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<p>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 [...].</p>	<p>PUBLIC VERSION</p> <p>This document is made available for information purposes only.</p>
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Subject: State aid n° SA. 38143 (2014/N) – Spain
Restructuring of NCG through its acquisition by the Banesco Group

Sir,

1 PROCEDURE

- (1) On 29 June 2010, Spain informed the Commission that the Fondo de Reestructuración Ordenada Bancaria (“**the FROB**”)¹ had decided to participate in the merger of two saving banks (“*cajas de ahorros*”)² – Caixa de Aforros de Vigo, Ourense e Pontevedra and Caja de Ahorros de Galicia – to create Novacaixagalicia, with total assets of EUR 76.2 billion³. To that end, the FROB agreed to subscribe EUR 1 162 million of preference shares in Novacaixagalicia.

¹ Pursuant to 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’s 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.

² *Cajas de ahorros* are credit institutions that have no shareholders, but instead are governed by their members. Their legal form is a private charity that holds a banking license and is entitled to provide banking services as commercial or cooperative banks do. Profits are partially used to strengthen their capital and the remainder is used to fund the social activities that each *caja de ahorros* carries out through its “*obra benéfico social*”, a form of charitable body.

³ As of 31 December 2009.

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- (2) On the same date, the Commission informed the Spanish authorities that it considered that the requirements of the FROB recapitalisation scheme were met for Novacaixagalicia to receive a capital injection from the FROB. The Commission concluded that, based on the assessment of the Bank of Spain (“**BoS**”), the merging entity was fundamentally sound and its integration plan was viable, so that there was no need for a restructuring plan.
- (3) On 23 September 2011, the Spanish authorities notified the Commission of their intention to provide an additional capital injection of EUR 2 465 million in the form of ordinary shares through the FROB into NCG Banco (“**NCG**”), the economic successor of Novacaixagalicia⁴.
- (4) On 30 September 2011, the Commission approved the new capital injection pending the notification of a restructuring plan.⁵ Spain notified a draft restructuring plan on 30 March 2012.
- (5) On 20 July 2012, the Memorandum of Understanding on Financial Sector Policy Conditionality between the Kingdom of Spain and the Heads of State and Government of the Euro Area (“**the MoU**”) was signed. The MoU set a strict timeline for the recapitalisation and restructuring of banks which would be fixed by assigning those banks to different groups on the basis of stress test results.⁶ In particular, for credit institutions controlled by the FROB, such as NCG, additional public capital was only to be provided once the Commission had approved individual restructuring plans.
- (6) On 21 November 2012, Spain communicated the final version of the restructuring plan for NCG (“**the Original Restructuring Plan**”), including the final figures pertaining to the size, composition and valuation of the assets and credit portfolio to be transferred to an asset management company known as SAREB (“**SAREB**”) in the context of an impaired asset measure.
- (7) By decision of 28 November 2012 (“**the Original Restructuring Decision**”)⁷, the Commission approved the Original Restructuring Plan for NCG.
- (8) In line with the Original Restructuring Decision⁸, by a process letter of 21 November 2013 the FROB initiated a competitive tender process for the sale of a 88.33% stake in NCG which was held by the FROB and the Spanish Deposit Guarantee Fund (*Fondo de Garantía de Depósitos*, “**FGD**”). By a resolution of its Governing Council of 18 December 2013, the FROB selected the EUR 1 003 million offer submitted by Banesco Group (“**Banesco Group**”), an international

⁴ See the explanation in section 2.1.

⁵ Case SA.33096, second rescue recapitalisation of Novacaixagalicia, OJ C 41, 14.2.2012, p. 6.

⁶ On the basis of the stress test results and the recapitalisations plans, banks were assigned to:

Group 0 - banks for which no capital shortfall was identified and no further action was required;

Group 1 - banks already owned by the FROB;

Group 2 - banks with capital shortfalls identified by the stress test and unable to meet those capital shortfalls privately without having recourse to State aid;

Group 3 - banks with capital shortfalls identified by the stress test with credible recapitalisation plans and which are, in principle, able to meet those shortfalls privately without recourse to State aid. Group 3 banks were split into:

(i) Group 3a - banks which were planning a significant equity raise (>2% Risk Weighted Assets (“RWA”)) and

(ii) Group 3b - banks which were planning a less significant equity raise (<2% RWA).

NCG was categorised as Group 1 bank.

⁷ Case SA.33734, OJ C 75, 14.03.2013, p. 1.

⁸ Section 3.3 of that Decision and section 8 of the Term Sheet annexed thereto.

banking group. On 18 December 2013, the FROB, on behalf of itself and the FGD, entered into a sale and purchase agreement with Banesco Group in relation to the 88.33%⁹ stake in NCG.

- (9) In view of that sale and in line with the Original Restructuring Decision,¹⁰ on 4 March 2014 Spain approached the Commission with a proposal for a new and modified restructuring plan (“**the Revised Restructuring Plan**”).
- (10) Spain exceptionally accepts that the present decision be adopted in the English language.

2 BACKGROUND

2.1 NCG

- (11) Novacaixagalicia was a Spanish saving bank, which was registered with the BoS and which was created as a result of the merger between two savings banks (Caixa de Aforros de Vigo, Ourense e Pontevedra and Caja de Ahorros de Galicia). Later, within the framework of the Spanish Royal Decree Law of 18 February 2011, Novacaixagalicia transferred its banking business to a newly established entity, NCG, a commercial bank, while it retained the “*obra benéfico social*”. The transfer of the banking business from Novacaixagalicia to NCG was implemented on 14 September 2011. This Decision, therefore, refers to Novacaixagalicia prior to that date and to NCG thereafter.
- (12) Currently, NCG operates mainly in the Spanish region of Galicia, where it has a [30-40]% market share¹¹. Its market share at a national level is around [0-5]%. Traditionally, its focus has been on retail banking in Galicia and the surrounding regions of Leon and Asturias. Between 2002 and 2008, NCG’s predecessors expanded geographically and broadened their business activities, in particular real estate development (“**RED**”), corporate banking and equity participations. Table 1 provides NCG’s main financial figures as of 31 December 2013.

⁹ 63% held by the FROB and 23% by the FGD.

¹⁰ Recital 85 of the Original Restructuring Decision.

¹¹ Average loan-deposit market share in December 2013.

Table 1

	31.12.2010	31.12.2011	31.12.2013
Total assets (billion EUR)	73.319	72.129	52.704
Loans to customers (billion EUR)	52.284	47.427	25.981
Retail deposits (billion EUR)¹²	38.730	36.434	26.000
Total wholesale funds (billion EUR)	30.106	30.904	22.123
Employees Total Group	10.511	9.842	5.043
Number of branches	1.553	1.222	641
National Market share in deposits	2.73%	2.64%	2.12%
Regional Market share in deposits*	[30-40]%	[20-30]%	[20-30]%
National Market share in loans	2.66%	2.55%	1.81%
Regional Market share in loans*	[20-30]%	[20-30]%	[10-20]%

Regional Market Share refers to the region covering Galicia, Asturias and Leon.

2.2 The events triggering the rescue and restructuring of NCG

- (13) Following the outbreak of the financial crisis in 2008, the Spanish authorities laid down, via the Royal Decree Law 9/2009, the legal foundations for the restructuring of the Spanish banking sector. The savings banks, which formed a significant part of that sector, had several structural limitations, such as the legal restrictions on the raising of regulatory capital and, in some cases, weak corporate governance systems which prevented them from detecting problems at an early stage.
- (14) Pursuant to that legislation, the FROB injected capital into Novacaixagalicia in December 2010 in the form of convertible preference shares in the amount of EUR 1 162 million to support the merger of the two savings banks and partially fund their restructuring.
- (15) On 18 February 2011, the Spanish authorities adopted more stringent regulatory capital requirements for the entire banking sector, which, *inter alia*, obliged all credit institutions operating in Spain to meet higher minimum regulatory solvency levels by 30 September 2011 at the latest.¹³
- (16) On 10 March 2011, as a result of the new legislation, the BoS informed Novacaixagalicia that under the new regime it required EUR 2 622 million of additional capital in order to meet a 10% capital principal solvency ratio over its RWA.

¹² Including SME and other corporate deposits.

¹³ See Royal Decree Law 2/2011 of 18 February 2011: “*Real Decreto-ley 2/2011, de 18 febrero para el reforzamiento del sistema financiero*”. The new legal framework established that by 30 September 2011 any credit institution without private investors holding at least 20% of its equity or with wholesale funding exceeding 20% of its financing needs had to meet a solvency level (defined as “*capital principal*”), set at 10% of its RWA. The new rule applied at consolidated and solo level.

- (17) On 14 April 2011, the BoS approved a recapitalisation plan submitted by Novacaixagalicia, designed to reach the new solvency levels by 30 September 2011. The plan incorporated some capital-generating organic measures that would reduce Novacaixagalicia's capital deficit from EUR 2 622 million to EUR 2 465 million.
- (18) In July 2011, Novacaixagalicia passed the stress test exercise of the European Banking Authority with a core tier 1 ratio of 5.3%.
- (19) The recapitalisation plan of April 2011 for Novacaixagalicia envisaged a combination of private and public capital injections. However, since the envisaged private investments were not completed before 30 September 2011, the FROB decided to close NCG's capital deficit by subscribing EUR 2 465 million of new ordinary shares. That recapitalisation was approved by the Commission on 30 September 2011.¹⁴
- (20) In the context of the MoU a bottom-up stress test and asset quality review was conducted by an independent consultant, Oliver Wyman ("**the MoU Stress Test**"). On 28 September 2012, the results¹⁵ of the MoU Stress Test revealed that NCG had a capital shortfall of EUR 7 176 million under the adverse scenario and EUR 3 966 million in the base case for the three years (2012-2014) covered by that exercise.
- (21) As envisaged in the Original Restructuring Plan approved by the Commission on 28 November 2012, NCG received aid in form of a capital injection of EUR 5.4 billion and an impaired asset measure of EUR 1.3 billion with regard to the assets transferred to SAREB.
- (22) In line with the Original Restructuring Plan,¹⁶ Spain was to carry out an in-depth restructuring of NCG's activities¹⁷ and to dispose of NCG through a competitive tender process, as soon as market conditions permitted and within five years.¹⁸

¹⁴ Case SA.33096, second rescue recapitalisation of Novacaixagalicia, OJ C 41, 14.2.2012, p. NN.

¹⁵ Ref. Oliver Wyman report, Asset Quality Review and Bottom-up Stress test exercise, 28 September 2012, <http://www.bde.es/bde/en/secciones/prensa/infointeres/reestructuracion/>

¹⁶ Section 3 of the Original Restructuring Decision and sections 5 and 8 of the Term Sheet annexed thereto.

¹⁷ Described under section 3.

¹⁸ Described under section 4.

2.3 Overview of the aid measures granted to NCG between 2010 and 2013

- (23) Since 2010 NCG has benefitted from several aid measures. Overall, Spain provided capital injections totalling EUR 9 052 million, NCG transferred assets amounting to EUR [10 000-15 000] million gross to SAREB,¹⁹ and provided guarantees worth EUR 7 703 million. Table 2 provides an overview of these aid measures. More detailed descriptions of each of those measures appear in Original Restructuring Decision.

Table 2

Measure	Description	Amount (€mn)	EC Approved	% RWA ²⁰
A	Guarantees	7.703	2009 - 2012	N/A
B and D	FROB I & equity conversion	1.162	29.06.10	2%
C	Recapitalisation Measure	2.465	30.09.2011	4.67%
E	Recapitalisation measure	5.425	28.11.2012	12.6%
F	Transfer of impaired assets	1.300	28.11.2012	3%

3 THE ORIGINAL RESTRUCTURING PLAN, COMMITMENTS AND IMPLEMENTATION

- (24) NCG's Original Restructuring Plan spanned a period of approximately five years, from the adoption of the Original Restructuring Decision on 28 November 2012 until 31 December 2017. It was based on splitting NCG's activities into two separate units (while remaining in the same legal entity), namely a Core Unit and Legacy Unit.
- (25) The Core Unit was to form a basis of a sound and viable bank. It would focus on its core region which was defined as Galicia, Leon and Asturias (with one office in Geneva, representative offices outside Spain, and one office each in Madrid, Barcelona and Bilbao) with new lending concentrated on small and medium-sized enterprises ("SMEs"), corporates and consumers (with RED financing excluded). It would not engage either in RED financing or in investment and corporate banking activities.
- (26) The Legacy Unit was to include the businesses, assets and liabilities that were to be discontinued and sold, closed or held to maturity. It would contain all banking activities outside NCG's core region. As a general rule, the Legacy Unit was not to

¹⁹ Additionally, Banco Gallego, NCG's subsidiary sold in April 2013 to Banco Sabadell, transferred assets amounting to EUR [1 000-1 500] million gross to SAREB in December 2013.

