RBS under this Measure and that RBS would be able to release over GBP 100 million of capital as a result of such switching. Depending on the assumed longevity of the customer relationships switching and the persistency of RBS' loss of market share the UK Government estimates the present value of lost earnings, net of capital released, to be in the order of GBP […] million.

([35]) The UK Government estimates the present value of the loss of earnings to be in the order of GBP [0 – 50] million.

(66) It has so far been envisaged that a proportion of the investment gains made by the Financial Services Innovation Fund could be reinvested to prolong the life of the fund once its initial capital has been deployed and to provide a lasting benefit to UK FinTechs. The remainder of the investment gains would be distributed to charities.

(67) The UK authorities anticipate that the fund would be legally owned by an independent body although the owner would not receive any returns from the Financial Services Innovation Fund. Arrangements would be put in place to ensure the ongoing oversight of the performance of the investment fund manager.

(68) The upfront capital cost and total cost of Measure D is GBP 200 million.

3. **POSITION OF THE UNITED KINGDOM**

(69) The UK authorities recall RBS's past efforts to divest Rainbow, as described in section 2.2. This includes RBS's efforts to divest Rainbow through a trade sale since 2016.

(70) The UK authorities note that RBS did not receive any bid which comprised the full Rainbow perimeter as envisaged in the Amended Restructuring Decision, nor any bid which could be completed before the 31 December 2017 deadline referred to above.

(71) The UK authorities also point out that, as evidenced by the previous efforts, realising a trade sale of Rainbow is inherently uncertain, as it is contingent on factors outside the control of RBS. According to the UK authorities, a lengthy divestment process also inevitably places significant resource demands and distractions on management time, which could adversely affect RBS's overall transformation plans and potentially impact the continuing recovery of the business over the longer term. Therefore, according to the UK authorities, the inherent risks and lengthy timelines of any divestment of Rainbow may adversely affect the ability of the UK Government to exit its shareholding in RBS within a reasonable timeframe.

(72) The UK authorities also note significant changes in the UK SME banking market since the Restructuring Decision. In particular, according to the data provided by the UK authorities, RBS's market share in the SME segment has fallen from [25 – 30]% in the fourth quarter of 2011 to [20 – 25]% in the third quarter of 2016.

(73) In light of the above factors, particularly the unavoidable delay and execution risks, the UK authorities have reached the conclusion that the divestment of Rainbow was no longer as deliverable or effective a remedy for addressing the distortion of competition identified in the Restructuring Decision.

(74) In this context, the UK authorities have explored with the PRA, the FCA and RBS, the scope to create an alternative remedies package that would deliver the intended pro-competitive outcomes of the divestment of Rainbow, as anticipated at the time of the Restructuring Decision, to a shorter timeline and with more certainty of delivery. According to the UK authorities, the intention was to design an alternative remedies package that would deliver an equivalent market impact, taking into account the changes that have occurred in the UK SME banking market since 2009, but avoid the […] of the trade sale […] available.

(75) The result of those efforts was the alternative package described in section 2.3.

(76) As noted above, the UK authorities intend to carry out further market testing in order to confirm their initial analysis, the speed with which the elements of the alternative package might have an impact on the SME banking market, and refine the detailed requirements of the alternative package, to maximise its impact.

(77) However, the UK authorities consider that it is already clear that the alternative package would have significant advantages over an uncertain and lengthy divestment process. Notably, according to the UK authorities, the alternative package:

(a) […] there is a much higher certainty of its completion and successful implementation. Its delivery is also not contingent on the actions of a third party in the same way as a trade sale. […];

