



EUROPEAN COMMISSION

Brussels, 30.05.2012
C(2012) 3540

**Subject: State aid SA.34255 (2012/N) – Spain
Restructuring of CAM and Banco CAM**

Sir,

1. PROCEDURE

- (1) On 27 May 2011, the Spanish authorities submitted to the Commission a draft recapitalisation plan for Caja de Ahorros del Mediterráneo ("**CAM**"), in accordance with the solvency framework approved by the Spanish Government in February 2011¹. Pursuant to that recapitalisation plan, CAM requested EUR 2.80 billion from the *Fondo de Reestructuración Ordenada Bancaria*² ("**the FROB**") in the form of ordinary shares to be subscribed for in Banco BASE³, to which Banco CAM⁴ would contribute all its banking assets and liabilities in exchange for all of the bank's equity.
- (2) The Spanish authorities did not approve the recapitalisation plan submitted by CAM. As a consequence, on 22 July 2011 Spain notified to the Commission its intention to replace the governing bodies of both CAM and Banco CAM and provide them with a capital injection and liquidity support through the FROB⁵.

¹ Royal Decree-Law 2/2011 of 18 February 2011 which, inter alia, obliges all credit institutions to meet higher solvency levels (8% or 10% "capital principal" depending on some parameters) by 30 September 2011; deadline extendable under certain limited circumstances.

² The FROB was established, in the context of the financial crisis, to provide public support for the consolidation of the Spanish banking sector by, inter alia, strengthening the capital buffers of credit institutions. The Commission adopted on 28 January 2010 a decision not to raise objections on FROB as a recapitalisation scheme for fundamentally sound institutions (case N 28/2010, OJ C57 of 09.03.2010, p. 2). However, the present case is not covered by that decision, since it involves actions taken by the FROB outside of the recapitalisation scheme in respect of a non-fundamentally sound institution.

³ Banco Base was a special purpose vehicle, to which four merging savings banks (CAM, Caja de Ahorros de Asturias, Caja de Ahorros y Monte de Piedad de Extremadura and Caja de Ahorros de Santander y Cantabria) committed to contribute all of their banking assets and liabilities in exchange for ordinary shares. However, after the failure of the negotiations with the other three savings Banks, CAM acquired Banco Base and renamed it Banco CAM. The three other savings banks resolved to continue their integration separately.

⁴ Banco CAM is the entity to which CAM transferred all of its banking activities in July 2011.

⁵ The legal basis for those measures is Article 7. 2 of the Royal Decree-Law 9/2009 of 26 June 2009, sobre reestructuración bancaria y reforzamiento de los recursos propios de las entidades de crédito.

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- (3) By decision of 24 July 2011⁶, the Commission approved the proposed rescue measures for CAM and Banco CAM for a period of six months, pending the notification of a restructuring plan ("**the Rescue Decision**").
- (4) In September 2011, the Spanish authorities initiated an open and competitive tender process for the sale of Banco CAM. Many bidders were invited but only one of them – Banco Sabadell – completed the auction.
- (5) By its final bid in November 2011, Sabadell offered EUR 1 for Banco CAM and requested several State aid measures offered by the FROB and the Spanish Deposit Guarantee Fund ("**the DGF**").
- (6) On 30 December 2011, the Spanish authorities provided the Commission with the final version of the restructuring plan for CAM ("**Banco Sabadell's original Restructuring Plan**"). On 20 January 2012, the Spanish authorities notified to the Commission the following aid measures: a) an additional recapitalisation measure of EUR 2.45 billion – on top of the EUR 2.80 billion injected during the rescue phase, b) liquidity lines in the form of ECB-eligible collateral and guarantees up to EUR 12.5 billion and c) an asset protection scheme ("**APS**") that covers expected and unexpected losses on an impaired assets pool of EUR 24.6 billion.
- (7) Additional information was requested and submitted by the Spanish authorities in relation to Banco Sabadell's original Restructuring Plan on several occasions between 17 January and 13 April 2012. Those exchanges also led to modifications of Banco Sabadell's original Restructuring Plan and resulted in the Restructuring Plan that is assessed in the present decision ("**the Restructuring Plan**").
- (8) Spain has accepted exceptionally that the decision will be adopted in English.

2. DESCRIPTION OF THE FACTS

2.1. THE BENEFICIARY

- (9) CAM was a Spanish savings bank (*caja de ahorros*). Savings banks are credit institutions that have no shareholders but instead are governed by their members⁷. Profits made are used to strengthen their capital base and to fund social/charitable activities through their Obra Benéfico-Social ("**OBS**")⁸. In July 2011, CAM transferred all of its banking activities to a commercial bank, Banco CAM.
- (10) Banco CAM operates mainly in the regions of Valencia and Murcia, where its market shares in deposits are around 15% and 17% respectively. In December 2011, the bank had total assets of EUR 70 billion, 843 branches and 6,679 employees. At a national level its market share in deposits is around 2.8%.

⁶ Commission Decision in Case SA.33402, Financial assistance to be granted to CAM and Banco CAM, (OJ C 281, 24.09.11, p.14).

⁷ Including, *inter alia*, employees, depositors, founding members and public authorities of the regions where it operates.

⁸ OBS are charity institutions without a separate legal personality from the savings banks.

- (11) Banco CAM's main figures are:

Table 1: Banco CAM's main figures at 31.12.2011⁹

Total assets	70.8 billion EUR
Risk weighted assets	42.64 billion EUR
Loans to customers	45.65 billion EUR
Retail deposits	37.85 billion EUR
Employees	6,679
Number of branches	843

2.2. THE EVENTS TRIGGERING THE MEASURES

- (12) Banco CAM presents material weaknesses that threaten its solvency and future viability. In particular, it shows: a) significant liquidity constraints, b) increased assets impairments, c) low quality of assets, d) a decrease in profitability, e) low efficiency levels, and f) a lack of trust in its future as a stand-alone institution following the failure of the Banco Base project.
- (13) Accordingly, the Spanish authorities believe one of the main reasons why Banco CAM has run into difficulties was its distressed liquidity position. CAM depended almost entirely on ECB funding for the refinancing of its liabilities. Furthermore, retail customers began to shun Banco CAM following the failure of its integration into Banco Base¹⁰, with the deposit base decreasing considerably thereafter. In addition, the downgrading of the bank's rating to "non-investment grade" prevents it from accessing wholesale markets. Banco CAM is also facing significant funding maturities in the course of 2012-2014.
- (14) Another one of the main reasons why Banco CAM failed was its low quality of assets. The on-site inspections by the Bank of Spain ("**the BOS**") have revealed that the quality of its loan portfolio was low, presenting very high default rates (22.3% at December 2011) and it has a high concentration of investment in high-risk sectors (in particular Real Estate Development or "**RED**" and real estate related assets in general). In addition, it has frequently used refinancing operations, avoiding a haircut in problematic assets and without applying viability criteria, which introduces an additional uncertainty factor on the already deteriorating portfolio.
- (15) On 24 May 2010, CAM announced its intentions to integrate with another three savings banks into a Sistema Institucional de Protección ("**SIP**"), known as Banco BASE. On 30 March 2011, the assemblies of those three other savings banks voted against the integration with CAM. Those votes ended the Banco BASE project, which triggered the need for further recapitalisation measure for Banco CAM in order to reach a 10% level of "capital principal" to meet the new solvency requirements established by the Royal Decree-Law 2/2011.
- (16) On 1 April 2011, the credit rating agency Fitch downgraded Banco CAM to non-investment grade from BBB+ to BB+, whilst Moody's lowered the

⁹ Source: Restructuring Plan submitted by the Spanish authorities on 30 December 2011
¹⁰ See recital (15)

credit rating from Baa2 to Ba1, which made access to wholesale financing almost impossible for Banco CAM.

- (17) The BOS requested CAM to provide a new recapitalisation plan as a standalone bank before 11 April 2011. On 7 April 2011 CAM presented a recapitalisation plan requesting EUR 2.80 billion from the FROB in order to reach the 10% "capital principal" level and included the incorporation of Banco CAM to which all of its banking activities would be contributed.
- (18) The Spanish authorities did not approve the recapitalisation plan submitted by CAM and the FROB took over both CAM and Banco CAM by granting rescue aid ("the Rescue Measures", as detailed in section 2.3 below) in the form of a recapitalisation of EUR 2.80 billion (or 5.8% of its risk weighted assets ("RWA")) and a liquidity line of EUR 3 billion. The FROB controls 100% of CAM following that recapitalisation.
- (19) Shortly thereafter, the Spanish authorities initiated a competitive tender process to restructure Banco CAM through its disposal to a competitor. Only one bidder - Banco Sabadell - completed the tender process with a final bid of EUR 1. Banco Sabadell also requested all of the additional aid measures offered by the FROB and the DGF.
- (20) Furthermore, Banco CAM failed the 2011 EU-wide stress test exercise run by the European Banking Authority ("EBA"). Based on 31 December 2010 data, the stress test showed the core Tier 1 ratio of Banco CAM would fall to 3%¹¹ in terms of its RWA under a two-year time horizon.
- (21) Finally, losses for 2011 of up to EUR 2.43 billion reduced Banco CAM's equity, leaving its solvency ratio at 7.76%.

2.3. THE RESCUE AID MEASURES

- (22) On 22 July 2011, the BOS, in accordance with Article 7.2 of the Royal Decree-law 9/2009 of 26 June 2009, resolved to replace both CAM and Banco CAM's management with the FROB and to implement the rescue measures described in recitals (23) and (24) which were temporarily approved by the Commission in the Rescue Decision:

2.3.1. The recapitalisation measure

- (23) Banco CAM's failure to meet the 10% RWA "capital principal" solvency ratio required under Royal Decree-Law 2/2011 triggered the need for its recapitalisation by the FROB. That recapitalisation was achieved through the issuance of EUR 2.80 billion of ordinary shares, representing 5.8% of Banco CAM's RWA. As the only holder of ordinary shares, the FROB has 100% control of Banco CAM.

2.3.2. The liquidity measure

- (24) In order to meet Banco CAM's present and expected liquidity needs, the FROB granted, against adequate collateral, a EUR 3 billion credit facility

¹¹ The threshold established by the EBA for passing the test was set at 5% RWA of core Tier 1 ratio. Nonetheless, if the bank's generic provisions had been considered, its core Tier 1 ratio would have risen to 5.1%.

to Banco CAM with an interest of 100 basis points on top of the ECB's marginal credit facility¹².

3. MAIN FEATURES OF THE FROB

- (25) The FROB was established, in the context of the financial crisis by Royal Decree-Law 9/2009 of 26 June, *sobre reestructuración bancaria y reforzamiento de los recursos propios de las entidades de crédito* to provide public support in the form of capital resources for the consolidation of the Spanish banking sector and to manage the orderly restructuring of non-viable credit institutions. The beneficiaries of the FROB are both fundamentally and non-fundamentally sound credit institutions established in Spain. Banco CAM falls into the second category.
- (26) The FROB has legal personality and full public and private capacity to implement its objectives. The FROB has an established original funding of EUR 15 billion of which EUR 12.75 billion is contributed by the State Budget and the rest (EUR 2.25 billion) has been contributed by the DGF. In addition, the FROB may resort to outside funding to finance its activities; however, outside funding may never exceed three times its original funding (with authorisation from the Finance Minister, FROB can increase its initial funding up to six times).

4. THE RESTRUCTURING OF BANCO CAM

- (27) According to the Spanish authorities, for the resolution of Banco CAM, the main alternative to the tender procedure was the bank's orderly wind-down.

4.1. THE WIND-DOWN ALTERNATIVE SCENARIO

- (28) The Spanish authorities have run different liquidation scenarios to evaluate the cost of an orderly winding-down of Banco CAM. The initial winding up scenario was developed based on the assumption of the sale of all the assets, right and liabilities in part. The main assumption used for this initial scenario is based on the sale of loans portfolio and real estate assets to private investors, using a table of discounted values for each asset class with a 3 to 5 year time horizon. The initial cost of liquidation was estimated between EUR 16.5 billion under a best case scenario and EUR 19.5 billion under a more prudent scenario.
- (29) In addition, the Spanish authorities ran two other liquidation scenarios based on a good bank/bad bank split, and with the following common assumptions:
 - i) the entire branch network would sold at the start with the retail deposits and best quality assets;

¹² Currently at 1.75%.

ii) a run-down of the remaining assets over a period of 5 to 10 years, so as to minimize capital losses. The residual assets could be set in a balance sheet of a special purpose vehicle owned by the DGF;

iii) the subordinated debt sold through the retail network would be subject to a haircut of 100%.

- (30) Under the first scenario, the entire branch network would be sold with the retail deposits at a premium of 4%¹³, as well as with assets up to the amount of retail deposits along with a selection of the highest quality assets available in the Banco CAM's present balance sheet, i.e. certain debt securities, performing corporate loans and most mortgages to individuals. The average haircut assumed¹⁴ on the book value of the loans would amount to 42.5%. The cost of that scenario was estimated at EUR 19 billion.
- (31) Under the second scenario, no loans would be included in the scope of the sold activity and therefore cash would be provided along with the debt securities already included under the first scenario. The liquidation cost of that scenario was estimated at EUR 19.3 billion.