²⁰ RWA as of the relevant reference date when the aid measure was granted.

carry out new lending, with a very limited number of exceptions (e.g. contractually committed amounts, maximisation of net present value of existing assets)

- (27) Spain committed that the total balance sheet of NCG would be reduced to EUR [50-60] in 2014, to EUR [40-50] billion in 2016 and to EUR [30-40] billion in 2017 (from EUR 59.8 billion as of the end of 2012). Spain forecasts that as of 30 June 2014 NCG will have achieved [30-40]% of the 2017 target for balance sheet reduction.²¹
- (28) NCG was to transfer RED loans to SAREB, which has occurred.
- (29) As part of the restructuring, the bank was to dispose of Banco Gallego and EVO which has occurred through sales to Banco Sabadell and Apollo respectively. Moreover, NCG committed to sell its listed and unlisted equity holdings/subsidiaries by the end of 2016.
- (30) NCG committed to reduce its network to [450-500] branches ([450-500] in the core unit and [30-40] service locations)²² by 2015 and maintain that number until 31 December 2017 (from 815 branches at the end of 2012). Personnel was to be adjusted down to [3 000-3 500] full-time equivalents (“FTEs”) by the end of 2017 (from 5 836 FTEs at 31 December 2012). As of 30 June 2014 (forecast), NCG had reached [70-80]% and [60-70]% of its targets for branches and personnel, respectively.
- (31) Furthermore, the Original Restructuring Plan contained commitments on burden-sharing, banning acquisitions, banning commercial aggressive practices and State aid advertising, restricting remuneration and banning dividends (no dividend in 2014; allowed 50% of excess capital above minimum requirement paid to shareholders in 2014; allowed 100% in years 2015 to 2017).
- (32) In addition, the Original Restructuring Plan stated that, in accordance with Royal Decree Law 24/2012 and in view of: a) the significant capital shortfall of NCG as revealed in the MoU Stress Test; b) the considerable amount of State aid already received since 2010; and c) the low probability that NCG would be able to fully repay the public funds granted through the various aid measures proposed in the Restructuring Plan, NCG would be placed under resolution under the meaning of that Royal Decree Law.
- (33) Accordingly, the Spanish authorities were to carry out an in-depth restructuring of NCG’s activities as set out in the Original Restructuring Plan with a view to selling it as soon as market conditions permitted and within five years, failing which, NCG would be placed under orderly resolution in accordance with Royal Decree Law 24/2012.
- (34) Additional detail on the specific terms and conditions of the Original Restructuring Plan is available in the Original Restructuring Decision. Table 3 provides an overview of the restructuring undergone by NCG since the Original Restructuring Plan was approved and the subsequent sale of NCG to Banesco Group. The last

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See Table 3.

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Branches carrying out only transactions (asset or liability side) necessary to manage their existing assets and not engaging in new operations or generating clients.

column of Table 3 shows the degree of restructuring already accomplished by NCG in the first year and a half of the original five-year restructuring period.

Table 3

	31.12.2012	30.06.2014*	Targets** TS/template 31.12.2017	Current % of restructuring accomplished
Total assets (billion EUR)	59.827	51.787	[35 000- 40 000]	[30-40]%
Loans to customers (billion EUR)	30.627	24.409	[20 000- 25 000]	[90-100]%
Retail deposits (billion EUR)²³	29.191	25.625	[20 000- 25 000]	[40-50]%
Total wholesale funds (billion EUR)	27.595	21.840	[10 000- 15 000]	[30-40]%
Employees Total Group	5.836	4.222	[3 000- 3 500]	[60-70]%
Number of branches	815	560	[450-500]	[70-80]%
National Market share in deposits	2.35%	1.94%	[0-5]%	-
Regional Market share in deposits	[20-30]%	[20-30]%	[20-30]%	-
National Market share in loans	1.89%	1.81%	[0-5]%	-
Regional Market share in loans	[10-20]%	[10-20]%	[10-20]%	-

** Forecast. ** Targets/estimates in the Original Restructuring Plan and Term Sheet. Total assets, employees and branches are specific commitments included in the Term Sheet.*

4 THE SALE OF NCG TO BANESCO GROUP

- (35) In line with the Original Restructuring Plan,²⁴ Spain was to dispose of NCG through a competitive tender process, with the objective of minimizing the cost to taxpayers. A sale and purchase agreement with a prospective purchaser, that would be legally and economically independent of the Kingdom of Spain and NCG, was to be signed no later than 31 December 2016.
- (36) The NCG sale was designed to be a two-stage process. The first stage was to consist of analysing the economic and financial situation of NCG and gauging market's appetite. The FROB could thereby decide whether the conditions were ripe to launch a sale process. In the second stage, NCG's sale process was to be executed.
- (37) FROB's external advisor carried out a vendor's due diligence of NCG. In parallel, internal expected loss calculations were reviewed (including a third-party assessment of the expected loss methodology), a business plan prepared by NCG's management was challenged, potential contingencies that may negatively affect the valuation were identified and different levers that may boost NCG's valuations were assessed.
- (38) As part of that first stage, the FROB's advisor informally contacted banking institutions as well as private equity funds to gauge market interest in NCG and

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Including SME and other corporate deposits.

²⁴

Section 3.3 of the Original Restructuring Decision and section 8 of the Term Sheet annexed thereto.

identified those players that might potentially be interested in participating in a sale processes.

- (39) After they had signed a non-disclosure agreement, access was granted to a virtual data room (that contained the vendor's due diligence as well as a data tape) to those banking institutions and private equity funds that had confirmed their interest in participating in a sale process of NCG. Furthermore, they held meetings with NCG's management in which they presented NCG's business plan. Potential bidders could also ask questions that had arisen upon reviewing the information uploaded to the virtual data room.
- (40) After those meetings, the FROB's management met with potential bidders to obtain their valuations for NCG and assessed their interest in participating in a formal sale process. Based on those valuations, the FROB's Governing Council decided to launch the sale. A process letter was submitted on 21 November 2013, informing potential bidders of the opening of a competitive tender process for the sale of the 88.33% stake in NCG held by the FROB and the FGD. In total, six formal binding offers were finally submitted by interested bidders at the end of the process.
- (41) By a resolution of its Governing Commission of 18 December 2013, the FROB selected the EUR 1 003 million offer submitted by Banesco Group. That offer did not request an Asset Protection Scheme and met the requirements for selection in the first round set out in the process letter of 21 November 2013. In particular, the offer submitted by Banesco Group exceeded the second-best offer by at least 50% and at least EUR 200 million.
- (42) On 18 December 2013, the FROB, on behalf of itself and the FGD, entered into a sale and purchase agreement with Banesco Group in relation to the 88.33% stake in NCG.
- (43) As part of the tender process, the FROB provided all potential buyers with a number of guarantees²⁵ that would protect them should specific contingencies materialise. Those guarantees concerned:
 - (a) negative adjustments arising from the asset transfer to SAREB (net of positive adjustments);
 - (b) tax charges (VAT) derived from the asset transfer to SAREB;
 - (c) amounts that NCG may be forced to pay to insurance companies (AVIVA and CASER) as a result of negative rulings in arbitration processes initiated for, allegedly, breaking the change of control clauses set forth in the contracts;
 - (d) court rulings ordering NCG to compensate hybrid-holders for mis-selling;
 - (e) court rulings ordering NCG to compensate mortgagors for mis-selling of mortgage floors;
 - (f) court rulings ordering NCG to compensate SMEs and retail clients for mis-selling of mortgage swaps; and
 - (g) loss on-balance sheet deferred tax assets ("**DTAs**") as of 31 December 2012, as

²⁵

Described under section 7.1.

a result of the sale and subsequent merger with the acquirer.

In the case of all those guarantees, except (a), the FROB would bear 85% of total charges stemming from those contingencies. In relation to (a), the FROB would compensate the buyer, exceptionally, 100% of total net adjustments.

5 REVISED RESTRUCTURING PLAN OF NCG

5.1 Key principles and financial projections

- (44) Following the sale of NCG, Spain submitted a Revised Restructuring Plan and revised commitments on 18 June 2014. The Revised Restructuring Plan is intended to take into account the new situation of NCG and its planned merger with Banco Etcheverría, S.A. (“**Banco Etcheverría**”), a Spanish bank in which Banesco Holding Financiero 2, S.L.U. (“**Banesco**”), a company belonging to Banesco Group, has held a 82.84% stake since December 2012.
- (45) Banco Etcheverría is a small retail bank, operating mainly in Spain’s north-western regions of Galicia, Asturias and Castile and Leon, with total assets of EUR 1.84 billion as of 31 December 2013. As of that date, Banco Etcheverría had a loan portfolio of EUR 1.30 billion and client deposits of EUR 1.65 billion. It had 105 branches and 379 employees.
- (46) According to Banesco Group, the Revised Restructuring Plan is, overall, consistent with the principles of the Original Restructuring Plan. In particular, the stated aim is to develop a viable regional bank, focusing on lending to SMEs and individuals and divesting non-strategic businesses.
- (47) The key principles underlying the Revised Restructuring Plan are:
 - (a) a business strategy in the core region, comprising mainly Galicia, Asturias and Leon²⁶, that focuses on maintaining traditional retail mortgage business as well as increasing the presence in other areas of traditional retail and corporate banking; disintermediation businesses (asset management and insurance); increasing profitability by increasing spreads in credit operations and active management of retail spreads; as well as limited financing to real estate developers;²⁷
 - (b) a business strategy in the non-core region²⁸ that focuses on maintaining and managing current business, SMEs and high net worth individuals, as well as targeting mortgages in the mid-high level of income segment;

²⁶ As defined in section 2 (“Definitions”) of the annexed Term Sheet, the core region also includes: (i) the operative branch of NCG located in Geneva, (ii) the representation branches of NCG and Banco Etcheverría located outside Spain, (iii) the NCG branches located in the cities of Madrid, Barcelona and Bilbao - one branch per city -, and (iv) the current branches of Banco Etcheverría in the region of Aragón (2 branches), and the provinces of Valladolid (1 branch) and Madrid (1 branch).

²⁷ As explained in recital (99), in the Pre-Merger Period marginal additional RED lending can be granted to improve the net present value of certain loans. In the Post-Merger Period the merged entity will only provide such new financing subject to a strict overall cap and to clearly defined risk management policies.

²⁸ Defined in section 2 (“Definitions”) of the annexed Term Sheet.

- (c) a financial and risk strategy that prioritises asset quality and profitability; improvement of corporate governance; a majority of independent directors; maintenance of a resilient balance sheet structure (loan-to-deposit ratio below [100-150] %); maintenance of capital levels in accordance with the new market standards (Common Equity Tier 1 above 10 %); as well as fixed income investments as part of balance sheet management tools;
 - (d) a cost structure based on maximum operational and management efficiency and strong commitment to improve productivity (a cost-to-income ratio below [40-50] %); as well as comprehensive cost control; and
 - (e) a corporate structure that entails potential public listing in the medium-term as well as a merger with Banco Etcheverría.
- (48) Furthermore, the restructuring period (the “**Restructuring Period**”) is divided into two phases: (1) the period between the date on which the acquisition of the shares of NCG by Banesco becomes effective and the date on which the merger between NCG and Banco Etcheverría is approved by general assemblies of the two entities, or 31 December 2016, whichever occurs first (the “**Pre-Merger Period**”); and (2) the period between the date on which the merger between NCG and Banco Etcheverría is approved by general assemblies of the two entities and 31 December 2016 (the “**Post-Merger Period**”).

