



EUROPEAN COMMISSION

Brussels, 13.08.2014
C(2014) 5857 final

<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.38228 (2014/N) – Restructuring of Abanka Vipa Group - Slovenia

Sir,

1. PROCEDURE

- (1) On 11 November 2013 the Slovenian authorities notified a EUR 348 million rescue recapitalisation ("first recapitalisation") in favour of Abanka Vipa ("Abanka" or "the Bank").
- (2) By decision of 18 December 2013¹ ("rescue decision"), the Commission temporarily approved the first recapitalisation in favour of Abanka in light of commitments provided by the Slovenian authorities and in particular a commitment to submit a restructuring plan within two months of the rescue decision.
- (3) On 17 February 2014 the Slovenian authorities notified the restructuring plan of Abanka.
- (4) A number of electronic mail exchanges and telephone conversations took place between the Commission and the Slovenian authorities in which additional

¹ Commission Decision in Case SA.37690 (2012/N), Rescue aid in favour of Abanka d. d., OJ C 37, 7.2.2014, p. 1.

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information was requested and submitted on various occasions between 18 December 2013 and 29 July 2014.

- (5) For reasons of urgency, Slovenia accepts that exceptionally the present decision is adopted in the English language.

2. DESCRIPTION

2.1. The beneficiary

- (6) Abanka is the third-largest universal bank in Slovenia with a market share of 7.5% as at 31 December 2013 in terms of total assets. It comprises the parent Abanka Vipa d.d. and its subsidiaries Afaktor d.o.o., Argolina d.o.o., Aleasing d.o.o., Analožbe d.o.o., AB58 d.o.o., Anepremi•nine d.o.o.. The banking business is concentrated in the parent company and accounts for almost all the assets and revenues of the group.
- (7) As at 31 December 2013 Abanka's consolidated total assets amounted to EUR 3 billion of which EUR 1.3 billion were corporate loans and EUR 0.5 billion were retail loans. The Bank was partly funded by customer deposits (EUR 1.5 billion) with the remainder being wholesale financing from the ECB, the Ministry of Finance and funding from the Slovenian Export and Development Bank.
- (8) Abanka operates primarily in Slovenia, providing corporate and retail banking services through a network of 42 branches across the country and employing 929 people as at 31 December 2013. Abanka's financial services include retail and corporate banking, asset management and administration and custody of investments funds. As part of its integrated product offering, Abanka also acts as an agent in the insurance market. The Bank also operates factoring and leasing activities in Slovenia, Serbia, Croatia and Bosnia-Herzegovina.
- (9) As at 31 December 2013, following the first recapitalisation Abanka's total capital adequacy ratio was 9.5% and its Tier 1 ratio was 9.3%.
- (10) In December 2013, the Republic of Slovenia became the sole shareholder of Abanka, following the first recapitalisation. Before the first recapitalisation the State had held indirectly 58% of Abanka's capital through four State-controlled companies² while the rest of the shares were privately owned.
- (11) Abanka's long-term credit rating was downgraded during 2013 to B- by FITCH and to Caa3 by Moody's. In January 2014 Moody's upgraded Abanka's credit rating to Caa2 with a positive outlook. Abanka was listed on the Ljubljana Stock Exchange (LJSE) in October 2008 and delisted on 18 December 2013.

2.2. The events triggering the measures and capital rising actions

- (12) From the outset of the financial crisis Abanka has been affected by an increasingly difficult operating environment due to unfavourable market conditions. The crisis exposed the weaknesses that the Slovenian banking industry developed during its boom years preceding the crisis. Banks had relied

² Zavarovalnica Triglav d.d., Sava d.d., HIT d.d. and SOD d.d..

heavily on wholesale (predominantly foreign interbank) funding and had based their lending decisions on overvalued collaterals and optimistic growth forecasts of their borrowers. Access to cheap and abundant financing coupled with poor credit standards and excessive risk taking, practiced especially among the domestic banks, led to a surge in non-performing loans ("NPL") and net impairment expenses.

- (13) In October 2012, the proportion of NPL to overall bank loans in Slovenia reached 14% (amounting to EUR 7 billion or 19% of GDP). The corporate sector experienced the highest levels of NPL, accounting for 24% of total loans. Within the corporate sector, a substantial share of NPL arose from large insolvent construction companies. The NPL of Slovenian domestic banks to private firms was approximately 30% of their total loans, compared to an average NPL ratio of 11% at foreign banks in that sector. The surge in NPL pushed the banks into financial distress, unprofitability and exacerbated loan contraction.
- (14) As the economic crisis progressed, Slovenian banks saw their access to wholesale funding dry up due to declining credit ratings. They responded by focusing more on domestic deposits. Although rates on deposits were initially at historical lows, intensified competition for deposits and rising government bond yields led to increased deposit rates from 2011-2013. Profitability was affected by higher NPL provisioning costs, lower net interest margins, a reduction in banking assets and relatively high operating costs. Those market developments rapidly weakened Abanka's financial position.
- (15) In addition internal factors had also contributed to Abanka's difficulties. During the boom years preceding the recession, Abanka raised its leverage while pursuing an aggressive credit policy with a focus on the corporate sector and an expansion in south-eastern European markets, thereby increasing its risk. Those strategies led to financial distress as soon as the economic conditions deteriorated. The financial crisis exposed weaknesses in corporate governance and risk management.
- (16) The aggressive growth strategy pursued up to 2011 contributed to a high concentration of loans to individual corporate customers. As loans were granted under generally loose credit and collateral standards, with limited usage of modern risk management practices, the situation of the Bank deteriorated immediately after major clients started to default.
- (17) In 2012 Abanka attempted to increase its share capital by a public offering with the aim to raise EUR 50 million. Abanka only managed to source EUR 0.7 million of unconditional commitments representing 1.4% of the targeted minimum recapitalisation amount. In response the Management Board of Abanka introduced additional measures to ensure higher capital adequacy: new capital raising at a price lower than that proposed in the prior offer; additional reduction of the credit activity; potential merger with another bank; cost optimization; sale of equity investments; and improvement of internal functioning and quality.
- (18) In December 2012 Abanka launched a second public offering seeking to raise between EUR 50 and EUR 90 million of capital. Abanka also engaged external

consultants in order to identify potential foreign investors. During that attempt to increase capital Abanka raised EUR 36.4 million. Because that amount was below the minimum threshold according to the public offering prospectus, the Bank returned the funds.

- (19) Subsequently, during their general meeting held on 8 April 2013, Abanka's shareholders decided to initiate a new shares issue in the amount of EUR 90 million. The Bank, together with its external advisers, sent teasers to 39 potential investors; they received expressions of interest from 10 investors (who signed non-disclosure agreements and received an information memorandum) and finally one conditional non-binding bid. At that time the asset quality review, stress test and potential transfers of claims to the State Bank Asset Management Company ("BAMC") started in Slovenia and all potential investors decided to wait for results before committing further. Since then, the Bank has been unable to attract investors.
- (20) The results of the asset quality review and stress test announced on 12 December 2013 revealed a total capital shortfall of EUR 756 million for the Bank for the period from 2013 to 2015. In view of the deadline set by the Bank of Slovenia³ and in the absence of private investors, on 11 November 2013 Slovenia notified to the Commission a capital injection of EUR 348 million to permit the Bank to continue operating until a restructuring plan was approved by the Commission, thereby preserving the financial stability of the Slovenian banking sector.

3. THE AID MEASURES

- (21) On 18 December 2013 the Commission approved a rescue recapitalisation in the form of cash of EUR 348 million by Slovenia in favour of Abanka. The amount of that recapitalisation was calibrated to enable Abanka to remain operational until the approval of its restructuring plan. It did not cover the expected capital shortfall over the period from 2013 to 2015 as determined in the stress test.
- (22) To fully recapitalise the Bank and ensure its return to viability Slovenia intends to implement two additional measures as part of the restructuring plan of Abanka:
 - (i) a State recapitalisation of EUR 243 million in form of government securities ("second recapitalisation"); and
 - (ii) a transfer of impaired assets amounting to EUR 1 087 million gross book value to BAMC. On 31 December 2013 the assets to be transferred had a net book value after impairments of EUR [500-550]^{*} million.

3.1. First recapitalisation of Abanka

- (23) The failure of Abanka to meet regulatory capital requirements triggered the need for a rescue recapitalisation in December 2013. In the absence of a private

³ The Bank of Slovenia extended its initial deadline for recapitalisation from 31 July 2013 to 31 December 2013.

^{*} Confidential information.

investor solution, Slovenia injected EUR 348 million in Abanka in the form of cash. A detailed description of the terms is provided in the rescue decision⁴.

3.2. Second recapitalisation of Abanka

- (24) Based on the results of the asset quality review and the stress test Slovenia estimates that Abanka still needs an additional recapitalisation of EUR 243 million to return to viability.
- (25) That second recapitalisation is designed to address the expected losses of the Bank, ensuring that Abanka will respect its capital requirements throughout the restructuring period even if the adverse scenario materialises.
- (26) The additional capital is provided by the State in the form of government securities.⁵

3.3. Transfer of impaired assets to the BAMC

- (27) Slovenia's Stability of Banks Act, which came into force in December 2012, provides a framework for issuing guarantees to fund the transfer of legacy assets from banks to the BAMC. It also permits recapitalisations to address the losses of such banks resulting from the transfer of assets at their real economic value ("REV").
- (28) In May 2013 Slovenia designed a National Reform Programme aiming at implementing the EU country-specific recommendations. That National Reform Programme envisages the transfer to the BAMC of non-performing assets of the three biggest Slovenian banks, including Abanka.
- (29) Slovenia sent to the Commission a list of assets to be transferred from Abanka to the BAMC amounting to EUR 1 087 million (gross book value). The list mainly contains defaulted loans to corporate clients.
- (30) Under the current restructuring plan, Abanka will receive approximately EUR [350-400] million in return for the transferred assets. The amount will be paid in two tranches of State bonds of equal size with a maturity of [...] and [...] years and a planned annual interest rate of [0-5]% and [0-5]% respectively.

4. THE RESTRUCTURING PLAN AND COMMITMENTS

- (31) The Slovenian authorities have submitted a restructuring plan covering the restructuring period from 2014 until 31 December 2018.
- (32) The main pillars of the restructuring plan are enhanced corporate governance and risk management frameworks, a shift from corporate lending to retail and small and medium-sized enterprises ("SME") lending, a decrease of NPL, risk-based credit pricing and a cost reduction programme. The restructuring plan includes financial projections for Abanka until 31 December 2018 under a base scenario and under a stress scenario.

⁴ In particular see recital (16) of the rescue decision.

⁵ The total capital provided is EUR 591 million. The write-down of subordinated debt-holders generated EUR 120 million, adding up to EUR 711 million compared to the EUR 756 million capital shortfall identified (see recital 20). The difference is generated from an estimated capital relief effect equivalent to EUR 45 million generated from the impaired asset transfer to the BAMC.

