12-18-2013

Subject: State aid n° SA.35709 (2013/N) – Slovenia Restructuring of Nova Kreditna Banka Maribor d. d. (NKBM) – Slovenia (December 18, 2013)

European Union: European Commission: Directorate-General Competition

EUROPEAN COMMISSION

Brussels, 18.12.2013
C(2013) 9634 final

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

Subject: State aid n° SA.35709 (2013/N) – Slovenia
Restructuring of Nova Kreditna Banka Maribor d. d. (NKBM) – Slovenia

Sir,

1. PROCEDURE

(1) On 5 December 2012, following preliminary informal contacts, the Slovenian authorities notified a EUR 100 million rescue recapitalisation in favour of Nova Kreditna Banka Maribor d. d. (hereinafter "NKBM d.d.").

(2) A number of electronic mail exchanges and telephone conversations took place between the Commission and the Slovenian authorities in which additional information was requested and submitted on various occasions between 5 and 17 December 2012.

Karl ERJAVEC
Minister za zunanje zadeve Republike Slovenije
Prešernova cesta 25
SI-1001 Ljubljana

(3) By decision of 20 December 2012[1] (hereinafter “rescue decision”), the Commission temporarily approved the recapitalisation as rescue aid in favour of NKBM d.d. subject to the submission by the Slovenian authorities of a restructuring plan within three months of the rescue decision.

(4) The Slovenian authorities notified a restructuring plan on 21 March 2013.

(5) Following Commission requests the Slovenian authorities submitted further information and updated the restructuring plan between 22 March and 9 December 2013.

(6) On 10 April 2013 the Commission concluded under the Macroeconomic Imbalances Procedure (hereinafter "MIP") that Slovenia was facing excessive economic imbalances. In the context of the MIP, Slovenia had to carry out an overall bottom-up stress test and asset quality review of the Slovenian banking sector (hereinafter "AQR/ST") which was conducted by an independent consultant. The restructuring plan incorporates the results of the AQR/ST.

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

2. DESCRIPTION OF THE BENEFICIARY AND SOURCES OF ITS PROBLEMS

(8) NKBM d. d. together with its affiliates[2] (hereinafter "NKBM" or "the bank") is the second-largest bank in Slovenia, holding approximately 10 % of the assets of the national banking system. It operates in Slovenia, Austria, Croatia and Serbia. NKBM d.d. is listed on the Ljubljana and Warsaw Stock Exchanges.

(9) The State directly holds 27,7 % of the voting rights in the bank. The second-biggest shareholding of 12 % is held by Krajowy Depozyt Papierów Wartościowych ("KDPW"), the Polish National Depository for Securities. Another 23 % of the capital is held indirectly by the State through five State-owned companies. The remainder of the capital is floating.

(10) The bank's total balance sheet amounted to EUR 5,32 billion and risk weighted assets (hereinafter "RWA") to EUR 4,32 billion at 31 December 2012[3] with a loan-to-deposit ratio of 94 %. It is a universal bank organised in the form of a joint stock company, with 11 subsidiaries. It is active in banking (80,8 % of its assets), insurance (11,7 % of its assets), fund and pension management (2,2 % of its assets) and real estate and others (5,3 % of its assets).

(11) NKBM's balance sheet has remained relatively stable over recent years, with a slight increase between 2008 and 2011 from EUR 5,5 billion to EUR 5,8 billion.

[1] Commission Decision in Case SA.37509 (2012/N), Recapitalisation of NKBM, OJ C 162, 7.6.2013, p. 5.

[2] Core companies: […][*]. Non-core companies: […].

[*] Confidential information.

[3] Source: Annual report of NKBM for the year ended 31 December 2012 (audited). In 2011, total assets of the NKBM Group amounted to EUR 5,8 billion and loan to deposit ratio to 102,2 % (audited figures).

The Tier 1 equity of the bank under the EU Capital Requirements Regulation[4] (hereinafter “CRR”) amounted to EUR 353 million on 31 December 2012.