(b) would have a much faster impact. The alternative package is capable of allowing customer transfers, and the associated competition benefits, to take place in 2017, significantly ahead of the earliest possible timeframe for transfers through any trade sale. It also does not face the same level of uncertainty regarding timing of execution. According to the UK authorities, the alternative package can be launched within a few months of receiving formal approval from the Commission. As regards timing of the separate elements of the package, the UK authorities anticipate that the Incentivised Switching Scheme and Access to RBS Branches elements of the package would be available from the package launch date, with the first disbursements from the Financial Services Innovation Fund and SME Capability Fund occurring around two to three months after launch. According to the UK authorities, the full impact of the package would also be realised quickly; for example, the UK authorities anticipate that all qualified disbursements under the Incentivised Switching Scheme and the SME Capability Fund would be made within 18 months of the launch;

(c) would have a significant pro-competitive impact on the UK SME banking market. Given changes to the market that have taken place since 2009, the impact of this package will be much greater now than it would have been at the time of the original commitment. The Package aims to strengthen multiple competitors by removing barriers to the development of new products and the switching of business customers, as well as encouraging new suppliers and products. In addition, the Incentivised Switching Scheme alone is capable of delivering a further 2 % reduction in market share. So the Incentivised Switching Scheme is capable of resulting in a total reduction in RBS' market share since Q4 2011 for SMEs of over 5 %. This reduction is expected to be greater than the 5 % market share attributed to the Rainbow Business in the 2009 Restructuring Decision;

(d) would enable RBS management to return to concentrating on delivering the continuing recovery of RBS and its day to day business once the alternative package has been implemented. According to the UK authorities, this would be desirable from a financial stability perspective, particularly in light of RBS's recent stress test results; and

(e) would increase the chance of the UK Government being able to exit its shareholding in RBS by removing one of the main barriers to the UK Government sale of shares (i.e. the ongoing uncertainty about the divestment of Rainbow).

(78) The UK authorities also consider the financial impact of the alternative package on RBS to be proportionate. According to the UK authorities, the alternative package would have an estimated upfront cost to RBS of around GBP 750 million, plus the ongoing cost in lost profits ([36]). The UK authorities note that these costs are more predictable than those of a trade sale, which carry a greater downside risk. According to the UK authorities, the capital impact of the alternative package on RBS is also broadly equivalent to the capital impact of a hypothetical divestment of Rainbow.

(79) Therefore, the UK authorities formally request the Commission to authorise the proposed amendment of the commitment to divest Rainbow, which would be substituted with the alternative package. The request is based on recital (65) of the Amended Restructuring Decision ([37]).

(80) The UK authorities justify the requested amendment by reference to it being at least equivalent to the divestment of Rainbow in terms of restoration of viability, burden-sharing and mitigation of competition distortions. Notably, according to the UK authorities, the alternative package:

(a) does not affect RBS's ability to restore its viability and it does not involve further aid;

(b) has a closely comparable financial impact to the divestment of Rainbow;

(c) together with the changes in the market position of RBS, results in a reduction of RBS' market share greater than that anticipated by the Restructuring Decision, as amended by the Amended Restructuring Decision; and

(d) is a proportionate amendment, given its pro-competitive effects on the SME banking market and its implementation costs.

4. **ASSESSMENT**

4.1 **Existence of State aid**

(81) According to Article 107(1) TFEU State aid is 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, in so far as it affects trade between Member States. The Commission observes that the UK authorities consider that no additional State aid would be granted as part of the alternative package.

(82) The qualification of a measure as State aid within the meaning of that provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

([36]) The UK Government estimates the net present value of the loss of future profits, offset by a capital release associated with Measure B, to be GBP […] million."

([37]) *'A restructuring decision, such as the 2009 Restructuring Decision and the 2014 Amended Restructuring Decision, can in principle be amended by the Commission where the modification is based on new commitments which can be considered equivalent to those originally provided. In that situation, the existing aid measures would remain compatible on the basis of Article 107(3)(b) of the Treaty if the overall balance of the original decision remains intact. In order to preserve the original balance, the altered commitments should not negatively affect the viability of the aid beneficiary, with the overall set of commitments remaining equivalent in terms of burden-sharing and compensatory measures taking into account the requirements of the Restructuring Communication.'*

4.1.1 *Potential aid to RBS*

(83) The alternative package, or Measures A, B, C, and D described in section 2.3, represents a financial cost to RBS. Based on the data provided by the UK authorities, the alternative package would have an estimated upfront cost to RBS of around GBP 750 million, with an additional ongoing cost in lost profits ([38]). There will be no State resource flowing from the State to RBS to finance those Measures. The cost of the alternative package will be borne entirely by RBS.