- (33) Slovenia provided a number of commitments, all of which are set out in the Annex. In order to ensure that the commitments will be implemented, a monitoring trustee will be appointed. The mandate of the monitoring trustee will apply throughout the restructuring period.

4.1 Restructuring plan

- (34) The restructuring plan of Abanka envisages measures to restore Abanka's viability, mitigate competition distortion and ensure sufficient own contribution and burden-sharing for a restructuring period until 31 December 2018. The major issues with regard to restoring the Bank's viability are (i) the implementation of up-to-date corporate governance structures and arrangements to ensure that decisions are business-oriented; and (ii) the overhaul of the Bank's credit policies and risk management processes, especially in the management of credit risk.
- (35) Abanka will continue its activity with a smaller balance sheet and implement a more controlled way of lending with increased risk management and corporate governance. Abanka will focus on retail and SME lending and reduce its credit activity in the corporate sector, financial holdings and real estate sector.
- (36) Abanka will divest or wind down [...] activities in Slovenia and abroad, representing a total asset value of EUR [...] million. Abanka will also refrain from undertaking equity trading on its own accounts, asset management activities and new credit activities with corporate clients incorporated outside of Slovenia, where the weakness of Abanka's knowledge of those markets has led to inadequate risk assessment in the past.
- (37) Abanka's net income will amount to EUR [10-20] million on 31 December 2018. The restructuring plan provides financial projections over the period 2014-2018 pointing to a Tier 1 ratio of [10-20]% at 31 December 2018 and a Return on Equity ("RoE") of [0-5]% at the end of the restructuring plan. Those indicators however do not take into account the excess capital generated by the Bank over the restructuring period which Abanka intends to pay partly back to the State through a capital repayment mechanism.⁶ The restructuring plan also provides adjusted RoE figures (adjusted to a situation of no excess capital) at the end of the restructuring period of [5-10]% in a base case and [5-10]% in a stress case.
- (38) Abanka will clean its balance sheet through the transfer of a portfolio of impaired assets, including essentially NPL, to the BAMC in the context of an impaired assets measure. The transfer value of the assets will be equal to or below their REV as determined by the Commission with support of external experts in compliance with the State aid rules set forth in the Impaired Assets Communication.⁷
- (39) As a result of the restructuring plan, and in particular the transfer of assets to the BAMC, Abanka's NPL ratio will decrease from 46.1% on 31 December 2013 to [10-20]% on 31 December 2018. Total assets will decrease from EUR 3 billion

⁶ See recitals (53) and (138).

⁷ Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 72, 26.03.2009, p. 1.

on 31 December 2013 to EUR [0-5] billion on 31 December 2018 and risk-weighted assets ("RWA") from EUR 2.1 billion to EUR [0-5] billion over the same period.

- (40) In addition to the first recapitalisation received in December 2013, the restructuring plan envisages a second recapitalisation. That second recapitalisation will improve the capital adequacy of Abanka by increasing its Tier 1 ratio from 9.3% at 31 December 2013 to [10-20]% by 31 December 2014. Abanka is also planning a cost-control and cost-reduction programme.
- (41) To ensure adequate participation of existing investors in the Bank's restructuring, the Bank already wrote down in full its shareholders' equity and the outstanding subordinated debt prior to the first recapitalisation.

4.2 Commitments

- (42) As an integral part of the restructuring plan Slovenia submitted a number of commitments, all of which are listed in full in the Annex.
- (43) Abanka plans to reduce its group balance sheet total from EUR 3.0 billion as at 31 December 2013 to EUR [0-5] billion by 31 December 2018, with essentially no change in the overall conditions governing the balance sheet and the legal environment relevant for the balance sheet total.
- (44) Abanka will reduce its operating costs at group level (excluding one-off extraordinary costs having non-recurrent nature, i.e. restructuring expenses) to achieve either a cost-to-income ratio below [50-60]% or, if the cost-to-income ratio is above [50-60]%, operating costs of EUR [50-60] million by the end of 2014, EUR [50-60] million by the end of 2015, EUR [50-60] million by the end of 2016, EUR [50-60] million by the end of 2017 and EUR [50-60] million by the end of 2018.
- (45) Slovenia commits to liquidate, sell or wind down [5-10] businesses which represented a total book value of EUR [90-100] million in Abanka's accounts as of 31 December 2013.⁸
- (46) Abanka will discontinue equity trading for its own account and asset management for clients.
- (47) Abanka will ensure that the RWAs will be capped according to an annual schedule. Abanka will refrain from undertaking any new credit activities with corporate clients incorporated outside Slovenia.
- (48) The corporate governance commitments seek to ensure that the management board of Abanka will have the sole powers and responsibilities for managing the day-to-day business of Abanka independently and in the sole interest of the Bank. The arm's length principle will apply to the relationship between the Bank and its shareholder, the Republic of Slovenia. Slovenia commits not to intervene in the appointment of supervisory board members and executives other than through the exercise of its shareholder rights under ordinary Slovenian corporate law. Two-thirds of the seats and voting rights on the supervisory board and its

⁸ [...].

committees will be allocated to independent experts. Abanka will put in place an independent and objective internal audit function. Abanka will follow a prudent and sound business policy geared towards sustainability while implementing the planned measures. Abanka will further review its incentive and remuneration policies in order to ensure that they do not encourage unreasonable risk-taking, are geared towards long-term and sustainable goals, and are transparent and compliant with the European Banking Authority Guidelines on remuneration policies and practices of 10 December 2010. The total remuneration to any board member and employee performing special work will be capped, until 31 December 2017, in line with point 38 of the 2013 Banking Communication⁹. Until 31 December 2018 such remuneration will not exceed the higher of 15 times the national average salary in Slovenia or 10 times the average salary of Abanka.

- (49) Abanka will overhaul its risk management process and in particular price every new credit deal before the transaction by an appropriate internal pricing tool. Pricing for every new credit will be considered adequate if it leads to a positive RoE before tax of at least [5-10]% in 2015, [5-10]% in 2016, [5-10]% in 2017 and 10% in 2018. Abanka will improve training of its credit officers and will refine its processes for credit rating, client rating and collateral management. Abanka will document all new credit deals with non-performing corporate clients including a comparison with alternative solutions such as execution of collateral and termination of the engagement, demonstrating that the solution which maximizes the net present value for the Bank is chosen. Abanka will also retreat from lending to financial holding companies, limit new lending to real estate projects to [10-20]% of the Bank's capital, and limit concentration risks to single corporate clients groups to [10-20]% of the Bank's capital.
- (50) Abanka will comply with an acquisition ban and a ban on advertising and aggressive commercial practices.
- (51) The commitments include a coupon ban, a dividend ban and a capital repayment mechanism.
- (52) The coupon ban applies only to capital instruments outstanding at the time of the present Decision, unless those payments stem from a legal obligation, and encompass also a commitment not to call or buy back those instruments without prior approval of the Commission. Nevertheless, the coupon ban does not apply to newly issued capital instruments (meaning instruments issued after the adoption by the present Decision), provided any payment of coupons on such newly issued capital instruments will not create a legal obligation to make any coupon payments on Abanka's securities existing at the moment of the adoption of the present Decision.
- (53) Under the capital repayment mechanism and dividend ban Abanka will not pay dividends for the fiscal years [...] and [...]. Abanka will pay dividends in [...], [...] and [...] under certain conditions. In particular for the fiscal years [...] and [...] it will pay: the lower amount of (i) [50-60]% of the excess capital above the

⁹ 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 ('the 2013 Banking Communication'), OJ C 216, 30.7.2013, p. 1.

applicable minimum capital requirement under Union and Slovenian law (including pillar 1 and 2) plus a capital buffer of [90-100] basis points, or (ii) the net income for the relevant year. For the fiscal year [...] it will pay the lower amount of (i) [90-100]% of the excess capital above the applicable minimum capital requirement under Union and Slovenian law (including pillars 1 and 2) plus a capital buffer of [90-100] basis points; or (ii) the net income for the relevant year.

- (54) Slovenia has committed to merge Abanka with Banka Celje d.d. once a majority stake has been taken up by Slovenia in Banka Celje. Slovenia has committed to notify a restructuring plan for the joint entity by 31 December 2014.
- (55) Any possible recapitalisation by Abanka of its subsidiaries via equity injections will be subscribed at (i) a [20-30]% discount to the share price (after adjustment for the "dilution effect" quantified using generally accepted market techniques) immediately prior to the announcement of the capital injection, or (ii) the lowest price at which other shareholders of those subsidiaries contribute to the recapitalisation. Slovenia and Abanka will appoint a Monitoring Trustee who will report to the Commission on compliance with the commitments over the entire restructuring period.

4.3 Description of the impaired assets measure

a. Objective

- (56) Abanka will benefit from an impaired asset measure by transferring a portfolio of impaired assets to the BAMC. The aim of that measure is to remove uncertainty about the future value of its most problematic asset portfolio and ensure that Abanka will concentrate on the implementation of the restructuring plan.

b. Set up and characteristics

- (57) Slovenia established the BAMC to support the stability of the banking sector. The overall objective of the BAMC is the management and orderly divestment of the assets it receives, maximising their recovery. In pursuing that activity, the BAMC contributes to the restructuring of the financial system, while minimising the use of public funds and avoiding market distortions as much as possible.
- (58) The BAMC may acquire or cover risks, in particular from assets, securities, derivatives, rights and obligations from approved loans or guarantees with the associated collateral. The BAMC will pay Abanka the established transfer value with State-guaranteed debt securities issued by the BAMC. The transfer value of the assets transferred to the BAMC will be set to their REV as established by the Commission's experts in line with the State aid rules.

c. Scope of the transfer of impaired assets and loans

- (59) The Slovenian authorities have submitted a list of non-performing assets selected for the transfer to the BAMC by Abanka.
- (60) Abanka identified approximately [200-250] clients to be transferred to BAMC with total gross exposure, before impairment provisions, of EUR 1 086 million as at 31 December 2013. The portfolio comprises: EUR [1000-1500] million of loans (EUR [500-550] million exposure net of impairment provisions);

EUR [5-10] million (EUR [0-5] million net) of debt securities available for sale; EUR [0-5] million of [...]; and EUR [5-10] million of derivatives held for trading ([...]). Overall, the portfolio contributes EUR [500-550] million in RWA (about [20-30]%).