4.2. THE TENDER PROCEDURE

- (32) As from the date of its intervention in Banco CAM in July 2011, the FROB, advised by Merrill Lynch Capital Markets España, S.A., S.V. ("**BofAML**"), started drawing up a restructuring plan for Banco CAM. Under that plan, it was envisaged that Banco CAM should be able to overcome its financial difficulties (see (12) above), by either merging with another financial institution or by transferring all of its assets and liabilities to one or more credit institutions.
- (33) According to the Spanish authorities, the FROB conducted an open, competitive, transparent, objective and non-discriminatory tender procedure with the aim of offering equal opportunities to all parties potentially interested in acquiring Banco CAM ("**the Tender Procedure**"). The Tender Procedure, as described in recitals (36) to (39), was intended to guarantee greater efficiency in the use of public funds.
- (34) The Tender Procedure originally included the possible granting, by the FROB, of the following aid measures ("**the initial Restructuring Aid Measures**"):
- the reinforcement of Banco CAM's solvency through the subscription by the FROB of equity in the form of ordinary shares;
 - the setting up of an Asset Protection Scheme ("**APS**"), with a pre-defined portfolio of EUR 24.6 billion; and
 - liquidity support measures.

¹³ Retail deposits (EUR 23.3 billion out of a total EUR 39.6 billion of deposits from customers) are considered core, non-volatile deposits.

¹⁴ The sale value of the loans assumes the discount that a specialised investor would require to obtain a 22.5% Internal Rate of Return in a time period of 3 to 5 years, factoring expected loss assumptions and current market circumstances.

- (35) In order to minimise the impact of the State support for the restructuring of Banco CAM, both the conditions and amount of the initial Restructuring Aid Measures would be determined by the Tender Procedure. Priority would be given to the bidder requesting initial Restructuring Aid Measures involving the least use of public resources, after applying pre-defined weighting criteria for each of the initial Restructuring Aid Measures which were made known to all the bidders.
- (36) Over the month of August 2011, the FROB, with the assistance of BofAML launched the Tender Procedure. BofAML contacted 76 financial institutions to participate in the Tender Procedure, out of which 24 examined the preliminary information describing Banco CAM's economic and financial standing and were informed about the details of the initial Restructuring Aid Measures.
- (37) On 5 September 2011, the first phase of the Tender Procedure began with a letter to the institutions that had shown initial interest in possibly bidding for Banco CAM. They were asked to submit an initial expression of interest, based on which the FROB selected the potential bidders, which were then invited to participate in the second phase of the Tender Procedure.
- (38) On 20 October 2011, the second phase of the Tender Procedure began with the request to the seven potential final bidders¹⁵ to submit their binding offers by 24 November 2011. Prior to submitting their bids, the bidders were able to: (i) examine financial, tax, legal and employment due diligence reports; (ii) examine Banco CAM's credit files; (iii) access an electronic data room containing information on Banco CAM's business; and (iv) hold meetings with Banco CAM's management and the teams responsible for preparing the due diligence reports. They were also able to put questions to Banco CAM and its advisers.
- (39) Finally, only one bidder - Banco Sabadell¹⁶ - completed the tender process. It submitted a final bid of EUR 1, which reflected the fact that the equity position of Banco CAM was negative. Banco Sabadell also requested all of the additional aid measure offered by the FROB. In parallel, the Spanish authorities decided that the capital increase and the APS described in recital (34) would be provided by the DGF¹⁷ instead of the FROB.

4.3. THE RESTRUCTURING PLAN FOR BANCO CAM

- (40) The restructuring plan put together by the FROB and Banco Sabadell was submitted to the Commission on 30 December 2011 and includes the following of measures:

¹⁵ Santander, BBVA, LaCaixa, BancoSabadell, Barclays, JC Flowers and Ibercaja.

¹⁶ The results of the valuation applied by the FROB, known by all bidders, to the bid presented was: Sabadell -3,991 points.

¹⁷ Due to legal changes in Spain, the three pre-existing DGF (for cajas, banks and credit cooperatives) merged in October 2011 into one and the Spanish authorities decided that as from that moment on it would take care of the support measures for the restructuring of banks in Spain. It should be noted that the three pre-existing DGFs had already restructuring powers.

4.3.1. The transfer of Banco CAM's assets and liabilities to Banco Sabadell

- (41) Banco CAM undertook under a Sale Agreement ("**the Disposal**") dated 7 December 2011, to transfer all its shares, assets and liabilities ("**the Business**") to Banco Sabadell. The full merger foreseen of Banco CAM into Banco Sabadell is explained in section 4.3.7 below.

4.3.2. The financial support measures offered to Banco Sabadell

- (42) Banco Sabadell's final offer to purchase Banco CAM was conditional on, *inter alia*, the FROB providing the initial Restructuring Aid Measures, as defined in a protocol signed by Banco CAM, Banco Sabadell and the FROB on 7 December 2011 ("**the Protocol**"). Those measures comprise:
- The APS: a second-loss scheme, with Banco CAM covering the total losses from the first tranche with existing provisions (EUR 3.9 billion). The DGF will cover 80% of the losses in the second tranche (between EUR 3.9 billion and EUR 24.6 billion), over a 10-year period with retroactive effect from 31 July 2011¹⁸. In exchange for the protection afforded by the APS, its beneficiary will have to pay an annual fee of 0.01% on the total outstanding amount of the APS over the end of the annual period. The breakdown of the portfolio covered by the APS, by type of assets, is as follows:

Table 2: APS covered portfolio¹⁹

Data as of 31 July € Millions	Money Arranged	Available	Guarantee	Net Exposure	Provisions	Exposure net of provisions
Credit Portfolio - Individual Level						
Real Estate Development loans	15,666	502	33	16,201	2,597	13,604
Mortgage-backed loans (substandard)	1,590	85	0	1,675	159	1,516
SME Loans	3,797	35	4	3,836	156	3,680
Written off loans	0	0	0	360	360	0
Subtotal				22,072	3,272	18,800
Real Estate/Tangible Assets - Individual Level						
IPRA's and rest of non-current assets held for sale				1,769	480	1,289
Stock				0	0	0
Property investments (rents)				610	78	532
Subtotal				2,379	558	1,821
Shares in Real Estate companies				193	52	141
Subtotal				193	52	141
Total				24,644	3,882	20,762
APS remuneration of 0.01%						

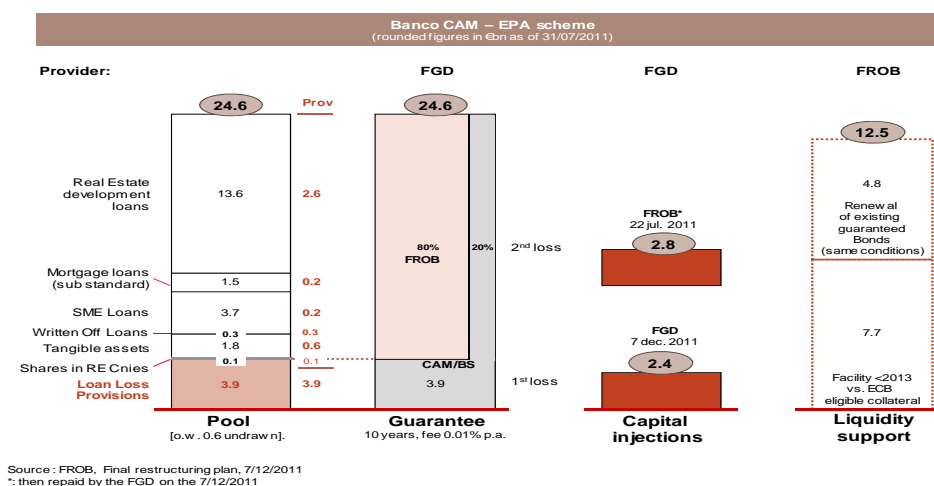
- An additional recapitalisation of EUR 2.45 billion in the form of ordinary shares.
- A liquidity support provided by the FROB for a total amount of up to EUR 12.5 billion, in the form of: i) guarantees equivalent to those currently granted under the Spanish Guarantees Scheme ("GDD" scheme) for a maximum amount of EUR 4.8 billion and ii) guaranteeing collateral to be used against the ECB/BOS up to 2013 for an amount of EUR 7.7 billion.
- A contingent grant for up to EUR 724 million, which would be triggered only if, after the acquisition by Banco Sabadell, Banco CAM could no

¹⁸ As of the time of the decision, the level of realised losses since July 2011 have not materialised above the level of provision (first tranche in the APS).

¹⁹ Source: Restructuring Plan submitted by the Spanish authorities on 30 December 2011

longer benefit from the accumulated deferred tax assets as of 31 December 2011. According to the Spanish authorities it is very unlikely that Banco CAM's deferred tax assets will not be available after the acquisition by Banco Sabadell.

Table 3: Overview of the initial Restructuring Aid Measures



4.3.3. The repayment of the rescue aid

- (43) The Protocol regulates the terms and conditions under which the Rescue Measures will be repaid. Accordingly, only the liquidity line is considered as rescue aid and the capital injection is considered as part of the Restructuring Aid Measures. In fact, once the Restructuring Aid Measures have been definitively granted and the Disposal completed, that liquidity line will automatically be cancelled and repaid by Banco CAM to the FROB.

4.3.4. The treatment of hybrid capital

- (44) Preference Shares have been issued by CAM for a total amount of EUR 1.31 billion and Banco CAM's subordinated debt amounts to EUR 548.94 million²⁰. Those which remain outstanding are both held mainly by retail investors ("**Hybrid Securities**"). Coupons on the Hybrid Securities are paid quarterly or half-yearly, provided Banco CAM has enough distributable profits.
- (45) Coupon payments have been made since the Hybrid Securities were first issued, including payments made up to 3Q11.
- (46) Following Banco CAM's rescue by the BOS and in light of the Rescue Measures, the Commission requested, in its Rescue Decision, to be consulted prior to: a) further coupon payments and b) any buy-backs on the Hybrid Securities.

²⁰

EUR 548.94 million of which EUR 321.04 million are held by retail investors and EUR 227.9 million held by institutional investors with no clause on suspension of payments due to losses or otherwise.

- (47) As a result, on 24 February 2012, the Commission agreed to a buy-back of a total amount of EUR 167.25 million of subordinated debt held by institutional investors for a price over nominal of 75%.
- (48) Banco CAM announced on 23 September 2011, through the National Stock Market Commission ("CNMV"), that the coupon payment on the Hybrid Securities due on 25 September 2011 would be suspended. Spain has agreed to suspend any payment of coupons until the Commission has decided on the restructuring aid to Banco CAM.
- (49) Finally, as a consequence of the rescue of Banco CAM by BOS, CAM's preference shares have a market value of 0.

4.3.5. The treatment of cuotas participativas in CAM

- (50) On 26 July 2008, CAM issued 50 million Cuotas participativas²¹ ("**Cuotas**") with a total value of EUR 292 million (nominal value of EUR 100 million and a premium of EUR 192 million). The day before FROB's take over of Banco CAM, CAM's governing council decided to redeem the Cuotas by buying them back with a haircut of 18.5% of their nominal value. However, after the takeover the FROB suspended the measure. On 9 December 2011, trade in the Cuotas was suspended.
- (51) When CAM transferred the Business into Banco CAM without any compensation, the Cuotas remained with CAM, as they are equity instruments of savings banks (cajas)²². Therefore, since the link between CAM and Banco CAM was lost following the recapitalisation by the FROB, Banco CAM's sale to Banco Sabadell is not in the interest of the Cuotas' holders.

4.3.6. CAM and limited continuation of its Obra Benefico-Social

- (52) Following the FROB's EUR 2.8 billion capital injection during the rescue phase, CAM lost all equity interest in Banco CAM, which became entirely controlled by the FROB. Pursuant to Spanish law, CAM, formerly a savings bank, will need to convert into a special foundation (hereinafter referred to as "**the Foundation**") whose main goal will be to manage the **OBS** of CAM and whose resources will be substantially lower than they were previously²³. The Foundation will not hold a banking license and will not carry out any banking activity.
- (53) Furthermore, upon completion of the disposal, Banco CAM will be dissolved and its link with CAM's OBS will also cease to exist. As a commercial bank, Banco CAM has no legal obligation to establish a separate OBS or to finance CAM's OBS. However, Banco Sabadell wishes to have an active presence in the Foundation for commercial reasons and having regard to the importance of the Foundation as a charitable

²¹ Cuotas Participativas are instruments with characteristics similar to equity shares without voting rights for Spanish savings banks. The 50 million cuotas participativas were distributed as follows: 32.8 million to retail investors, 1.7 to employees of CAM and 15.5 to investors.

²² Spanish legislation does not allow non-savings bank entities to issue Cuotas.

²³ CAM's OBS activity will be funded by its own existing cash resources (EUR 83.8 million) following its Strategic Plan 2012-2015. In 2012, the CAM's OBS budget is EUR 16.2 million and for 2013-2015 the budget decreases to EUR 13.7 million per annum. The number of employees and active centres will also decrease significantly (52.2% and 58.1% respectively).

institution in regions where Banco Sabadell will carry out banking activities.

4.3.7. Banco CAM'S restructuring and integration into Banco Sabadell

(54) The main elements of the Banco Sabadell's original Restructuring Plan, were as follows:

- Full integration of the activities of Banco CAM into Banco Sabadell, by migrating towards Banco Sabadell's systems²⁴. Central services will be unified at Banco Sabadell's headquarters in Sabadell (Barcelona) with the establishment of a centre (as part of the Corporate services), in Alicante to coordinate regional operations of the group.
- The integration will be implemented in three separate phases. *Phase one*²⁵ will be devoted to the continuation of the ordinary business of Banco CAM and the preparation for the integration in Phase two under the supervision of a steering committee composed of directors from Banco Sabadell. *Phase two*²⁶ will integrate Banco CAM into the Banco Sabadell Group. During Phase two it is expected that around 2.231 employees of Banco CAM will be made redundant. During *Phase three*²⁷ a Corporate centre will be established in Alicante and the legal merger will be registered.
- Maintenance of a separate retail footprint in Banco CAM's Core Regions, namely, Valencia and Murcia ("**the Core Regions**") and in the Balearic Islands, where the merged entity will operate under a local brand name that still needs to be decided. In other regions the merged entity will operate under Banco Sabadell's brand name.
- Integration of the branch networks of Banco Sabadell and Banco CAM where they overlap. Given Banco CAM's significant presence in the Core Regions and Balearic Islands, it is likely that branch closures will affect former Banco Sabadell branches to a significant extent. Outside the Core Regions and Balearic Islands, consolidation will be based on branch profitability and will affect former Banco CAM branches to a very large extent. In particular, it is expected that 86% of Banco CAM branches outside the Core Regions will be closed and 28% in the Core Regions and Balearic Islands.
- Banco CAM's (performing) credit portfolio for the duration of the restructuring plan (2012-2015) in the Core Regions and Balearic Islands will be limited and is not forecast to exceed the following growth rates per annum:
 - i. **Consumer credit:** maximum 2.5% annual growth rate;
 - ii. **SME & Corporate:** maximum 6% annual growth rate;

²⁴ i.e. risk, human resources, finance, treasury and control.