(49) Table 4 presents the main financial projections contained in the Revised Restructuring Plan for NCG on a stand-alone basis (Pre-Merger Period) and for the merged entity (Post-Merger Period):

Table 4 Revised Restructuring Plan for NCG and the merged entity

P&L	2013 Actual		2014		2015		2016		Evolution rate 2013-2016		CAGR	
	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity
Profit before tax	minus [400-450]	minus [400-450]	[100-150]	[100-150]	[200-250]	[200-250]	[350-400]	[400-450]	NA	NA	NA	NA
Cost of Income Ratio	[30-40]%	[30-40]%	[60-70]%	[60-70]%	[50-60]%	[50-60]%	[40-50]%	[40-50]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%
FTE	[5000-5500]	[5000-5500]	[3500-4000]	[4000-4500]	[3500-4000]	[4000-4500]	[3500-4000]	[4000-4500]	minus [30-40]%	minus [20-30]%	minus [10-20]%	minus [5-10]%
Branches	[600-650]	[700-750]	[500-550]	[650-700]	[450-500]	[600-650]	[450-500]	[600-650]	minus [20-30]%	minus [10-20]%	minus [5-10]%	minus [5-10]%
ROE	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[550-600]%	[400-450]%	[80-90]%	[70-80]%
Balance sheet	2013 Actual		2014		2015		2016		Evolution rate 2013-2016		CAGR	
	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity
Loans to clients (net)	[25000-30000]	[25000-30000]	[20000-25000]	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	minus [0-5]%	[0-5]%	[0-5]%	[0-5]%
NPLs	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	minus [40-50]%	minus [40-50]%	[0-5]%	[0-5]%
Total assets	[50000-55000]	[50000-55000]	[45000-50000]	[45000-50000]	[40000-45000]	[40000-45000]	[35000-40000]	[40000-45000]	minus [20-30]%	minus [20-30]%	minus [5-10]%	minus [5-10]%
RWA	[20000-25000]	[20000-25000]	[20000-25000]	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Liabilities	2013 Actual		2014		2015		2016		Evolution rate 2012-2017		CAGR	
	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity	NCG	Merged Entity
Central bank	[9000-9500]	[9000-9500]	[7000-7500]	[7000-7500]	[3000-3500]	[3000-3500]	[500-550]	[500-550]	minus [90-100]%	minus [90-100]%	minus [60-70]%	minus [60-70]%
Liabilities to clients	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	[25000-30000]	[30000-35000]	[5-10]%	[5-10]%	[0-5]%	[0-5]%
Total Liabilities	[45000-50000]	[50000-55000]	[40000-45000]	[45000-50000]	[35000-40000]	[40000-45000]	[35000-40000]	[35000-40000]	minus [20-30]%	minus [20-30]%	minus [10-20]%	minus [5-10]%
LTD	[100-150]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	[90-100]%	minus [5-10]%	minus [5-10]%	minus [0-5]%	minus [0-5]%
Basel III CET1	[2500-3000]	[2500-3000]	[2500-3000]	[2500-3000]	[2500-3000]	[2500-3000]	[2500-3000]	[3000-3500]	[10-20]%	[10-20]%	[0-5]%	[0-5]%
Basel III Common Equity Ratio	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%

5.2 Description of the Pre-Merger Period

- (50) Overall, the changes to the Original Restructuring Plan in the Pre-Merger Period will be limited to the minimum which is necessary to take into account NCG's sale to Banesco Group, a bank that has not received State aid, and the planned merger between NCG and Banco Etcheverría.
- (51) In particular, as illustrated in Table 4, NCG's balance sheet will be reduced by [20-30]% between 2013 and 2016, mainly due to a reduction in fixed-income investments (while maintaining the same level of loan portfolio) and a decrease in Eurosystem funding of [90-100]%. If added to previous restructuring efforts (2010-2012), it represents a total reduction of the balance sheet by [40-50]%.
- (52) NCG will continue to improve its operational efficiency. The intended total branch and staff adjustments, in line with the Original Restructuring Plan, will lead to a reduction between 2013 and 2016 of [20-30]% in branches and [30-40]% in staff, which, if added to previous restructuring efforts (2010-2012), represents a total [60-70]% closure of branches and [60-70]% reduction in staff since the restructuring of NCG started.
- (53) In addition to those measures, the total balance sheet of NCG will be reduced as a result of continuing divestment of the portfolio of industrial stakes.²⁹
- (54) The RWA of NCG will slightly increase by [5-10]% by the end of 2016 (as compared to 2013).
- (55) Following that restructuring, NCG projects to post profits before tax in 2016 of EUR [350-400] million (compared to a EUR 427 million loss in 2013), a cost-to-income ratio of [40-50]% (compared to 39.3% in 2013) and common equity capital ratio according to Basel III of [10-20]% (compared to 10% on 31 December 2013).

5.3 Description of the Post-Merger Period

- (56) With regard to the Post-Merger Period, the Revised Restructuring Plan takes into account a new situation of NCG following a planned merger with Banco Etcheverría ("**the merged entity**").
- (57) As illustrated in Table 4, the balance sheet of the merged entity will be further reduced by [20-30]% between 2013 and 2016, due to a decrease in fixed-income investments, to a level similar to that foreseen in the Original Restructuring Plan for NCG alone. The loan portfolio will marginally increase (+[0-5]%) driven predominantly by lending to SMEs and consumers, and partially offset by lower lending to residential mortgages, large corporates and RED.
- (58) The number of branches will be further adjusted from 746 in 2013 to a maximum of [600-650] in 2015 and 2016. That latter figure corresponds to the number of branches which NCG was supposed to reach on a stand-alone basis in 2015, according to the Original Restructuring Plan, and the number of the existing branches of Banco Etcheverría. That figure also makes it possible for the merged entity to open a limited number of new branches (or not to close some of the NCG branches). The slightly slower pace of reduction in branches than in assets takes into account that over the

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See the annexed Term Sheet, paragraph 5.2.5.

period 2010 to 2013 NCG's branches have decreased faster (-59%) than the bank's assets (-28%).

- (59) The merged entity will focus on its core region, mostly in the north of Spain, with new lending outside the core region not exceeding 25% of the total credit and with no more than 10% of total branches active outside the core area.
- (60) The volume of RWA in the merged entity will slightly increase by [5-10]% between 2013 and 2016.
- (61) The rebalancing in the structure of the merged entity's balance sheet will bring its loan-to-deposit ratio to [90-100]% in 2016.
- (62) The merged entity will continue selling its listed and unlisted equity holdings/subsidiaries, in line with the Term Sheet annexed to this Decision.
- (63) Fulfilling the restructuring plan will enable the merged entity to reach a profit before tax of EUR [400-450] million in 2016 (compared to a EUR 416 million pro-forma loss in 2013), a cost-to-income ratio of [40-50]% (compared to a 39.6% pro-forma in 2013) and common equity capital ratio according to Basel III of [10-20]% (compared to 10.1% pro-forma on 31 December 2013).

6 COMMITMENTS AND POSITION OF THE SPANISH AUTHORITIES

6.1 Commitments of the Spanish authorities under the Revised Restructuring Plan

- (64) The Spanish authorities have undertaken a number of commitments relating to the implementation of the Revised Restructuring Plan. The revised commitments by the Spanish authorities have been presented in a separate document entitled "Term Sheet of the Spanish Authorities' Commitments for the Approval by the European Commission of the Restructuring Plan of NCG Banco, S.A." ("**Term Sheet**"), annexed to this Decision.
- (65) With regard to the restructuring of NCG, the Spanish authorities commit to ensure:
 - (a) a balance sheet size of not more than EUR [50-60] billion by 31 December 2014, EUR [40-50] billion by 31 December 2015 and EUR [40-50] billion by 31 December 2016 during the Pre-Merger Period; and of not more than EUR [50-60] billion by 31 December 2014, EUR [40-50] billion by 31 December 2015 and EUR [40-50] billion by 31 December 2016 during the Post-Merger Period;
 - (b) a loan-to-deposit ratio of NCG and/or the merged entity, as the case may be, of not more than [100-150]% during the Restructuring Period;
 - (c) the size of the fixed income portfolio (excluding bonds issued by SAREB and the European Stability Mechanism), compared with the total balance sheet of NCG in the Pre-Merger Period and of the merged entity in the Post-Merger Period, will not be more than [20-30]% by 31 December 2014, [20-30]% by 31 December 2015 and [10-20]% by 31 December 2016;
 - (d) the number of Full-Time Branches of NCG of not more than [500-550] by 31 December 2014 and [450-500] by 31 December 2015 onwards until 31 December 2016 during the Pre-Merger Period; and of not more than [600-650] by 31 December 2015 onwards, until 31 December 2016 during the Post-Merger Period. The number of branches corresponding to the Non-Core Unit will not

exceed [30-40] during the Pre-Merger Period and [10-20]% of the total number of branches of the merged entity during the Post-Merger Period;

- (e) the number of FTEs of NCG of not more than [3 500-4 000] by 31 December 2015 and [3 000-3 500] by 31 December 2016 during the Pre-Merger Period. During the Post-Merger Period, the merged entity shall be subject to the following limits: (1) personnel cost-to-gross margin ratio of not more than [30-40]% by 31 December 2015 and [30-40]% by 31 December 2016, and (2) the average number of FTEs per Full-Time Branch of not more [5-10] by 31 December 2015 and [5-10] by 31 December 2016;
 - (f) the scope of activities limited to general banking during the Pre-Merger Period, not engaging in new business in (1) investment banking, (2) granting of loans for the development of real estate assets, except under the strictly defined conditions, and (3) lending by the NCG branches corresponding to the Core Unit outside those regions where Core Units are located. During the Post-Merger Period, the merged entity will not engage in new business in investment banking, whilst the granting of loans for the development of real estate assets will be subject to the condition that the exposure to the development of real estate assets does not exceed [5-10]% of the aggregate amount lent and, in the case of new real estate assets, to further strictly defined conditions;
 - (g) the divestment of the Non-Core equity portfolio during the Pre-Merger Period, (1) with at least [30-60]% of the total book value divested by [...],[60-80]% by [...], and [80-100]% by [...], and (2) with at least [30-60]% of the number of stakes divested by [...],[60-80]% by [...], and [80-100]% by [...], and fully writing down those stakes if they are not sold until [...]. During the Post-Merger Period the merged entity undertakes that, by [...], the book value of those equity holdings will not exceed EUR [0-500] million;
 - (h) the optimization in relation to the institutional headquarters, implementing the rationalisation plan by [...] during the Pre-Merger Period. If the Post-Merger Period starts prior to that date, a plan for the long-term optimization of the institutional headquarters will be submitted to the European Commission within three months after the Post-Merger Period commences;
 - (i) restrictions on lending by the Non-Core Unit during the Pre-Merger Period, with the aggregate net book value of the loan portfolio being below EUR [10-20] billion and the value of deposits being below EUR [0-5] billion during the Pre-Merger Period. During the Post-Merger Period the aggregate net book value of the loan portfolio of the Non-Core Unit will not exceed [20-30]% by 31 December 2014, [20-30]% by 31 December 2015, and [20-30]% by 31 December 2016;
 - (j) restrictions on capital repayments, with no dividend payment until 31 December 2014 during the Pre-Merger Period. During the Post-Merger Period those restrictions will not apply, subject to the fulfilment of applicable legal and regulatory requirements.
- (66) With regard to behavioural measures and corporate governance, the Spanish authorities commit to ensure:

- (a) the ban on acquisitions until 31 December 2015, subject to strictly defined exceptions;³⁰
 - (b) the ban on commercial aggressive practices throughout the duration of the Restructuring Plan, with the nominal interest rate offered to clients by NCG or the merged entity being less attractive than the average of the most competitive rates offered on analogous products by the five main non-aided competitors within the geographical area where NCG or the merged entity operate;
 - (c) advertising restrictions, preventing the use of the granting of the aid measures or any advantages arising therefrom for advertising purposes;
 - (d) restrictions on the remuneration of bodies, employees and essential agents during the Pre-Merger Period, so that NCG meets the applicable legislation in all salary and compensation matters, and public resources are used in the most efficient way. Those restrictions will cease to apply when the Post-Merger Period commences;
 - (e) implementation of other rules of conduct, with NCG or the merged entity, as the case may be, continuing to expand their risk-monitoring operations and conducting a commercial policy that is prudent, sound and oriented towards sustainability.
- (67) The Spanish authorities undertake to comply with the commitments described in recitals (65) and (66), which are set out in full in the Term Sheet, if necessary by ensuring that those commitments are duly observed by NCG or the merged entity.
- (68) The Spanish authorities note in light of section 5 of the Restructuring Communication³¹ that regular reports are required to allow the Commission to verify that the Revised Restructuring Plan is being implemented properly throughout its duration. Therefore, to ensure that NCG or the merged entity, as the case may be, fully and correctly implement the commitments as part of the Revised Restructuring Plan, the Spanish authorities commit to appoint an independent, sufficiently qualified monitoring trustee (“**the Monitoring Trustee**”).
- (69) The Monitoring Trustee will have unrestricted access to all information needed to monitor the implementation of the Original Restructuring Decision as amended by the present Decision. The Commission or the Monitoring Trustee may ask NCG or the merged entity, as the case may be, for explanations and clarifications. Spain and NCG or the merged entity will cooperate fully with the Commission and the Monitoring Trustee with regard to all enquiries associated with monitoring.