- (61) The loans to be transferred to BAMC are divided into five customer segments: [...]. Approximately half of the gross exposure to be transferred relates to the [...] segment (i.e. [50-60]% and [40-50]% of the gross and net exposure respectively), [20-30]% of the gross exposure ([30-40]% of the net) relates to [...], [10-20]% of the gross exposure ([10-20]% of the net) relates to [...], while the remainder relates to other. Approximately half of all customer loans to be transferred to BAMC (by gross exposure) have [...] at 31 December 2013. [10-20]% of the overall loan portfolio are loans [...].
- (62) The Commission has conducted an assessment of the portfolio with the assistance of external experts.

d. The transfer value

- (63) The REV of the assets of Abanka, as assessed initially by Slovenia, amounted to EUR [600-650] million compared to a net book value after impairments of EUR [500-550] million or [40-50]% of the gross book value of those assets. Slovenia committed that the transfer value of the assets to the BAMC will be equal to or below their REV as established by the Commission's experts in line with the State aid rules. In return of the asset transfer, Abanka will receive State bonds, paid in two tranches of equal size with a maturity of [...] and [...] years and a planned annual interest rate of [0-5]% and [0-5]% respectively.

e. Market price

- (64) Given that for most of the securities selected for transfer to the BAMC there is no active market, no market price has been provided by Slovenia. The Commission has requested its experts to also determine the current market value of the portfolio.

5 POSITION OF SLOVENIA

- (65) Slovenia agrees that the first recapitalisation, the second recapitalisation and the transfer of impaired assets to the BAMC constitute State aid measures in favour of Abanka within the meaning of Article 107(1) TFEU. Slovenia is of the view that those measures are compatible with the internal market under Article 107(3)(b) TFEU.
- (66) Slovenia argues that the restructuring plan complies with all conditions set forth in the Restructuring Communication¹⁰ as supplemented by the 2013 Banking Communication.
- (67) In particular, Slovenia is of the opinion that the restructuring plan ensures the restoration of Abanka's long-term viability without reliance on State resources, provides sufficient own contribution to the restructuring costs and limits competition distortions. In order to ensure prudent decision-making processes in

¹⁰ Commission's Communication of 23 July 2009 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.

managing the Bank's activities Slovenia has provided specific commitments to strengthen its corporate governance arrangements and structure.

- (68) The commitments provided by Slovenia are set out in the Annex to this Decision. In order to ensure that the commitments will be implemented, a monitoring trustee will be appointed. Furthermore, Slovenia has committed that upon taking a majority share-holding in Banka Celje d.d., Slovenia will proceed to merging the two banks and notify a new restructuring plan for the joint entity before 31 December 2014. This merger is part of a more general strategy of the Republic of Slovenia to improve the sustainability of the Slovenian banking system.

6 ASSESSMENT

6.1 Existence and amount of State Aid

- (69) The Commission has concluded in the rescue decision that the first recapitalisation of Abanka constituted State aid¹¹, which was not disputed by Slovenia. Therefore in this section the Commission will assess only whether the two new measures (i.e. the second recapitalisation of Abanka and the transfer of impaired assets to the BAMC) constitute State aid.
- (70) Article 107(1) TFEU provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings is, insofar as it affects trade between Member States, incompatible with the internal market.
- (71) As the second recapitalisation amounting to EUR 243 million will be provided directly by Slovenia, the Commission concludes that the measure stems from State resources. The Commission considers the aid element in the recapitalisation to be up to 100% of the nominal amount.
- (72) The second recapitalisation allows Abanka to obtain capital in a fragile financial situation where due to the uncertainty surrounding Slovenian banking sector it would be impossible to find such capital on the market. It allows Abanka to cover further losses and remain above the minimum solvency ratio under the adverse scenario. In view of the large amount of aid and the rather limited expected profitability of Abanka in the first years of the restructuring period, it is doubtful whether this additional capital injection will be remunerated in line with market terms and, in the current circumstances, that it would have been available on the market.
- (73) For these reasons, the Commission considers that the second recapitalisation would not have been provided by a market economy investor expecting a reasonable return on its investment, particularly in the light of the overall volume of the intervention and given the current market circumstances.
- (74) The second recapitalisation must therefore be regarded as providing an advantage to Abanka which it could not obtain in the market. Moreover, that advantage is selective since it only benefits to Abanka.

¹¹ See recitals (23) – (28) of the rescue decision.

- (75) Given that Abanka is and will be active in the financial sector, which is open to intense international competition, any advantage from State resources to the Bank has the potential to affect intra-Union trade and to distort competition. The second recapitalisation therefore constitutes State aid within the meaning of Article 107(1) TFEU.
- (76) As regards the transfer of impaired assets to the BAMC, the Commission considers that the measure involves State resources. Slovenia created the BAMC to support banking sector stability, helping troubled banks to transfer their risky assets off their balance sheet at a price over current market value. Those transfers of impaired assets from Abanka to the BAMC will limit the loss the Bank would otherwise need to take in order to clean up its balance sheet and implement its restructuring plan, in furtherance of the public policy goals which led to the creation of the BAMC.
- (77) The Commission's experts have independently determined the current market value of the portfolio of assets to be transferred as well as the REV. The level of State aid involved in the impaired asset measure is determined by the difference between that transfer value and the market value. The proposed transfer value of the portfolio is equal to the REV and higher than the current market value. Since the transfer occurs at a level about market value, the measure constitutes an advantage to Abanka.
- (78) That advantage strengthens Abanka's position compared to that of its competitors. The measure must therefore be regarded as liable to distort competition and affect trade between Member States, given that Abanka is and will be active in the financial sector, which is open to intense international competition.
- (79) As regards the aid amount in the transfer of impaired assets to the BAMC, footnote 2 to point 20(a) of the Impaired Assets Communication defines the aid amount in an asset relief measure as the difference between the transfer value of the assets and the market price. In the case of Abanka, the transfer price will be set at REV (at EUR [450-500] million) while the market price has been estimated at EUR [200-250] million. Therefore, the aid granted to Abanka as a result of the transfer of impaired assets to the BAMC amounts to EUR [200-250] million.
- (80) Consequently, the total aid granted to Abanka both in 2013 and 2014 as a result of the first recapitalisation of EUR 348 million, the second recapitalisation of EUR 243 million and the transfer of impaired assets to the BAMC (resulting in an aid of EUR 234 million) amounts to EUR 825 million, representing [30-40]% of Abanka's RWA as of 31 December 2013.

6.2 Compatibility of the aid

6.2.1. Legal basis for the compatibility assessment

- (81) Article 107(3)(b) TFEU empowers the Commission to find that aid is compatible with the internal market if it is intended "to remedy a serious disturbance in the economy of a Member State". The Commission has acknowledged that the global financial crisis can create a serious disturbance in the economy of a Member State and that measures supporting banks are apt to

remedy that disturbance. This has been successively detailed and developed in the seven Crisis Communications¹². The 2013 Banking Communication applies to State aid measures notified from 1 August 2013 onwards. Slovenia has notified the State aid measures in favour of Abanka after that date. Therefore the provisions of the 2013 Banking Communication apply to the compatibility assessment of Abanka's restructuring plan.

- (82) The Commission's various approvals of the measures undertaken by the Slovenian authorities to combat the financial crisis¹³ confirm the presence of a serious disturbance in the Slovenian economy. Therefore, the legal basis for the compatibility assessment of all the measures covered by the restructuring plan (namely the first recapitalisation, the second recapitalisation and the transfer of impaired assets to the BAMC) is Article 107(3)(b) TFEU.

6.2.2. Compatibility assessment

- (83) As regards the compatibility of the specific features of the measure comprised of the transfer of impaired assets to the BAMC, the Commission assesses that measure with regard to the Impaired Assets Communication as adapted by the 2013 Banking Communication.
- (84) As regards the compatibility of the first and second recapitalisations provided to Abanka and the transfer of assets to the BAMC, they constitute restructuring aid to Abanka. The Commission assesses that aid on the basis of the restructuring plan examined in the light of the Restructuring Communication as supplemented by the 2013 Banking Communication.

6.2.3. Compatibility with the Impaired Assets Communication as adapted and complemented by the 2013 Banking Communication

- (85) It is necessary to assess the compatibility of the transfer of impaired assets to the BAMC on the basis of the Impaired Assets Communication as adapted and complemented by the 2013 Banking Communication. The Impaired Assets Communication defines impaired asset relief as any measure which “free[s] the beneficiary bank from (or compensate[s] for) the need to register either a loss or a reserve for a possible loss on its impaired assets and/or free regulatory capital for other uses” and sets out criteria for the compatibility of such measures with the internal market. Those compatibility criteria comprise: (i) the eligibility of the assets; (ii) transparency and disclosure of impairments; (iii) the management

¹² Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (“2008 Banking Communication”), OJ C 270, 25.10.2008, p. 8; Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition (“Recapitalisation Communication”), OJ C 10, 15.1.2009, p. 2; the Impaired Assets Communication; the Restructuring Communication; Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis (“2010 Prolongation Communication”), OJ C 329, 7.12.2010, p. 7, Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of financial institutions in the context of the financial crisis (“2011 Prolongation Communication”), OJ C 356, 6.12.2011, p. 7 and the 2013 Banking Communication.

¹³ See e.g. Rescue recapitalisation in favour of NLB SA.32261 (2011/N), OJ C 189, 29.06.2011, p. 2; Second recapitalisation of NLB and Restructuring of NLB SA.34937 (2011/N) SA.33229 (2012/N), OJ C 361, 22.11.2012, p. 18; Recapitalisation of NKBM SA.35709, OJ C 162, 07.06.2013, p. 5.

of the assets; (iv) the correct and consistent approach to valuation; and (v) the appropriateness of the remuneration and burden-sharing.

a. Eligibility of assets

- (86) As regards the eligibility of the assets, section 5.4 of the Impaired Assets Communication indicates that asset relief requires a clear identification of impaired assets and that certain limits apply in relation to eligibility to ensure compatibility.
- (87) The Impaired Assets Communication however further sets out that a balance needs to be found between meeting the objective of immediate financial stability and the need to ensure the return to normal market functioning, which would plead in favour of flexibility when identifying classes of assets. In particular, whilst the Impaired Assets Communication cites as eligible assets those that triggered the financial crisis, it also allows for the possibility to "extend eligibility to well-defined categories of assets corresponding to a systemic threat upon due justification, without quantitative restrictions".
- (88) As regards the present case, the impaired assets measure is targeted at non-performing assets mostly related to defaulted loans to large corporates, SME, and real estate developers. Those assets are therefore in line with the eligibility criteria of the Impaired Assets Communication.

b. Transparency and disclosure

- (89) As regards transparency and disclosure, section 5.1 of the Impaired Assets Communication requires full ex-ante transparency and disclosure of impairments by eligible banks on the assets which will be covered by the asset relief measures, based on an adequate valuation, certified by recognised independent experts and validated by the relevant supervisory authority. The Impaired Assets Communication requires that disclosure and valuation should take place prior to government intervention.
- (90) As regards the impaired assets measure of Abanka, the Commission notes that independent consultants have been engaged by Slovenia to review the quality of assets in the context of the Slovenian asset quality review 2013 exercise and that the valuation of the assets has been performed by the Bank of Slovenia. A stress test was also disclosed on 10 May 2013 by the Bank of Slovenia, indicating the capital impacts of the transfer of assets from the three main Slovenian banks to the BAMC. An initial list of assets to be transferred was provided already in December 2013 during the pre-notification to the Commission. It has since been updated with several submissions, most recently on 23 April 2014. Slovenia has thus provided sufficient transparency and disclosure on the entirety of Abanka's impaired assets to be transferred to the BAMC.

c. Management of the assets

- (91) As regards the management of assets, section 5.6 of the Impaired Assets Communication stipulates the necessity of ensuring a clear functional and organisational separation between the beneficiary bank and its assets, notably as to their management, staff and clientele. The Communication provides in that respect that such arrangements should allow the bank to focus on the restoration of viability and to prevent possible conflicts of interest.

