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Subject: State Aid SA.35334 (2019/N-4) – Cyprus – Second amendment to the liquidation aid for the orderly market exit of Cyprus Cooperative Bank Ltd

Sir,

1. PROCEDURE

- (1) On 17 June 2018, Cyprus notified a number of State aid measures to facilitate the orderly market exit of Cyprus Cooperative Bank Ltd ("CCB" or the "Bank").
- (2) By decision of 19 June 2018 (the "2018 Decision")¹, the Commission approved the liquidation aid needed for the orderly market exit of CCB. The 2018 Decision included a series of commitments (the "Commitments") made by Cyprus which aimed at ensuring a speedy and fully-fledged integration of certain assets and liabilities of CCB into Hellenic Bank as well as providing a supportive framework for the asset workout to be done by CCB's residual entity, which was officially renamed to Cooperative Asset Management Company Ltd ("SEDIPES").
- (3) On 28 August 2018, the Commission adopted an amendment to the 2018 Decision in view of the finalisation of the agreements between the parties to the sale transaction and certain amendments to the aid measures (the "2018

¹ State Aid SA.35334 (2018/N-2) – Liquidation aid for the orderly market exit of Cyprus Cooperative Bank Ltd, OJ C 406, 9.11.2018, p. 1–12.

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Amendment Decision”)². The amendments did not alter the overall balance of the previously notified measures and therefore the Commission considered that the aid remained compatible with the internal market within the meaning of Article 107(3)(b) of the Treaty on the Functioning of the European Union (“TFEU”).

- (4) By letter dated 11 November 2019, Cyprus notified an amendment to the Commitments to the Commission (the “Notification”).
- (5) By letter dated 11 November 2019, Cyprus agreed to waive its rights deriving from Article 342 TFEU in conjunction with Article 3 of Regulation 1/1958³ and to have the present decision on the proposed amendment adopted and notified in English.

2. BACKGROUND

- (6) CCB, which had been created by the merger of cooperative credit institutions, was the second largest bank of Cyprus in 2018 with a market share of 25% in terms of deposits, focusing on retail deposits and lending. CCB only had local residents as clients.
- (7) In spite of two consecutive State recapitalisations – respectively in 2014 and 2015 – CCB did not succeed in returning to viability. The Bank and its difficulties are described in detail in recitals (9) to (25) of the 2018 Decision.
- (8) The difficulties of the Bank led to its exit from the banking market by way of (i) selling certain assets and liabilities to Hellenic Bank and (ii) the withdrawal of the banking licence of the residual entity, which solely focuses on managing its assets with the view of winding down. The sale process and the State aid measures to facilitate CCB’s orderly market exit approved by the Commission in 2018 are described in detail in recitals (26) to (59) of the 2018 Decision.
- (9) Following the adoption of the 2018 Decision, the Bank, the Cypriot authorities and Hellenic Bank further fine-tuned their agreement and the State aid measures which were approved in the 2018 Decision. In the 2018 Amendment Decision, the Commission concluded that the State aid measures, as amended, remained compatible with the internal market within the meaning of Article 107(3)(b) TFEU, and did not constitute State aid to the Buyer within the meaning of Article 107(1) TFEU (see recital (63) of the 2018 Amendment Decision).
- (10) On 3 September 2018, the sale of certain assets and liabilities of CCB to Hellenic Bank was closed (“Closing”) and subsequently the banking licence of the residual entity SEDIPES was withdrawn. Hellenic Bank, SEDIPES and the Cypriot authorities proceeded with the implementation of the Commitments related to the sold assets and liabilities, the residual entity and the legislative framework, respectively. The implementation of the Commitments is closely monitored by the Commission through a monitoring trustee appointed by the Cypriot authorities and approved by the Commission. Following the Closing, SEDIPES set up a

² State Aid SA.35334 (2018/N-3) – Amendment to the liquidation aid for the orderly market exit of Cyprus Cooperative Bank Ltd, OJ C 406, 9.11.2018, p. 1–12.

³ Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

subsidiary named KEDIPES which is a credit acquiring company that manages the bulk of the assets not transferred to Hellenic Bank.