6.2 Position of the Spanish authorities on the Revised Restructuring Plan

- (70) The Spanish authorities contend that they have largely carried out an in-depth restructuring of NCG’s activities and disposed of NCG through a competitive tender process, in line with the Original Restructuring Plan.³²
- (71) In view of the sale and in line with the Original Restructuring Plan,³³ Spain proposed the Revised Restructuring Plan.

³⁰ Those exceptions are defined in paragraph 6.1.2 of the annexed Term Sheet.

³¹ Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009, p. 9.

³² Section 3 of the Original Restructuring Decision and sections 5 and 8 of the Term Sheet annexed thereto.

³³ Recital 85 of the Original Restructuring Decision.

- (72) The Spanish authorities also contend that no additional State aid has been granted as part of the sale, and that the Revised Restructuring Plan is, overall, consistent with the principles of the Original Restructuring Plan. In particular, according to the Spanish authorities, the Revised Restructuring Plan does not alter the original balance in terms of the viability of NCG, burden-sharing and compensatory measures relating to the distortion of competition, meaning that the existing aid measures remain compatible on the basis of Article 107(3)(b) of the Treaty.

7 ASSESSMENT

7.1 Existence of State Aid

- (73) With regard to the measures approved by the Commission as rescue and restructuring aid in favour of Novacaixagalicia and NCG in earlier decisions or under a scheme, the Commission has already concluded that these measures constituted State aid. As a consequence, it is not necessary to reassess whether those measures (A to F described in section 2.3) constitute State aid under the present decision. However, the Commission must assess if the guarantees provided by the FROB at the sale of NCG constitute State aid.
- (74) According to Article 107(1) of the Treaty State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings, in so far as it affects trade between Member States. The Commission observes that the Spanish authorities consider that the guarantees do not constitute State aid.
- (75) The qualification of a measure as State aid within the meaning of that provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and have the potential to affect trade between Member States.

7.1.1 Advantage

- (76) The cumulative headline amount of the guarantees granted by the FROB to the purchaser of NCG is EUR 2 332 million. However, the real value of those guarantees as estimated by the Spanish authorities will give rise to a loss for the FROB of EUR [0-500] million.
- (77) In case of the guarantee on negative adjustments arising from the asset transfer to SAREB, the Commission notes that its real value was estimated at a level very close to its maximum value and that the due diligence on SAREB assets has been ongoing for over a year now which has allowed the real value of the transferred assets to be properly evaluated. As for the guarantee on VAT charges that might derive from the asset transfer to SAREB, the Commission considers that the analysis of the Spanish authorities that the guaranteed risk is unlikely to materialise is well-founded. For that guarantee to be activated, the land subject to VAT in previous transactions (construction land) would have to be declared not developable or SAREB would have to sell construction land or finished premises to entities which are not subject to VAT (financial, insurance and health sector) all of which are entities that would be very unlikely to purchase such assets³⁴. Those factors allow the Commission to conclude

³⁴ SAREB would not be able to charge VAT to a buyer of an asset and hence recover the VAT paid by it to NCG for the same asset together with the acquisition price.

that the FROB's estimates of the true cost of the both of the SAREB-related guarantees are realistic.

- (78) Based on previous purchases of FROB-owned entities, the Commission recognises that the guarantee in relation to the DTAs (of a maximum of EUR 1 073 million) cannot be triggered. According to the Spanish authorities, that guarantee can be characterised as legally meaningless since it purports to guarantee that the FROB (a body which could not take advantage of the DTAs) will not take advantage of the DTAs.
- (79) As for the other guarantees, the FROB's experience of the past two years with securities mis-selling allows it to provide the Commission with a realistic evaluation of the true cost of the guarantees.
- (80) With regard to all of the above guarantees, the Spanish authorities provided the Commission with a detailed report with the assessment of their real value prepared by an external adviser, an internationally renowned investment bank.
- (81) The price paid for NCG by Banesco Group amounted to EUR 1 003 million. There is thus an overall net positive price paid by Banesco Group for NCG, and hence a net profit for the FROB, which can be estimated at EUR [500-1 000] million. That net price would remain positive even if there were major problems (which is not the case) as to the plausibility of the assumptions made by Spain in estimating the real economic value of the guarantees, given a wide margin between that value and the sale price.
- (82) The Commission recalls that the guarantees provided are ordinary guarantees in the context of a business disposal, which is to say that a private investor would also grant them. In addition, they were granted in an open and competitive tender process and were available to all parties participating in that process. Moreover, had those guarantees not been granted by the FROB their absence would have been reflected in a lower price paid by the buyer. In view of those elements, as well as the net positive price paid for NCG and the wide degree by which the real costs of the guarantees exceed the amounts to be obtained by the FROB, the Commission agrees with the assessment of the Spanish authorities that the guarantees do not confer an advantage either on the buyer or on NCG.
- (83) Given that the condition of advantage is not fulfilled, there is no need to assess if the remaining three conditions are met.

7.1.2 Conclusion

- (84) On the basis of the forgoing, the Commission considers that the guarantees granted by the FROB in the notified sale of NCG do not fulfil all the conditions laid down in Article 107(1) of the Treaty and that they therefore do not constitute State aid in favour of NCG or Banesco within the meaning of that provision.
- (85) However, the Commission also recalls that it had already found measures A, B, C, D, E and F to constitute State aid of which NCG is the beneficiary.

8 COMPATIBILITY OF THE AID WITH THE INTERNAL MARKET

- (86) As regards the compatibility of the aid provided to NCG, the Commission has already concluded in earlier decisions that measures A through F in favour of Novacaixagalicia and NCG were compatible with the internal market for reasons of financial stability on the basis of Article 107(3)(b) of the Treaty.
- (87) A restructuring decision can in principle be amended by the Commission where the modification is based on new set of commitments which can be considered equivalent to those originally provided.³⁵ In that situation, the existing aid measures would remain compatible on the basis of Article 107(3)(b) of the Treaty if the overall balance of the original decision remained intact. In order to preserve the original balance, the Revised Restructuring Plan and altered commitments should not negatively affect the viability of the aid beneficiary, with the Revised Restructuring Plan and overall set of commitments remaining equivalent in terms of burden-sharing and compensatory measures taking into account the requirements of the Restructuring Communication.
- (88) Given that no new aid has been granted, the Commission does not have to assess compliance with the 2013 Banking Communication.³⁶

8.1 Compatibility with the Restructuring Communication

- (89) As explained in recital 75, for the Revised Restructuring Plan to remain compatible on the basis of Article 107(3)(b) of the Treaty, it should preserve the original balance, notably with regard to (1) the viability of the aid beneficiary, (2) burden-sharing and (3) compensatory measures relating to the distortion of competition. Therefore, each revised commitment is assessed against the background of the Original Restructuring Plan.

8.1.1 *Restoration of viability*

- (90) As set out in point 17 of the Restructuring Communication, a sale of an ailing bank to another financial institution can contribute to long-term viability. In that context, it is particularly important to assess viability of NCG under the Revised Restructuring Plan, given the fact that Banco Etcheverría is a considerably smaller bank than NCG and that, therefore, the merged entity is to a large extent the continuation of NCG.
- (91) In line with section 2 of the Restructuring Communication, the Member State needs to provide a comprehensive restructuring plan which shows how the long-term viability of the bank will be restored without State aid within a reasonable period of time and within a maximum of five years. Long-term viability is achieved when a bank is able to compete in the marketplace for capital on its own merits in compliance with the relevant regulatory requirements. For a bank to do so, it must be able to cover all its costs and provide an appropriate return on equity, taking into account the risk profile of the bank. The return to viability should mainly derive from internal measures and be based on a credible restructuring plan.

³⁵ For other similar decisions see, for instance, SA.29833 KBC – Extension of the target date of certain divestments by KBC and Amendment of restructuring commitments, OJ C 135, 9.5.2012, p. 5; SA.29833 KBC – Accelerated phasing-out of the State Protection measure and amendments to the KBC restructuring plan, OJ C 163, 8.06.2013, p. 1; SA.34539 Commerzbank – Amendment to the restructuring plan of Commerzbank, OJ C 177, 20.06.2012, p. 20.

³⁶ Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 2016, 30.07.2013, p. 1.

- (92) The Spanish authorities have submitted the Revised Restructuring Plan for NCG standalone and as a merged entity, following a planned merger with Banco Etcheverría. The Revised Restructuring Plan goes until 31 December 2016, that is more than four years from the start of the original restructuring period. It shows a return to viability at the end of that period. Compared to the Original Restructuring Plan, the Restructuring Period is one year shorter. That shorter duration is intended to take into account NCG's restructuring to date, in which NCG has exceeded the targets set in the Original Restructuring Plan, and the fact that NCG has been sold to a non-aided bank.
- (93) Point 10 of the Restructuring Communication requires that the proposed restructuring measures remedy the bank's weaknesses. A number of causes of NCG's failures had been addressed by the time the Revised Restructuring Plan was submitted. In particular, the assets and loans relating to the RED sector had been transferred to SAREB, reducing high exposure of NCG's balance sheet to that sector and the level of non-performing assets.
- (94) The Revised Restructuring Plan adequately addresses the remaining causes of NCG's failures. First, NCG will continue reducing its balance sheet and improving its operational efficiency. Compared to the Original Restructuring Plan, the balance sheet will be reduced at a faster rate in both the Pre-Merger and the Post-Merger Periods (EUR [40-50] billion by 31 December 2016 in the Pre-Merger Period and EUR [40-50] billion in the Post-Merger Period, including Banco Etcheverría, compared to EUR [40-50] billion in the Original Restructuring Plan).
- (95) With regard to operational efficiency, the continued reduction in the number of branches and staff should improve the cost-to-income ratio from 68.7% in 2011 to [40-50]% (NCG standalone) and [40-50]% (merged entity) in 2016. Compared to the Original Restructuring Plan, the number of branches will remain unchanged in the Pre-Merger Period, whilst in the Post-Merger Period more branches will be allowed than under the Original Restructuring Plan ([600-650] versus [450-500] branches by 31 December 2015 and until 31 December 2016), to take into account the planned merger between NCG and Banco Etcheverría. Similarly, the caps on the number of FTEs will remain unchanged in the Pre-Merger Period and will be replaced by more targeted indicators in the Post-Merger Period, namely the personnel cost-to-gross margin ratio and the average number of FTEs per branch. In particular, the latter two ratios ensure an equivalent increase in operational efficiency to that foreseen in the Original Restructuring Plan, whilst also reflecting the actual number of branches and the level of income at any given date.
- (96) NCG will also continue the optimisation of its headquarters. The deadline for implementation is extended by one year in the Pre-Merger Period to factor in the delay incurred as a result of the sale of the bank. Spain commits that the merged entity will submit an optimisation plan within three months in the Post-Merger Period and the optimisation will also concern Banco Etcheverría's headquarters.
- (97) Second, in line with the Revised Restructuring Plan, NCG will continue to change fundamentally its business profile, to concentrate on its core competences and to wind down non-core and riskier activities. In particular, NCG as well as the merged entity will focus on the north of Spain and will continue disposing its subsidiaries and equity holdings. Compared to the Original Restructuring Plan, the core area has been extended to include Asturias and Leon, to take into account the planned merger with