²⁵ Phase one started on the date of the approval of Banco Sabadell's bid for CAM and will run until the date of the Disposal.

²⁶ Phase two shall commence on the date of the Disposal until the integration of the IT/OPS.

²⁷ Phase three shall go from the integration of the IT/OPS onwards.

iii. **Residential mortgages**²⁸: no growth (maximum 0% annual growth rate);

iv. **Developer**: a reduction of 15% per annum.

5. POSITION OF THE SPANISH AUTHORITIES

5.1. POSITION OF THE SPANISH AUTHORITIES ON THE RESTRUCTURING PLAN

(55) Spain is of the view that a positive decision should be adopted by the Commission on the Restructuring Plan and the Restructuring Measures, stating that the State aid elements of the Restructuring Plan are compatible with the provisions of the TFEU.

(56) Regarding the expected losses on the portfolio covered by the APS (hereinafter referred to as "**the covered portfolio**"), the Spanish authorities have determined that the expected losses on the covered portfolio are EUR [...] billion²⁹.

(57) Furthermore, the Spanish authorities believe that the Restructuring Plan complies with the Commission's requirements in its Restructuring Communication³⁰ as it:

- contains a thorough analysis of Banco CAM's financial situation and an explanation of the grounds for the FROB's intervention.
- contains an analysis of the different options for the restructuring of Banco CAM and an explanation of the reasons why the Disposal is the most appropriate and efficient solution in economic terms. In particular, the winding-down option would be more expensive under various alternative scenarios.
- describes the process for selecting Banco Sabadell via the Tender Procedure in accordance with the point 20 of the Restructuring Communication and point 49 of the Banking Communication³¹. It also describes the criteria for selecting and evaluating the various bids submitted.
- complies with the burden-sharing principle, guaranteed by the existence of an open and competitive procedure in which the successful bidder will be the one that requires the least public support and, therefore, the negative price paid by the successful bidder is the market price and does not entail aid to the buyer.

²⁸ The growth rate is net of new mortgages generated by migrating existing RED loans.

* Business secret: contains confidential information, where possible, figures have been replaced by ranges in [brackets].

²⁹ Ernst & Young report, Estimación de la pérdida esperada de la cartera de CAM cubierta por el Esquema de Protección de Activos, 9 December 2011.

³⁰ Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195 of 19.8.2009, p. 9.

³¹ Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis, OJ C 270 of 25.10.2008, p. 8.

- provides for a process of restructuring and significant integration of the Business so that its long-term viability can be assured, as Banco Sabadell is one of the most solvent entities in the Spanish financial system.

5.2. COMMITMENTS OF THE SPANISH AUTHORITIES

- (58) The Spanish authorities have undertaken a number of commitments related to the implementation of the restructuring plan, in particular on the liquidity measures agreed during the sale process, safeguards relating to the management of the assets covered under the APS, and the restructuring measures of Banco CAM. The commitments by the Spanish authorities have been presented in a document entitled: "*Term sheet of the Spanish authorities' commitments for the approval of CAM restructuring plan by the European Commission*" (hereinafter referred to as "**The Term Sheet**")³². Those commitments are summarised hereunder.
- (59) The Spanish authorities commit to withdraw the ECB/BOS eligible collateral measure. As part of the tender outcome, the FROB guaranteed Banco CAM eligible collateral to obtain EUR 7.7 billion from the ECB/BOS. Following the recent three-year Long Term Refinancing Operations conducted by the ECB in December 2011 and February 2012, Banco CAM obtained a total amount of EUR 16 billion maturing in 2015, thereby, rendering largely unnecessary the guarantee provided by the FROB on eligible collateral for Banco CAM. However, had the BOS not commit to withdraw the measure, the FROB would still have had to provide collateral to the combined entity if Banco CAM's collateral were to go below EUR 7.7 billion.
- (60) The Spanish authorities commit to withdraw the Government Guaranteed Bonds ("**GGBs**") measure. The measure was meant to ensure replacement of EUR 4.8 billion GGBs issued by CAM in 2009 under the old Spanish Guarantee Scheme maturing in 2012 and 2014. The Spanish authorities agreed that to the extent that Banco CAM is unable to extend its EUR 4.8 billion of GGBs upon maturity, the FROB would provide it with a) guarantees or b) funding up to a maximum amount of EUR 4.8 billion. After the reintroduction of the Spanish Guarantee Scheme on 9 February 2012, Banco CAM asked for and was awarded between February and March 2012 EUR 4 billion under the new Scheme,. As a consequence, the measure granted could still cover an additional EUR 0.8 billion.
- (61) The Spanish authorities commit to reporting yearly on the evolution of the APS provided by the FROB as well as on the termination of Banco CAM as a legal entity. Those reports will start from the date of the present Decision until the date on which the protection offered by the APS is terminated.
- (62) In relation to the APS management, Spanish authorities commit to proposing an appropriate incentive mechanism within the combined entity for the work-out of the assets covered by the APS. The proposed mechanism will be reviewed by the Commission. The incentives will be designed in a way to ensure that, although 80% of the losses stemming

³²

See Annex 1

from those assets are not borne by the new entity, they will be managed with the same diligence and care as the other assets of the bank.

- (63) The Spanish authorities commit to providing additional safeguards in the management of the APS. In particular, the auditor of the APS will be appointed by the DGF and cannot be the auditing firm of the buyer or Banco CAM. Furthermore, on any transaction above EUR 3 million involving the disposal of assets under the APS, the DGF shall be entitled to assign the pre-emptive right granted to it in clause 10.4 of the Protocol to any third party under the same terms and conditions of the proposed transaction to be completed between the combined entity and a third party proposed by the combined entity. The same entitlement to assign pre-emptive rights under the same conditions shall also extend to the members of the Comisión Mixta³³ of the DGF.
- (64) The Spanish authorities commit to enhancing Banco CAM's restructuring in its Core Regions, namely, Valencia and Murcia, so as to avoid that the footprint of the resulting entity would be bigger, in terms of branches, than Banco CAM's original footprint in those territories. Spanish authorities also commit to enhancing Banco CAM's restructuring in the region of Balearic Islands. It means, based on the restructuring plan, that the following branches of the combined entity will close:
- Valencia: 116 closures out of a total of 514 branches;
 - Murcia: 26 closures out of a total of 175 branches;
 - Balearic Islands: 31 closures out of a total of 96 branches.
- (65) Furthermore, based on the Restructuring Plan, the Spanish authorities commit to the closure of 283 branches of the combined entity in the rest of Spain (out of a total of 1495 branches) and 8 branches abroad (out of a total of 54).
- (66) Those closures represent 45 additional branches compared to Banco Sabadell's original Restructuring Plan, bringing the total branch reduction in CAM's core areas to 22% of the existing combined entity or 28% of Banco CAM considered in isolation. Total branch network restructuring in Spain amounts to 20% of the existing combined entity and 49% of Banco CAM considered in isolation.
- (67) In addition, the combined entity will not carry out any new expansion of economic activities or any aggressive commercial policy while the aid is in place nor will it use the fact that it is being supported by the FROB in any way for the duration of the APS.
- (68) As regards lending to activities other than those covered by the APS, Spain commits to the projections it has submitted to the European Commission on 9 March 2012, which will be in force for the duration of the restructuring plan (2012-15). The commitment therefore means that over 2012-2015, the loan portfolios (loans performing) in Banco CAM's

³³

The Comisión Mixta consists of 5 members: 2 members appointed by DGF, 2 members appointed by Banco Sabadell and 1 member appointed by the APS auditor.

Core Regions and the Balearic Islands shall not exceed the following growth rate per annum:

- Consumer credit: maximum 2.5% annual growth rate;
 - SME & Corporate: maximum 6% annual growth rate;
 - Residential mortgages: no growth, unless they are generated by migrating existing Real Estate Development ("**RED**") loans;
 - Developer: a reduction of 15% per annum.
- (69) The Spanish authorities commit to implement the strategy approved by the Commission to decrease Banco CAM's portfolio of subsidiaries linked to RED loans, in line with the reduction of the RED portfolio covered by the APS.
- (70) Furthermore, in order to ensure that the various commitments are duly implemented during the implementation of the restructuring plan, the Spanish authorities commit to the appointment of a monitoring trustee in charge of monitoring all the commitments undertaken by the Spanish authorities and Banco Sabadell towards the Commission. The trustee will be appointed by Banco Sabadell, and must be endorsed by the Commission. The trustee must be independent of the merged entity and be remunerated by the merged entity. The monitoring trustee will report to the European Commission.

6. ASSESSMENT OF THE AID

6.1. EXISTENCE OF AID AND POTENTIAL BENEFICIARIES

6.1.1. Existence of aid

- (71) Article 107(1) TFEU lays down that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (72) The Rescue Measures (recapitalisation measure of EUR 2.8 billion and the liquidity line of EUR 3 billion) were already analysed in the Rescue Decision, where the Commission concluded that they constitute State aid.
- (73) The State guarantee on liabilities was granted under the Spanish Guarantee scheme which was approved in the Decision of 9 February 2012. In that decision the Commission concluded that guarantees given under that scheme constitute State aid.
- (74) As specified under clause A of the Term sheet, the Spanish authorities committed that Banco Sabadell will not make use of the liquidity measures detailed in recital (42). Accordingly those liquidity measures are no longer in force and do not need to be assessed.

- (75) Therefore the aid measures to be assessed under the existence of aid are the additional recapitalisation measure, the impaired asset measure and the tax relief measure (the "**Restructuring Aid Measures**").

The additional recapitalisation measure

- (76) As indicated in recital (39), an additional recapitalisation of EUR 2.4 billion will be provided to the Business by the DGF. The Commission considers that the intervention of the DGF constitutes State aid within the meaning of Article 107(1) TFEU. That measure is to be financed through State resources, is imputable to the State, is selective in nature, and provides Banco CAM with a clear advantage distorting or threatening to distort competition and affecting trade between Member States.
- (77) **As to the State resources**, under the Commission's decisional practice³⁴, all the financial means by which the public sector may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector, fall under Article 107(1) TFEU, provided that they constantly remain under public control, and are therefore available to the competent national authorities. In the case at issue, the members' contributions which finance the DGF are mandatory and determined by law up to a predetermined level.
- (78) **As regards imputability**, the Court of Justice³⁵ has clarified that imputability to the State of an aid measure taken by a prima facie independent body (for instance, a public undertaking) can be inferred from a set of indicators arising from the circumstances of the case, such as the fact that the body in question cannot take the contested decision without taking into account the requirements of the public authorities, or the fact that, apart from factors of an organic nature which link it to the State, it has to take into account the directives issued by the State before taking the contested decision. Other indicators might, in certain circumstances, be relevant in concluding that an aid measure taken by a public undertaking is imputable to the State³⁶.
- (79) In the case at issue, the recapitalisation measure is part of a set of measures proposed by the Spanish authorities to potential buyers in the context of the tender process for the Business. The initial intention of the Spanish authorities was that the capital would be provided by the FROB, whose actions are undisputedly imputable to the State. The decision to have the DGF provide the capital was taken at a later stage, when the Spanish authorities decided to use the DGF as the vehicle to provide support measures for the restructuring of banks in Spain³⁷. There is therefore no doubt that the decision to provide capital by the DGF was taken following a requirement of the public authorities and that it is imputable to the State.
- (80) According to well-established principles of EU law, if capital is made available to an undertaking on conditions better than normal market

³⁴ See Case NN 61/2009 Rescue and restructuring of Caja Castilla-La Mancha, OJ C 289, 26.10.10, p. 1.

³⁵ Case C-482/99 *France v Commission ("Stardust Marine")* [2002], ECR I-4397, paragraph 55. See also Case C-303/88 *Italy v Commission* [1991] ECR I-1433, paragraphs 11 to 13.

³⁶ See Case C-482/99 *France v Commission ("Stardust Marine")* [2002] ECR I-4397, paragraph 56.

³⁷ See footnote 17 above.

conditions that capital injection favours the undertaking. In order to determine whether such advantage is granted, the Commission applies the market economy investor principle, and assesses "*whether a private investor would have entered into the transaction in question on the same terms*".³⁸ The attitude of the hypothetical private investor is that of a prudent investor,³⁹ whose goal of profit maximisation is tempered with caution about the level of risk acceptable for a given rate of return.⁴⁰

- (81) It is clear in the specific case that the DGF did not behave as a market economy investor in providing the additional recapitalisation, since there will be neither repayment of the principal amount of the recapitalisation measure nor any form of remuneration. There is therefore nothing to indicate that profit maximisation played any role whatsoever in the intervention of the DGF. The Commission therefore considers that the DGF did not behave as a market economy operator when it injected capital into Banco CAM. The business carried out within Banco CAM has accordingly benefited from an advantage within the meaning of Article 107(1) TFEU since it could not have obtained a comparable recapitalisation of an equivalent scale and on similar terms under normal market conditions.
- (82) The measure is selective as it solely benefits a specific entity – the Business – and that will be continued after the sale.
- (83) The measure distorts competition as it places the Business after its sale to Banco Sabadell in a beneficial position vis-à-vis other competing banks by strengthening its capital position compared to its competitors, in particular in the Core Regions of Banco CAM.
- (84) Given the position of the Business in the Spanish financial sector, where that sector is open to intense competition at the level of the Union, and the fact that the Business is competing with a significant number of subsidiaries and branches of foreign banks in Spain, the Commission considers that any advantage from State resources would have the potential to affect intra-Union trade within the meaning of Article 107(1) TFEU.