- (92) The non-performing assets of Abanka will be managed by the BAMC, which is fully independent from Abanka. It can therefore be concluded that the separate asset management is in line with the requirements of the Impaired Assets Communication.

d. Valuation

- (93) Section 5.5 of the Impaired Assets Communication notes that a correct and consistent approach to valuation is of key importance to prevent undue distortions of competition. The main aim of the valuation exercise is to establish the REV of the assets. That value constitutes the benchmark level in so far as a transfer of impaired assets at that value indicates the compatibility of aid – it creates a relief effect because it is in excess of the current market value, but keeps the aid amount to the minimum necessary.
- (94) The Bank of Slovenia assessed the portfolio according to the methodology defined in the BAMC bylaws. Slovenia has provided a note from the Bank of Slovenia explaining how the final transfer value of the asset transfer to the BAMC was calculated.
- (95) The Commission has scrutinized the valuation and, in particular, the underlying general methodology in order to ensure a consistent approach at Union level. For that purpose, the Commission has contracted external experts, to:
- (i) provide technical support on the valuation of the portfolio to be transferred, assessing how the existing materials submitted by Abanka could be used to assess the REV;
 - (ii) estimate the REV and current market value of the portfolio earmarked to be transferred.
- (96) With the support provided by the external experts the Commission assessed the REV of the portfolio. For those exposures selected for transfer to the BAMC which are in default, the analysis focused on determining the value of the underlying collateral and the difficulty in realising that value in a liquidation scenario. For the performing exposures ([10-20]% of the overall portfolio), a PD/LGD approach¹⁴ was used. The methodology used to calculate the REV contains sufficient stress to include an appropriate level of remuneration to the BAMC for the wind-down of the assets to be transferred.
- (97) The Commission concludes that the REV of the portfolio is [40-50]% of the outstanding gross exposure value (equivalent to EUR [450-500] million) and its current market value is [20-30]% of the outstanding gross exposure value (equivalent to EUR [200-250] million).
- (98) Therefore the amount of aid considered is the difference between the REV and the market value, i.e. EUR 234 million.

e. Burden-sharing and remuneration

¹⁴ PD: Probability of Default; LGD: Loss Given Default; the value of performing exposures is then calculated by taking the current loan value times the survival probability (1-PD) and subtracting the expected loss in a default scenario (LGD * PD).

- (99) As regards burden-sharing, section 5.2 of the Impaired Assets Communication repeats the general principle that banks ought to bear the losses associated with impaired assets to the maximum extent so as to ensure equivalent shareholder responsibility and burden-sharing. Thus, the assets should be transferred at a price that matches or remains below their REV.
- (100) As Slovenia undertakes to transfer the impaired assets of Abanka at the REV established by the Commission and its external experts, the Commission considers that the pricing proposed by Slovenia ensures sufficient burden-sharing and is therefore in line with the Impaired Assets Communication.

Conclusion on the impaired assets measure

- (101) In light of the above, the Commission considers that the transfer of impaired assets to the BAMC meets all the conditions and requirements of the Impaired Assets Communication as adapted and complemented by the 2013 Banking Communication.

6.2.4. Compatibility with the Restructuring Communication supplemented by the 2013 Banking Communication.

- (102) According to point (31) of the 2013 Banking Communication, any restructuring plan involving restructuring aid will, with the exception of the requirements on capital raising and burden-sharing, continue to be assessed on the basis of the Restructuring Communication.
- (103) According to the Restructuring Communication and the 2013 Banking Communication, first, the restructuring plan has to demonstrate that the restructuring process a beneficiary of State aid is undergoing is suitable to restore its long-term viability. Second, the aid amount must be limited to the minimum necessary and both shareholders and subordinated creditors must contribute to reducing the capital shortfall to the maximum extent. Third, measures need to be in place to limit distortions of competition created by artificially supporting the market power of the beneficiary and to ensure a competitive banking sector. Finally, monitoring and procedural issues need to be addressed.

(i) Restoration of long-term viability

- (104) As set out under the Restructuring Communication, the Member State needs to provide a comprehensive restructuring plan which demonstrates how the long-term viability of the beneficiary will be restored without State aid within a reasonable period of time, but 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 RoE, 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.
- (105) Slovenia has submitted a restructuring plan for Abanka covering the period up to 31 December 2018 and showing a return to viability at the end of that restructuring period. The return to viability is largely based on the expected improvement in the quality of the portfolio and the reduced need for additional

impairments and provisioning resulting mainly from the planned transfer of impaired assets to the BAMC. Abanka will also profit from an improved operational efficiency resulting from cost reduction and risk management measures. To ensure the Bank's viability the financial plan takes into account the transfer of impaired assets to the BAMC in the amount of EUR 1 086 million (gross book value) and the second recapitalisation of EUR 243 million in 2014.

- (106) Point 10 of the Restructuring Communication requires that the proposed restructuring measures remedy the entity's weaknesses. The restructuring plan explains the internal factors causing Abanka difficulties. The main causes are related to the aggressive growth strategy pursued up to 2011, which contributed to a high concentration of loans to individual corporate customers. Loans were granted under generally loose credit and collateral standards, with poor risk management practices, which resulted in the accumulation of large portfolio of non-performing loans. Expansion, in particular to South-Eastern European markets, insufficient cost adjustments, weak corporate governance contributed further to the difficulties of the Bank. In addition, the general slowdown of the Slovenian economy had a negative impact on Abanka's performance.
- (107) Between 2009 and 2013, the NPL ratio increased from 6.1% to 46.1%. Abanka had accumulated losses of EUR 81 million in 2012 and EUR 306.5 million in 2013, thus consuming capital and bringing the Tier 1 ratio below the minimum level of 9.5% required by the Bank of Slovenia by 31 December 2013. At the same time, the funding side of the Bank's balance sheet is relatively healthy with a large, diversified deposit base, a liquidity coverage ratio in excess of 200% and a loan-to-deposit ratio of less than 75%.
- (108) Therefore five major issues must be tackled for the return to long-term viability. First, the bank's corporate governance must be enhanced to ensure that economically justified business decisions are taken exclusively by the Bank's management and that the State will not influence the day-to-day business. Second, the Bank must improve its pricing policies and risk management framework so that margins are preserved and losses minimized. Third, Abanka must rebalance its activities towards less risky activities. Fourth, the Bank must repair its capital base. Fifth, the Bank must improve its operational efficiency to secure a sufficient level of profitability.
- a) *Strengthening the corporate government framework*
- (109) The commitments provided in the context of the restructuring of Abanka guarantee independence of the board and management to set lending criteria. They also ensure that the pricing of loans will be based on a pricing policy establishing minimum RoE rules for all loans, thereby limiting the possibility for the Bank to lend below market price to firms as a result of external influences or to related parties.
- (110) The commitments on a new corporate governance framework aim to properly address and remedy the weakness of Abanka's corporate governance.¹⁵ The new framework establishes adequate safeguards to prevent conflicts of interest. It also ensures that strategy and decisions are business-oriented and are neither

¹⁵ See recital (48).

biased by objectives other than value maximisation nor subject to improper external influence. Planned changes to the corporate governance will make the Bank less vulnerable to external influence and at the same time will introduce more market discipline through enhanced control and transparency in management decisions.

- (111) Abanka will further review its incentive and remuneration policies in order to ensure that they do not encourage unreasonable risk-taking and are geared towards long-term and sustainable goals. The total remuneration to any board member and employee performing special work will be capped, until 31 December 2018, in line with points (37) to (39) of the 2013 Banking Communication.
- (112) As a result, the commitments and the restructuring plan properly address and remedy the main weakness of Abanka's corporate governance policy. They establish adequate safeguards to prevent conflicts of interest, ensure that Abanka's strategy and decisions are business-oriented and are neither biased by objectives other than value maximisation nor subject to improper external influence. The planned changes to Abanka's organisational structure and corporate governance will make Abanka less vulnerable to external influence and at the same time will introduce more market discipline through enhanced control and transparency in management decisions. Those measures will contribute to Abanka's viability in the long term.
- (113) In the context of its efforts to support the further consolidation of the banking sector, Slovenia has committed to merge Abanka with Banka Celje d.d. once a majority stake has been taken up by Slovenia in Banka Celje (see recital (54)). External consultants have been tasked to study the benefits/costs of such a merger. Account will be taken that this commitment does not conflict with the timely implementation of the Country Specific Recommendations addressed by the Council to Slovenia.

b) Strengthening the pricing policies risk management framework

- (114) The commitments will enhance pricing policies and risk management in particular through a number of measures aiming at protecting the best business interests of the Bank. Those measures cover the scoring of clients and related lending, the assessment of collateral, the pricing of the new production, the control of the credit process by the credit risk department, and the review of the rating system used by the bank.
- (115) In particular the pricing of new loans will lead by 31 December 2018 to a positive RoE before tax of at least [10-20]% on each client relationship. That pricing will be progressively phased in, starting at [5-10]% RoE before tax on each client relationship in [...] and reaching [10-20]% in [...].
- (116) The Bank's vulnerabilities are also addressed with the limitation of lending in certain sectors. Abanka will not grant new lending to financial holding companies (parent), other than Abanka's remaining financial holding companies' (parent) clients, after the transfer to BAMC; will limit new lending to real estate projects to [10-20]% of its capital; and will limit concentration risks to single corporate clients groups to [0-20]% of its capital;