Banco Etcheverría which is already active in those regions.³⁷

- (98) As regards the divestment of the non-core equity portfolio, the commitments remain unchanged in the Pre-Merger Period, whilst allowing for some flexibility in the Post-Merger Period.
- (99) With regard to the winding down of non-core and riskier activities, NCG will refrain from new financing to the RED sector as a standalone entity in the Pre-Merger Period. The relevant commitment remains essentially unchanged compared to the Original Restructuring Plan. It nevertheless clarifies that marginal additional lending can be granted to improve the net present value of certain loans. That additional lending can for instance concern lending necessary to finish a building, thereby improving the capacity of the lender to repay the loan to NCG. In the Post-Merger Period the merged entity will only provide such new financing subject to a strict overall cap (the overall real estate exposure will not exceed [5-10]% of total loans by 31 December 2016) and to clearly defined risk management policies relating to own investment by clients, value of the collateral and risk concentration. Therefore, the revised commitment will contribute to the long-term viability of NCG: the marginal additional lending in the Pre-Merger Period should increase the net present value of certain loans and improve the financial position of NCG, whilst the overall cap in the Post-Merger Period should prevent NCG or the merged entity from overexposure to riskier activities.
- (100) The commitment restricting new business in investment banking remains essentially unchanged compared to the Original Restructuring Plan, preventing NCG from riskier non-core activities and thereby contributing to its long-term viability.
- (101) In addition, NCG's activities will remain restricted in the non-core area, with absolute limits on net lending and deposits, branches and FTEs during the Pre-Merger Period. During the Post-Merger Period net lending in the non-core area will be restricted as a proportion of total lending. Limiting activities in the non-core area should contribute to the aim of creating a focused regional bank for the north of Spain and thereby ensure the long-term viability of NCG.
- (102) Third, the Revised Restructuring Plan envisages a financial and risk strategy that prioritises asset quality and profitability rather than growth. In particular, it involves a continued improvement of corporate governance, with a majority of independent directors. The commitment under the Original Restructuring Plan, requiring continued expansion of risk monitoring operations and conducting a commercial policy that is prudent, sound and oriented towards sustainability, remains unchanged in the Revised Restructuring Plan.
- (103) In addition, the continued rebalancing in the structure of NCG's balance sheet should bring its loan-to-deposit ratio to [below 100-150] % in 2016 (both standalone and as a merged entity with Banco Etcheverría), with the binding loan-to-deposit now applying to the entirety of NCG or the merged entity, and not only to the core unit as in the Original Restructuring Plan.
- (104) Capital levels should be maintained in accordance with the new market standards (Common Equity Tier 1 above 10%) and the size of the fixed income portfolio should be capped throughout the Restructuring Period, the latter being a new commitment under the Revised Restructuring Plan. Both of those commitments ensure that NCG is adequately capitalised. Capping the non-core activity of investment in fixed income

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The core area will also include the current branches of Banco Etcheverría in the region of Aragón (2 branches), and the provinces of Valladolid (1 branch) and Madrid (1 branch), as defined in paragraph 2.6 of the annexed Term Sheet.

will contribute to its long-term viability. In addition, a dividend ban in the year 2014 of the Pre-Merger Period should permit the amount of capital remaining in the bank at the start of the restructuring to be maximised at a moment when Spain and NCG are still likely to be more vulnerable to any continuation of the crisis.

- (105) Fourth, the Revised Restructuring Plan provides information on the future funding profile of NCG, including evolution in the level of deposits and reliance on central bank funding. By the end of the Restructuring Period, reliance on the central bank funding shall have been reduced by [90-100]% compared to the levels in 2012.
- (106) The Commission therefore considers that the implementation of the Revised Restructuring Plan will ensure long-term viability of NCG which, after the restructuring, shall be able to compete in the marketplace for capital on its own merits, in compliance with the relevant regulatory requirements.
- (107) In conclusion, the revised commitments relating to the long-term viability are in part stricter than, in part equivalent to and in part more accommodating than the commitments in the Original Restructuring Plan. Overall, the Commission considers that the original balance has been preserved, duly taking into account the restructuring progress so far, the sale of NCG to Banesco Group and the planned merger between NCG and Banco Etcheverría.

8.1.2 Own contribution and burden-sharing

- (108) Given the fact that the sale of NCG does not give rise to new aid, there is no need for additional burden-sharing of securities holders beyond that already achieved.
- (109) In addition, the Commission notes that Spain commits to sustain the restrictions on remuneration within both NCG and the merged entity which contributes to sharing the costs of the restructuring.
- (110) The Commission also views positively the commitment that NCG will not pay out a dividend in the year 2014 of the Pre-Merger Period and hence the resources will be fully devoted to the restructuring.
- (111) The Commission notes positively that NCG or the merged entity, as the case may be, commits to continue divesting its portfolio of equity holdings until the end of 2016 as per the Term Sheet.
- (112) Finally, the company resources should be limited to covering those costs that are necessary for restoration of viability. Therefore, the Commission takes positive note of sustaining the existing ban on acquisitions by NCG (in the Pre-Merger Period) and up until 31 December 2015 by the merged entity (in the Post-Merger Period).
- (113) Taking all those factors into consideration, the Commission considers that burden-sharing that took place in NCG is adequate and sufficient.

8.1.3 Limiting distortion of competition

- (114) Finally, section 4 of the Restructuring Communication requires that the Revised Restructuring Plan contains measures limiting distortions of competition. Such measures should be tailor-made to address the distortions on the markets where the beneficiary bank operates post-restructuring. The nature and form of such measures depend on two criteria: first, the amount of the aid and the conditions and circumstances under which it was granted and, second, the characteristics of the markets on which the beneficiary will operate. Furthermore, the Commission must take into account the extent of the NCG's own contribution and burden-sharing over the Restructuring Period.

- (115) The Commission recalls that NCG and Novacaixagalicia have received State aid approved by previous decisions in the form of capital injections and impaired asset measures up to an amount of EUR 10 352 million in addition to the liquidity guarantees worth EUR 7 703 million.
- (116) The aid amount of EUR 10 352 million was equivalent to 22.27 % of NCG's RWA.³⁸ As the relative amount of aid to the beneficiary was very large and the price received by the FROB from the sale compensates the aid only to a certain extent, measures limiting potential distortions of competition need to remain ascertained. At the same time, the Commission considers it necessary to take account of the fact that NCG was purchased by a non-aided bank which was, accordingly, not subject to restrictions.
- (117) The two main measures that have already contributed to and will limit distortions of competition are (i) the downsizing of NCG in terms of total assets, RWA, geographical footprint, business segments and staff; and (ii) the sale of NCG to Banesco Group.
- (118) First, over the first year and a half of the original restructuring period, NCG has already become a smaller bank with a total balance sheet reduced from EUR 59.8 billion in December 2012 to EUR 51.8 billion (forecast) on 30 June 2014. As indicated in Table 4, by December 2016, the total balance sheet will shrink further to EUR [30-40] billion for NCG and to EUR [40-50] billion for the merged entity. By the end of 2016, RWA will be also reduced (EUR [20-30] billion for NCG and EUR [20-30] billion for the merged entity) as compared to their levels before the restructuring (EUR 43 billion as of 30 June 2012).
- (119) In parallel, NCG has already made a considerable effort to reduce branches (from 815 in December 2012 to 641 in December 2013) and headcount (from 5 836 FTEs to 5 043 FTEs) and will continue to do so until the end of 2016 both in the Pre-Merger ([450-500] branches and [3 000-3 500] FTEs) and Post-Merger Periods ([600-650] branches and [4 000-4 500] FTEs for the merged entity). In line with the Original Restructuring Decision, the bank has also reduced its size through divesting Banco Gallego and EVO. Moreover, NCG or the merged entity, as the case may be, will continue to sell its portfolio of equity holdings until the end of 2016 as per the Term Sheet.
- (120) Altogether, the Commission considers the reduction of the total balance sheet between December 2012 and the end of the Restructuring Period of NCG by more than [30-40]% in Pre-Merger Period and by more than [30-40]% in Post-Merger Period (taking into account that the perimeter of the bank has been enlarged by integrating a non-aided bank) to be appropriate, as compared to the distortions of competition stemming from the large amount of aid received.
- (121) Second, the Commission recalls that lending outside the core region will be limited in Post-Merger Period to [20-30]%, [20-30]% and [20-30]% of the total credit portfolio in year 2014, 2015 and 2016, respectively, whereas in Pre-Merger Period it will be even more contained.
- (122) In addition, in the core region, where arguably the distortions of competition post-restructuring caused by the aid were most significant, NCG and the merged entity will focus on retail mortgage business, SME and corporate banking. The bank will operate with limitations in the segments of RED (cap of [5-10]% of total loans portfolio in Post-Merger Period with stricter limit in the Pre-Merger Period) and investment and

³⁸

RWA as of the relevant reference date when the aid measure was granted.

corporate banking activities which involve assuming direct risk in the operation. NCG has already reduced its presence in the core region through the divestment of Banco Gallego.

- (123) Outside the core region, NCG and the merged entity will maintain its current business focus, namely SMEs and high net worth individuals as well as mortgages.
- (124) Third, in line with its commitment in the Original Restructuring Decision, Spain sold NCG in an open, transparent and non-discriminatory procedure. The sale of NCG, as the beneficiary of the aid, to another market player in the framework of an open sales process constitutes a form of mitigation of potential distortions of competition.³⁹ That process, which gave competitors the possibility to acquire that business, resembles to some extent the “counterfactual” situation that would have occurred in the absence of State aid, as a company in difficulty (or indeed in bankruptcy) would normally often seek a potential buyer in the market or, failing to do so, would be liquidated. As a result, the sales process in the present case contributes significantly to limiting the distortions of competition resulting from the aid.
- (125) In addition to those structural measures, Spain also committed to several behavioural constraints. Spain will continue to ensure that the remuneration of NCG’s employees is in line with the limitations set forth in Spanish legislation. The Commission welcomes also maintaining a ban on advertising State support and a ban on aggressive commercial practices, thus preventing NCG or the merged entity from using the aid for anti-competitive market conduct. It also welcomes the maintenance an acquisition ban (shortened to 31 December 2016 in the Port-Merger Period) which ensures that the State aid will not be used to take over competitors, but instead that it will serve its intended purpose, namely to restore NCG’s viability.
- (126) On the other hand, the Commission also notes that the duration of the Revised Restructuring Plan and hence the timeframe of restrictions imposed on the bank was shortened by one year to 31 December 2016 as compared to the Original Restructuring Decision. That reduced duration is, however, justified by the facts that Banesco Group purchased NCG in an open and competitive tender process and that Banco Etcheverria has not received State aid and as such on a stand-alone basis is not subject to State aid restrictions.
- (127) As a result, the Commission considers that there are sufficient safeguards to limit potential distortions of competition despite the high amount of aid that NCG has received.

8.2 Conclusion on compatibility under Restructuring Communication

- (128) The Commission finds that the Revised Restructuring Plan and the new set of commitments preserve the objectives and the standard of the original commitments in terms of restoration of viability, burden-sharing and mitigation of competition distortion, while factoring properly the sale of NCG to a non-aided bank via a competitive process. The replacement of the original commitments by the new commitments does not alter the compatibility of the aid in favour of NCG and Novacaixagalicia with the internal market for reasons of financial stability on the

³⁹

Cf. Case C 10/2008, IKB Commission decision of 21 October 2008, OJ L 278, 23.10.2009, p. 32, recital 113; Case NN 42/2008, NN 46/2008 and NN/53/A/2008, Fortis Banque & Fortis Banque Luxembourg, Commission decision of 3 December 2008, recital 95; Case N 344/2009 and N 380/2009 Kaupthing Luxembourg Decision of 9 July 2009, recital 79; and Case NN 19/2009 Dunfermline of 25 January 2010, recitals 126 and 130.

basis of Article 107(3)(b) TFEU as concluded by the Original Restructuring Decision.

9. CONCLUSION

The Commission has accordingly decided:

- to consider that the sale process of NCG by the FROB as a way to orderly resolve the bank in accordance with the Original Restructuring Decision does not involve any new aid element to NCG or the buyer.
- to consider that the Revised Restructuring Plan and a new set of commitments does not affect the compatibility of the State aid provided to NCG with the internal market on the basis of Article 107(3)(b) TFEU.

The Commission notes that Spain exceptionally accepts that the adoption of the Decision be 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/competition/elojade/isef/index.cfm>.

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

European Commission
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

TERM SHEET NCG BANCO, S.A.
2014 EU RESTRUCTURING PLAN

1. BACKGROUND

This term sheet (the "**Term Sheet**") sets out the terms for the restructuring of NCG Banco, S.A. ("**NCG**"), which the Kingdom of Spain and NCG have committed to implement.