The Assets Protection Scheme

- (85) The APS is a second-loss scheme with the first-loss tranche made up with the existing provisions of Banco CAM, while the DGF covers 80% of the losses in the second tranche. As argued in recital (77), the guarantee given by the DGF involves State resources.
- (86) Given that the first tranche is below the expected losses of the covered portfolio, the DGF will have to cover losses. The APS therefore provides a selective advantage to the Business as it favours the Business by indemnifying 80% of the losses exceeding the first tranche, and by providing a capital relief to the Business. Given the types of assets covered

³⁸ Judgment in Joined Cases T-228/99 and T-233/99 *Westdeutsche Landesbank GZ v Commission* [2003] ECR II-435, paragraph 245.

³⁹ Case C-482/99 *France v Commission* [2002] ECR I-4397, paragraph 71.

⁴⁰ Joined Cases T-228/99 and T-233/99, already cited, paragraph 255.

(which are highly impaired), no market investor would be willing or able to guarantee the covered portfolio.

- (87) The APS measure distorts competition and affects trade within the meaning of Article 107(1) TFEU for the reasons set out in recitals (83) and (84).

The contingent grant measure

- (88) The contingent grant for up to EUR 724 million will only be triggered if, after the acquisition by Banco Sabadell, Banco CAM can no longer benefit from deferred tax assets accumulated as of 31 December 2011. Given that such grant would involve the Member State foregoing resources that it would ordinarily have had available to it, the Commission considers that the measure involves the use of State resources.
- (89) The Commission takes note of the statement of the Spanish authorities that the probability of that event occurring is very small. Nevertheless, that contingent grant measure constitutes an advantage for the Business, as it clearly constitutes a binding commitment of the Spanish authorities to provide State resources if a certain event, whose occurrence cannot be excluded, takes place. The grant measure provided assurance to potential buyers on the value of the Business, facilitating its sale and consequently the continuation of its economic activities.
- (90) The contingent grant measure distorts competition and affects trade within the meaning of Article 107(1) TFEU for the reasons set out in recitals (83) and (84).

Conclusion

- (91) The Commission therefore considers that the Restructuring Aid Measures constitute State aid within the meaning of Article 107(1) TFEU.

6.1.2. Potential beneficiaries

- (92) The Commission identifies three parties that could potentially benefit from the aid: 1) the purchaser of the Business, Banco Sabadell; 2) Banco CAM; 3) the Business itself (the economic activities transferred to the buyer).
- (93) With regard to the purchaser of the Business, Banco Sabadell, the Commission needs to assess whether the aid measures have been granted to the buyer. According to point 49 of the Banking Communication, in order to ensure that no aid is granted to the buyer of a financial institution sold by the State, it is important that certain requirements are met, and in particular that i) the sale process is open, transparent, non-discriminatory and unconditional, ii) the sale takes place on market terms, and iii) the State maximises the sale price for the assets and liabilities involved.
- (94) On the basis of the information provided by Spain as detailed in section 4.2, the Commission considers that the Tender Procedure was an open and non-discriminatory tender which resulted in the best bid winning the tender. No other participant made an offer requesting less public support.

Therefore the fact that the offer made by Banco Sabadell does not correspond to the (negative) accounting value of Banco CAM does not preclude that the sale price reflects market value. The Commission has, therefore, no reason to believe that the offer made and the price paid did not reflect the market price. Consequently, the Commission concludes that Banco Sabadell has not received aid.

- (95) With regard to Banco CAM, the Commission notes that the savings bank will be dissolved but its economic activity will be transferred to Banco Sabadell. Therefore, Banco CAM was beneficiary of rescue aid but not of restructuring aid.
- (96) As regards the Business, the Commission notes that it comprises all of Banco CAM's banking activities. After the Disposal, some of Banco CAM's branches will continue to operate under the Banco Sabadell Group, while Banco CAM will cease to exist as legal entity. The Business will thus be allowed to continue providing the same products to its customers as Banco CAM did before the Disposal. Therefore, the Business will undertake economic activities, as it will provide a variety of financial services to its customers.
- (97) The Commission considers that the beneficiary of the restructuring measures constituting State aid within the meaning of Article 107(1) TFEU is the Business.

6.2. THE AMOUNT OF AID

- (98) As a result of the Rescue Measures implemented by the FROB on July 2011, Banco CAM received State aid in the form of a capital injection for EUR 2.8 billion, which represents approximately 5.8% of Banco CAM's RWA, and a liquidity facility of EUR 3 billion. The FROB reclassified the capital injection as restructuring aid. The liquidity facility granted under the Rescue Decision will be paid back to the FROB and cancelled as of the date of the Disposal.
- (99) As a result of the Restructuring Plan, the Business will receive restructuring aid measures in the form of recapitalisations, an APS and a contingent tax relief measure. The restructuring aid will amount to EUR 13.44 to 14.16 billion representing 30 to 33% of Banco CAM's RWA.

Table 4: Summary of State aid measures and amount in favour of the Business

Nr	Type of measure	Amount (EUR, bn)
A	First (rescue) recapitalisation	2.80
B	Second recapitalisation	2.45
C	Contingent Tax benefit	0.72
D	Assets Protection Scheme	7.49 - 8.21
Total		13.46 to 14.18

Recapitalisation measures

- (100) First, the two recapitalisation measures of EUR 2.80 and 2.45 billion, plus a contingent grant up to EUR 0.72 billion triggered by a possible tax liability will amount to EUR 5.97 billion.

Asset Protection scheme

- (101) Second, the State (DGF) will have to pay to the Business 80% of the losses on the portfolio covered by the APS. According to the Spanish authorities, the expected losses of the covered portfolio would amount to EUR [...] billion⁴¹. According to Banco Sabadell, the expected losses of the covered portfolio are estimated to amount to EUR [...] billion.
- (102) According to the Commission's experts, the valuation concluded by the Spanish authorities does not accurately reflect the expected losses of the covered portfolio. Under the micro approach taken by the Commission's experts, the expected losses for every asset in the Pool is computed separately, taking into account the type of collateral securing the loan, where it is located, and all the other characteristics that may be relevant. The covered portfolio is of a low quality, as it is made up mostly of loans to real estate developers secured on property under development or undeveloped land, assets which are subject to significant price volatility. As a result, the current market value ("**CMV**") and the long-term economic value ("**LTEV**") of the covered portfolio are very low, with an estimated CMV of around 41.2%⁴² of the nominal value and a LTEV of 62.1% (56.8% in a stressed scenario). As regards the total expected losses, they will reach approximately EUR 9.3 billion for the base case scenario and EUR 10.6 billion for the stressed scenario (or 37.9% of nominal in the base case scenario and 43.2% in the stressed scenario). Accordingly, the DGF will cover expected losses for an amount up to EUR 5.34 billion⁴³, which can be considered equivalent to a capital injection.
- (103) In addition, the APS will provide the Business with a RWA relief of EUR 14.95 billion (or EUR 1.2 billion of capital relief). According to the Restructuring Plan, it raises Banco CAM's pro-forma core Tier 1 capital ratio from 9.7% to 14.9%⁴⁴, and the combined entity's pro-forma core Tier 1 to 10.5% core Tier 1 ratio, is in line with the minimum requirement in Spain.
- (104) Therefore the capital injection element of the APS amounts to the expected losses covered by the DGF (EUR 5.34 billion), and the capital relief (EUR 1.18 billion), totalling from EUR 6.36 billion to EUR 6.54 billion⁴⁵.
- (105) Furthermore, the State (DGF) is providing a guarantee on the "unexpected losses" of the APS portfolio. That guarantee should be appropriately remunerated to account for the RWA relief effect of the scheme, as it has equivalent effect on regulatory capital as a recapitalisation measure. The

⁴¹ See footnote 29.

⁴² The estimated CMV disregards potential losses in non-credit assets of Banco CAM covered by the Pool.

⁴³ 80% of the difference between the stress expected losses (EUR 10.56 billion) and the first tranche level (EUR 3.88 billion).

⁴⁴ FROB information, 09/03/2012, Proforma ratio after capital increase and APS effect as of 31 December 2011.

⁴⁵ When netting the provisions, it amounts to EUR 6.36 billion.

appropriate level of remuneration for the guarantee has therefore to be calculated having consideration to the regulatory capital relief provided by the guarantee itself. According to the Commission's experts, the average cost of capital for Spanish retail banks is 14%. Based on that average cost of capital, the Commission considers that the appropriate remuneration fee of the APS should amount to between EUR 1.13 billion and EUR 1.67 billion⁴⁶. Therefore the proposed remuneration of 0.01% of the outstanding covered amount is considered to be purely symbolic compared to the fee which would be payable for a "plain" recapitalisation having the same capital effect. The difference between the appropriate remuneration fee of the APS and the proposed remuneration therefore constitutes additional aid within the APS measure.

- (106) Therefore, under the APS, the Business will only cover a small portion of the expected losses in the Pool⁴⁷ and thus benefit from an aid amount of up to EUR 6.54 billion for the capital injection element and up to EUR 1.67 billion for the guarantee element of the APS. In total, the aid amount of the APS amounts from between EUR 7.49 billion to up to EUR 8.21 billion.

Conclusion as regards the aid amount

- (107) The Commission therefore considers that the total aid amount is up to EUR 14.18 billion, which represents up to 33% of Banco CAM's RWA.

6.3. LEGALITY OF THE AID

- (108) The Commission notes that Spain notified the intended aid measures to the Commission for its approval prior to putting it into effect and thus complied with its obligations under Article 108(3) TFEU.

7. COMPATIBILITY OF THE AID WITH THE INTERNAL MARKET

7.1. LEGAL BASIS FOR THE COMPATIBILITY ASSESSMENT

- (109) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended "*to remedy a serious disturbance in the economy of a Member State*". The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to remedy that disturbance. It has been confirmed in the Banking Communication, the Recapitalisation Communication⁴⁸, the Impaired Asset Communication⁴⁹ and the Restructuring Communication, adopted by the Commission. In respect of the Spanish economy that assessment was confirmed in the Commission's various

⁴⁶ It is calculated as 14% (cost of capital) of the APS capital relief over 10 years. Taking a conservative approach and accounting for the whole capital relief element of the APS (EUR 1.2 billion) gives a remuneration of EUR 1.67 billion. When netting the provisions and calculating the capital relief on the unexpected losses part of the APS only, the appropriate remuneration amounts to EUR 1.13 billion.

⁴⁷ The first tranche of EUR 3.9 billion plus EUR 1.3 billion (20% of the expected losses above the first tranche), which equals to EUR 5.2 billion.

⁴⁸ Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition, OJ C 10, 15.1.2009, p. 2.

⁴⁹ Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72, 26.3.2009, p. 1.

approvals of the measures undertaken by the Spanish authorities to combat the financial crisis⁵⁰. Therefore, the legal basis for the assessment of such measures should be Article 107(3)(b) TFEU.

7.2. COMPATIBILITY OF THE ADDITIONAL RECAPITALISATION AND CONTINGENT GRANT UNDER THE RECAPITALISATION AND THE BANKING COMMUNICATION

- (110) According to the Banking Communication, the aid measure must, in its amount and form, be necessary to achieve its objective. That requirement implies that the capital injection must be of the minimum amount necessary to reach the objective. The additional recapitalisation of EUR 2.45 billion will take the form of ordinary shares subscribed by the DGF. It aims at reaching a core capital level of 10.1%⁵¹. The measure is therefore appropriate to reach the minimum regulatory capital requirement of 10%.
- (111) As regards the remuneration, the DGF will receive no fixed remuneration on its capital injection given that the aid is granted through ordinary shares whose remuneration is based on distributable profits.
- (112) The contingent grant measure ensures that the capital position of the entity being sold is not influenced by a possible loss of deductible Deferred Tax Assets. If triggered, the contingent grant measure will not be remunerated or reimbursed.
- (113) Under the Recapitalisation Communication, it is possible to accept that a distressed bank pays a lower remuneration than is normally necessary, provided such a pricing is required to ensure financial stability and is accompanied by the presentation of a thorough and far-reaching restructuring plan, including a change in management and corporate governance where appropriate.
- (114) In the case of Banco CAM, the Commission notes that Spain has submitted a far-reaching restructuring plan including the change of ownership, the dissolution of Banco CAM and its disappearance as a stand-alone entity. Therefore, the Commission considers that it is justified that no remuneration is paid for the recapitalisation measure or the contingent grant measure.

7.3. COMPATIBILITY OF THE APS UNDER THE IMPAIRED ASSETS COMMUNICATION

- (115) The specific conditions applying to asset relief measures are laid down in the Impaired Assets Communication. Pursuant to section 5.2 of the Impaired Assets Communication, an asset relief measure should ensure ex-ante transparency and should provide for adequate burden-sharing followed by the correct valuation of the eligible assets and the correct remuneration of the State.

⁵⁰ See i.a. Commission Decision of 28.01.2008 in State aid case N 28/2010, *Recapitalisation measures in favour of the banking sector in Spain*, OJ C 57, 9.3.2010, p. 2.[Is there really nothing more recent? If there are any decisions from early 2012 or late 2011, please use them instead.]