(84) Given that Measures A, B, C, and D do not involve State resources with respect to RBS, there is no need to assess the other cumulative conditions for a measure to qualify as State aid. Hence, the alternative package does not involve new aid to RBS.

4.1.2 *Potential aid to beneficiaries of the alternative package*

(85) The Commission observes that there is no link between the State aid granted to RBS in 2008 and 2009 and the alternative package. Indeed, in the procedure leading to the Restructuring Decision, the UK authorities committed to divest Rainbow and the approval of the aid was based on that commitment. The alternative package has been proposed eight years after the granting of the last capital aid to RBS, i.e. a long time after the granting of the aid. Therefore, it can be excluded that the alternative package is directly linked or funded by the 2008 and 2009 aid to RBS.

(86) Despite the above, one can note that, as indicated in recital (12), the State still owns 71,3 % of RBS's shares. This suggests that the financial burden of the alternative package is indirectly but largely borne by the State, as the majority shareholder of RBS. In addition, as indicated in recital (74), the UK authorities have been closely involved in the design of the alternative package. This could suggest that the design of the package is imputable to the State. Moreover, the alternative package could give a selective advantage to the undertakings that are entitled to benefit from it. The measure is also designed in such a way as to channel its effects towards the Eligible Banks.

(87) However, even if the alternative package was considered to constitute State aid to the banks which would benefit from it, the Commission considers that it could be declared compatible as a necessary part of the commitments on the basis of which the aid measures in favour of RBS would eventually be considered compatible on the basis of the Restructuring Decision, the Amended Restructuring Decision and the final decision in the present case ([39]).

4.1.3 *Conclusion on the existence of new aid*

(88) In view of the elements discussed in section 4.1.1, the Commission preliminarily concludes that Measures A, B, C and D do not qualify as new State aid to RBS.

(89) As analysed in section 4.1.2, to the extent that measures A, B, C and D could qualify as State aid to the banks which would benefit from the alternative package, such aid could be considered compatible on the basis of Article 107(3)(b) TFEU as necessary part of the commitments on the basis of which the initial aid measures in favour of RBS may eventually be considered compatible in the present case. Therefore, the compatibility of possible aid to those banks depends on the compatibility of the existing aid to RBS if the divestment commitment is replaced by the alternative package, which is analysed in section 4.2.

4.2 **Compatibility**

(90) Whilst the alternative package does not appear to contain new State aid to RBS, the existing aid was authorised on the basis of the commitment to sell Rainbow. The UK authorities now request to replace this commitment with a commitment to implement the alternative package. Therefore, the Commission has to assess whether the proposed replacement would alter the conclusion that the existing aid to RBS is compatible with the internal market.

(91) A restructuring decision, such as the Amended Restructuring Decision, can in principle be amended by the Commission where the modification is based on new commitments which can be considered equivalent to those originally provided ([40]). In that situation, the existing aid measures would remain compatible on the basis of Article 107(3)(b) TFEU if the overall balance of the original decision remains intact. In order to preserve the original balance, the altered commitments should not negatively affect the viability of the aid beneficiary, with the overall set of commitments remaining equivalent in terms of burden-sharing and compensatory measures taking into account the requirements of the Restructuring Communication ([41]).

([38]) Recital (32) of the present Decision.

([39]) If the final decision on the present case were to conclude that the alternative package can replace the commitment to divest Rainbow so that the aid measures in favour of RBS can be compatible on the basis of Article 107(3)(b) TFEU.

([40]) Recital (65) of the Amended Restructuring Decision.