- (117) The inadequate credit, client and collateral assessment of the past will be addressed via the implementation of refined client credit rating and collateral management processes.
- (118) Abanka will also document all restructuring decisions and include in the documentation a comparison with alternative solutions (such as execution of collateral and termination of the engagement) demonstrating that the solution which maximizes the net present value for the Bank is chosen.
- (119) The resulting improvements in Abanka's pricing policies and risk management framework is appropriate and necessary in order to implement a more rigorous credit policy on new lending and a more conservative provisioning policy. They address the weaknesses of Abanka that caused its low profitability as a result of the poor quality of its loan portfolio, high concentration risk, an excessive level of NPL and a high cost of credit and provisioning. By addressing those causes of weaknesses, those measures contribute to the long-term viability of Abanka.
- c) *Rebalancing the business towards less risky activities*
- (120) Several measures will help rebalancing the balance sheet of the Bank towards less risky activities.
- (121) Abanka will transfer a portfolio of impaired assets to the BAMC. The size of the portfolio transferred (gross book exposure of EUR 1 086 million) and the related capital relief generated through the corresponding reduction of RWA by EUR [500-550] million will enable Abanka to focus on the management of the performing loans, while releasing resources for the workout of the remaining non-performing loans.
- (122) The commitment to reduce and cap the RWA ensures that the risk associated with credit exposures will decrease over the restructuring period and release capital resources. Under the new business model, Abanka will also introduce a stricter origination and collateral policy. Abanka will reduce the concentration risk per client, decrease its lending activity to large corporates and real estate projects, where it accumulated high NPL in the past, and focus on lending activity towards retail and SME sectors where the Bank already has a large network.
- (123) An asset quality review and stress test of the Slovenian banking sector was performed during the third and fourth quarters of 2013. Its results were taken into account when assessing the capital needs of Slovenian banks. The restructuring plan incorporates the results of the asset quality review and stress test.
- (124) Abanka commits to withdraw from [...] activities [...] which never generated the expected returns. A reduction in Abanka's foreign corporate credit portfolio is also planned through the discontinuation of the provision of new credit activities to corporate clients abroad, thereby addressing the weakness of the Bank's knowledge in those markets which lead to inadequate risk assessment in the past.
- (125) Abanka will also discontinue equity trading on its own accounts.

- (126) Those measures will contribute to rebalance the risk profile and balance sheet of Abanka and improve its capital adequacy. The resulting business model will be more sustainable and less risky
- d) *Repairing the capital base*
- (127) Through the first recapitalisation Abanka already received State aid of EUR 348 million.
- (128) The restructuring plan envisages a second State recapitalisation for viability purposes in the maximum amount of EUR 243 million. After that second recapitalisation and the transfer of assets to the BAMC, the Tier 1 ratio of Abanka under the Capital Requirements Regulation¹⁶ ("CRR") will reach [10-20]% by 31 December 2014 and increase to [10-20]% by 31 December 2018 at the end of the restructuring plan. That second recapitalisation will cover capital needs as calculated in the asset quality review and stress test and so will immediately improve the capital adequacy of the Bank.
- e) *Restoring the long-term profitability*
- (129) The restoration of long-term profitability will result from the transfer of assets to the BAMC and Abanka's future strategy of refocusing on its core markets in Slovenia by pursuing essentially retail and SME activities.
- (130) The net interest margin of Abanka will be improved by ensuring that new lending will be adequately priced. In particular, pricing for new loans will contribute to achieving a positive RoE before tax of at least [5-10]% in 2015 (from 1 January 2015 on), [5-10]% in 2016, [5-10]% in 2017 and [10-20]% in 2018 on either the individual loan or on each client relationship.
- (131) Abanka will also document all restructuring decisions. It will include in the documentation a comparison with alternative solutions such as execution of collateral and termination of the engagement. It will demonstrate that the solution which maximizes the net present value for the bank is chosen.
- (132) Abanka is also planning a far-reaching cost-reduction programme. According to this program, Abanka's operating costs, amounting to EUR [50-60] million in 2013, will be reduced to EUR [50-60] million by 31 December 2014, EUR [50-60] million by 31 December 2015, EUR [50-60] million by 31 December 2016, EUR [50-60] million by 31 December 2017 and to EUR [50-60] million by 31 December 2018 in order to achieve a cost-to-income ratio below [60-70]% by the end of the restructuring period.
- (133) In 2018, at the end of the restructuring period, Abanka projects that its net income will amount to EUR [10-20] million corresponding to a RoE after tax of [0-5]% and a Tier 1 ratio of [10-20]%.

¹⁶ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.06.2013, p. 1.

- (134) The Commission notes that the RoE at the end of the restructuring period is low compared to other banks in restructuring. However, the Commission's detailed analysis of the restructuring plan reveals three main points to take into consideration in that regard:
- (a) Provisioning. The current levels of expenses related to loan loss provisions and impairments built into the plan amount to roughly [0-5]% of the total loan book annually. Compared to international peers, it is a high level and a conservative estimate equivalent to the assumption that there will be no improvement in the currently stressed economic situation of Slovenia before the end of December 2018. It also does not take into account the Abanka's commitments related to the improvement of its corporate governance and risk management frameworks.
 - (b) Income. The figures of interest income in the restructuring plan do not take into account the commitment on RoE pricing of loans to be adjusted to [10-20]% by 2018. Current pricing is targeted at around [5-10]%, so the interest income projections are on the low side.
 - (c) Capital. The figures in recital (132) are calculated based on an amount of capital maintained at a level appropriate to sustain a stress situation in line with the results of the asset quality review and stress test and so are well above the regulatory minimum. Those projections do not take into account the effects of the commitment on capital repayment designed to prevent a build-up of excess capital in Abanka.
- (135) Effects (a) and (b) could lead to upwards adjustments of RoE in 2018 of between one and three percentage points. Effect (c) could increase the RoE by up to [20-30]% depending on the precise capital requirements in place for Abanka by end of 2018. In combination, those three effects point to a likely RoE of between [5-10]% and [5-10]% at the end of the restructuring period which is appropriate for a bank with Abanka's risk profile and a sound funding basis in the current economic and regulatory environment.
- (136) The Commission therefore considers that the restructuring plan is apt to restore Abanka's long-term viability.
- ii) Own contribution and burden-sharing*
- (137) The Restructuring Communication supplemented by the 2013 Banking Communication indicates that an appropriate contribution by the beneficiary is necessary to limit the aid to a minimum and to address distortions of competition and moral hazard. To that end, it provides (i) that both the restructuring costs and the amount of aid should be limited and (ii) that there should be a maximum burden-sharing by existing shareholders and subordinated creditors.
- (138) The restructuring plan does not contain any elements that suggest that the aid exceeds the means required to cover the costs resulting from the restoration of viability of the Bank. The capital shortfall which needs to be covered by the second recapitalisation measure was determined on the basis of the asset quality review and stress test in line with point (28) of the 2013 Banking Communication. That second recapitalisation estimation is based in particular

on an asset evaluation which shows such a level to be necessary and sufficient to sustain a stress situation. The asset quality review and stress test give further certainty on the appropriate level of capital needed. The amount of the second recapitalisation will make it possible for the Bank to meet its regulatory capital requirements, to cover the capital shortfall established by the asset quality review and stress test, and to meet market expectations. In addition, a capital repayment mechanism will be in place to limit the build-up of excess capital in Abanka, under which Abanka will have to pay dividends for the fiscal years [...] calculated on increasing percentage of any excess capital. The capital repayment mechanism ensures that excess capital above minimum regulatory capital requirements will not permit the Bank to enter into new business before repaying the State.

- (139) Adequate burden-sharing will normally entail contributions by hybrid capital holders and subordinated debt holders, after losses are first absorbed by equity. Hybrid capital and subordinated debt holders must contribute to reducing the capital shortfall to the maximum extent. Such contributions can take the form of either a conversion into Common Equity Tier 1 or a write-down of the principal of the instruments. In any case, cash outflows from the beneficiary to the holders of such securities must be prevented to the extent legally possible.
- (140) First, the commitments regarding the burden-sharing of subordinated debt holders comply with the Restructuring Communication supplemented by the 2013 Banking Communication. To ensure adequate burden-sharing and participation of Abanka's existing investors in the restructuring, the equity holders and all subordinated debt holders were written down in full prior to the first recapitalisation. After the first recapitalisation the State became the sole shareholder of Abanka.
- (141) Second, as regards the first recapitalisation, the Commission notes that it was conducted in a way compatible with the burden-sharing principles¹⁷. As for the second recapitalisation, the State already is 100 % owner of the Bank thereby maximising the burden-sharing. Finally, the Commission has also already established that the transfer of impaired assets to the BAMC is adequately remunerated.¹⁸
- (142) Third, as regards covering the restructuring costs associated with the implementation of the restructuring plan through Abanka's internal measures, Abanka will carry out cost-cutting measures resulting in a decrease of its operating costs from EUR 59.8 million in 2013 to EUR [50-60] million in 2018. The restructuring plan and the commitments also provide for restrictions to be applied, until 31 December 2018, to the total remuneration of any board member and employee performing special work.
- (143) Fourth, in addition to those structural measures, Slovenia also committed to a behavioural measure entailing a coupon ban, an acquisition ban and a ban on advertising and aggressive commercial practices which will also contribute to provide appropriate burden-sharing.

¹⁷ See recitals (47) to (49) of the rescue decision.

¹⁸ See recitals (99) and (100).

- (144) In that regard the Commission notes that the coupon ban does not apply to newly issued capital instruments (meaning instruments issued after the adoption of the present Decision), provided any payment of coupons on such newly issued capital instruments will not create a legal obligation to make any coupon payments on Abanka's securities existing at the moment of the adoption of this Decision¹⁹. The Commission accepts that limitation of the coupon ban in order to permit the bank to raise fresh capital on the market in line with point 26 of the Restructuring Communication. The issuance of capital instruments after the date of adoption of this Decision will permit the Bank to raise additional funding and capital, while not triggering the payment of coupons on existing securities, in particular subordinated debts. By virtue of the limitation of the coupon ban Abanka will therefore be in a position to issue capital instruments eligible as a Tier 1 capital, which may potentially reduce the capital it needs in form of equity. In that respect, it must be recalled that coupons must be optional and cannot be mandatory for debt instruments to qualify as Tier 1 capital. The limitation of the coupon ban does not undermine the useful effect of a coupon ban of the kind contemplated by the Restructuring Communication because the commitment that the payment of coupons on Abanka's new capital instruments will not create a legal obligation to make any coupon payments on Abanka's existing securities will prevent any unnecessary outflow of capital.
- (145) In addition any possible recapitalisation by Abanka of its subsidiaries via equity injections will be subscribed at (i) a [20-30]% discount to the share price (after adjustment for the "dilution effect" quantified using generally accepted market techniques) immediately prior to the announcement of the capital injection, or (ii) the lowest price at which other shareholders of those subsidiaries contribute to the recapitalisation.
- (146) Accordingly, the full write-down of shareholders' equity and outstanding subordinated debts of Abanka, cost reduction measures, divestment commitments result in a sufficient own contribution by Abanka to the costs of its restructuring and ensure appropriate burden-sharing.
- (147) For those reasons, the Commission concludes that the Restructuring Plan provides for an appropriate own contribution and burden-sharing.