⁵¹ Pro-Forma solvency position Banco CAM as of 31 December 2011, after the capital increase and without taking into account the reduction of capital needs following the APS as described in recital (105).

- (116) Regarding transparency and ex-ante disclosure requirement, the Commission is satisfied that full ex-ante disclosure of the assets covered under the APS (see table 2) has been achieved as the Spanish authorities have granted access to all information on the covered asset pool to its advisers, the Commission's experts and the buyer, Banco Sabadell. Furthermore, the valuation process performed by the Spanish authorities and its expert has been disclosed⁵².
- (117) Regarding burden-sharing, the Impaired Assets Communication requires that banks ought to bear the losses associated with impaired assets to the maximum extent. In particular, in the case of a guarantee scheme, it would be achieved by ensuring that the first-loss piece is sufficiently large so that it covers at least the long-term expected losses on the covered assets.
- (118) In the case of the APS covering Banco CAM's impaired assets, the Commission notes that it is a second-loss scheme covering 80% of losses above the existing provisions. The first loss is constituted of existing provisions only (EUR 3.9 billion) and does not cover the long-term expected losses estimated to be up to EUR 10.6 billion (under a stressed case). As explained in recital (102), the DGF will therefore cover expected losses for an amount up to EUR 5.34 billion, which can be considered as a capital injection-equivalent element. There is therefore an aid element in the APS, estimated at EUR 5.34 billion, which is not in line with the general principles of the Impaired Asset Communication. That discrepancy arises because the guarantee covers not only the unexpected losses of the portfolio but also part of the expected losses. The latter, according to the Impaired Asset Communication, should be borne by the bank benefitting from the scheme, and not by the Member State. Indeed, covering expected losses is akin to a further capital injection, and can be considered compatible only if it is accompanied by an in-depth and far-reaching restructuring of the entity.
- (119) Regarding the remuneration of the impaired asset measure, the Commission notes that the remuneration on the APS (0.01% per annum) does not compensate for the capital relief effect that it will generate. It is thus not aligned with the Impaired Assets Communication. However, it also has to be assessed within the context of the offer presented by Banco Sabadell to take over Banco CAM, which was the result of a competitive process, open to market participants. Therefore the offer of Banco Sabadell and the resulting State aid fully take into account the conditions regarding the remuneration of the APS, which result from a competitive open-market tender process.

Conclusion

- (120) The Commission concludes that the APS measure assessed above is not fully in line with the Impaired Assets Communication as it covers, not only, unexpected losses of the portfolio but also part of the expected losses which should be borne by the beneficiary of the scheme and not by the Member State. Covering expected losses can be considered compatible only if it is accompanied by an in-depth and far reaching restructuring of

⁵² See footnote 29.

the entity. Furthermore, the APS measure has not been remunerated adequately. However, the Commission notes that it is possible to accept that an entity pays remuneration lower than is normally necessary, provided that such lower remuneration is compensated for by a thorough and far-reaching restructuring. In the case of Banco CAM, the Commission notes that Spain has submitted a far-reaching restructuring plan including the change of ownership, the dissolution of Banco CAM and its disappearance as a stand-alone entity.

7.4. COMPATIBILITY UNDER THE RESTRUCTURING COMMUNICATION

- (121) As regards compatibility of the Restructuring Aid Measures with the internal market, the Commission has to assess whether they are in line with the conditions set out in the Restructuring Communication.
- (122) The Restructuring Communication sets out the State aid rules applicable to the restructuring of financial institutions in the current crisis. According to the Restructuring Communication, in order to be compatible with Article 107(3)(b) TFEU, the restructuring of a financial institution in the context of the current financial crisis has to:
- (i) lead to a restoration of the viability of the bank and/or its orderly liquidation;
 - (ii) include sufficient own contribution by the former shareholders and capital holders of the bank (burden-sharing);
 - (iii) contain sufficient measures limiting the distortions of competition.

7.4.1. The restoration of viability/wind-up in an orderly fashion

- (123) Points 9 and 10 of the Restructuring Communication indicate that the Member State should provide a comprehensive and detailed restructuring plan which should include a comparison with alternative options. Where a financial institution cannot be restored to viability, the restructuring plan should indicate how it can be wound up in an orderly fashion. The plan should, furthermore, also identify the causes of the difficulties faced by a financial institution and provide a business model that restores the bank's long-term viability.
- (124) In the present case the Commission observes that the Spanish authorities have chosen to sell the Business via the Tender Procedure and to dissolve Banco CAM. The Commission, therefore, has to assess whether a) the Business transferred to the Bank will be viable, and b) Banco CAM will cease to exist as a legal entity.

a) Viability of the Business: Restoration of its long-term viability within the new Banco Sabadell Group

- (125) According to point 17 of the Restructuring Communication, the sale of a financial institution to a viable third party with financial means sufficient to absorb the entity and the capacity to restore confidence can help to restore its long-term viability. The Commission considers the requirements in the Restructuring Communication are met by the Banco Sabadell group.

- (126) Banco Sabadell is a banking group incorporated in Sabadell (Barcelona) with 1,382 branches, 10,575 employees and a total balance sheet of EUR 100 billion with a consolidated profit of EUR 332 million as of 31 December 2011. The impact of the acquisition of the Business on Banco Sabadell's balance sheet is significant (leading to an increase of more than 70%), based on a consolidated balance sheet as of 31 December 2011.
- (127) Banco Sabadell has proven in the current context its capacity to maintain high profitability, solvency, efficiency and productivity ratios throughout the crisis. The limitation of its exposure to the troublesome real estate sector (15 %) has contributed to ensure its resilience, both in absolute and in relative terms.

Table 5: Banco Sabadell's main figures (as of 31/12/2011)

31/12/2011		<i>Banco Sabadell</i>
Profitability	ROA	0.44
	ROE	9.3
Solvency	BIS ratio	10.95
	Tier 1	9.94
	Core capital	9.01
Efficiency	Efficiency ratio	45.75
	Expenses / assets	1.15
Productivity	Deposits per employee (EUR million)	8.1
Risks	% loans to developers / total loans	13.2

- (128) Besides, the Commission notes that Banco Sabadell has a consistent and favourable track record in buying external retail banking entities and through successful integration, extracting foreseen synergies⁵³.
- (129) Under the terms of Banco Sabadell's proposal, a full merger is foreseen which will allow Banco Sabadell (currently EUR 100 billion balance sheet⁵⁴) to establish itself among the top five biggest banks in Spain.⁵⁵

Table 6: Combined Entity (Banco Sabadell- Banco CAM)'s main figures

Main figures as of 30.06.2011 (EUR million)	SAB-CAM	Main ratios 2012e	SAB-CAM
Total Assets	166,346	Solvency	11.21%
Loans to clients	124,721	TIER I	10.13%
Deposits	93,396	TIER II	1.08%
Total capital	6,858	Core Capital	10.48%
Clients funds off balance	21,963		
Deposits' market share (1Q11) ⁵⁶	6.2%		

⁵³ For instance, Banco Sabadell has recently acquired and successfully integrated the following banks: a) Lydian Bank (2011), b) Banco Guipuzcuano (2010), b) Banco Urquijo (2006).

⁵⁴ Banco Sabadell's total assets before the Disposal (30.06.2011) were EUR 95 billion, thereafter, estimated assets (including the Business) will be around EUR 166 billion.

⁵⁵ The figures in the tables below are pro-forma.

⁵⁶ Information as of 30.03.2011

Tier I ⁵⁷	8,588		
Tier II ⁵⁸	916		

- (130) The Commission notes that the quality of Banco Sabadell's credit portfolio presents a level of non-performing loans ("NPL") which is low (7.06 % as of 31 December 2011) and its level of provisioning on NPLs ("ratio de cobertura") is well above the sector's average (115.8%⁵⁹ vs. 57.5%). The Commission notes that the long-term ratings granted by S&P and Moody's to Banco Sabadell have been recently lowered to BB+ and B respectively. However the downgrades are caused by the general situation in Spain due to the economic downturn, which affects all domestic institutions.
- (131) Furthermore, Banco Sabadell has recently published the estimated effects of the application of the new provision requirements due to the RDL 18/2012⁶⁰, including the planned integration of Banco CAM. The estimated effects, subject to approval by BOS, would represent an estimated additional charge on the results of 2012 of EUR 288 million after taxes⁶¹. Banco Sabadell estimates that these provisions will be absorbed by the 2012 results and, nevertheless, the forecasted net profit will remain positive and the core capital ratio and capital principal will be approximately 10% and 9.6% respectively.
- (132) The Commission believes that, on the basis of the information provided by the Spanish authorities, Banco Sabadell has the know-how required to own and manage the Business in compliance with regulatory and prudential requirements. The Commission therefore considers the combined entity - after the intended restructuring - to be viable. Restructuring actions initiated by the interim administrators appointed by the FROB will thus be further carried on⁶² by Banco Sabadell under *Phase two* of the Restructuring Plan (see recital (54)).
- (133) The Commission notes that the Restructuring Plan is based on reasonably credible underlying macroeconomic assumptions. In particular, the Restructuring Plan will allow Banco Sabadell to comply with the relevant regulatory requirements even in stress scenarios with a protracted global and national recession in line with point 13 of the Restructuring Communication. The Commission considers that the Plan demonstrates how Banco Sabadell will show adequate profitability, allowing it to cover all its costs including depreciation and financial charges.
- (134) As regard the viability of Banco Sabadell, it should be noted that the group to which it belongs complies, as from the date of the Disposal, with legal

⁵⁷ Banco Sabadell's expectations for 2012

⁵⁸ Banco Sabadell's expectations for 2012

⁵⁹ Loan loss ratio coverage with mortgage security included (48.5% otherwise).

⁶⁰ Real Decreto-ley 18/2012 sobre saneamiento y venta de los activos inmobiliarios del sector financiero: <http://www.boe.es/boe/dias/2012/05/12/pdfs/BOE-A-2012-6280.pdf>

⁶¹ EUR 176 million due to Banco CAM's portfolio and EUR 112 million due to Banco Sabadell's portfolio.

⁶² For instance, at the end of 2010, CAM had some 963 branches. As of 31 December 2011, it had 948 branches. After the restructuring, a total of 464 of those branches will be closed for overlapping with Banco Sabadell. Around 49% of the branches will be closed.

solvency requirement and that its own resources are well in excess of what is required⁶³.

- (135) As regards the very large concentration of Banco CAM's loan portfolio exposure to RED in its Core Regions, which was one of the main reasons for its failure and could therefore weigh on its return to viability, the Commission notes positively Banco Sabadell's commitment (see Section C vii & viii of the Term Sheet) to reduce Banco CAM's exposure to RED loans not covered by the APS by 15% annually up to the end of the restructuring period. In particular the Combined Entity's RED exposure in the Core Regions and in the Balearic Islands will be reduced materially, so that it does not exceed 15% of its total loan portfolio and repossessed assets throughout the duration of the Restructuring Plan. That figure does not include new lending to RED made in order to finish work in progress.
- (136) Moreover, Banco Sabadell has committed to manage Banco CAM's portfolio of 70 subsidiaries exposed to RED with the aim of reducing that portfolio in an orderly manner and maximizing the net present value of those subsidiaries.
- (137) Furthermore, Banco Sabadell expects to make a profit from the date of the Disposal onwards, as stated in the Restructuring Plan:

<i>EUR million</i>	<i>2012 E</i>	<i>2013 E</i>	<i>2014 E</i>
Net income	[...]	[...]	[...]

- (138) The Commission nevertheless notes that the liquidity profile submitted by Banco Sabadell still exhibits a significant reliance on ECB refinancing facilities for the next five years. However, the Commission notes that such a reliance applies to most Spanish banking institutions. In addition, the Commission takes note of the fact that the assumptions on which the liquidity profile was built take into account a monetary normalization as of 2014.
- (139) On the basis of the above, the Commission is satisfied that the restructuring put in place by Banco Sabadell is capable of ensuring the long-term viability of the integrated entity.

b) Orderly liquidation of Banco CAM

- (140) Under the terms of Sabadell's proposal, a full merger is foreseen which will allow Banco Sabadell to establish itself among the top five biggest banks in Spain. All banking activities of Banco CAM (the Business) will be transferred to Banco Sabadell. As a consequence, following the Disposal, Banco CAM will cease to exist. On that basis, the Commission has no reason to doubt that Banco CAM is being liquidated in an orderly manner.
- (141) The Commission notes that the Spanish authorities will report on the termination of Banco CAM as a legal entity, as set out in recital (173).

⁶³

See Table 5 above.

7.4.2. Aid limited to the minimum and burden-sharing

- (142) The Restructuring Communication indicates that an appropriate contribution by the beneficiary is necessary in order to limit the aid to minimum and to address distortions of competition and moral hazard. To that end, both the restructuring costs and the aid amount should be limited and a significant own contribution is necessary.

Limitation of the aid to the minimum

- (143) Point 23 of the Restructuring Communication indicates that the restructuring aid should be limited to cover the costs which are necessary for the restoration of viability.
- (144) The Restructuring Communication also indicates that, in order to keep the aid limited to a minimum, the banks should first use their own resources to finance the restructuring. The costs associated with the restructuring should not only be borne by the State but also by those who invested in the bank. That objective is achieved by absorbing losses with available capital and by paying an adequate remuneration for State interventions.
- (145) To that end the Commission needs to assess first that the costs associated with the sale of Banco CAM to Banco Sabadell are lower than the costs that would be incurred by the Spanish authorities if Banco CAM were liquidated, and second, whether the aid granted for the restructuring of Banco CAM is kept to the minimum necessary.