3. THE PROPOSED AMENDMENT TO THE COMMITMENTS

- (11) By letter dated 11 November 2019, the Cypriot authorities notified to the Commission their intention to amend Commitment 12 of the 2018 Decision.
- (12) According to the initial wording of Commitment 12, CCB's shareholding in the non-performing loan ("NPL") servicer company Altamira Asset Management (Cyprus) Ltd ("Altamira Cyprus"), jointly owned by CCB and Altamira Asset Management S.A. ("Altamira Spain"), was to be sold in an open, transparent, unconditional tender within 6 months after the Closing, i.e. by 3 March 2019 (see the Annex of the 2018 Decision).
- (13) However, after the adoption of the 2018 Decision and the 2018 Amendment Decision, the Cypriot authorities informed the Commission that such tender could not be carried out as a result of pre-existing contractual constraints that arise from the Articles of Association of Altamira Cyprus and the Amended and Restated Shareholders' Agreement dated 23 January 2018 ("SHA") concluded between SEDIPES, Altamira Spain, and Altamira Cyprus.
- (14) In the Notification, the Cypriot authorities note that these contractual arrangements contain certain restrictions on existing shareholders transferring their shares to third parties. In this case, the SHA provides for a lock-up period that does not allow for the sale of SEDIPES' shareholding in Altamira Cyprus (the "Sale") to a third party without the prior written consent of Altamira Spain prior to the third anniversary of the servicing agreement dated 30 December 2017 between SEDIPES and Altamira Cyprus. Moreover, the Articles of Association of Altamira Cyprus set out pre-emption rights in favour of the other shareholder(s), in this case Altamira Spain. The Cypriot authorities informed the Commission that Altamira Spain formally stated that it wished to waive neither its contractual rights nor its pre-emption rights under the Articles of Association.
- (15) In such circumstances, Cyprus notified an amendment to Commitment 12 of the 2018 Decision in order to (i) replace the tender requirement by the requirement to sell on market-conform terms and (ii) replace the initial deadline. According to the proposal of the Cypriot authorities, the following wording shall replace the former, and the amended Commitment 12 should hereinafter read as follows:

12. The Bank's shareholding in the joint venture Altamira Asset Management (Cyprus) Ltd (Altamira Cyprus) will remain in the Residual Entity and will be liquidated/sold as a matter of urgency (and before the end of November 2019) in a market-conform way. The market conformity of the terms of the sale will be verified by an independent third party expert. The Residual Entity will neither inject capital into nor grant any loans to Altamira Cyprus. It will also not impose any staff retention obligations on the buyer.

- (16) In the Notification, Cyprus informed the Commission that Altamira Spain and KEDIPES, acting on behalf of SEDIPES, started negotiations on the Sale in the week of 28 October 2019, with the aim of reaching a binding agreement by the end of November 2019. The parties will then swiftly proceed with jointly appointing the independent third-party expert to verify the market conformity of the transaction. The closing of the agreement with Altamira Spain will be conditional on the establishment of the market conformity by the expert.
- (17) Moreover, Cyprus also notified that KEDIPES will have to return EUR 100 million to the Cypriot Government by March 2020 in order to accelerate the repayment of the State aid granted to CCB. Cyprus notes that this sum will be the result of KEDIPES' workout of outstanding loans and real estate owned ("REO") assets on its balance sheet.

4. POSITION OF CYPRUS

- (18) The Cypriot authorities consider that the amended Commitment 12 is equivalent to the initial Commitment as it preserves the objective of ensuring that the Sale is carried out on market-conform terms. While the initial wording of Commitment 12 aimed at ensuring this through an open, transparent and unconditional tender, Cyprus considers that the amended wording will allow for establishing the market conformity by another means, notably by a valuation carried out by an independent third-party expert. The expert will verify whether the sale price is in line with market terms on the basis of a generally accepted, standard assessment methodology, compliant with Section 4.2.3.2 of the Commission Notice on the notion of State aid as referred to in Article 107(1) TFEU⁴, based on sufficiently detailed, objective, verifiable and reliable data and correctly reflecting the economic situation, Commitments 14 and 15 of the 2018 Decision, as well as the contractual constraints imposed on the SEDIPES' shareholding (as mentioned in recital (14)).
- (19) As the Sale could not be carried out by the initial deadline stipulated in the Commitment ("within 6 months", i.e. by 3 March 2019), Cyprus commits to sign the agreement on the Sale as a matter of urgency, before the end of November 2019. In addition, Cyprus commits that KEDIPES will reimburse EUR 100 million to the Cypriot Government by March 2020 in order to compensate for the delay.