¹⁹ Other decisions refer to similar commitments: see recital (218) of Commission Decision in the Case Restructuring of Royal Bank of Scotland and participation in the Asset Protection Scheme C(2009)10112 final, OJ C 119, 07.05.2010, p. 1, recital (165) of Commission Decision in the Case Restructuring of Lloyds Banking Group C(2009)9087 final, OJ C 46, 24.02.2010, p. 2, recital (151) of Commission Decision in the Case Restructuring of NLB C(2013)9632 final, not yet published and recital (132) of Commission Decision in the Case Restructuring of NKBM C(2013)9634 final, OJ C 120, 23.04.2014, p. 1

iii) Measures limiting the distortion of competition

- (148) Finally, section 4 of the Restructuring Communication requires that the 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 beneficiary's own contribution and burden-sharing over the restructuring period.
- (149) Abanka will receive State aid in the form of first and second recapitalisations and the impaired asset measure amounting to EUR 825 million, equivalent to [30-40]% of Abanka's RWA as of 31 December 2013. The need to implement measures to limit potential distortions of competition is necessary in particular given the relatively large amount of aid and Abanka's market position.
- (150) A first measure that will limit distortions of competition is the divestment/orderly winding-down of its [...] representing a total book value of EUR [90-100] million as of 31 December 2013. Abanka will completely withdraw from [...] activities in [...], hence reducing its market presence to the benefit of competitors.
- (151) Abanka will further reduce its market presence by closing its [...].
- (152) Abanka will also reduce its credit activities by ensuring that its RWA will be reduced from EUR 2.1 billion on 31 December 2013 to EUR [0-5] billion at 31 December 2018. Abanka will also discontinue asset management for clients.
- (153) Abanka will continue its activities in a reduced way, with a smaller balance sheet and implement a more efficient lending policy with enhanced pricing and risk management policies. Those measures not only contribute to the viability in the long-term of the Bank but also limit distortions of competition.
- (154) Abanka will use potential excess capital to remunerate the State for the aid measures received, which prevents Abanka from benefiting from an excessive capital base which would put it in an advantageous situation compared to its competitors. As such, the capital repayment mechanism which is designed to limit the build-up of excess capital in Abanka represents a further appropriate measure to limit the distortion of competition.
- (155) In addition to those structural measures, Slovenia also committed to behavioural constraints. The Commission welcomes a ban on advertising State support and on aggressive commercial practices, thus preventing Abanka using the aid for anti-competitive market conduct. Slovenia committed also to an acquisition ban, designed to ensure that, the beneficiary will not use the State aid received to acquire any stake in any undertaking (that covers both undertaking which have the legal form of a company and pool of assets which form a business), which is of particular importance in view of the high capital ratio maintained by Abanka during the restructuring period to sustain a stress situation.

- (156) Taking into account that mix of measures and commitments, there are sufficient safeguards to limit potential distortions of competition in view of the amount of aid to Abanka.

6.2.5. Monitoring of the restructuring plan

- (157) Pursuant to section 5 of the Restructuring Communication supplemented by the 2013 Banking Communication, regular reports are required to allow the Commission to verify that the restructuring plan is being implemented properly. Slovenia will appoint a monitoring trustee who will provide the Commission with semi-annual monitoring reports.
- (158) To ensure proper implementation of the restructuring plan throughout its duration, the Slovenian authorities will take all the necessary measures to ensure that Abanka complies with the commitments listed in the Annex.
- (159) Moreover, the correct implementation of the restructuring plan and the full and correct implementation of all commitments contained in the Annex to this Decision will be continuously monitored by the monitoring trustee who will be independent and sufficiently qualified. The monitoring trustee will have unrestricted access to all information needed to monitor the implementation of the Decision. The Commission or the monitoring trustee may ask Abanka for explanations and clarifications. Slovenia and Abanka are to cooperate fully with the Commission and the monitoring trustee with regard to all enquiries associated with monitoring.

6.2.6. Conclusion on the restructuring plan

- (160) The Commission finds that the restructuring plan of Abanka is compatible with the internal market pursuant to Article 107(3)(b) TFEU.

6.2.7 Conclusion on the compatibility of the measures

- (161) The Commission concludes that the first recapitalisation of EUR 348 million (temporarily approved by the rescue decision on 18 December 2013), the second recapitalisation of EUR 243 million and the transfer of impaired assets to the BAMC (resulting in aid of EUR 234 million) constitute restructuring aid in favour of Abanka. In view of the assessment of the restructuring plan and commitments undertaken by Slovenia, the Commission concludes that Abanka will be restructured in a manner that ensures its long-term viability, involves adequate burden-sharing and sufficiently addresses competition distortions. The Commission considers that the first recapitalisation, the second recapitalisation of Abanka and the transfer of impaired assets to the BAMC and the submitted restructuring plan fulfil the criteria of the Impaired Assets Communication and the Restructuring Communication, as amended and supplemented by the 2013 Banking Communication. The first recapitalisation, the second recapitalisation of Abanka and the transfer of impaired assets to the BAMC are compatible with the internal market for reasons of financial stability on the basis of Article 107(3)(b) of the Treaty on the Functioning of European Union, in light of the commitments set out in the Annex to this Decision.

CONCLUSION

The Commission has accordingly decided, in view of the commitments undertaken by the Republic of Slovenia regarding the restructuring of Abanka, to consider the first recapitalisation of EUR 348 million (temporarily approved by the rescue decision on 18 December 2013), the second recapitalisation of EUR 243 million and the transfer of impaired assets to the BAMC (resulting in aid of EUR 234 million) to be compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of the European Union

The Commission notes that for reasons of urgency Slovenia exceptionally accepts the adoption of the Decision in the English language.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

<http://ec.europa.eu/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

SA.38228 Commitments Abanka

Commitments provided by Slovenia

The Republic of Slovenia ("**Slovenia**") ensures that Abanka and its affiliates ("**Abanka**") will implement the restructuring plan submitted on **17 February 2014** as subsequently amended. In connection with this, Slovenia commits to implement in particular the measures and actions and to achieve the objectives listed below (the "**Commitments**") which are integral part of said restructuring plan.

The Commitments shall take effect upon the date of adoption of the European Commission's ("**Commission**") decision approving the restructuring plan.

The restructuring period will end on **31 December 2018**. The Commitments apply throughout the restructuring period unless the individual Commitment states otherwise.

In March 2014, the Government of the Republic of Slovenia resolved to support measures aimed at further consolidation in the banking sector. The consolidation aims at reducing the number of banks in the Slovenian market and increasing the efficiency of the banking system. To the extent that Abanka will feature in this consolidation exercise, Slovenia will co-operate with the European Commission in line with the applicable State aid rules, while implementing the Commitments herein.

(1) Reduction of the balance sheet

According to the content of the restructuring plan Abanka will reduce its group balance sheet total from EUR 3.0 billion as at 31 December 2013 to EUR [0-5] billion by 31 December 2018, with essentially no change in the overall conditions governing the balance sheet and the legal environment relevant for the balance sheet total.

(2) Reduction of costs

Abanka's operating costs amounted to EUR 59.8 million in 2013 at Group level. Abanka will reduce its operating costs at Group level (excluded one-off extraordinary costs having non-recurrent nature, i.e. restructuring expenses) to achieve either a cost-to-income ratio below [50-60]% or in case the cost-to-income ratio is above [50-60]% to EUR [50-60] million by the end of 2014, EUR [50-60] million by the end of 2015, EUR [50-60] million by the end of 2016, EUR [50-60] million by the end of 2017 and to EUR [50-60] million by the end of 2018.

If the annual inflation in the period 2014-2018 exceeds 2.5%, the operating cost targets will be adjusted to accommodate for the difference between inflation rate projections in the restructuring plan and actual inflation in the particular year.

(3) Divestment and winding down of [...]

- [...]
- [...]

- [...]
- [...]
- [...]
- [...]
- [...]
- [...]
- [...]
- [...]
- [...]

As of 31 December 2013, the aforementioned [...] to be divested or wound down represented a total asset value of EUR [90-100] million according to their respective balance sheets.

In addition, Abanka will divest [...] and close [...].

The divestment/active winding down of the above businesses and participations is deemed to be completed once the respective company has been liquidated or wound down or Abanka has concluded a binding sale and purchase agreement (although conditional to regulatory approvals) for the respective participation with one or more Purchasers that are independent from and unconnected to Abanka.

In case of [...] it is considered that Abanka has successfully terminated [...] when [...] is sold or wound down. In case of the latter no new business will be executed by the entity (with the only exception of contractual engagements for the prolongation of existing business). In case of [...] it is considered that Abanka has successfully terminated [...] when [...] is sold or wound down. In case of the latter no new business will be executed by the entity (with the only exception of contractual engagements for the prolongation of existing business).

The commercial activity of businesses that have not been divested within the deadlines set out in this commitment due to pending lawsuits (e.g. [...]), will be terminated in accordance with the duration and nature of the relevant lawsuits. No new business will be executed by those entities (except forced prolongations of existing engagements). In such a case, the respective divestment is deemed to be completed if either its total assets have been reduced to [10-20]% compared to the total assets as of 31 December 2013, or the statutory formal liquidation procedure has been initiated, or if the capital requirements for the subsidiaries concerned do not exceed a total of EUR [5-10] million on a consolidated level.

If Abanka has not concluded binding sale and purchase agreements conform to the above schedule, Abanka d.d. shall grant the Divestiture Trustee (appointed in accordance with commitment 19) an exclusive mandate to sell the participations (or the remainder thereof) to one or more Purchasers that are independent of and unconnected to Abanka.

In any case businesses shall be sold in a manner consistent with the Commitments.

- (4) **Equity trading:** Abanka will discontinue equity trading for its own account by the end of 2014.
- (5) **Asset management:** Abanka will discontinue asset management for clients by the end of 2014.

(6) Cap on credit activities in terms of RWAs

The risk weighted assets ("RWA") on group level amounted to EUR 2,099 million on 31 December 2013. Abanka will ensure that the RWAs will be capped according to the following schedule (outstanding volume in EUR million, including credit, market and operational risk):

- [...]
- [...]
- [...]
- [...]
- [...]

If any of those targets are exceeded by more than [10-20]%, Abanka shall refrain from undertaking any new credit activities in Slovenia until the respective reduction target is achieved. In addition, Abanka shall promptly submit to the Commission a contingency plan showing its ability to achieve by 31 December 2018 the relevant target.

(7) Discontinuation of business with foreign corporate clients

Abanka shall refrain from undertaking any new credit activities with corporate clients incorporated outside Slovenia and are not members of the groups whose headquarter or final beneficiary is in Slovenia. Abanka will limit its activities with such clients to the orderly execution and management of existing credit contracts. For the sake of clarification, trade and export financing for Slovenian companies in relation to foreign countries and treasury operations with foreign banks are not subject to this limitation.