Comparison between a sale and an orderly liquidation

- (146) The Commission notes that FROB effectively worked out liquidation scenarios built on different assumptions as described in section 4.1. In that context, the Commission notes that the Spanish authorities estimated the cost of liquidation to be between EUR 16 billion and EUR 19 billion under an asset disposal scenario, and in the region of EUR 19 billion in a good bank/bad bank scenario. In the good bank/ bad bank scenario, the assumption of an average haircut of 42.5% on the loans (see recital (31)) is probably at the higher end of the possible range. Taking a significantly more optimistic average haircut of 27.5% on the loans, the overall cost of liquidation would amount to EUR 16.2 billion.
- (147) In that respect, the cost for the State to sell Banco CAM is equal to the amount of the State aid measures. As explained in recital (97), that amount includes first the recapitalisation measures of EUR 5.97 billion which represents the two equity injections of EUR 2.80 and 2.45 billion, plus a contingent tax liability for the FROB of EUR 0.72 billion. Second, the State (DGF) will have to pay to Banco Sabadell 80% of the expected losses on the portfolio covered by the APS – that amount is expected to lie between EUR 6.36 billion⁶⁴ and EUR 6.54 billion. In addition, the State (DGF) is providing insurance on the "unexpected losses" of the APS portfolio which would be appropriately remunerated at between EUR 1.13 billion and EUR 1.67 billion (versus the purely symbolic remuneration fee

⁶⁴ Aid amount for the expected losses part net of provision.

agreed of 0.01% of the total covered amount). Therefore, the total cost for the State in selling Banco CAM is about EUR 13.46 billion to EUR 14.18 billion, excluding any guarantee measures provided to Banco CAM.

- (148) As explained above, the estimates provided by the Spanish authorities of the different liquidation scenarios show that the cost of liquidation would be in excess of the potential cost of the sale to Banco Sabadell. Furthermore, the Spanish authorities have indicated that liquidation is not a scenario they would envisage, given the risk of negative spill-overs on confidence in the whole banking sector. There is little experience in Spain regarding the liquidation of significant banks.
- (149) On the basis of that information, the Commission concludes that the cost of the most favourable liquidation scenario (amounting to EUR 16 billion) is still greater for the Spanish authorities than that of the sale. Accordingly, the option of restructuring the bank, i.e. the sale to Banco Sabadell, contributes to limiting the aid amount to the minimum.

Aid limited to minimum in the restructuring of Banco CAM

- (150) The Commission first notes that the sale to Banco Sabadell is the result of an open tender procedure which the Commission considers as a proper way to gauge market interest and to determine the selling price.
- (151) Although Banco Sabadell was ultimately the sole bidder, the Commission has no indication that the tender procedure was organised in a manner that would not allow all potential manifestation of interest (see section 4.2 above).
- (152) Since the tender did not result in any bid offering a positive price, an alternative to the sale was an orderly winding-down. However, as explained above, the cost of the orderly winding-down of Banco CAM remained greater than the cost of the aid measures required as the result of the sale process of Banco CAM to Banco Sabadell.
- (153) In addition, as regard the amount of aid, the Commission notes that as recorded in section A of the Term Sheet, Banco Sabadell committed to relinquish its right to draw the liquidity lines originally contained in section IV of the Protocol of financial support measures for the restructuring of Banco CAM. Accordingly, those liquidity measures are no longer in force, which contributes to limiting to the minimum necessary the amount of aid.
- (154) Furthermore, in order to ensure that the APS Assets are managed with the same degree of diligence as any other assets of Banco Sabadell and thus to limit to the greatest extent possible the scope for triggering the guarantee provided by the DGF, the Spanish authorities and Banco Sabadell have committed to a number of safeguards (see Section B of the Term Sheet). Those safeguards will ensure that Banco Sabadell should be induced to maximise the net present value of the APS Assets, and thereby minimising the losses to be borne by the DGF.

- (155) The Commission thus concludes that the amount of aid can be deemed limited to the minimum necessary.

Burden-sharing

- (156) As regards the contribution of Banco CAM to the financing of the restructuring costs, the Commission observes that the stakeholders of that credit institution have suffered significant losses. More specifically, the *cuotas participativas* - equity instruments with non-voting rights which allow investors to receive a percentage of the after-tax profits distributed by the issuing company - have lost all value
- (157) Upon the intervention of the BOS on 22 July 2011, Banco CAM's Board of Directors⁶⁵ was dismissed. The FROB appointed three interim administrators to supervise the management of Banco CAM during the period in which Banco CAM is under the control of the FROB. Furthermore, since the FROB injected capital in the form of ordinary shares, it controls 100% of the voting rights in Banco CAM's General Assembly.
- (158) Upon completion of the disposal, Banco CAM will be dissolved and its link and obligations towards CAM and CAM's OBS will also cease to exist. As a commercial bank, Banco CAM has no legal obligation to establish an OBS. Moreover, the combined entity will have no legal obligation to finance CAM and its OBS. CAM will be transformed into a special purpose foundation whose main goal will be to manage the OBS, which will have substantially less capital.
- (159) Following Banco CAM's rescue by the BOS and in light of the Rescue Measures, the Commission requested, in its Rescue Decision, to be consulted prior to: a) further coupon payments and b) any buy-backs on the Hybrid Securities. As a result, on 24 February 2012, the Commission agreed to a buy-back of a total amount of EUR 167.25 million of subordinated debt held by institutional investors for a price over nominal of 75%. Banco CAM announced on 23 September 2011 through the CNMV that the coupon payment on the Hybrid Securities due on 25 September 2011 would be suspended. Spain has agreed to suspend any payment of coupons until the Commission has decided on the restructuring aid. Finally, as a consequence of the rescue of Banco CAM by BOS, CAM's Preference Shares have a market value of 0. Therefore, burden-sharing has also been applied to the holders of the Hybrid Securities.

7.4.3. Measures limiting distortions of competition

- (160) The Restructuring Communication requires that the restructuring plan proposes measures limiting distortions of competition and ensuring a competitive banking sector. In that context, the plan should also address moral hazard issues and ensure that State aid is not used to fund anti-competitive behaviour.

⁶⁵

The composition of CAM's Board of Directors and General Assembly prior to the intervention of the BOS represented the following stakeholders: municipal corporations (23.3%), depositors (36.9%), founding institutions (1.7%), employees (13.6%) and the Government of Valencia (24.4%).

- (161) Point 30 of the Restructuring Communication provides that the Commission has to take into account in its assessment the amount of aid and the conditions and circumstances under which that aid was granted and the effects of the position the financial institution will have on the market after the restructuring. On the basis of that analysis, the Commission should verify that potential distortions of competition arising from the aid are not disproportionate.
- (162) Point 31 of the Restructuring Communication states that when assessing the amount of aid and the resulting distortions, the Commission has to take into account both the absolute and relative amount in relation to the beneficiary's RWA. In that respect, the Commission notes that the liquidity line (EUR 3 billion) will be cancelled and repaid by the date on which the Disposal is completed. The Commission also notes that the aid received amounts approximately to 30-33% of Banco CAM's RWA (excluding the State guarantee on liabilities).
- (163) The Commission notes that the takeover of Banco CAM by Banco Sabadell results both in the total wiping out of former CAM shareholders and in the disappearance of CAM as a standalone entity. The Commission finds that the exit of a failed entity which engaged in excessive risk-taking is a clear indication that moral hazard is addressed. As a result, potential distortions of competition resulting from the State aid are likely to be greatly reduced.
- (164) In addition, the Commission notes that the sale of CAM's business to a competitor has been undertaken through an adequately open, transparent and non-discriminatory tender procedure that can be considered as a sufficient proxy for the establishment of a market price for the assets and liabilities taken over by the purchaser. That procedure has given competitors the opportunity to acquire the business.
- (165) As regards the Business transferred to Banco Sabadell, it is necessary to assess whether contemplated measures to limit the distortion of competition are sufficient in light of the characteristics of the market on which the beneficiary will operate.
- (166) In that respect, the Commission considers that the distortions of competition due to the Business' continued market presence are limited. Banco CAM has a limited market presence in the national Spanish market. In December 2011 Banco CAM's market share in deposits at a national level represented 2.8%. However, Banco CAM has a very strong regional presence: 17% in the province of Alicante (1st in terms of market share), 13% in the region of Murcia (3rd in terms of market share), 9% in the region of Valencia (3rd in terms of market share) and 4.9% in the region of Balearic Islands (7th in terms of market share).
- (167) As regards the Restructuring Plan, the Commission takes note of the significant downsizing of the business transferred to Banco Sabadell. The Commission notes that Banco Sabadell-CAM has committed to close 464 branches out of 963 branches by 31 December 2013. Those closures will target in particular the regions where Banco CAM had the strongest position, namely Valencia, Murcia and the Balearic Islands. As a result,

the branch footprint of the Combined Banco Sabadell-Banco CAM in Banco CAM's Core Regions will not be bigger than the presence of Banco CAM in the Core Regions prior to its acquisition by Banco Sabadell.

- (168) Furthermore the headcount will also be reduced by 31 December 2013, by 2,231 bringing the total number of former Banco CAM's employees to a maximum of 4,448.
- (169) The Commission further notes that Sabadell commits to cap the future growth of the combined entity for loans to 2,5 % in consumer credit, 6% in SME and corporate and to zero for residential mortgages. The Commission considers that any concerns it might have regarding the financing of organic growth through State aid are adequately addressed.
- (170) The Commission takes note of the fact that Banco Sabadell committed to refrain from making any use in its communication with clients and investors of the fact that it is being supported by the FROB in any way for the duration of the APS.
- (171) In addition, the Commission takes note of the commitments by Spain with regard to the new entity that Banco Sabadell will not carry out targeted non-organic growth in Banco CAM's Core Regions, as well as in the region of Balearic Islands, and that it will not increase the number of branches in the same regions, thereby limiting organic growth as well.
- (172) On the basis of the above elements, the Commission considers that the scale and nature of measures proposed in the Restructuring Plan are sufficient and adequate to address the distortions of competition created by the aid.

7.4.4. Monitoring

- (173) The Restructuring Plan will need to be properly implemented. In order to ensure a proper implementation, the Spanish authorities will ensure that Banco Sabadell complies with the commitments listed in the term sheet. The Spanish authorities will submit regular reports on the measures taken to comply with the commitments. The first report will be submitted to the Commission not later than six months after approval from the date of notification of the Decision and thereafter at six monthly intervals. Spain commits that it will also report yearly as from the date of the Disposal on the evolution of the APS as well as on the occasion of the termination of Banco CAM as a legal entity. The Commission considers that those reports will allow it to monitor the progress of the APS, its impact on competition and the fulfilment of the commitments which have been made by the Spanish authorities.
- (174) Furthermore, as mentioned in recital (70) and section D xi) of the Term Sheet, a monitoring trustee will be appointed for the duration of the restructuring period. The monitoring trustee will be in charge of monitoring all the commitments undertaken by the Spanish authorities and Banco Sabadell towards the Commission. The monitoring trustee will report to the European Commission.

8. CONCLUSION

The Commission has accordingly decided to consider the aid measures implemented by Spain in the context of the restructuring of Banco CAM to be compatible with the internal market.

The Commission notes that for reason of urgency, Spain exceptionally accepts the adoption of the Decision in the English language.

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. 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/eu_law/state_aids/state_aids_texts_en.htm

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II, 70
B-1049 Brussels
Fax No: +32-2-296 12 42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

Annex 1

Term sheet of the Spanish authorities' commitments for the approval of CAM restructuring plan by the European Commission

As regards the restructuring plan of Banco CAM S.A. ("**Banco CAM**") submitted to the Commission on 30 December 2011 and, thereafter, completed by additional information⁶⁶ ("**the Restructuring Plan**"), Banco de Sabadell S.A. ("**Banco Sabadell**"), having taken into account the specific organizational and financial characteristics of such Restructuring Plan and Banco CAM's footprint in its core regions of Valencia and Murcia, as well as in the region of Balearic Islands, has agreed to make the following commitments to the European Commission, which are in turn assumed by the Spanish authorities:

A) Liquidity measures

Banco Sabadell shall not make use of the liquidity measures⁶⁷ contained in Section IV of the Protocol of financial support measures for the restructuring of Banco CAM ("**the Protocol**"), signed among Banco CAM, Banco Sabadell, the Fondo de Reestructuración Ordenada Bancaria ("**the FROB**") and the Fondo de Garantía de Depósitos de Entidades de Crédito ("**the FGD**"). Accordingly, the said liquidity measures are no longer in force.

B) Asset Protection Scheme granted over certain assets of Banco CAM

The following commitments are made regarding the functioning of the Asset Protection Scheme ("**the APS**"):

- i. Upon the entry into force of the APS, its auditor shall be appointed by the FGD. The appointed auditing firm can be neither the auditing firm responsible for the annual accounts of Banco Sabadell⁶⁸ nor of Banco CAM⁶⁹.
- ii. On any transaction of assets covered by the APS ("**the APS Assets**"), above the thresholds set out in the Protocol⁷⁰, the members of the Board of Directors of the FGD shall be entitled to assign the pre-emptive right granted to it in clause 10.4 of the Protocol⁷¹ to any third party under the same terms and conditions of the proposed transaction to be completed between Banco Sabadell and a third party proposed by Banco Sabadell. The same entitlement to assign pre-emptive right under the same conditions shall also extend to the members of the Comisión Mixta⁷² of the FGD ("**the Commission**").

⁶⁶ Additional information in relation to the Restructuring Plan was submitted by the Spanish authorities on the following dates: 17/1, 15/2, 22/2, 24/2, 27/2, 28/2, 5/3, 7/3, 9/3, 12/3, 14/3, 16/3, 20/3, 22/3 and 13/4 of 2012

⁶⁷ See Attachment A for a complete description of the liquidity measures granted in the Protocol.