([41]) 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.

4.2.1 *Viability*

(92) The Commission has to assess whether the modifications to the Amended Commitments call into question the conclusion reached in the Amended Restructuring Decision as to RBS's ability to restore its viability without needing further State aid.

(93) The Commission observes that, according to the estimation provided by the UK authorities (see Table 3), the cost of the alternative package is not higher than the costs of continuing with the Rainbow divestment. The Commission therefore considers that switching to the alternative package would not significantly affect RBS's viability.

(94) In this respect, it should also be noted that Rainbow itself is not a loss-making entity. Consequently, the modifications to the Amended Commitments to allow RBS to retain Rainbow would not negatively impact the profitability of RBS.

(95) The Commission preliminarily concludes that the amendments proposed by the UK authorities do not endanger the viability of RBS.

(96) Leaving aside the effect on the viability of RBS of the proposed changes to the Amended Commitments, the Commission observes that RBS has not restored its profitability. The Commission has therefore to assess whether its conclusion that RBS will be able to restore its profitability and viability without further State aid is still valid.

(97) The losses attributable to the ordinary shareholders since 2008 ([42]) come mainly from the accumulation of large one-off items as fines and settlements for past misconduct and misselling, restructuring costs and higher than expected losses on non-core assets.

(98) The Core Tier 1 capital ratios have improved further since 2013 and the core operating profit has continued to be positive as described in recital (9) and (10).

(99) The Commission therefore considers that the proposed amendments should not prevent RBS to return to viability and profitability.

4.2.2 *Burden sharing*

(100) The Amended Restructuring Decision indicates that the divestment of Rainbow was taken into account as a measure to limit distortions of competition and it was neither a burden-sharing measure nor a measure to limit restructuring costs ([43]). As such, the proposed alternative package does not affect the burden-sharing assessment.

(101) The notified changes therefore do not put into question the assessment of burden sharing made in the Restructuring Decision and the Amended Restructuring Decision.

4.2.3 *Measures to limit distortions of competition*

(102) Pursuant to the Amended Restructuring Decision ([44]), the primary purpose of the commitment to divest Rainbow was to limit the distortion of competition that the aid to RBS could have created. More precisely, the commitment to divest Rainbow aimed at avoiding that the very large amount of State aid granted to RBS in 2008 and 2009 led to undue distortion of competition in the UK market for banking services to SME and mid-corporate customers, where RBS was the market leader ([45]). To avoid strengthening RBS's position in that market and thereby decreasing competition in it, the UK authorities committed that RBS would divest an entity having a market share of 5 % in the UK SME customers and mid-corporate customers market ([46]).

(103) The purpose of the alternative package as described in section 2.3 is to address distortion of competition in the same way as the divestment commitment of Rainbow it is replacing.

(104) The Commission therefore has to assess whether the alternative package is equivalent to the divestment commitment it is proposed to replace.

4.2.3.1 Design of individual Measures

(105) The alternative package consists of four individual Measures. As far as possible, the Commission intends to assess the equivalence both on an individual level and on the level of the package.

SME Capability Fund ('Measure A')

(106) The SME Capability Fund was described in detail in recitals (34) to (46) of the present Decision.

(107) The Commission observes that the provision of funds to Challenger Banks to increase their capacity to offer SME banking services will likely increase competition in the SME banking market.

([42]) Recital (7) of the present Decision.
([43]) Recital (78) of the Amended Restructuring Decision.
([44]) Recital (82) of the Amended Restructuring Decision.
([45]) Recital (238) of the Restructuring Decision.
([46]) Recital (29) of the Amended Restructuring Decision.

(108) It is however difficult to estimate *ex-ante* the magnitude of that positive effect. It is also difficult to estimate *ex-ante* whether Measure A will translate into a decrease of market share for RBS in the SME segment, and, if so, by how much.

(109) The Commission therefore invites interested parties to comment on those points.

