EUROPEAN COMMISSION

Brussels, 25.7.2013
C(2013) 4842 final

In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus […].		PUBLIC VERSION This document is made available for information purposes only.

Subject: State aid n° SA.36249 (2013/N-2) – Spain
Amendment of the Restructuring of CEISS through integration with Unicaja Banco

Sir,

1 PROCEDURE

(1) By decision of 20 December 2012, the Commission approved a restructuring plan of Banco CEISS ("**the Bank**"), on a standalone basis (“**the December 2012 Decision**”)[1]. The recapitalisation and restructuring aid was approved in the form of a) the conversion into ordinary shares of the Convertible Preference Shares amounting to EUR 525 million subscribed for by the *Fondo de Restructuración Ordenada Bancaria*[2] ("**the FROB**") in

[1] SA.34536 (2012/N) OJ C 96, 4.4.2013, p. 1

[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 (case N 28/2010, OJ C57, 09.03.2010, p. 2) on FROB as a recapitalisation scheme for fundamentally sound institutions. The notified capital injection and liquidity support to BVA was not covered by that decision, since *inter alia*, it involved a non-fundamentally sound institution. After the enactment of Royal Decree-law 24/2012, the FROB has been entrusted with the management of the restructuring and resolution proceedings of Spanish credit institutions. For that purpose, it may provide public support to distressed institutions. The FROB funds are contributed by the State Budget. Additionally, the FROB may obtain other funding (via issuance of securities, loans, credits or other debt transactions) up to the limit annually established in the State Budget. The maximum for 2012 amounts to EUR 120 billion.

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2010; b) a second FROB capital injection in the form of new ordinary shares amounting to EUR 604 million; c) the transfer of assets to SAREB amounting to up to EUR 717 million, and d) State guarantees on unsecured debt issued by the Bank up to EUR 3 193 million.

(2) On 19 April 2013, Spain notified an amended restructuring plan for the Bank (“**the New Restructuring Plan”**), based on an offer to acquire the Bank by Unicaja Banco ("**the Unicaja Offer**"), together with a new set of commitments.

(3) By decision of 13 May 2013 ("**the May 2013 Decision**")[3], the Commission approved the New Restructuring Plan which included the following changes in the aid measures to the Bank: a) a capital injection in the form of contingent convertible instruments (“**CoCos**”) issued by the Bank amounting to EUR 604 million, b) a decreased amount in the impaired asset measure amounting to EUR 696 million, c) and new aid in the form of a second loss guarantee linked to the transfer of the impaired assets up to EUR 200 million.

(4) According to the May 2013 Decision and in order for the Unicaja Offer to be successful, it is necessary that at least 75% of the existing holders of hybrid and subordinated debt instruments in the Bank accept the exchange of their instruments against new securities to be issued by Unicaja Banco (“**the Acceptance Threshold**”). If the Acceptance Threshold were not met by […][*], the terms and conditions set out in the December 2012 Decision were to be fully implemented (“**the Original Deadline**”). The Acceptance Threshold is a condition established by the Bank in accordance with Spanish law. 75% of ownership would allow the buyer to achieve all the benefits, as if the two entities would have merged.

(5) On 16 July 2013, Spain notified to the Commission its request to postpone the Original Deadline to […] ("**the New Deadline**") as it had become apparent by that date that a series of requirements and processes that needed to be completed before the Unicaja Offer could be launched could not be achieved by the Original Deadline.

(6) Spain exceptionally accepts that the present decision be adopted in the English language.

2 FACTS

2.1 The beneficiary

(7) Banco CEISS is a commercial bank, registered with the Bank of Spain ("**BoS**"), and created within the framework of Royal Decree Law 2/2011, pursuant to which Caja CEISS approved on 5 September 2011 and fulfilled on 5 December 2011 the transfer of all of its banking business to a newly established banking entity, Banco CEISS. Banco CEISS operates mainly in the Spanish region of Castilla y León and the province of Caceres where it has around [10-20]% market share in terms of loans and [20-30]% in

[3] SA.36249 (2013/N).

[*] Parts of this text have been deleted so as not to divulge confidential information; they are indicated by a series of dots between square brackets or a range providing for a non confidential approximation of the figure.

terms of deposits. Its market share at a national level is around 1.6% in terms of loans and 1.9% in terms of deposits[4].

Description of the Original Deadline

(8) As originally conceived, if the Acceptance Threshold were not met by […], the terms and conditions set out in the December 2012 Decision would be fully implemented. It would, inter alia, imply that the ownership structure of Banco CEISS would be divided between the FROB and the existing hybrid and subordinated debt holders. The FROB would have at least a 50% equity stake in the Bank while the existing hybrid and subordinated debt holders would hold the remainder of the equity.