⁴ Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1–50.

5. ASSESSMENT OF THE AMENDMENT

5.1 Existence of aid

- (20) According to Article 107(1) TFEU, State aid is any aid granted by a Member State or through State resources in any form whatsoever which distorts, or threatens to distort, competition by favouring certain undertakings, in so far as it affects trade between Member States.
- (21) In its 2018 Decision, the Commission concluded that the different measures implemented by Cyprus to support the orderly market exit of CCB constituted State aid. That assessment remains unchanged.

5.2 Compatibility of the aid in the 2018 Decision

- (22) In the 2018 Decision, the Commission concluded that the State aid measures in favour of the Bank were compatible with the internal market since they were necessary to remedy a serious disturbance in the Cypriot economy within the meaning of Article 107(3)(b) TFEU. The Commission concluded that the Commitments supported the compatibility of the aid. In particular, the Commitments were deemed to contribute to limiting the costs of winding down CCB while not causing undue distortion of competition.
- (23) The Commission also observes that the commitments attached to a State aid decision can be amended when the amendment does not entail any additional aid to the Bank or another undertaking and is based on revised or new commitments that can be considered equivalent to those originally provided. In that situation, the existing aid measures would remain compatible on the basis of Article 107(3)(b) TFEU if the overall balance of the original decision remains intact.
- (24) Regarding the proposed amendment, the Commission notes that Cyprus has not complied with Commitment 12, i.e. SEDIPES has not sold on time its shareholding in Altamira Cyprus. The Commission remarks that the Cypriot authorities notified by letter dated 11 November 2019 a proposal to amend Commitment 12. In particular, the Commission notes that Cyprus is proposing to extend the deadline by which the agreement on the Sale will be signed until end-November 2019 and to replace the open, transparent and unconditional tender by a verification of the market conformity of the terms of the Sale by an independent third-party expert. The Commission recalls that selling through an open, transparent and unconditional tender was a way of ensuring that the Sale takes place on market terms, i.e. that no advantage is passed on to the buyer of SEDIPES' shareholding in Altamira Cyprus.
- (25) The Commission notes that (i) the contractual provisions mentioned by Cyprus and stemming from the SHA and the Articles of Association of Altamira Cyprus as well as (ii) the explicit willingness of Altamira Spain to exercise its contractual and pre-emption rights significantly constrain the way SEDIPES can sell its shareholding. In particular, the Commission notes that under these circumstances, the open, transparent and unconditional tender foreseen by the original Commitment 12 cannot be carried out.

- (26) In the present case, the possible effects of the altered commitment on the overall balance of the 2018 Decision must be assessed in view of (i) the costs of winding down of the residual entity SEDIPES, (ii) the distortions of competition entailed by the measures approved by the 2018 Decision, (iii) the burden sharing and (iv) the viability of the entity resulting from the sale of certain assets and liabilities of CCB to Hellenic Bank.