(12) The bank was profitable in the period 2008-2010, with average profits before tax of EUR 19,3 million and an average return on equity (hereinafter "RoE") before tax of 4,7 %. In 2011 and 2012 NKBM generated losses of EUR 80 million and EUR 211 million respectively, while the loan portfolio of NKBM gradually deteriorated in that period, recording an increase in non-performing loans (hereinafter "NPLs") from EUR 607 million in the second quarter of 2011 to EUR 911 million in the third quarter of 2012. That poor performance occurred in the context of considerable capital pressure due to the deterioration of its asset portfolio quality, higher capital ratios required by the regulator and expected by investors, and reduced availability of capital and of debt (and in particular of wholesale funding).

(13) The results of the AQR/ST disclosed on 13 December 2013 showed that NKBM had a capital shortfall of EUR 1 055 million under the adverse scenario and EUR 887 million in the base case for the time horizon (2013-2015) of that exercise.

3. THE AID MEASURES

(14) NKBM has already received a State recapitalisation of EUR 100 million (hereinafter "first recapitalisation") in the form of a hybrid loan facility (i.e. contingent convertible instruments, hereinafter “CoCos”). That measure was temporarily approved by the rescue decision on 20 December 2012.

(15) Slovenia intends to implement two further measures in favour of NKBM as part of its restructuring plan:

(i) a State recapitalisation of EUR 870 million (hereinafter "second recapitalisation"); and

(ii) a transfer of impaired assets amounting to EUR 1 149 million (gross exposure) to the State Bank Asset Management Company (hereinafter "BAMC") established in 2013.

3.1. First recapitalisation of NKBM

(16) The failure of NKBM to meet the regulatory capital requirements triggered the need for a rescue recapitalisation in December 2012. In the absence of a private investor solution, Slovenia injected EUR 100 million in NKBM in the form of CoCos qualifying as a CT1 capital instrument under the latest requirements set forth by the European Banking Authority (hereinafter "EBA"). The detailed description of the terms of the CoCos was provided in the rescue decision[5].

[4] 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

[5] In particular see recitals (15) to (17) of the rescue decision.

(17) The CoCos were converted into shares of NKBM on 18 April 2013 in accordance with the CoCos Agreement dated 31 December 2012 (the relevant trigger event materialised in March 2013), and interests on the CoCos were also converted into NKBM shares. As a result the share capital of NKBM was increased by an in-kind contribution resulting from that conversion. All of the newly issued shares were subscribed by Slovenia. The rights and entitlements attached to new shares are the same as those of all other ordinary registered shares of NKBM.

3.2. Second recapitalisation of NKBM

(18) Following the results of the AQR/ST and given the content of the restructuring plan (including the divestment of assets and the transfer of some impaired assets and loans to the BAMC), NKBM d.d. still needs an additional recapitalisation of EUR 870 million to return to viability.

(19) That second recapitalisation is designed to address the expected losses of the bank, ensuring that NKBM will respect its capital requirements throughout the restructuring period even if the adverse scenario materialises.

(20) The additional capital is provided by the State in the form of government bonds and cash.

3.3. Transfer of impaired assets to the BAMC

(21) The 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, or to a special purpose vehicle. It also permits recapitalisations to address the losses of such banks resulting from the transfer of assets at their real economic value (hereinafter "REV").

(22) In May 2013 Slovenia designed a National Reform Programme aiming at implementing the EU country-specific recommendations. That National Reform Programme envisages the transfer of non-performing assets of the three biggest Slovenian banks, including NKBM, to the BAMC. Assets to be transferred to the BAMC include: bankrupt companies, claims to be restructured, claims with real estate collateral, financial holdings and other non-performing loans.

(23) Slovenia sent to the Commission a list of assets to be transferred from NKBM to the BAMC amounting to EUR 1 149 million (gross exposure).

4. THE RESTRUCTURING PLAN AND COMMITMENTS

(24) The Slovenian authorities submitted a restructuring plan covering the restructuring period from 2013 until 31 December 2017.

(25) The main pillars of the restructuring plan are a balance sheet reduction, enhanced corporate governance and risk management, a refocusing on the bank's core markets, a decrease of non-performing loans, a cost reduction programme and liquidity optimisation. The restructuring plan includes financial projections for NKBM until 31 December 2017 under a base scenario and under a stress scenario.