(8) Corporate governance

Abanka will implement up-to-date corporate governance structures in accordance with the EU Capital Requirements Directive and Slovenian domestic legislation. The related necessary changes to Abanka internal rules have to be implemented in three months after the adoption of the decision of the Commission on the restructuring plan of Abanka. In particular:

(i) The management board of Abanka will have the sole powers and responsibilities for managing the day-to-day business of Abanka independently and in the sole interest of the bank. Neither the supervisory board nor the shareholders' assembly or any representatives of shareholders may issue any instructions to the management board or interfere otherwise with the day-to-day management of the bank;

(ii) apart from supervising and monitoring by the Supervisory Board, no other corporate body or unit shall issue instructions to the Management Board; in particular, there shall be no direct or indirect instruction by any shareholder or by the State to the Management Board. This shall also apply to the Assembly General Meeting, whose decision taking competence shall be limited to the catalogue of decisions as foreseen by the law and in the statutes. Furthermore, individuals who use their influence on a company to induce members of the Management Board to act in a manner which causes damage to the company or its shareholders must reimburse the company for the resulting damage.

(iii) the arm's length principle shall apply to the relationship between the bank and its shareholders, in particular Slovenia;

(iv) all members of the supervisory board shall pass the "fit and proper test", i.e. they shall be reliable and avail of the necessary professional skills to properly assess and monitor Abanka's business. Slovenia will not intervene in the appointment of supervisory board members and executives over and above its own nominees and its shareholder rights under ordinary Slovenian corporate law;

(v) two thirds of the seats and voting rights on the supervisory board and its committees shall be allocated to independent experts, i.e. persons who are neither currently employed nor have been employed 24 months prior to their appointment by the Slovenian government and who do not currently hold nor have held 24 months prior to their appointment a leadership or managing function within a Slovenian political party;

(vi) Abanka will ensure an effective, independent and objective internal audit function. For this purpose, the internal audit function will report and be answerable only to the Management Board and Supervisory board's Audit Committee, where at least one member has recent and relevant financial experience. Further, the findings and recommendations by the internal audit function shall receive proper attention and be discussed in the Management Board/Audit Committee, followed by an appropriate action plan to address identified problems. Decision not to act on findings by the internal audit function shall be well substantiated and, upon request, reported to the Monitoring Trustee.

(vii) Abanka will follow a prudent, sound business policy geared towards sustainability while implementing the planned measures. Abanka will further review its internal incentive schemes and remuneration policy and take steps to ensure that they do not encourage unreasonable risk-taking, that they are geared towards long-term and sustainable goals, and are transparent. The remuneration of board members and leading employees of the bank shall particularly take into account the relevant person's contribution to the bank's economic position and the necessity of market-oriented salary levels so as to be able to employ particularly suitable individuals who can achieve a sustainable business development. Abanka's remuneration policies and practices will be compliant with the EBA Guidelines on Remuneration Policies and Practices published on the 10 December 2010. The variable annual remuneration will be limited as follows:

- (a) management board: [...];
- (b) employees performing special work²⁰ employed in the front office function: [...]
- (c) employees performing special work employed in other functions: [...]

The payment of at least [50-60]% of the variable remuneration for the management board as defined in point 8(vii)(a) above will be deferred over the period of two years.

The payment of at least [50-60]% of the variable remuneration for employees performing special work as defined in points 8(vii)(b) and (c) above may be deferred over the period of two or three years according to the final decision of the Supervisory Board of Abanka.

(viii) Notwithstanding the commitment of item (vii) above, in any case, for the whole restructuring period, the total remuneration to any board member and employee performing

²⁰ Employees performing special work are beside (1) the management board, (2) executive directors on the second level management, (3) director of internal audit function, (4) director of risk management function on the third level of management, (5) directors on the third level of management in those functions, where executive directors are not appointed according to the final decision of the management board.

special work will be restricted to an appropriate level. The total remuneration of any such individual will not exceed 15 times the national average salary in Slovenia or 10 times the average salary of Abanka d.d. The restriction to total remuneration referred to above will apply until the end of the restructuring period.

(ix) After informing the monitoring trustee, Abanka may adjust the above maximum limit for the annual remuneration in line with Slovenian inflation.

(x) To the extent legally possible, Abanka shall remunerate members of its bodies and committees, employees and essential agents in line with the following principles:

(a) the relevant person's contribution to Abanka economic position, especially in the context of previous business policies and risk management; and

(b) the necessity of a market oriented salary, so as to be able to employ particularly suitable persons who can achieve sustainable growth.

(xi) Slovenia will ensure that each state-owned bank shall remain a separate economic unit with independent powers of decision within the meaning of the EC Merger Regulation and the Jurisdictional Notice. In particular, Slovenia ensures that:

(a) any confidential, commercially sensitive or personal information provided to government bodies and marked as such will be treated accordingly and not circulated to other banks and undertakings in which the state has a stake;

(b) the government will manage and maintain its stake in Abanka separately from the management of its interests in any other bank in which the state has a stake;

(c) the exercise of any rights held by the state and the management of the state's interests in any banks shall be on a commercial basis and shall not prevent, restrict, distort or significantly lessen nor impede effective competition. Any disposal of the state's shareholding must be conducted in a transparent, open and competitive process.

(9) Risk management and credit policies

Abanka will overhaul its risk management process and in particular Abanka will:

9.1) price every new loan (considering as new loan any new business not related to an existing transactions) by using an appropriate internal pricing tool as of [...] or (in the case of mass market retail and SME exposures) using appropriate internal pricing guidelines. Pricing for new loans will be considered adequate if the new loan contributes to achieve a positive Return on Equity before tax ("RoE") of at least [5-10]% in 2015 (from [...] on), [5-10]% in 2016, [5-10]% in 2017 and [10-20]% in 2018 on either the individual loan or on each client relationship. The calculation of the ROE of a client relationship can include interest income, fees as well as other combined products of the same client. The calculation of RoE on client level and pricing according to minimum RoE has to be implemented by [...].

a) For the purpose of this calculation, the volume weighted average of all loans with a single client (since the date of adoption of this decision), other fee business or banking transactions contributing to the profitability of the relationship with the same client can be taken into account, so that a new loan might generate a lower return if it is compensated by revenues of other fee business or banking transactions. New loans will have a credit documentation demonstrating a pre-deal calculated RoE for the either the individual loan or other live exposure on single client including fee business or banking transactions. In the case of mass market retail and SME transactions, this pre-deal calculated RoE may be replaced by a verification that the transaction is in line with internal pricing guidelines and a centralized demonstration that pricing guidelines assure a return on equity of [5-10]% in 2015 (from[...]), [5-10]% in 2016, [5-10]% in 2017 and [10-20] in 2018.

b) Any deviation from the pricing resulting in a lower price level will be documented. This documentation will include robust commercial reasoning for the deviation and will be presented to the Monitoring Trustee. The total amount of deviations will not exceed the amounts defined in paragraph 9.13.

c) Credit deals not falling under this pricing policy regime: Transactions with related parties (i.e. group members and employees, restructuring cases (of D, E and C clients with a delay in payments of more than 90 days) and all money market transactions.

9.2) adapt the credit rating process such that a financial statement analysis and a credit scoring indicating at the very least leverage and performance parameters such as return on capital, EBIT Interest Coverage, Debt/EBITDA, Debt / (Debt+Equity) etc. will be taken into account before engaging on a new credit exposure with any business client. Every customer to which Abanka has an exposure exceeding EUR [0-5] million should be re-rated annually;

9.3) document all restructuring decisions i.e. all new credit deals with non-performing corporate clients with an exposure over EUR [10.000-10.500] and include in the documentation a comparison with alternative solutions such as execution of collateral and termination of the engagement, demonstrating that the solution which maximizes the net present value for the bank is chosen. Unless a RoE of at least [5-10]% can be obtained, restructuring decisions will be such that the bank is able to terminate the engagement at least every [10-20] months. Where Abanka

does not have the exclusive right to accept, propose or approve restructuring agreements or to take restructuring decisions it shall exercise its rights according to the above principles. A list of all recent restructuring decisions will be regularly provided to the Monitoring Trustee (at least every 6 months). The documentation of any restructuring decision will be presented to the Monitoring Trustee upon request.

9.4) ensure that all credit officers approving credits to SME and corporate clients will have attended an internal training familiarizing them with the credit rating process and established pricing methodologies no later than [...];

9.5) in addition to the currently used scorecard process, implement a refinement of the corporate client rating process by developing an estimation model for the probability of default which will be based on a benchmarked statistical regression approach and integrated into Abanka's information system in the loan underwriting process by no later than [...];

9.6) not grant new lending to financial holding companies (parent), other than Abanka's remaining financial holding companies (parent) clients, after the transfer to BAMC;

9.7) not grant new lending to clients rated [...] (internal rating) or worse, except financial restructuring cases in line with the provisions of point 9.3;

9.8) limit new lending to real estate development projects (as a sub-sector) in total to [10-20]% of Abanka's capital. Refinancing of existing loans in that sub-sector is allowed up to the current exposure amount (after transfer to BAMC) without counting towards the limit on new lending;

9.9) limit total net exposure to single corporate client groups to [...]% of Abanka's capital. There can be up to [10-20] exceptions to this rule. These exceptions can be freely allocated to [...] clients [...]. Aggregated corporate client groups connected with the Republic of Slovenia in accordance with Article 4(39) of the Capital Requirements Regulation (CRR) are not subject to the above limitation. However, each sub-group belonging to the overall client group related to the Republic of Slovenia is subject to the above limitation at the individual sub-group level.

9.10) limit exposures to related parties and to persons in a special relationship with Abanka²¹ by requiring the approval from the Supervisory Board in the following cases:

²¹ Persons in a special relationship with the bank are the following:

1. Members of the bank's Management Board,
2. Members of the bank's Supervisory Board,
3. The bank's procurator,
4. Legal persons other than banks and whose Management Board member or procurator is a person from points 1., 2. or 3.,
5. Natural persons who are direct or indirect holders of the bank's shares granting them at least 5% of the voting rights or at least a 5% participation in the bank's capital,
6. Legal persons other than banks that are direct or indirect holders of the bank's shares granting them at least 10% of the voting rights or at least a 10% participation in the bank's capital (in case of Abanka: The Republic of Slovenia),
7. Immediate family of persons from points 1. through 3. and 5.,
8. Members of the Management Board, members of the Supervisory Board or members of other management or supervision bodies of the legal person from point 6.

- a) legal transactions, which, in respect of the bank's overall exposure, would result in a large exposure to a single individual,
- b) legal transactions on account of which the bank's large exposure to a single individual might increase so that it is equal or exceeds [10-20]% or [20-30]% of the bank's own funds,
- c) legal transactions to a single individual in a special relationship with the bank and whose value exceeds [100,000-105,000] euros.