Incentivised Switching Scheme ('Measure B')

(110) The Incentivised Switching Scheme is described in detail in recitals (47) to (54) of the present Decision.

(111) The Commission observes that this measure will increase competition in the SME banking market, by transferring customers from RBS to Challenger Banks. The implementation of this measure may lead to an up to 2-percentage point reduction in market share for RBS in the SME banking market.

(112) The Incentivised Switching Scheme cannot lead to a reduction in the market share of RBS larger than 2 percentage points because the amount of funding available for Measure B is capped and would therefore not allow to subsidise the acquisition of more customers by the Challenger Banks.

(113) Regarding the assumption that the 2-percentage point reduction will be reached, the Commission observes that it is uncertain as RBS's SME customers will need to switch from RBS to a Challenger Bank on a voluntary basis. The offers made by the Challenger Banks will need to be attractive enough to convince the maximum number of customers to switch. The Commission has doubts whether the Incentivised Switching Scheme is large enough to ensure that a transfer of customers equivalent to a market share of 2 % of the SME market is reached with a high likelihood. The Commission seeks comments of interested parties on that question.

(114) The Commission also observes that the impact on the competition in the mid-corporate market is even less clear. The Commission seeks comments of interested parties on that question.

(115) Finally, the Commission notes that the feasibility of Measure B will be further analysed in a market test, to be carried out by the UK authorities.

Access to RBS branches ('Measure C')

(116) The Access to RBS branches was described in detail in recitals (55) to (61) of the present Decision.

(117) The Commission observes that the access to RBS branches will most likely make it easier for Challenger Banks having no large bank network in the UK to take advantage of the Incentivised Switching Scheme.

(118) The impact of Measure C is difficult to quantify on a standalone basis. It seems that it will only have an impact when combined with the two Measures discussed previously. In that capacity, Measure C will increase the effectiveness of the package as a whole. However, it is difficult to assess by how much it will increase the effectiveness of the package. The Commission invites interested parties to comment on that point.

Financial Services Innovation Fund ('Measure D')

(119) The Financial Services Innovation Fund was described in detail in recitals (62) to (68) of the present Decision.

(120) The Commission observes that the Financial Services Innovation Fund will likely have an impact on increasing competition in the SME banking market in the long run. The impact in the short run will likely be limited. It is therefore difficult to estimate the concrete impact on competition due to its long term nature and the uncertainty of the impact the investments will have. The Commission invites interested parties to comment on that point.

4.2.3.2 Overall equivalence of the package to the commitment to divest Rainbow

(121) In this section, the Commission carries out a preliminary assessment of the equivalence of the alternative package with the commitment to divest Rainbow.

(122) There are different ways to assess the equivalence of the alternative package. It can be compared to the impact of the trade sale and to the intentions behind the divestment in the Restructuring Decision. One can measure the equivalence using different indicators, such as the financial costs on RBS, the size of the transferred assets and liabilities, and the decrease in market shares of RBS.

(123) Table 3 compares the three scenarios along different indicators.

Table 3

Equivalence of the alternatives

	Objective 2009 Decision	Rainbow divestment	Alternative package
Motivation commitment	Limitation of distortion of competition in UK SME market	Limitation of distortion of competition in UK SME market	Limitation of distortion of competition in UK SME market
Market Share Loss RBS in UK SME market	5 %	[0 – 5]% [[5 – 10]%] (*)	[0 – 5]% [[5 – 10]%] (*)
Total Capital Loss	[…]	[…] [[…]] (**)	[…] [[…]] (**)
CET1 Ratio Impact	N.A.	[…]	[…]
Total Asset Transfer	GBP 20bn	GBP [15 – 25]bn	GBP [0 – 5]bn

(*) Including market share loss since Q4 2011
(**) Including GBP [1 – 3]bn of already incurred costs

(124) The motivation behind the Rainbow divestment in the Restructuring Decision and the Amended Restructuring Decision is to limit the distortion of competition in the UK SME banking market. The UK authorities have designed the alternative package with the aim to accomplish the same underlying objective.