(26) Slovenia provided a number of commitments set out in the Annex. In order to ensure that the commitments will be implemented, a monitoring trustee will be appointed. The activities of the monitoring trustee will apply throughout the restructuring period.

4.1 Return to viability in the long run

(27) 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.

(28) The corporate governance changes listed in detail in the Annex will be implemented, within three months after the date of adoption of this Decision, in accordance with the EU Capital Requirements Directive[6] and Slovenian domestic legislation. The resulting changes to the bylaws and internal rules of NKBM seek to ensure that the management board of NKBM will have the sole powers and responsibilities for managing the day-to-day business of NKBM independently and in the sole interest of the bank. As a result, the arm's length principle will apply to the relationship between the bank and its shareholders, in particular the Republic of Slovenia. In that respect 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 committees will be allocated to independent experts. NKBM will put in place an independent and objective internal audit function. NKBM will follow a prudent and sound business policy geared towards sustainability while implementing the planned measures. NKBM 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 EBA 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 the relevant rules set forth in the 2013 Banking Communication[7]. As a result until 31 December 2017 such remuneration will not exceed the higher of 15 times the national average salary in Slovenia or 10 times the average salary of NKBM, whichever is higher.

(29) NKBM will overhaul its internal pricing and risk management processes by implementing a number of rules and measures listed in detail in the Annex. In particular, as a matter of principle, pricing for new loans will be considered adequate if the new loan contributes to achieving a positive RoE of at least [5-10]

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6 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013, p. 338.

7 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 (‘Banking Communication’), OJ C 216, 30.7.2013, p. 1.

% in […], [5-10] % in […], [5-10] % in […] and [10-20] % in […] on each client relationship, under the terms further specified in the Annex.

(30) NKBM’s future strategy is to focus its business on its core markets of retail and corporate banking activities, fund and pension saving management, and on the provision of banking services and products to Slovenian households and companies. In that respect, the restructuring plan provides for a significant reduction of NKBM's non-core business which encompasses the sale of subsidiaries and insurance activities[8], as well as the winding-down of […]. As part of the NKBM's business strategy to primarily refocusing on its traditional core businesses, lending in Croatia and Austria and the provision of new credit to corporate clients abroad are considered, for the time being, as non-core businesses and will be discontinued.

(31) The restructuring of the core banking business includes the active management of NPLs with the objective of significantly reducing their overall amount, maximising their recovery value and limiting their loss given defaults (hereinafter "LGD"). Measures foreseen in the restructuring plan with that objective include the transfer of a portfolio of impaired assets including essentially non-performing loans 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[9].

(32) In addition, NKBM will reduce its market presence by reducing the number of branches of NKBM d.d. on a stand-alone basis and of Credy Banka (from [100-150] at 31 December 2012 to [100-150] at 31 December […]).

(33) In addition to the State aid received in December 2012, the restructuring plan envisages a second recapitalisation. That second recapitalisation will immediately improve the capital adequacy of NKBM by increasing its Tier 1 ratio under the "CRR" to 16,83 % by 31 December 2013. It will also address the bank's expected losses, therefore ensuring that NKBM will respect its capital requirements throughout the restructuring period.

(34) NKBM is also planning a far-reaching cost-control and cost-reduction programme. NKBM's operating costs amounted to EUR 119,5 million in 2012 at group level. NKBM 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 55 % or, in case the cost-to-income ratio is above 55 %, a reduction of the same operating costs to EUR [100-150] million by 31 December 2014, EUR [100-150] million by 31 December 2015, EUR [100-150] million by 31 December 2016 and to EUR [100-150] million by 31 December 2017.

(35) As a result of the restructuring plan, and in particular the transfer of impaired assets to the BAMC, NKBM’s RWA will decrease from EUR 4,32 billion at 31

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8 In particular the sale of the 51 % stake of NKBM in Zavarovalnica Maribor a major player in the Slovenian insurance market had been already implemented in December 2012.

9 Communication from the Commission on the treatment of impaired assets in the Community banking sector, OJ C 7272, 26.03.2009, p. 1.

December 2012 to EUR [0-5] billion at 31 December […]. Total assets will decrease from EUR 5,32 billion at 31 December 2012 to EUR [0-5] billion at 31 December […].