⁶⁸ Currently PWC

⁶⁹ Currently KPMG

⁷⁰ See Attachment B for a description of the thresholds set out in the Protocol.

⁷¹ See Attachment C for a description of the pre-emptive right set out in the Protocol.

⁷² The Commission consists of 5 members: 2 members appointed by FGD, 2 members appointed by Banco Sabadell and 1 member appointed by the APS auditor.

- iii. In order to ensure that the APS Assets are managed with the same degree of diligence as any other assets of Banco Sabadell, Banco Sabadell shall establish by 31 December 2012 an incentive policy for the organization and staff of a dedicated unit, so as to maximise the net present value of the APS Assets, and in particular:
 - a. to ensure alignment of objectives and strategies, the management of the APS Assets shall be agreed by Banco Sabadell with the FGD and submitted for approval to the Monitoring Trustee referred to in section D) below by 31 December 2012.

C) Restructuring of the activity transferred to Banco Sabadell

- iv. By 31 December 2013, Banco Sabadell-CAM ("**the Combined Entity**") shall close 464 branches. As a result, the Combined Entity's branch footprint in Banco CAM's core regions, Valencia and Murcia, ("**the Core Regions**") shall not be bigger than the presence of Banco CAM prior to its acquisition by Banco Sabadell.

In particular:

- In the region of Valencia: at least 116 closures, bringing the total number of the Combined Entity's branches to maximum 398. The number of branches will not increase organically further before the end of the Restructuring Plan (31 December 2015).

- In the region of Murcia: at least 26 closures, bringing the total number of the Combined Entity's branches to maximum 149. The number of branches will not increase organically further before the end of the Restructuring Plan (31 December 2015).

- In the region of Balearic islands: at least 31 closures, bringing the total number of the Combined Entity's branches to maximum 65. The number of branches will not increase organically further before the end of the Restructuring Plan (31 December 2015).

- In the rest of Spain: 283 closures, bringing the total number of the Combined Entity's branches to 1,212.

- Outside of Spain: 8 branches of Banco CAM shall close, bringing the total number of the Combined Entity's branches abroad to 17.

- v. By 31 December 2013, the Combined Entity shall reduce its headcount by 2,231, bringing the total number of former Banco CAM's employees to maximum 4,448.
- vi. Between 1 January 2012 and 31 December 2015, the Combined Entity's loan portfolio shall not grow (unless due to non-organic growth), in the Core Regions and the region of Balearic Islands, above the following growth targets⁷³:

⁷³ For the estimated amounts of each portfolio category and its expected evolution throughout the restructuring period in respect of Banco CAM within the Combined Entity for the whole of Spain, please see Attachment D. The definition of each category

- a. Consumer credit: maximum compounded annual growth rate of 2.5%.
 - b. SME/Corporate: maximum compounded annual growth rate of 6%.
 - c. Residential mortgages: no growth, except to the extent that new mortgages materialise from the conversion of existing Real Estate Development (“**RED**”) loans.
- vii. Banco Sabadell shall reduce Banco CAM's exposure to RED loans not covered by the APS by 15% annually, from 1 January 2012 to 31 December 2015. The Combined Entity's RED exposure in the Core Regions and in the region of Balearic Islands shall be reduced materially, so that it does not exceed 15% of its total loan portfolio and repossessed assets throughout the duration of the Restructuring Plan⁷⁴, with the sole exceptions of new lending to RED in order to finish work in progress or if due to non-organic growth. Once that threshold has been reached, and for the duration of the Restructuring Plan, new RED loans may be underwritten as long as the relative size of the RED portfolio does not exceed 15% of total credit and repossessed assets.
- viii. Banco Sabadell shall manage Banco CAM's portfolio of 70 subsidiaries exposed to RED with the aim of reducing it in an orderly manner and maximizing the net present value of those subsidiaries. To that end, Banco Sabadell shall implement the following strategies as regards 50 of those subsidiaries:
- in the case of 13 subsidiaries⁷⁵ with capacity to generate positive cash flows and to the extent that fellow shareholders are willing to buy the Combined Entity's participation out, the Combined Entity shall sell its stake in these subsidiaries by 31 December 2013.
 - in the case of 22 subsidiaries⁷⁶ with negative cash flow and which are unable to meet their debt liabilities toward Banco CAM and to the extent legally permitted and subject to the willingness and acceptance of any relevant counterparty, the Combined Entity will buy the assets of or the rest of the participation in those subsidiaries for a nominal price of EUR 1 or such other price as may be agreed with the vendor by 31 December 2013 save for those subsidiaries being subject to reasons for voluntarily or compulsory liquidation proceedings.
 - in the case of 15 subsidiaries⁷⁷ fully owned by Banco CAM as a result of the insolvency of its fellow shareholders, the Combined Entity shall manage and sell the assets of those subsidiaries through the ordinary commercial channels of the Combined Entity by 31 December 2015
- ix. Before 31 December 2015, the Combined Entity shall not carry out any non-organic growth in the Core Regions and the region of Balearic Islands, unless

(i.e. consumer credit, SME, etc.) corresponds to the definition used by Banco Sabadell for its own portfolio of loans in its managerial accounts.

⁷⁴ 2012-2015

⁷⁵ [...]

⁷⁶ [...]

⁷⁷ [...]

such growth derives incidentally from the acquisition of another entity not focused on the Core Regions.

- x. The Combined Entity shall not use the circumstance of Banco CAM being supported by the State for commercial purposes.

D) **Monitoring of the commitments above mentioned**

- xi. Monitoring Trustee. Banco Sabadell will appoint a Monitoring Trustee ("**the Monitoring Trustee**"), subject to European Commission's approval, who will verify the adherence to the above listed commitments. The Monitoring Trustee will be nominated for the duration of the Restructuring Plan. The appointment rules of the Monitoring Trustee and its duties are listed in Attachment E.
- xii. Enforcement and Reporting. The Spanish authorities will ensure that Banco Sabadell complies with the above listed commitments. The Spanish authorities will submit regular reports on the measures taken to comply with the commitments. The first report will be submitted to the Commission not later than six months after approval from the date of notification of the Decision and thereafter at six monthly intervals.

**SECCIÓN IV
MEDIDAS DE APOYO DE LIQUIDEZ**

16 GARANTÍA DE LA REFINANCIACIÓN DE LA DEUDA AVALADA

16.1 Compromiso de apoyo de liquidez

En el supuesto de que cualquiera de las emisiones de Deuda Avalada de la Entidad Beneficiaria llegara a su vencimiento y no dispusiera la Entidad Beneficiaria del aval del Estado Español o del Fondo de Estabilidad Financiera Europeo para completar su refinanciación, por razones ajenas a ella, con sujeción a lo establecido en el presente Protocolo, el FROB se compromete a apoyar la liquidez de la Entidad Beneficiaria a fin de que pueda llevar a cabo dicha refinanciación, para lo cual prestará a la Entidad Beneficiaria su aval por un importe y un plazo máximo equivalentes a los de la emisión de Deuda Avalada vencida, con el objeto de que ésta pueda completar dicha refinanciación con una emisión avalada por el FROB. Si aún así, no se pudiese llevar a cabo dicha emisión avalada por el FROB por no existir un entorno de mercado que permita completar emisiones avaladas por circunstancias ajenas a la Entidad Beneficiaria, el FROB hará efectivo su compromiso de apoyo de liquidez a la Entidad Beneficiaria previsto en la presente Cláusula mediante el otorgamiento de un préstamo por un importe y un plazo máximo equivalentes a los de la emisión de Deuda Avalada vencida, que será disponible hasta el momento en que vuelva a existir un entorno de mercado que permita que la Entidad Beneficiaria pueda completar la nueva emisión con el aval del FROB, momento en el cual vendrá obligada a amortizar anticipadamente el préstamo de que se trate. La Entidad Beneficiaria vendrá igualmente obligada a amortizar dicho préstamo del FROB si, con posterioridad a su otorgamiento, llegara a tener a su disposición el aval del Estado Español o del Fondo de Estabilidad Financiera Europeo para llevar a cabo emisiones de deuda. En tal caso, la Entidad Beneficiaria vendrá obligada a obtener el correspondiente aval a fin de llevar a cabo una nueva emisión avalada en el plazo de un mes contado desde dicha obtención (siempre que el entorno de mercado lo permita), con el objeto de amortizar anticipadamente el referido préstamo.

Asimismo, en el supuesto de que cualquiera de las emisiones de Deuda Avalada de la Entidad Beneficiaria llegara a su vencimiento y pese a disponer la Entidad Beneficiaria del aval del Estado Español o del Fondo de Estabilidad Financiera Europeo para refinanciarla mediante una nueva emisión de deuda avalada, no se pudiese llevar a cabo dicha emisión avalada por no existir un entorno de mercado que permita completar emisiones avaladas por circunstancias ajenas a la Entidad Beneficiaria, con sujeción a lo establecido en el presente Protocolo, el FROB se compromete a apoyar la liquidez de la Entidad Beneficiaria a fin de que pueda llevar a cabo dicha refinanciación, directamente mediante el otorgamiento de un préstamo por un importe y un plazo máximo equivalentes a los de la emisión de Deuda Avalada vencida, que será disponible hasta el momento en que vuelva a existir un entorno de mercado que permita que la Entidad Beneficiaria pueda completar la nueva emisión con el aval del Estado Español o del Fondo de Estabilidad Financiera Europeo, momento en el cual la Entidad Beneficiaria vendrá obligada a amortizar anticipadamente el préstamo de que se trate.

A los efectos anteriores, se entenderá que en un determinado momento existe un entorno de mercado que permite completar emisiones avaladas (ya sea por el Estado Español, el Fondo de Estabilidad Financiera Europeo o el FROB), cuando dentro de los dos meses anteriores se hubieran completado por emisores españoles al menos tres (3) emisiones avaladas por tres

entidades de crédito distintas y al menos el importe de una de ellas supere el ochenta por ciento (80%) del importe de la emisión a refinanciar, y siempre y cuando no haya habido un cambio sustancial adverso en las condiciones de mercado desde entonces. Si fuera concedido un préstamo por el FROB por haber considerado el FROB y la Entidad Beneficiaria que se habla producido un cambio sustancial adverso en las condiciones de mercado, se entenderá que ha cesado tal cambio sustancial adverso y que existe un entorno de mercado que permite completar emisiones avaladas si con posterioridad al otorgamiento del préstamo se llegara completar una emisión avalada por un emisor español. En tal caso, vendrá la Entidad Beneficiaria obligada a amortizar el préstamo otorgado por el FROB dentro del mes siguiente a la fecha de desembolso de la citada emisión.

Igualmente, si fuera concedido un préstamo por el FROB en cumplimiento del compromiso previsto en los párrafos anteriores por no existir un entorno de mercado que permita completar emisiones avaladas, se entenderá que dicho entorno vuelve a existir cuando con posterioridad al otorgamiento del préstamo y dentro de cualquier periodo de dos (2) meses consecutivos, se llegaran completar por emisores españoles al menos tres (3) emisiones avaladas por tres entidades de crédito distintas y al menos el importe de una de ellas supere el ochenta por ciento (80%) del importe de la emisión a refinanciar. En tal caso, vendrá la Entidad Beneficiaria obligada a amortizar el préstamo otorgado por el FROB dentro del mes siguiente a la fecha de desembolso de la última de las tres citadas emisiones avaladas.

16.2 Acceso por la Entidad Beneficiaria

Para obtener los avales o, en su caso, los préstamos a los que se refiere esta Cláusula, la Entidad Beneficiaria deberá solicitar al FROB el apoyo de liquidez correspondiente para cada supuesto concreto, identificando al efecto la emisión de Deuda Avalada de que se trate así como su importe y vencimiento, e incorporando a su solicitud cualquier documentación justificativa de la necesidad y procedencia del apoyo de liquidez de acuerdo con los términos de la presente Cláusula. Asimismo, la Entidad Beneficiaria deberá entregar al FROB en todo momento, y a primer requerimiento de éste, cualquier documentación adicional que éste le solicite al respecto.

16.3 Términos y coste de los avales

Los avales que el FROB pueda prestar en garantía de cualquier emisión de deuda de la Entidad Beneficiaria en cumplimiento de sus compromisos bajo la presente Cláusula se registrarán, *mutatis mutandis*, por términos y condiciones similares a los de los avales del Estado Español otorgados al amparo del régimen establecido por el Real Decreto-ley 7/2008, de 13 de octubre y su coste será el de estos avales del Estado Español reducido en setenta y cinco puntos básicos.

16.4 Términos y coste de los préstamos

Por su parte los préstamos que pudiera otorgar el FROB a la Entidad Beneficiaria en virtud de lo previsto en la presente Cláusula serán suscritos sustancialmente en los términos que se recogen en el borrador de contrato de préstamo que se adjunta como **Anexo 6** al presente Protocolo.

El importe de los préstamos pendiente de amortización en cada momento devengará intereses a favor del FROB a un tipo de interés anual. El tipo de interés aplicable el primer y el segundo año será fijado en la fecha de otorgamiento y desembolso del correspondiente préstamo en función de la cotización de la deuda no subordinada y no garantizada ("deuda senior") del Comprador, en el caso de ser dicha deuda suficientemente líquida para dar una

indicación relevante de valor, en el mercado secundario para un plazo de amortización idéntico (o, en el caso de no existir precios para dicho plazo, para el plazo de amortización existente más ajustado), o, en el caso de no existir dicha información, el FROB lo determinará tomando en consideración entidades de carácter comparable en términos de rating y de estructura de negocio o que cuenten con un CDS comparable a dicha entidad.