(125) The alternatives can be compared using the impact on the market share of RBS in the UK SME market. According to the Restructuring Decision, the divestment of Rainbow was expected to result in a market share loss of 5 %, as described in recital (102) of the current decision. The trade sale process started in 2016 would have resulted in a market share loss of [0 – 5]%. The alternative package should also result in a market share loss. It would amount to up to 2 %, if one takes into account only the Incentivised Switching Scheme (other elements of the alternative package being difficult to quantify in terms of market share loss). The total alternative package is however difficult to translate into a specific market share loss. Nevertheless, it is reasonable to assume that the other elements would have an impact on the market share of RBS as well.

(126) As indicated by the UK authorities, it also seems reasonable to take into account the fact that RBS has lost market share in the UK SME banking market since the Restructuring Decision. It is however not easy to precisely quantify this decrease. According to the UK authorities, the external data provider which provided the banks' market shares in the SME market (which were used in the documents submitted by the UK authorities in 2009) does not publish those market shares anymore. The UK authorities proposed an alternative data provider, but which started to publish market shares in the SME market only from end 2011. According to those data, RBS lost [0 – 5]% of market share between the 4th quarter of 2011 and the 3rd quarter of 2016 in the market for SMEs with a turnover up to GBP 25 million ([47]).

(127) The 5 % decrease in market share of RBS expected in the Restructuring Decision is reached when one aggregates the market share loss expected from the alternative package (up to 2 % resulting from Measure B alone) with the observed market share loss since the 4th quarter of 2011 ([0 – 5]%).

(128) In other words, based on its preliminary assessment, the Commission sees value in the argumentation provided by the UK authorities that the market share loss anticipated in 2009 would be achieved by the alternative package. More clarity will however be needed in how achievable the targeted 2 % market share loss is under the Incentivised Switching Scheme. In order to consider the alternative package equivalent with the divestment commitment the Incentivised Switching Scheme needs to have a high probability of reaching its target, which could require increasing its budget.

([47]) Based on Charterhouse Research data provided by the UK authorities. The same dataset is used by the UK's Competition and Markets Authority.

(129) The estimated total capital loss of the different scenarios can also be used to compare their equivalence.

(130) The Restructuring Decision did not contain an estimation of the capital cost of the Rainbow divestment. However, it seems a reasonable estimation to use the estimation of the capital cost which the Rainbow sale would generate if it is pursued, which has been quantified by the UK authorities.

(131) The cost that RBS has incurred since 2009 to comply with the divestment commitment is standing at GBP [1 – 3] billion ([48]). This covers several types of costs, the biggest of which are technology costs to create a separate IT platform for Rainbow.

(132) In table 3 the direct total capital loss of the different alternatives is indicated. The total capital loss when adding the GBP [1 – 3] billion cost already incurred by RBS is indicated within brackets.

(133) The direct capital loss of the alternative package is lower than if the Rainbow divestment is continued. In addition, when adding the costs already incurred by RBS, the alternative package is clearly more costly than what was implicitly envisaged in the Restructuring Decision. From that point of view, as claimed by the UK authorities, the alternative package does not lighten the financial burden of RBS compared to what was envisaged in the Restructuring Decision; it is actually much more costly.

(134) The CET1 ratio impact can also be used to compare the different scenarios. The difference between the CET1 ratio indicator and the capital loss indicator is that the former also takes into account the reduction in RWA: if a scenario generates a larger reduction in risk weighted assets, it has — for a given capital loss — a less negative effect on the CET1 ratio.

(135) The CET1 figures were provided by the UK authorities. Table 3 illustrates that the CET1 impact of the alternative package is slightly more significant. This seems to be the consequence of the fact that it involves the loss of much less assets. Hence, even if the capital loss is slightly smaller, is has a slightly more negative effect on the CET1 ratio.