5.2.1 *Limitation of costs of winding down*

- (27) In recital (133) of the 2018 Decision, the Commission referred to the Commitments related to the Cypriot legislative framework. It argued that “[t]hese changes will improve the capacity of creditors to recovery money from defaulted borrowers and therefore contribute to maximising the proceeds the State will recover from the NPLs of the Residual Entity. Doing so will minimize the net costs of Measures A, B, C and D for the Cypriot government over the long term.”
- (28) The Commission underlines that the original Commitment 12 intended to contribute to the same logic of maximising the recovery value of KEDIPES’ assets. As stated in Commitment 18, one of the objectives of the Commitments was to ensure that the servicing of the assets would not be done in-house by KEDIPES “but by a fully private servicing company with no financial link to the Residual Entity or to the State”. Doing so was supposed to contribute to maximising the efficiency of the asset workout and accelerating the reimbursement of the State aid granted to CCB. By amending the way the Sale will take place while committing to ensure its market conformity, SEDIPES will be able to exit from Altamira Cyprus’ shareholding structure as soon as possible. Therefore, KEDIPES’ servicer will be a fully private servicing company focused on the management and disposal of KEDIPES’ assets.
- (29) The Commission takes additional comfort that KEDIPES is requested in the Notification to repay the Cypriot Government the sum of EUR 100 million by March 2020 by working out some of its outstanding loans and REO assets. This measure proposed by Cyprus will also contribute to fulfilling the objective of divesting, liquidating or winding down the assets of KEDIPES in an orderly manner and with a view to maximising the recovery value, thereby minimising the costs of the State aid granted to CCB in 2018.

5.2.2 *Limitation of distortions of competition*

- (30) In recital (138) of the 2018 Decision, the Commission considered that the Commitments submitted by Cyprus on CCB’s residual entity, i.e. SEDIPES, would ensure that the latter “will limit its activities exclusively to managing the assets that remain in its perimeter [...]. In particular, the aid will not be used to allow CCB's Residual Entity to continue to offer products and acquire clients. It will not compete on the market with other banks.” These restrictions are notably reflected in Commitments 14 and 15 of the 2018 Decision.
- (31) The Commission considers that the Cypriot authorities may commit to ensure the Sale on market terms through a method different than an open, transparent and unconditional tender. With the proposed amendment, the Cypriot authorities commit to ensure that the Sale takes place on market terms through the verification of the terms of the Sale by an independent third-party expert. Assuming that such verification takes place properly, as the Cypriot authorities

have committed, the Commission considers that the initial objective of the tender requirement (prevention of passing-on of any advantage to the buyer of the shareholding) would be reached to the same extent with the amended Commitment 12.

- (32) While SEDIPES has remained a key shareholder of Altamira Cyprus for longer than initially foreseen under the original Commitment 12 (the initial exit deadline was 3 March 2019), Commitments 14 and 15 have *de facto* restricted Altamira Cyprus' business to the servicing of KEDIPES' portfolio alone as long as SEDIPES jointly owns the servicer with Altamira Spain. Indeed, the prolongation of the deadline for the Sale does not cause undue distortions of competition as any potential distortion remains limited by the restrictions that apply to Altamira Cyprus while it is in SEDIPES' ownership. Notably, the residual entity has been prohibited from injecting further capital into Altamira Cyprus under Commitment 15 and the limitation on the residual entity to enter into new business under Commitment 14 extends to Altamira Cyprus given its partial ownership by SEDIPES. During the prolonged time period that Altamira Cyprus has remained in SEDIPES' control, Altamira Cyprus has been prohibited from bidding for new business opportunities and engaging in new contracts. Therefore, the Commission considers that Altamira Cyprus and its other shareholder Altamira Spain have not unduly benefitted from the delay in the Sale.
- (33) Therefore, the Commission is of the view that committing to ensure the Sale on market terms through a method different than an open, transparent and unconditional tender, as well as delaying the signature of the agreement on the Sale to the end of November 2019, would not generate undue distortions to competition.

5.2.3 *Burden sharing*

- (34) The Commission considers that the amended Commitment 12 does not change the assessment of the burden sharing in the 2018 Decision.

5.2.4 *Viability of the entity resulting from the sale*

- (35) In the same vein as in recital (34), the Commission considers that the changes made to Commitment 12 do not alter the viability assessment of the entity resulting from the sale of certain assets and liabilities of CCB to Hellenic Bank.

6. CONCLUSION

The Commission has accordingly decided that the proposed amendment to Commitment 12 does not alter the compatibility of the State aid granted to CCB, which therefore remains compatible with the internal market on the basis of Article 107(3)(b) TFEU, and therefore not to raise objections to the proposed amendment.

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Your request should be sent electronically to the following address:

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Yours faithfully,

For the Commission

Margrethe VESTAGER
Member of the Commission