Desde el segundo aniversario desde la fecha de otorgamiento y desembolso del préstamo, el tipo de interés aplicable se incrementará cada año en un porcentaje no acumulativo de un cinco por ciento (5%) aplicado sobre el tipo de interés aplicable el primer y el segundo año (es decir, en caso de que el tipo de interés aplicable el primer y el segundo año fuera un 5%, el incremento constante sería de un 0,25% cada año, ascendiendo los tipos de interés aplicables el tercer, el cuarto y el quinto año al 5,25%, 5,50% y 5,75%, respectivamente).

17 GARANTÍA DE LA LIQUIDEZ DERIVADA DEL DESCUENTO FRENTE AL BCE

17.1 Compromiso de apoyo de liquidez

En el supuesto de que por circunstancias ajenas a la Entidad Beneficiaria (lo que incluirá la rebaja de rating de los activos titulizados por la misma), durante los años 2011, 2012 y 2013 ésta viera restringida, total o parcialmente, la posibilidad de obtener liquidez en virtud de las Líneas del BCE en un importe equivalente al saldo dispuesto a 31 de octubre de 2011 y que ascendía a siete mil setecientos un millones de euros (€7.701.000.000) (la "**Liquidez Garantizada**"), porque (a) dejaran de ser considerados aptos para el descuento con el BCE cualesquiera valores negociables que fueran propiedad de BANCO CAM o se incrementaran los recortes de valoración de dichos valores negociables a efectos de su descuento, o (b) el BCE adoptara una política restrictiva general en relación con su operativa de descuento que afectara a las citadas líneas, con sujeción a lo establecido en el presente Protocolo, el FROB se compromete a apoyar la liquidez de la Entidad Beneficiaria en el siguiente orden de prioridad:

- (i) en primer lugar, mediante el otorgamiento de uno o varios préstamos de valores, en virtud de los cuales el FROB haga disponibles a BANCO CAM valores aptos para su descuento bajo las Líneas del BCE; o
- (ii) en segundo lugar, mediante el otorgamiento del aval del FROB en relación con valores propiedad de BANCO CAM, con el objeto de hacer viable su descuento bajo las Líneas del BCE o mejorar su valoración a efectos de tal descuento; o
- (iii) en última instancia, mediante el otorgamiento de un préstamo de efectivo,

en cada caso en el importe necesario y de acuerdo con los términos y condiciones adecuados para que BANCO CAM pueda obtener la Liquidez Garantizada y por un plazo equivalente a aquél durante el que duraran las restricciones de que se trate.

17.2 Acceso por la Entidad Beneficiaria

Para obtener los avales o, en su caso, los préstamos de valores o efectivo a los que se refiere esta Cláusula, la Entidad Beneficiaria deberá solicitar al FROB el apoyo de liquidez correspondiente para cada supuesto concreto, identificando al efecto la Línea del BCE restringida de que se trate así como la cuantía y circunstancias de la restricción de la liquidez, e incorporando a su solicitud cualquier documentación justificativa de la necesidad y procedencia del apoyo de liquidez de acuerdo con los términos de la presente Cláusula. Asimismo, la Entidad Beneficiaria deberá entregar al FROB en todo momento, y a primer requerimiento de éste, cualquier documentación adicional que éste le solicite al respecto.

17.3 Términos y coste de los préstamos de valores

Los préstamos de valores que pudiera otorgar el FROB a la Entidad Beneficiaria en virtud de lo previsto en la presente Cláusula serán suscritos sustancialmente en los términos que se recogen en el borrador de contrato de préstamo de valores que se adjunta como **Anexo 7** al presente Protocolo.

Los préstamos de valores no tendrán coste para la Entidad Beneficiaria.

Cualquier pago en concepto de intereses derivado de los valores objeto de préstamo que reciba la Entidad Beneficiaria será entregado al FROB.

17.4 Términos y coste de los avales

Los avales que el FROB pueda prestar en cumplimiento de sus compromisos bajo la presente Cláusula se regirán, *mutatis mutandis*, por términos y condiciones similares a los de los avales del Estado Español otorgados al amparo del régimen establecido por el Real Decreto-ley 7/2008, de 13 de octubre y no tendrán coste para la Entidad Beneficiaria.

17.5 Términos y coste de los préstamos de efectivo

Por su parte, los préstamos de efectivo que pudiera otorgar el FROB a la Entidad Beneficiaria en virtud de lo previsto en la presente Cláusula serán suscritos sustancialmente en los términos que se recogen en el borrador de contrato de préstamo de efectivo que se adjunta como **Anexo 6** al presente Protocolo.

El coste de los préstamos de efectivos otorgados será equivalente al coste de la Línea del BCE que hubiese sufrido la restricción.

Anexo 4

Operaciones sujetas al mecanismo de control adicional previsto en la Cláusula 10 del Protocolo

- A.** Enajenación de un Activo Garantizado aisladamente o de manera conjunta con otros, cuando se verifique alguno de los siguientes requisitos:
- (a) cuando el Valor de Activo Garantizado del Activo o Activos Garantizados sea igual o superior a tres millones de euros (€3.000.000).
 - (b) de tratarse de activos inmobiliarios, cuando (i) el Importe de Venta del Activo Garantizado sea inferior al Valor de Tasación corregido por el importe resultante de aplicar a dicho valor el porcentaje de corrección que corresponda a su tipología en base al tratamiento de la cobertura específica para operaciones con garantía inmobiliaria de acuerdo con la normativa vigente en cada momento (actualmente el Anejo IX de la Circular 4/2004 del Banco de España, apartado III A) 1 (b)) y además (ii) la Pérdida resultante sea superior a trescientos mil euros (€300.000).
 - (c) de tratarse de financiaciones con garantía hipotecaria, cuando (i) el Importe de Venta del Activo Garantizado sea inferior al Valor de Tasación de la garantía hipotecaria corregido por el importe resultante de aplicar a dicho valor el porcentaje de corrección que corresponda a su tipología en base al tratamiento de la cobertura específica para operaciones con garantía inmobiliaria de acuerdo con la normativa vigente en cada momento (actualmente el Anejo IX de la Circular 4/2004 del Banco de España, apartado III A) 1 (b)) y además (ii) la Pérdida resultante sea superior a trescientos mil euros (€300.000).
 - (d) en supuestos distintos de los cubiertos en los apartados anteriores, en todo caso cuando la Pérdida resultante sea igual o superior a doscientos cincuenta mil euros (€250.000).
- B.** Deterioros Irreversibles totales o parciales respecto de Activos Garantizados cuando el Valor del Activo Garantizado sea igual o superior a tres millones de euros (€3.000.000).
- C.** Las solicitudes de declaración de concurso necesario o voluntario en el caso de entidades controladas o cogestionadas por la Entidad Beneficiaria con impacto en alguno de los Activos Garantizados, que hubieran contraído deudas frente a la Entidad Beneficiaria por un importe igual o superior a tres millones de euros (€3.000.000).

Sin perjuicio de lo anterior, el FGD y la Entidad Beneficiaria acuerdan expresamente que a los efectos del presente Anexo y la verificación de los umbrales antes referidos, se considerará como Valor de Activo Garantizado de los Activos Garantizados Adicionales, el Valor de los Activos Garantizados Iniciales de los que aquéllos traigan causa.

Attachment C

- 10.4 El FGD podrá ejercitar un derecho de tanteo sobre los Activos Garantizados objeto de operaciones o actuaciones de las identificadas en los apartados A y B del **Anexo 4** que no hubiera autorizado, durante un plazo máximo de cinco (5) días hábiles siguientes desde la fecha en que el FGD hubiera comunicado a la Entidad Beneficiaria su decisión de no autorizar la operación o actuación de que se trate.

En caso de ejercitar su derecho de tanteo, el FGD llevaría a cabo la adquisición de los Activos Garantizados de que se trate en las mismas condiciones que le hubieran sido comunicadas por parte de la Entidad Beneficiaria conforme a la Cláusula 10.1 anterior (de tratarse de una

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operación de las identificadas en el apartado A del **Anexo 4**) y por importe igual al Valor del Activo Deteriorado resultante del deterioro propuesto (de tratarse de una actuación de las identificadas en el apartado B del **Anexo 4**).

El FGD estará facultado para ceder el derecho de tanteo a cualquier tercero, el cual podrá subrogarse en la posición del FGD para su ejercicio en las mismas condiciones previstas en el presente subapartado.

En el supuesto de que el FGD (o cualquier tercero independiente al que el FGD hubiera cedido el derecho de tanteo conforme a lo establecido en el subapartado anterior), habiendo adquirido el Activo Garantizado de la Entidad Beneficiaria en ejercicio del derecho de tanteo, enajenara el Activo Garantizado dentro del mes siguiente por un precio superior al de ejercicio del derecho de tanteo, la diferencia entre el precio de enajenación al tercero independiente y dicho precio de ejercicio del derecho de tanteo quedará en poder del FGD (o el tercero independiente) y tendrá la consideración de Plusvalía a los efectos de lo dispuesto en la Cláusula 6.3.2 anterior.

Attachment D

Total performing loans

	31/12/2011	31/12/2012	31/12/2013	31/12/2014	31/12/2015
1) Consumer credit	[...]	[...]	[...]	[...]	[...]
2) SME & Corporate	[...]	[...]	[...]	[...]	[...]
3) Residential mortgages	[...]	[...]	[...]	[...]	[...]
<i>Subrogation* of commercial real estate loans</i>	[...]	[...]	[...]	[...]	[...]
<i>All others</i>	[...]	[...]	[...]	[...]	[...]
4) Developers (Residential and Commercial)	[...]	[...]	[...]	[...]	[...]
5) Other	[...]	[...]	[...]	[...]	[...]
Total performing loans	[...]	[...]	[...]	[...]	[...]
YoY increment		[...]	[...]	[...]	[...]

Attachment E

Appointment and duties of the Monitoring Trustee

Banco Sabadell-CAM is commonly referred to "**the Combined Entity**".

The Monitoring Trustee

1. The Spanish authorities commit that Banco Sabadell will appoint a Monitoring Trustee for the duration of the Restructuring Plan.
2. The Monitoring Trustee shall be one or several natural or legal person(s) independent of the Combined Entity who will be approved by the Commission and appointed by Banco Sabadell, and will have the duty to monitor whether the Combined Entity complies with its obligations towards the Commission and implements the Restructuring Plan.
3. The Monitoring Trustee must be independent of the Combined Entity and must possess the necessary qualifications to carry out its mandate, for example as an investment bank, consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Monitoring Trustee shall be remunerated by the Combined Entity, which does not impede the independent and effective fulfilment of its mandate.

II. Appointment of the Monitoring Trustee

Proposal by the Spanish authorities

No later than four weeks after the date of delivery of the Decision approving the Restructuring Plan of the Combined Entity, the Spanish authorities shall submit for the Commission's approval the names of two or more persons as Monitoring Trustees and shall indicate which of them is their first choice. The proposal must contain sufficient information for the Commission to verify that the proposed Monitoring Trustee fulfils the requirements set out in paragraph 3 and shall include:

- the full terms of the proposed mandate together with all the provisions necessary to enable the Monitoring Trustee to carry out its duties in accordance with these commitments;
- the outline of a work plan describing how the Monitoring Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

The Commission shall have the discretion to approve or reject the proposed Monitoring Trustees and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Spanish authorities

4. If all the proposed Monitoring Trustees are rejected, the Spanish authorities shall, within one week of being informed of the rejection, submit the names of at least two other persons or institutions, in accordance with the conditions and according to the procedure in paragraphs 1 and 5.

Monitoring Trustee nominated by the Commission

5. If all further proposed Monitoring Trustees are also rejected by the Commission, the Commission shall nominate a Monitoring Trustee(s), whom Banco Sabadell shall appoint in accordance with a trustee mandate approved by the Commission.

III. The duties of the Monitoring Trustee

6. It shall be the duty of the Monitoring Trustee to ensure compliance with the conditions and obligations herein established, which shall be attached to the Decision, and guarantee implementation of the Restructuring Plan.

Duties and obligations of the Monitoring Trustee

7. The Monitoring Trustee shall
 - i) propose to the Commission within four weeks of appointment a detailed work plan describing how it plans to monitor compliance with the commitments towards the Commission and implementation of the Restructuring Plan;
 - (ii) monitor compliance with all commitments taken by the Spanish authorities on behalf of Banco Sabadell and implementation of the Restructuring Plan;
 - (iii) propose measures, which the Monitoring Trustee considers necessary to ensure compliance by the Spanish authorities with all commitments towards the Commission;
 - (v) submit to the Commission, the Combined Entity and the Spanish authorities within 30 days after the end of each quarter the draft of a written report. The report shall cover the Monitoring Trustee's fulfilment of its obligations under the Mandate, compliance with all commitments and the implementation of the Restructuring Plan. All recipients of the draft report shall be able to submit their observations within five working days. Within five working days of receipt of the comments, the Monitoring Trustee shall prepare a final report and submit it to the Commission, taking into account, if possible and at his sole discretion, the comments submitted. The Monitoring Trustee will also send a copy of the final report to the Spanish authorities and to the Combined Entity. Should the draft report or the final report contain any information that must not be disclosed to the Combined Entity or the Spanish authorities, the Combined Entity or the Spanish authorities shall only be provided with a non-confidential version of the draft report or the final report. The Monitoring Trustee shall submit no version of the report to the Combined Entity and/or the Spanish authorities before submitting it to the Commission.

The Commission can give the Monitoring Trustee instructions or directions in order to ensure that the commitments towards the Commission are met and the restructuring plan implemented.

The Spanish authorities and the Combined Entity shall provide for all such cooperation, support and information which the Monitoring Trustee may reasonably require in order to perform its tasks. The Monitoring Trustee shall have unlimited access to the books, records, documents, managers and other staff members, to files, locations and technical information of the Combined Entity which are necessary in order to perform its tasks in accordance with the commitments.