9.11) implement a refinement of its collateral management process by no later than [...] ensuring that

- a) collateral is revalued at minimum frequencies in accordance with Articles 207 to 209 of the Capital Requirements Regulation (CRR)
- b) collateral will only be accepted based on clearly defined rules with haircuts applied to the market value of the collateral based on the risk involved in realising the market value in a liquidation scenario. A corresponding grid will be defined and used in the lending business by [...]. Particular focus will be put on haircuts regarding collateral where there is positive correlation between the credit quality of the obligor and the value of the collateral in the meaning of CRR, Article 207.2 as well as collaterals which are accepted not at first lien level.
- c) there is a collateral management system in place allowing all necessary information to be viewed and accessed on a per-loan as well as an aggregated basis including but not limited to information such as collateral type and description, current valuation and valuation history, last date of revaluation, lien, etc.

9.12) implement a refinement of its customer behaviour monitoring including an early warning system for all clients by [...].

9.13) should the Monitoring Trustee reveal a failure on behalf of Abanka to comply with any of the provisions of Commitment 9, Abanka shall provide the Monitoring Trustee with a remedial plan indicating which actions it has taken and intends to take in order to avoid a breach in the following quarter. The plan will be submitted in time for the Monitoring Trustee to report on it in its next semi-annual report to the Commission. Should the remedial plan not deliver the expected results and objectives, Abanka will limit for a term of twelve months – starting the quarter following the reporting of such breach of Commitments – the new lending volume per reporting period to [60-70]% of the new lending volume of the reporting period in which the Commitment was breached. This does not apply to an individual breach of the Commitment under points 9.1, 9.2, 9.3 and 9.11 provided that a further investigation by the Monitoring Trustee reveals that such breach can be considered an isolated error or omission and that there is no evidence hinting that a total volume per client of more than EUR [20-30] million of deals is affected by such breach.

(10) Non-discrimination of Slovenian State-owned companies

Slovenian State-owned companies will by no means be treated more favourably than non-state-owned companies (non-discrimination). Abanka should make available throughout the restructuring period an annual report comparing the lending conditions applied to state-owned companies and to similar private companies.

(11) Bans on advertising and aggressive commercial strategies

Slovenia will impose a ban on advertising related to the state support to Abanka and to the state ownership in Abanka (or to any competitive advantages arising in any way from the aid to Abanka or the state ownership in Abanka) and to prevent Abanka from employing any aggressive commercial strategies which would not be pursued without state support.

(12) Coupon ban

Slovenia will ensure that Abanka will refrain during the restructuring period from making any payments on capital instruments, unless those payments stem from a legal obligation, and not to call or buy back those instruments without prior approval of the Commission. Coupons on capital instruments held by the state may be paid, unless such payments would trigger coupon payments to other investors that otherwise would not be mandatory. This commitment not to pay coupons during the restructuring period does not apply for newly issued instruments (meaning instruments issued after the final Commission's approval of the restructuring plan), provided any payment of coupons on such newly issued instruments will not create a legal obligation to make any coupon payments on Abanka's securities existing at the moment of the adoption of the Commission's Restructuring Decision.

(13) Capital repayment Mechanism and dividend banko

Abanka will not pay dividends for the fiscal year 2014 and 2015. Based on the audited year end accounts Abanka may pay in form of dividend disbursement the following amounts to its shareholders:

(i) For the fiscal year [...] and [...]: the lower amount of (i) [50-60]% of the excess capital above the applicable minimum capital requirement under European and Slovenian law (including pillar 1 and 2) plus a capital buffer of [100-150] basis points, or (ii) the net income for the relevant year.

(ii) For the fiscal year [...]: the lower amount of (i) [90-100]% of the excess capital above the applicable minimum capital requirement under European and Slovenian law (including pillars 1 and 2) plus a capital buffer of [100-150] basis points; or (ii) the net income for the relevant year.

Without prejudice to the competences of Bank of Slovenia as banking supervisor of Abanka, the dividend disbursement shall be, totally or partially, suspended if, on the basis of a reasoned request by Abanka endorsed by the Monitoring Trustee, it is considered that it would endanger the solvency position of the bank in the following years.

(14) Acquisition ban

Slovenia ensures that Abanka will not acquire any stake in any undertaking. This covers both undertaking which have the legal form of a company and pool of assets which form a business.

- (a) Exemption requiring Commission's prior approval: Notwithstanding this prohibition, Abanka may, after obtaining the Commission's approval, acquire businesses if that is in exceptional circumstances necessary to restore financial stability or to ensure effective competition²²;
- (b) Exemption not requiring Commission's prior approval: Abanka may acquire stakes in undertakings provided that the purchase price is less than [...] % of Abanka's

²² See point 41 of the Commission communication on the return to viability and the assessment of the restructuring measures in the financial sector in the current crisis under the State aid rules, OJ C 195, 19.8.2009, p. 9.

total assets as of 31 December 2013 in each individual case and that the cumulative purchase prices paid by Abanka for all such acquisitions over the whole restructuring period is less than [...] % of Abanka' total assets as of 31 December 2013.

- (c) Activities not falling under the acquisition ban: 1) Acquisitions that take place in the ordinary course of the banking business in the management of existing claims towards ailing firms, including debt to equity swaps; 2) Disposals and restructuring within Abanka Group, including buy-outs of minority shareholders.

(15) Abanka shareholding

Upon taking a majority shareholding in Banka Celje d.d., the Republic of Slovenia will proceed to merging Abanka and Banka Celje. To this effect, the Republic of Slovenia will notify by no later than 31 December 2014 a restructuring plan for the joint entity to be created.

(16) Transfer of assets to the BAMC

The transfer value of the assets transferred to the BAMC will be equal to their Real Economic Value (REV) established by the Commission's experts in line with the state aid rules.

(17) Recapitalisation of subsidiaries

(17.1) Recapitalisation of subsidiaries via equity injections will be subscribed at the lower of (i) [20-30] % discount to the share price (after adjustment for the 'dilution effect') immediately prior to the announcement of the capital injection, or (ii) the lowest price at which other shareholders of Abanka's subsidiaries will contribute to the recapitalisation of subsidiaries. The 'dilution effect' can be quantified using generally accepted market techniques (for instance, the theoretical ex-rights price (TERP)). For non-listed subsidiaries, the market value of the shares should be established using an appropriate market-based valuation approach (including a peer group multiplier approach or other generally accepted valuation methodologies).

(17.2) In case the capital injection takes the form of hybrids instruments, those instruments will contain alternative coupon satisfaction mechanism and the provision determining the conversion rate of the hybrid into equity capital at the [20-30] % discount to TERP (established analogically as in case of equity injection stipulated in (17.1)). The commitment in this point applies only in cases where shareholders of Abanka's subsidiaries other than Abanka do not participate in the capital increase or subscription of hybrid instruments in the existing shareholding proportions.

(18) Monitoring Trustee

- Slovenia and Abanka shall appoint a Monitoring Trustee who is to report to the Commission on compliance by Slovenia and by Abanka with the Commitments listed in this document. The Monitoring Trustee shall be independent of Abanka and shall possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall not be subject to a conflict of interests throughout the exercise of his mandate.
- The Trustee shall be remunerated by Abanka in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by Slovenia and Abanka

- No later than four weeks after the Decision date, Slovenia shall submit a list of two or more persons whom Slovenia and Abanka propose to appoint as the Monitoring Trustee to the Commission for approval, with an indication which of those is Slovenia's and Abanka's preferred choice. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out above and shall include:
 - The full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments;
 - The outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks;

Approval or rejection by the Commission

- The Commission shall have the discretion to approve or reject the proposed Trustees and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Slovenia and Abanka shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Slovenia and Abanka shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Slovenia and Abanka

- If all the proposed Monitoring Trustees are rejected, Slovenia and Abanka shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out above.

Trustee nominated by the Commission

- If all further proposed Monitoring Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Slovenia and Abanka shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

Functions of the Monitoring Trustee

- The Monitoring Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Slovenia, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the Commitments.

Duties and obligations of the Monitoring Trustee

The Monitoring Trustee shall:

- Propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the Commitments.
- Monitor the compliance with the Commitments.
- Propose such measures as the Monitoring Trustee considers necessary to ensure the Slovenia's and Abanka's compliance with the Commitments;
- Provide to the Commission, Slovenia and Abanka a written draft report in English no later than by each 30 November for the first six months the then current calendar year and no later than 31 May for the last six months of the preceding calendar year giving each the opportunity to submit comments within 5 working days. The report shall cover the compliance with the Commitments. Within 5 working days of receipt of the comments, the Monitoring Trustee shall prepare a final report and submit it to the Commission, taking into account, if possible and at his sole discretion, the comments submitted. Only afterwards the Trustee is also to send a copy of the final report to Slovenia and to Abanka. If the draft report or the final report contains any information that may not be disclosed to Abanka, only a non-confidential version of the draft report or the final report is to be sent to Abanka. Under no circumstances is the Trustee to submit any version of the report to Slovenia and Abanka before submitting it to the Commission.
- In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Slovenia and Abanka a non-confidential copy at the same time, if it concludes on reasonable grounds that Abanka is failing to comply with these Commitments;

Duties and obligations of Slovenia and Abanka

- Slovenia and Abanka shall provide and shall cause its advisors to provide the Monitoring Trustee with all such cooperation, assistance, managerial, administrative support and information as the Monitoring Trustee may reasonably require to perform its tasks.

Replacement, discharge and reappointment of the Monitoring Trustee

- If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
 - The Commission may, after hearing the Monitoring Trustee, ask Slovenia to replace the Trustee; or
 - Slovenia and Abanka, with the prior approval of the Commission, may replace the Monitoring Trustee.
 - If the Monitoring Trustee is removed, the Monitoring Trustee 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 hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred above.

- iv. Beside the removal, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

(19) Divestiture Trustee

- Slovenia must propose to the European Commission for approval, no later than one month before the deadlines specified in commitments 3 a list of one or more persons whom it proposes to appoint as Divestiture Trustee following the appointment procedure as set out above for the Monitoring Trustee.
- The Divestiture Trustee must be appointed within one week of the European Commission's approval in accordance with the mandate approved by the European Commission;
- Slovenia must grant comprehensive powers of attorney to the Divestiture Trustee :
 - i. to effect the disposal of the businesses specified in commitments 3; and
 - ii. to take all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the disposal, including the appointment of advisors to assist with the disposal;
- Abanka must provide the Divestiture Trustee with all such co-operation, assistance and information as the Divestiture Trustee may reasonably require to perform its tasks; and
- The Divestiture Trustee shall be remunerated by Abanka and in a way that does not impede the independent and effective fulfilment of the Divestiture Trustee's mandate.

Ljubljana, 28. 7. 2014