2. DEFINITIONS

- 2.1 "**Banco Etcheverría**" means Banco Etcheverría, S.A., a Spanish bank duly authorised by the BoS in which Banesco holds a 82.84% stake.
- 2.2 "**Banesco**" means Banesco Holding Financiero 2, S.L.U., a company belonging to Banesco Group.
- 2.3 "**Banesco Group**" is an international banking group with operations in Latin America, Spain and the United States.
- 2.4 "**BoS**" means the Bank of Spain.
- 2.5 "**Commitments**" means the undertakings related to the restructuring of NCG set out in this Term Sheet.
- 2.6 "**Core Unit**" comprises (i) the branches of NCG and Banco Etcheverría located in Galicia, Asturias and León, (ii) the operative branch of NCG located in Geneva, (iii) the representation branches of NCG and Banco Etcheverría located outside Spain, (iv) the NCG branches located in the cities of Madrid, Barcelona and Bilbao -one branch per city-, and (v) the current branches of Banco Etcheverría in the region of Aragón (2 branches), and the provinces of Valladolid (1 branch) and Madrid (1 branch).
- 2.7 "**Decision**" means the decision of 20 June 2014 of the European Commission on the restructuring of NCG in the context of which these Commitments are undertaken.
- 2.8 "**FGD**" means the Spanish Deposit Guarantee Fund (*Fondo de Garantía de Depósitos*).
- 2.9 "**Former Decision**" means the decision of 28 November 2012 of the European Commission on the restructuring of NCG which ceases to be in force by virtue of the Decision.
- 2.10 "**Former Term Sheet**" means the term sheet described in clause 3.5 below.

- 2.11 "**FROB**" means the Spanish Fund for Orderly Bank Restructuring (*Fondo de Reestructuración Ordenada Bancaria*).
- 2.12 "**FTE**" means Full-Time Equivalent, a unit that indicates the workload of an employee (*e.g.* 1.0 FTE means that the person is equivalent to a full-time employee).
- 2.13 "**Full-Time Branches**" means branches which ordinarily open on business days and are not considered as Part-Time Branches or Mobile Branches.
- 2.14 "**ESM**" means the European Stability Mechanism, established by virtue of the Treaty signed by euro area Member States on 2 February 2012.
- 2.15 "**Law 9/2012**" means Spanish Law 9/2012 of 14 November on Credit institutions restructuring and resolution.
- 2.16 "**Merged Entity**" comprises (i) the entities NCG and Banco Etcheverría upon the approval of the Projected Merger (as defined in 2.26 below) and, (ii) once such merger has been effectively implemented, the company resulting out of the same.
- 2.17 "**Merger Resolutions**" means the resolutions to be adopted by the General Shareholders' Meeting of both NCG and Banco Etcheverría in order to approve the Projected Merger, and regardless of the fact that the effectiveness of such resolutions may be subject to the subsequent obtaining of the relevant authorizations to the Projected Merger from public authorities, as required by applicable regulations.
- 2.18 "**Mobile Branches**" means branches located in a bus or similar motor vehicle which can be moved to different places and do not open every day or all the working hours of a day.
- 2.19 "**Monitoring Trustee**" has the meaning set out in clause 7 and Appendix II herein.
- 2.20 "**NCG**" means NCG Banco, S.A.
- 2.21 "**Non-Core Unit**" comprises the branches of NCG which are not part of the Core Unit.
- 2.22 "**Optimization Plan**" has the meaning set out in clause 5.9.2 herein.
- 2.23 "**Part-Time Branches**" means branches which open only certain days in the week or certain hours a day, so that the total number of hours they open a week, are not more than those corresponding to 2 working days of a Full-Time Branch.
- 2.24 "**Post-Merger Period**" has the meaning set out in clause 3.3.2 herein.
- 2.25 "**Pre-Merger Period**" has the meaning set out in clause 3.3.1 herein.
- 2.26 "**Projected Merger**" has the meaning set out in clause 3.3.1 herein.

- 2.27 **"Remedial Action"** means the actions to be proposed by NCG in accordance with clause 5.12 herein.
- 2.28 **"Restructuring Period"** is the time period specified in clause 3.3 herein. All Commitments under this Term Sheet apply exclusively during the Restructuring Period, unless a shorter term is expressly provided herein.
- 2.29 **"Restructuring Plan"** means the plan submitted to the European Commission in relation to the restructuring of NCG, on 18 June 2014, as amended and supplemented from time to time by written communications, to be implemented during the Restructuring Period.
- 2.30 **"Shares of NCG"** has the meaning set out in clause 4.1.
- 2.31 **"SPA"** has the meaning set out in clause 4.2.
- 2.32 **"Term Sheet"** has the meaning set out in clause 1.

3. **GENERAL**

- 3.1 Spain is to ensure that the Restructuring Plan for NCG submitted on 18 June 2014, is correctly and fully implemented during the Restructuring Period.
- 3.2 Spain is to ensure that the Commitments are duly observed during the implementation of the Restructuring Plan.
- 3.3 The Restructuring Period will end on 31 December 2016 (the **"Restructuring Period"**) and is divided into the following 2 phases:
- 3.3.1 the period between the date in which the acquisition of the Shares of NCG by Banesco becomes effective; and
- (a) the date in which the Merger Resolutions corresponding to the merger between NCG and Banco Etcheverría (the **"Projected Merger"**) have been approved by the General Shareholders' Meeting of both entities, or
- (b) 31 December 2016,
- whichever occurs first (the **"Pre-Merger Period"**); and
- 3.3.2 the period between the date in which the Projected Merger is approved as per clause 3.3.1.(a) above and 31 December 2016 (the **"Post-Merger Period"**).
- 3.4 The Commitments apply during the entire Restructuring Period and only during the Restructuring Period, unless a shorter term is otherwise provided, fully expiring upon the termination of said period.

- 3.5 NCG and Banesco shall not bear any undertakings during the Restructuring Period other than the Commitments hereunder. For the avoidance of doubt, the undertakings set out in this Term Sheet fully replace those contained in the term sheet annexed to the Former Decision, which ceases to be in force at the date of adoption of this decision (the "**Former Term Sheet**"), the fulfilment of which was monitored by the firm Grant Thornton, appointed as monitoring trustee of NCG for such purposes on 13 March 2013.

4. **SALE OF NCG TO BANESCO**

- 4.1 By virtue of the process letter dated 21 November 2013, the FROB initiated a competitive bidding process for the sale of a 88.33% stake in NCG, held by the FROB and the FGD, as a result of the injection of public funds and the implementation of burden sharing measures (*i.e.* mandatory exchange of preferred participations for ordinary shares and subsequent purchase of the latter), respectively (the "**Shares of NCG**"). Such bidding process commenced 4 years ahead of the deadline set out by the European Commission.
- 4.2 On 18 December 2013, the FROB (on its own behalf and on behalf of the FGD) entered into a sale and purchase agreement with Banesco in relation to the Shares of NCG (the "**SPA**"), in accordance with terms which do not imply the granting of any State aid for the benefit of Banesco.
- 4.3 The Banesco Group, which currently holds a controlling position over the Spanish credit entity Banco Etcheverría, has committed to implement the merger between NCG and Banco Etcheverría, in order to maximize the synergies between both entities and to provide the Merged Entity with a solid financial position.

5. **RESTRUCTURING OF NCG**

- 5.1 The Restructuring Plan is subject to:
- 5.1.1 the completion of the acquisition of the Shares of NCG by Banesco in accordance with the terms set out in the SPA; and
 - 5.1.2 the subsequent restructuring of the continuing business of NCG pursuant to the terms of this clause, which assumes the completion of the Projected Merger in due course;

the foregoing with the aim of ensuring the viability of NCG or the Merged Entity, as the case may be, as well as preventing competition distortions.

5.2 Balance sheet size.

5.2.1 Pre-Merger Period.

During the Pre-Merger Period, the balance sheet size of NCG shall not exceed:

- (a) EUR [50-60] billion, by 31 December 2014;
- (b) EUR [40-50] billion, by 31 December 2015; and
- (c) EUR [40-50] billion, by 31 December 2016.

5.2.2 Post-Merger Period.

During the Post-Merger Period, the balance sheet size of the Merged Entity shall not exceed:

- (a) EUR [50-60] billion, by 31 December 2014;
- (b) EUR [40-50] billion, by 31 December 2015; and
- (c) EUR [40-50] billion, by 31 December 2016.

5.3 Loan to deposit ratio.

5.3.1 Restructuring Period.

The loan to deposit ratio of NCG and/or the Merged Entity, as the case may be, shall not exceed [100-150]% during the Restructuring Period.

5.4 Fixed income portfolio.

5.4.1 Restructuring Period.

The size of the fixed income portfolio (excluding bonds issued by SAREB and the ESM), over the total balance sheet of NCG in the Pre-Merger Period and of the Merged Entity in the Post-Merger Period shall not exceed:

- (a) [20-30]%, by 31 December 2014;
- (b) [20-30]%, by 31 December 2015; and
- (c) [10-20]%, by 31 December 2016 provided that, however, this threshold shall be increased up to 20% in the event that the GDP accumulative growth of the Kingdom of Spain for the period between 1 January 2014 and 30 June 2016 is lower than 2.1%.

5.5 Number of branches.

5.5.1 Pre-Merger Period.

- (a) The number of Full-Time Branches of NCG shall not exceed [500-550] by 31 December 2014, and [450-500] by 31 December 2015 onwards until 31 December 2016.
- (b) The number of Full-Time Branches corresponding to the Non-Core Unit during the Pre-Merger Period is set out in clause 5.10.2(a).
- (c) All the branches, regardless of their category, may be fully operational and no restriction shall apply as to the activities which any of them may carry out.
- (d) For the purposes of clause 5.5.1, [5-10] representative offices, [20-30] Part-Time Branches and [0-5] Mobile Branches are not considered as Full-Time Branches and, therefore, shall not be subject to any of the restrictions set out herein.

5.5.2 Post-Merger Period.

- (a) The number of Full-Time Branches of the Merged Entity shall not exceed [600-650] by 31 December 2015 onwards, until 31 December 2016.
- (b) The number of Full-Time Branches corresponding to the Non-Core Unit during the Post-Merger Period is set out in clause 5.10.2(b).
- (c) All the branches, regardless of their category, may be fully operational and no restriction shall apply as to the activities which any of them may carry out.
- (d) For the purposes of clause 5.5.2, [10-20] representative offices, [30-40] Part-Time Branches and [0-5] Mobile Branches are not considered as Full-Time Branches and, therefore, shall not be subject to any of the restrictions set out herein.

5.6 Personnel.

5.6.1 Pre-Merger Period.

- (a) The number of FTEs of NCG during the Pre-Merger Period shall not exceed:
 - (i) [3 500-4 000], by 31 December 2015; and

(ii) [3 000-3 500], by 31 December 2016.

(b) Remuneration of bodies, employees and essential agents during the Pre-Merger Period is set out in clauses 6.4.1 and 6.4.2.

5.6.2 Post-Merger Period.

(a) During the Post-Merger Period, the Merged Entity shall be subject to the following limits:

(i) By 31 December 2015:

(A) personnel costs of the Merged Entity shall not exceed [30-40]% of its gross margin (excluding results from (i) financial operations and (ii) the provision of services pursuant to the service level agreement entered into in relation to the disposal of EVO Banco, S.A. and the asset management agreement entered into with SAREB); and

(B) the average number of FTEs shall not exceed 6.5 per Merged Entity Full-Time Branch.

(ii) By 31 December 2016:

(A) personnel costs of the Merged Entity shall not exceed [30-40]% of its gross margin (excluding results from (i) financial operations and (ii) the provision of services pursuant to the service level agreement entered into in relation to the disposal of EVO Banco, S.A. and the asset management agreement entered into with SAREB); and

(B) the average number of FTEs shall not exceed 6.45 per Merged Entity Full-Time Branch.

(b) Remuneration of bodies, employees and essential agents during the Post-Merger Period is set out in clause 6.4.3.

5.6.3 For the purpose of this clause 5.6, FTEs shall not be deemed to include:

(a) the [50-60] FTEs assigned to the task of providing services pursuant to the service level agreement entered into in relation to the disposal of EVO Banco, S.A., provided that their costs are fully covered by the fees earned by NCG Banco pursuant to said service level agreement; and

(b) the [100-150] FTEs assigned to the task of providing services pursuant to the asset management agreement entered into with SAREB, provided that their costs are fully covered by the fees earned by NCG Banco pursuant to said asset management agreement.