(136) The alternative scenarios can be compared across total assets as well. The total asset impact of the alternative package is significantly smaller than under the commitment to divest Rainbow.

(137) The Restructuring Decision envisaged to divest a viable entity. In order to be a viable entity, Rainbow needed to have enough income generating assets and customers to bear the costs of its large branch network and infrastructure. Therefore, besides SME loans and deposits which were the focus of the measure, Rainbow's perimeter also included a large amount of retail loans and deposits.

(138) The alternative package does not envisage the transfer of the retail and other non-SME assets and liabilities. It is focused on achieving a transfer of part of the SME customers, with their assets (loans) and liabilities (deposits). The alternative package is therefore much more targeted in terms of amounts of assets transferred, but attempts to deliver a similar outcome on the UK SME banking market.

4.2.3.3 Preliminary conclusion on equivalence of the alternative package

(139) RBS has implemented all Commitments and Amended Commitments (other than Rainbow) from the Restructuring Decision and the Amended Restructuring Decision. In addition, from the date of the Restructuring Decision (14 December 2009), RBS has genuinely tried to divest Rainbow as evidenced by the successive procedures launched, the significant amount of resources involved and manpower dedicated to the Rainbow divestment.

(140) In doing so RBS has incurred significant costs (notably, the estimated costs of attempting to divest Rainbow, as described in recital (131)) which were considerably higher than what was anticipated in the Restructuring Decision.

(141) As claimed by the UK authorities, pursuing the trade sale process initiated in 2016 has significant execution risks, as referred to in recital (77). The completion of an eventual trade sale would be scheduled for […] at the earliest which would require a new extension of the current deadline of end-2017 to divest Rainbow.

([48]) The amount of GBP [1 – 3] billion was reconciled with the actual costs booked under the Williams & Glyn programme by an external consultant.

(142) Also, as described in recital (25), However, RBS did not receive any bid which comprised the full Rainbow perimeter as envisaged in the Amended Restructuring Decision.

(143) Based on its preliminary analysis, the Commission observes that the alternative package appears to be able to deliver an equivalent outcome with less execution risks.

(144) The Commission also notes that the alternative package does not seem to lighten the requirements on RBS. In terms of costs, besides the cost already incurred by RBS in the past, the implementation of the alternative package would impose an additional cost burden on RBS. The cumulative costs since 2009 would be significantly higher than what was implicitly expected by the Restructuring Decision.

(145) The alternative package, in combination with the already lost market shares, will result in total decrease of RBS market share in the SME market which is at least equivalent to what was envisaged in the Restructuring Decision. The concern that the very large 2008-2009 aid is used by RBS to consolidate or grow its market share in the already concentrated SME market would therefore be as much allayed as it would have been if the Rainbow divestment had been implemented as envisaged by the Restructuring Decision.

(146) The Commission also notes positively that the UK authorities will perform a market test to verify its feasibility conducted in parallel to the Commission's investigation procedure.

(147) Since the effect of this atypical alternative package is difficult to assess, the Commission is inviting interested parties to share their view on the alternative package as proposed.

(148) In the past the Commission has not accepted replacing the divestment of a business by a package of behavioural measures and direct payments to competitors. Therefore, the Commission intends to first give a possibility to interested parties to comment on the alternative package, before reaching a final conclusion. In particular, at first sight, the Commission has doubts whether the Incentivised Switching Scheme is large enough to ensure that a transfer of customers equivalent to a market share of 2 % of the SME market is reached with a high likelihood. It seems that a higher market share may have to be targeted, so that the actual outcome of the implementation of Measure B is not limited to a transfer of customers representing a market share of, for instance, merely 1 %.

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union, requests the United Kingdom to submit its comments and to provide all such information as may help to assess the aid/measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to potential recipients of the aid immediately.

The Commission informs the United Kingdom that it will inform interested parties by publishing this letter and a meaningful summary of it in the Official Journal of the European Union. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the Official Journal of the European Union and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.