2.2 The New Deadline

(9) The process of integrating the Bank with Unicaja is an on-going process, which has required major efforts from the different parties involved. Some additional information requirements, stemming from the "*Comisión Nacional del Mercado de Valores*" ("**the CNMV**"), have delayed the launching of Unicaja Offer by the agreed deadline. Furthermore, a large number of third parties are also involved in the proposed integration process and the preparation of the Unicaja Offer, such as auditors, consultants, investment banks and law firms. Consequently, the full completion of all requirements needed for Unicaja to launch the exchange offer makes it impossible to meet the Original Deadline.

(10) In addition, the months of July and August are not optimal to launch an acquisition bid due to the summer holiday season, as a considerable number of the hybrid and subordinated debt holders will be on holidays during those months. As meeting the Acceptance Threshold is decisive for the Unicaja Offer to be successful, the Spanish authorities have decided to request an extension of the Original Deadline to the New Deadline.

3 POSITION OF THE SPANISH AUTHORITIES

(11) The Spanish authorities argue that, taking into account the different administrative procedures involved in the approval of the Unicaja Offer, the process should be finished by […], at the latest. However, to take account of any new delays, they requested to set the New Deadline on […].

(12) The Spanish authorities consider that the New Deadline is justified, given the complexity of the process and the importance of reaching the Acceptance Threshold. Moreover, the New Deadline will increase the likelihood of the Unicaja Offer reaching the Acceptance Threshold and, thus, the success of Unicaja Offer.

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4 Market shares as of December 2012.

(13) The Bank of Spain argues that the New Deadline does not imply an additional State aid or any other advantage to the Bank.

4 ASSESSMENT

4.1 Existence of State Aid

4.1.1 Advantage

(14) According to Article 107(1) of the Treaty, 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.

(15) With respect to the New Deadline, the Commission has to analyse if it brings additional advantage to Banco CEISS and/or Unicaja.

(16) The Spanish authorities have provided the Commission with a list of requirements to be met and ongoing discussion with the authorities before the Unicaja Offer can be launched, as supporting evidence for the requested New Deadline:

(i) Information required by the CNMV:

a. […];
b. […];
c. […];
d. […];
e. […];
f. […]

(ii) Ongoing discussion between Unicaja and the Bank with the Ministry of Finance in order to get reassurances that tax benefits can be extracted from the proposed acquisitions, as if the two entities were to merge.

(iii)The investment bank is still working on the structure and details of Unicaja Offer, including the marketing and selling process to avoid litigation with hybrid and subordinated debt holders from the SLE.

(17) The information described in recital (16) must be provided by any financial entity wishing to carry out a similar transaction.

(18) According to the May 2013 Decision, it is crucial that the Acceptance Threshold is met. To that end, it is essential that the hybrid and subordinated debt holders are reached in order to guarantee the success of the Unicaja Offer. Should the Acceptance Threshold not be met, the terms and conditions set out in the December 2012 Decision would be fully implemented.

(19) The Commission has identified in the New Deadline two possible advantages. The first one derives from allowing the possibility of Unicaja acquiring the Bank, as opposed to directly reverting to the December 2012 Decision pursuant to the May 2013 Decision. The second one derives from granting Unicaja extra time to launch its offer.

(20) As regards the first possible advantage, the Commission already found in the May 2013 Decision that the proposed integration of the Bank with Unicaja is compatible with the internal market. Thus, the Commission finds that any potential benefit flowing from the New Deadline in the form of maintaining the solution approved in the May 2013 Decision does not qualify as an additional advantage in comparison with the advantage already identified in relation to the aid measures previously assessed in relation to the Bank.

(21) As regards the second possible advantage, the New Deadline has no impact on the State aid measures already granted and, in particular, on the coupon payment and the repayment schedule for the CoCoS issued by the Bank to the FROB. Moreover, the New Deadline does not enable Unicaja or Banco CEISS to modify the commitments submitted in the May 2013 Decision in any way. Accordingly, the Commission does not find that the second possibility brings any additional advantage.

(22) Given the above, the Commission can conclude that the New Deadline does not provide any additional advantage to Banco CEISS or Unicaja because the State aid measures granted pursuant to the May 2013 Decision and the calendar for the repayment of the public capital injection remain unchanged. Moreover, the New Deadline is the result of administrative requirements and on-going discussions with the Spanish authorities outside their control. Once those requirements are met and the discussions conclude, the Unicaja Offer will be both launched and completed before the New Deadline. The New Deadline cannot, therefore, be considered State aid in the meaning of Article 107(1) of the Treaty.

4.2 Conclusions on the existence of aid

(23) The Commission concludes that the notified New Deadline does not constitute State aid pursuant to Article 107(1) TFEU in favour of Banco CEISS or Unicaja.

5 CONCLUSION

- The Commission has accordingly decided:

  – to consider the New Deadline not to constitute aid under the Treaty on the Functioning of the European Union.

- The Commission notes that Spain exceptionally accepts that the adoption of the present Decision be in the English language

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

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Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Fax No: (+32)-2-296.12.42

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President