5.7 Scope of activities.

5.7.1 Pre-Merger Period.

- (a) During the Pre-Merger Period, NCG shall carry out general banking activities which may include, *inter alia*, savings and transactional accounts, mortgages, debit cards and credit cards, corporate banking, basic loans, specialised lending (such as lending related to infrastructure and energy and monetary secured lending related to movable assets), credits, working capital, payment services and non-speculative hedging products sold to companies or public entities.
- (b) NCG shall not engage in any new business during the Pre-Merger Period in the following activities:
 - (i) investment banking activities which, for the purposes of this restriction, shall solely comprise M&A advisory, equity trading, speculative derivatives, volatility book and positions in currencies (other than client and NCG's balance hedges), all the foregoing restrictions exclusively applying in the event that NCG assumes direct risk as a result of said activities;
 - (ii) granting of loans for the development of real estate assets, except under the conditions set out in clause 5.7.1(c)(iii) herein; and
 - (iii) lending by the NCG branches corresponding to the Core Unit outside those regions where Core Units are located.
- (c) Without prejudice to the restrictions set out in clause 5.7.1(b), NCG shall be allowed to carry out the following activities during the Pre-Merger Period:
 - (i) investment in fixed-income securities in any of its forms in accordance with Spanish accounting rules, subject to the restrictions to the size of its fixed income portfolio established in clause 5.4 herein;
 - (ii) hedging transactions entered into with the aim of mitigating risk assumed by NCG or its customers shall not be considered in any event as a restricted activity pursuant to this clause; and
 - (iii) granting of loans for the development of real estate assets to the extent that such loans are devoted to financing the disposal of

any real estate assets foreclosed and/or owned and put up for sale by NCG, subject to the following principles:

- (A) payment of contractually committed but not yet paid-out amounts;
- (B) additional financing to existing customers which is not contractually committed only when it is strictly necessary to preserve the value of the loan collateral, or otherwise related to minimising capital losses and/or enhancing the expected recovery value of a loan; and
- (C) management of existing assets in a way that maximises NPV of the assets.

5.7.2 Post-Merger Period.

- (a) During the Post-Merger Period, the Merged Entity shall carry out general banking activities which may include, *inter alia*, savings and transactional accounts, mortgages, debit cards and credit cards, corporate banking, basic loans, basic specialised lending (such as lending related to infrastructure and energy and monetary secured lending related to movable assets), credits, working capital, payment services and non-speculative hedging products sold to companies or public entities.
- (b) The Merged Entity shall not engage in any new business during the Post-Merger Period in the following activities:
 - (i) investment banking activities which, for the purposes of this restriction, shall solely comprise M&A advisory, equity trading, speculative derivatives, volatility book and positions in currencies (other than client and Merged Entity's balance hedges), all the foregoing restrictions exclusively applying in the event that the Merged Entity assumes direct risk as a result of said activities; and
 - (ii) granting of loans for the development of real estate assets, except under the conditions set out in clause 5.7.2(c)(iii) herein.
- (c) Without prejudice to the restrictions set out in clause 5.7.2(b) the Merged Entity shall be allowed to carry out the following activities during the Post-Merger Period:
 - (i) investment in fixed-income securities in any of its forms in accordance with Spanish accounting rules, subject to the

restrictions to the size of its fixed income portfolio established in clause 5.4 herein;

- (ii) hedging transactions entered into with the aim of mitigating risk assumed by the Merged Entity or its customers shall not be considered in any event as a restricted activity pursuant to this clause; and
- (iii) subject to the condition that the exposure to the development of real estate assets does not exceed [5-10]% of the aggregate amount lent, the Merged Entity shall be allowed to provide financing for the development of real estate assets:
 - (A) regarding the granting of loans for the development of real estate assets to the extent that such loans are devoted to financing the disposal of real estate assets foreclosed and/or owned and put up for sale by the Merged Entity;
 - (B) in relation to transactions concerning real estate assets which meet the following requirements:
 - (1) financing to be granted to clients that also provide a substantial part of each relevant investment, which shall not be lower than [20-50]% of the total amount invested for each transaction, individually considered;
 - (2) financing must be collateralized with valuable assets; and
 - (3) the exposure of the Merged Entity to a particular client's group shall not exceed [20-30]% of its own resources.

5.8 Divestment of the portfolio of the Non-Core equity holdings.

5.8.1 Pre-Merger Period.

- (a) In the event that the Post-Merged Period has not started to apply by 31 December 2015, NCG commits to divest the following equity holdings by such date:

Company	Stake (%)¹	Book value (€m)¹
Itínere Infraestructuras, S.A.	23.75	[...]
Sacyr Vallehermoso, S.A.	8.65	[...]
Compañía Logística de Hidrocarburos CLH, S.A.	5.00	[...]
Caja de Seguros Reunidos, Compañía de Seguros y Reaseguros S.A.	10.31	[...]
Enerfin, S.A.	30.00	[...]
		[500-1 000]

¹The information included in this chart corresponds to 30 June 2012.

- (b) In relation to the total book value (which amounted to EUR 1.87 billion as of the cut-off date, established on 30 June 2012) and number of the subsidiaries / equity holdings:
- (i) NCG will at least have divested, in accumulative terms, (i) by [...], [30-60]% of the book value as of 30 June 2012 of subsidiaries / equity holdings listed in Appendix I, (ii) by [...], [60-80]% of said book value and (iii) by [...], [80-100]% of the same, to the extent that the Post-Merger Period has not started to apply prior to such dates, respectively; and
- (ii) NCG will at least have divested, in accumulative terms, (i) by [...], [30-60]% of the number of subsidiaries / equity holdings listed in Appendix I, (ii) by [...], [60-80]% of said subsidiaries / equity holdings and (iii) [...], [80-100]% of the same, to the extent that the Post-Merger Period has not started to apply prior to such dates, respectively.
- (c) Until the above-referred subsidiaries/equity holdings are sold, NCG will make its best efforts to decrease its financial exposure (loans, guarantees, etc) to these companies. In addition, it will not increase its exposure to such companies in any case, except when it is (a) strictly necessary to preserve the value of the relevant equity interest; or (b) otherwise relate to minimising capital losses and/or enhancing the expected recovery value of such exposures or interest.
- (d) If the subsidiaries/equity holdings mentioned above are not sold by the deadlines laid down, NCG will fully write down its stakes, and terminate any financial and operational involvement in the companies, except when such termination is legally or contractually prohibited. Each equity holding/subsidiary will be offered to the market for the sum of [...] Euro.

5.8.2 Post-Merger Period.

NCG or the Merged Entity, as the case may be, undertakes that, by 31 December 2016, the book value of the equity holdings listed in Appendix I shall be lower than EUR [0-500] million. In order to achieve such target, NCG and/or the Merged Entity, as the case may be, shall, at their own discretion and on the basis of market conditions, (i) divest or, alternatively, (ii) make a provision to reduce the book value of such portfolio.

5.9 Optimization Plan in relation to the Headquarters.

5.9.1 Pre-Merger Period

NCG shall determine, on the basis of a comprehensive plan, a detailed concept for the long term rationalization for its institutional headquarters. Such plan shall include an inventory of sites, costs, sizes, marketability, staff assigned to each site and relocation possibilities. The plan will be designed to respect at every point in time the staff levels determined in the Term Sheet. All board members and all non-operational services supporting directly the board (i.e. controlling, finance, HR, corporate development, revision, etc) are located in at most two locations which will constitute the only official headquarters of NCG. Should NCG decide to retain its headquarters in two locations, the plan shall demonstrate that this decision does not imply additional cost as compared to the alternative of only one location for its headquarters. The basic goals of the plan shall be: (a) to guarantee efficiency in the banks' operations, in particular by avoiding cost duplications; and (b) to minimise the real estate costs for NCG. To these purposes, the allocation of banking activities to specific locations will be decided on the basis of explicit efficiency considerations. In this context, every main operational banking activity (i.e. back office, call center, credit risk department, etc) will be allocated in only one location. All excess capacity will be available for sale or lease cancelation. The plan will be executed by [...], unless the Post Merger Period has started to apply prior to such date.

5.9.2 Post-Merger Period

Within 3 months after the commencement of the Post-Merger Period, the Merged Entity shall submit to the European Commission a plan for the long term optimization of its institutional headquarters (including Banco Etcheverria's headquarters) (the "**Optimization Plan**"), which shall be defined by the Merged Entity taking into account the necessary flexibility that it may need in order to avoid depreciation of its assets pursuant to market conditions. The objective of the Optimization Plan will be to guarantee efficiency in the Merged Entity's operations, in particular by avoiding cost duplications and by minimizing the number of sites and the costs associated to real estate and people

relocation. The Optimization Plan shall include an inventory of sites, costs, sizes and staff assigned to each site as well as relocation possibilities.

5.10 Restrictions to Non-Core Unit.

5.10.1 Lending.

(a) Pre-Merger Period.

During the Pre-Merger Period, NCG shall keep the aggregate net book value of the loan portfolio of the Non-Core Unit below EUR [10-20] billion and the value of deposits below EUR [0-5] billion. NCG shall be entitled to provide new financing and incur liabilities attributed to the Non-Core Unit within such limits (for the avoidance of doubt, there are no lending restrictions applicable to the Core Unit).

(b) Post-Merger Period.

During the Post-Merger Period, the aggregate net book value of the loan portfolio of the Non-Core Unit shall not exceed, respectively:

- (i) [20-30]%, by 31 December 2014,
- (ii) [20-30]%, by 31 December 2015, and
- (iii) [20-30]%, by 31 December 2016,

of the overall balance sheet of the Merged Entity. The Merged Entity shall be entitled to provide new financing attributed to the Non-Core Unit within such limits (for the avoidance of doubt, there are no lending restrictions applicable to the Core Unit).

5.10.2 Branches.

(a) Pre-Merger Period.

During the Pre-Merger Period, the number of branches corresponding to the Non-Core Unit shall not exceed [30-40].

(b) Post-Merger Period.

During the Post-Merger Period, the number of branches corresponding to the Non-Core Unit shall not exceed [10-20]% of the total number of branches of the Merged Entity.

5.11 Capital repayments.

5.11.1 Pre-Merger Period.

Until 31 December 2014, NCG shall not pay out dividends. Hereafter, dividend disbursements shall be allowed, subject to the fulfilment of applicable legal and regulatory requirements.

5.11.2 Post-Merger Period.

Restrictions included in clause 5.11.1 above shall not apply during the Post-Merger Period. Dividend disbursements shall be allowed, subject to the fulfilment of applicable legal and regulatory requirements.

5.12 Failure to meet targets.

If the targets envisaged in clauses 5.2, 5.3, 5.4, 5.5 and 5.6 are not met, NCG or the Merged Entity, as the case may be, and to the extent required by the Monitoring Trustee, shall present Remedial Actions within a month from the request by the Monitoring Trustee to do so. The Monitoring Trustee will analyse the Remedial Actions proposed and will report to the European Commission on their adequacy to meet the targets in the Restructuring Plan.

6. **BEHAVIOURAL MEASURES AND CORPORATE GOVERNANCE**

6.1 Ban on acquisitions.

6.1.1 NCG or the Merged Entity, as the case may be, commits to refrain from making acquisitions or increasing the stakes they hold in any other entity until 31 December 2015 except as otherwise provided herein. This applies to both the acquisition of controlling and/or minority stakes in other companies, as well as to the acquisition of asset bundles on an ongoing concern which represent a branch of activity. For the avoidance of doubt, the Projected Merger shall not be considered an acquisition for the purposes of this clause 6.

6.1.2 The restriction set out in Clause 6.1.1 shall not apply to any of the following cases:

- (a) acquisitions that must be made in order to maintain financial and/or association related stability, or in the interests of effective competition, provided that they are approved beforehand by the European Commission;
- (b) acquisitions that belong, in terms of management of existing obligations of customers in financial difficulty, to a bank's normal ongoing business;

- (c) acquisitions of stakes in entities to the extent that the purchase price paid by NCG or the Merged Entity, as the case may be, for any acquisition is less than [0-5]% of its balance sheet at the date of the Former Decision and that the cumulative purchase prices paid by NCG or the Merged Entity for all such acquisitions over the Restructuring Period is less than [0-5]% of the balance sheet size of NCG at the date of the Decision;
- (d) acquisitions of stakes in entities due to the capitalisation of credits;
- (e) acquisitions of stakes in entities as a result of disbursements which had been contractually committed by NCG at the date of the Decision.

6.2 Ban on commercial aggressive practices.

NCG or the Merged Entity, as the case may be, shall avoid engaging in aggressive commercial practices throughout the duration of the Restructuring Plan. To this end, NCG or the Merged Entity will ensure that the nominal interest rate offered to clients on its products must be less attractive than the average of the most competitive rates offered on analogous products by the five main non-aided competitors within the geographical area where NCG or the Merged Entity operate, in conformity with the restrictions approved by the Board of the FROB on 22 December 2010. The Monitoring Trustee will verify the compliance with these restrictions.

6.3 Advertising.

NCG or the Merged Entity, as the case may be, must not use the granting of the aid measures or any advantages arising therefrom for advertising purposes.

6.4 Remuneration of bodies, employees and essential agents during the Pre-Merger Period.

6.4.1 The Spanish Government undertakes to ensure that NCG meets the applicable legislation in all salary and compensation matters, especially regulation related to remuneration limits applicable at the time to credit institutions (currently primarily regulated by Spanish law through Royal Decrees Law 2-2012 of February 3rd and 3-2012 of February 11th; RD 771/2011 of June 3rd; Orden ECC/1762/2012 of August 3rd and Bank of Spain Circular 4/2011 of November 30th), in the terms that such regulations apply to public-aided entities. Likewise, it commits to ensure that NCG complies scrupulously with the regulations specifically imposed by the European Commission in this subject, within the Community framework for State aid, in the terms that such regulations apply to public-aided entities.

6.4.2 The Government also undertakes to ensure the most efficient use of public resources, regarding compensation and salaries issues, as inspiring principle of Law 9/2012 of 14th November, on restructuring and resolution of banks.

Therefore, it will oversee that the restructuring process is very demanding, seeking that severance pays approach to the legal minimum, but with some flexibility to avoid delaying the process.

6.4.3 Any restrictions concerning the remuneration of bodies, employees and essential agents shall cease to apply upon the beginning of the Post-Merger Period.

6.5 Other rules of conduct.

NCG or the Merged Entity, as the case may be, is to continue expansion of its risk monitoring operations and to conduct a commercial policy that is prudent, sound and oriented towards sustainability.

7. MONITORING TRUSTEE

7.1 Spain is to ensure that the full and correct implementation of the Restructuring Plan and the full and correct implementation of all Commitments within this Term Sheet are continuously monitored by an independent, sufficiently qualified by the Monitoring Trustee (which is obliged to maintain confidentiality).

7.2 The duties, obligations and discharge of the Monitoring Trustee shall be subject to the provisions set out in Appendix II hereof.

7.3 In order to ensure the efficiency in the management of NCG and/or the Merged Entity in accordance with this Term Sheet, and in view of the knowledge and experience gained in the past, the trustee appointed under the Former Term Sheet may remain in its post as Monitoring Trustee in order to monitor the implementation of the Restructuring Plan under the Term Sheet, provided that the European Commission shall be entitled to request at any time the replacement of the Monitoring Trustee on the basis of public interest grounds.

7.4 Spain and NCG or the Merged Entity, as the case may be, are to ensure that, during the implementation of the Decision, the European Commission or the Monitoring Trustee have unrestricted access to all information needed to monitor the implementation of the Decision. The European Commission or the Monitoring Trustee may ask NCG and/or the Merged Entity for explanations and clarifications. Spain and NCG or the Merged Entity are to cooperate fully with the European Commission and the Monitoring Trustee with regard to all enquiries associated with monitoring of the implementation of the Decision.

**Appendix I to the Term Sheet – List of equity holdings allocated to the former Legacy
Unit (I)**

Cut off date 30-Jun, €millions

[...]

**Appendix I to the Term Sheet – List of equity holdings allocated to the former Legacy
Unit (II)**

Cut off date 30-Jun, €millions

[...]

**Appendix I to the Term Sheet – List of equity holdings allocated to the former Legacy
Unit (III)**

Cut off date 30-Jun, €millions

[...]

**Appendix I to the Term Sheet – List of equity holdings allocated to the former Legacy
Unit (IV)**

Cut off date 30-Jun, €millions

[...]

Appendix II to the Term Sheet – The Monitoring Trustee

1. APPOINTMENT OF THE MONITORING TRUSTEE

1.1 Pursuant to clause 7.3 of the Term Sheet, the trustee appointed under the Former Term Sheet may remain in its post as Monitoring Trustee in order to monitor the implementation of the Restructuring Plan, provided that the European Commission shall be entitled to request at any time the replacement of the Monitoring Trustee on the basis of public interest grounds. In the event that clause 7.3 of the Term Sheet cannot be effectively implemented, the Monitoring Trustee shall be appointed in accordance with the following procedure:

- 1.1.1 Spain undertakes to ensure that NCG appoints a Monitoring Trustee as set out in paragraph 3.2 of this Appendix. The mandate applies to the entire duration of the Restructuring Plan. At the end of the mandate, the Monitoring Trustee must submit a final report.
- 1.1.2 The Monitoring Trustee must be independent of NCG and the Merged Entity. The Monitoring Trustee must possess, for example as an investment bank, consultant or auditor, the specialised knowledge that is required in order to carry out its mandate, and must at no time be exposed to any conflict of interest. The Monitoring Trustee is to be remunerated by NCG or the Merged Entity, as the case may be, in a way that must not impede the independent and effective fulfilment of its mandate.
- 1.1.3 Spain undertakes to ensure that NCG submits the names of 2 or more persons to the European Commission for approval as Monitoring Trustee no later than 4 weeks after notification of the Decision.
- 1.1.4 These proposals must contain sufficient information about those persons to enable the European Commission to verify whether the proposed Monitoring Trustee fulfils the requirements set out in paragraph 1.1.2 of this Appendix, and must in particular include the following:
 - (a) the full terms of the proposed mandate with all the provisions which are necessary to enable the Monitoring Trustee to fulfil its duties; and
 - (b) the draft of a work plan describing how the Monitoring Trustee intends to carry out its assigned duties.
- 1.1.5 The European Commission has the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate subject to any modifications that it deems necessary in order to enable the Monitoring Trustee to fulfil its obligations. If only one name is approved, NCG will appoint the

person or institution concerned as Monitoring Trustee or cause that person or institution to be appointed, in accordance with the mandate approved by the European Commission. If more than one name is approved, NCG is free to decide which of the approved persons should be appointed as Monitoring Trustee. The Monitoring Trustee will be appointed within one week of the European Commission's approval, in accordance with the mandate approved by the European Commission.

- 1.1.6 If all the proposed Monitoring Trustee are rejected, Spain undertakes to ensure that NCG submits the names of at least 2 further persons or institutions within 2 weeks of being informed of the rejection, in accordance with the requirements and procedure set out in paragraphs 1.1.1 and 1.1.4 of this Appendix.
- 1.1.7 If all further proposed Monitoring Trustee are also rejected by the European Commission, the European Commission will nominate a Monitoring Trustee which NCG will appoint or cause to be appointed, in accordance with a Trustee mandate approved by the European Commission.

2. GENERAL DUTIES AND OBLIGATIONS

The Monitoring Trustee is to assist the Commission to ensure NCG's or the Merged Entity's compliance with the Commitments and to assume the duties of a Monitoring Trustee specified in the Commitments document. The Monitoring Trustee is to carry out the duties under this mandate in accordance with the work plan, as well as revisions of the work plan that have been approved by the European Commission. The European Commission may, on its own initiative or at the request of the Monitoring Trustee or NCG or the Merged Entity, issue orders or instructions to the Monitoring Trustee in order to ensure compliance with the Commitments. NCG or the Merged Entity shall not be entitled to issue instructions to the Monitoring Trustee.

3. DUTIES AND OBLIGATIONS OF THE MONITORING TRUSTEE

- 3.1 The duty of the Monitoring Trustee is to guarantee full and correct compliance with the obligations set out in the Commitments, and full and correct implementation of the Restructuring Plan. The European Commission may, on its own initiative or at the request of the Trustee, issue any orders or instructions to the Monitoring Trustee or NCG or the Merged Entity in order to ensure compliance with the Commitments attached to the Decision.

3.2 The Monitoring Trustee:

- 3.2.1 is to propose to the European Commission in its first report a detailed work plan describing how it intends to monitor compliance with the Commitments attached to the Decision;
- 3.2.2 is to monitor the full and correct implementation of the Restructuring Plan, in particular:
 - (a) the commitments regarding the reduction of the size of the balance sheet set out in clause 5.2 of the Term Sheet;
 - (b) the scope of business activities in accordance with clause 5.7 of the Term Sheet;
 - (c) the divestments commitments set out in clause 5.8 of the Term Sheet;
- 3.2.3 is to monitor compliance with all other Commitments;
- 3.2.4 is to assume the other functions assigned to the Monitoring Trustee in the Commitments attached to the Decision;
- 3.2.5 is to propose measures to NCG or the Merged Entity, as the case may be, that it considers necessary to ensure that NCG or the Merged Entity fulfil the Commitments attached to the Decision;
- 3.2.6 is to take into account any regulatory changes on solvency and liquidity when verifying the evolution of the actual financials with respect to the projections made in the Restructuring Plan; and
- 3.2.7 is to submit a draft written report to the European Commission, Spain and NCG or the Merged Entity within 30 days after the end of each 6-month period. The European Commission, Spain and NCG or the Merged Entity can submit comments on the draft within 5 working days. Within 5 working days of receipt of the comments, the Monitoring Trustee is to prepare a final report, incorporating the comments as far as possible and at its discretion, and submit it to the European Commission and to the pertinent Spanish Authorities. Only afterwards the Monitoring Trustee is also to send a copy of the final report to Spain and NCG or the Merged Entity. If the draft report or the final report contains any information that may not be disclosed to NCG or the Merged Entity, only a non-confidential version of the draft report or the final report is to be sent to NCG or the Merged Entity. Under no circumstances is the Monitoring Trustee to submit any version of the report to Spain and/or NCG or the Merged Entity before submitting it to the European Commission. The report is to focus on the duties set out in the mandate by the Monitoring Trustee and compliance with the obligations by NCG or the Merged Entity, thus enabling the European

Commission to assess whether NCG or the Merged Entity are being managed in accordance with the obligations. If necessary, the Commission may specify the scope of the report in more detail. In addition to these reports, the Monitoring Trustee is to report promptly in writing to the European Commission if it has reasons to suppose that NCG or the Merged Entity are failing to comply with these obligations, sending a non-confidential version to NCG or the Merged Entity at the same time.

4. DUTIES AND OBLIGATIONS OF NCG AND THE MERGED ENTITY

- 4.1 NCG or the Merged Entity is to provide and to require its advisors to provide the Monitoring Trustee with all such cooperation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks under this mandate. The Monitoring Trustee is to have unrestricted access to any books, records, documents, management or other personnel, facilities, sites and technical information of NCG or the Merged Entity or of the business to be sold that are necessary to fulfil its duties under the mandate. NCG or the Merged Entity is to make available to the Monitoring Trustee one or more offices at its business premises and all employees of NCG or the Merged entity are to be available for meetings with the Monitoring Trustee in order to provide it with all the information it needs to perform its duties.
- 4.2 Subject to NCG's or the Merged Entity's approval (this approval may not to be unreasonably withheld or delayed) and at its expense, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any costs and other expenses incurred by the Monitoring Trustee are reasonable. Should NCG or the Merged Entity refuse to approve the advisors proposed by the Trustee, the European Commission may approve their appointment instead, after hearing NCG's or the Merged Entity's reasons. Only the Monitoring Trustee is entitled to issue instructions to the advisors.

5. REPLACEMENT, DISCHARGE AND REAPPOINTMENT OF THE TRUSTEE

- 5.1 If the Monitoring Trustee terminates its functions under the Commitments or if there are any other significant grounds, such as a conflict of interest on the part of the Monitoring Trustee:
 - 5.1.1 the European Commission can, after hearing the Monitoring Trustee, require NCG or the Merged Entity to replace it, or
 - 5.1.2 NCG or the Merged Entity, with the approval of the European Commission, can replace the Monitoring Trustee.

- 5.2 If the Monitoring Trustee is removed in accordance with paragraph 5.1 of this Appendix, it may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full handover of all relevant information. The new Monitoring Trustee is to be appointed in accordance with the procedure referred to in paragraphs 1.1.1 to 1.1.6 of this Appendix.
- 5.3 Besides removal in accordance with paragraph 5.1 of this Appendix, the Monitoring Trustee is to cease its activities only after the European Commission has discharged it from its duties. This discharge is to take place when all the obligations with which the Monitoring Trustee has been entrusted have been implemented. However, the European Commission may at any time require the reappointment of the Monitoring Trustee if it is subsequently found that the relevant remedies have not been fully and properly implemented.