(36) At 31 December 2017 NKBM plans to achieve a RoE after tax of [5-10] %. That RoE is calculated on an amount of capital maintained at a level appropriate to sustain a stress situation in line with result of the AQR/ST and so well above the regulatory minimum. The restructuring plan provides financial projections over the period 2013-2017 pointing to a Tier 1 ratio of [20-30] % under the "CRR" at 31 December 2017 which is still well above the regulatory minimum in line with the result of the AQR/ST. The financial projections included in the restructuring plan do not take into account the effects of the capital repayment mechanism described in recital (43) which is designed to prevent a build-up of excess capital in NKBM. NKBM's net income will amount to EUR [30-40] million in 2017.

(37) Finally, Slovenia has committed to fully divest its shareholding in NKBM by […]. If the State shareholding in NKBM is not fully sold by that date […].

4.2 Burden-sharing measures

(38) The restructuring plan provides for a coupon ban, dividend ban and profit distribution ban applicable throughout the duration of the restructuring plan, until 31 December 2017. Those measures will cease to apply from […] if the State's shareholding in NKBM has been fully divested by […].

(39) NKBM's existing shareholders were already been severely diluted as a result of the first recapitalisation in December 2012. NKBM's remaining subordinated securities amount to EUR 64 million. The results of the AQR/ST revealed that the bank has suffered huge capital losses and that in the absence of the first and the second recapitalisations the bank would have a negative equity. Slovenia commits that before any State aid (i.e. the second recapitalisation and the transfer of impaired assets to the BAMC) is granted NKBM will write-down in full its shareholders' equity and outstanding subordinated debts. As a result the State will become the sole shareholder of NKBM, compared to the 27,7 % of shares it held before the first recapitalisation in December 2012.

(40) Slovenia commits to divest or wind down […] businesses[10] […] representing a total book value of […].

(41) The restructuring plan and the commitments also provide for restrictions to be applied, until 31 December 2017, to the total remuneration of any board member and employee performing special work which are in line with points (37) to (39) of the 2013 Banking Communication.

(42) Any possible recapitalisation by NKBM of its subsidiaries via equity injections will be subscribed at (i) a 25 % discount to the share price (after adjustment for the "dilution effect" quantified using generally accepted market techniques[11]) immediately prior to the announcement of the capital injection, or (ii) the lowest

[10] […].

[11] For example by using the theoretical ex-rights price (hereinafter "TERP").

price at which other shareholders of those subsidiaries contribute to the recapitalisation. For non-listed entities, the market value of the shares will be established using an appropriate and generally accepted market-based valuation methodology. If any such capital injection takes the form of hybrids instruments, those instruments will contain an alternative coupon satisfaction mechanism and a provision determining the conversion rate of the hybrid instruments into equity capital at the 25 % discount to the TERP (established in an analogical fashion to the case of equity injection).

(43) A capital repayment mechanism and dividend ban will be also in place prohibiting NKBM to pay dividends for the fiscal years 2013 and 2014 and requiring NKBM to pay dividend disbursements in 2015, 2016 and 2017[12]. In particular for the fiscal years 2015 and 2016, NKBM will pay the lower amount of (i) 50 % of the excess capital above the applicable regulatory capital requirement under Union and Slovenian law (including pillar 1 and 2) plus a capital buffer of 100 basis points, or (ii) the net income for the relevant year. For the fiscal year 2017, NKBM will pay the lower amount of (i) 100 % of the excess capital above the applicable regulatory capital requirement under Union and Slovenian law (including pillars 1 and 2) plus a capital buffer of 100 basis points; or (ii) the net income for the relevant year. Notwithstanding that dividend ban, NKBM d. d. and its affiliates[13] may pay out dividends to their shareholders if NKBM d.d. is – directly or indirectly – the majority shareholder and all external shareholders combined hold less than 15 % of shares and voting rights in the relevant company[14].

(44) 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 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 NKBM's securities existing at the moment of the adoption of the present Decision.

4.3 Distortion of competition measures

(45) In order to limit distortions of competition, NKBM plans to reduce its business activities in Slovenia. NKBM will reduce its group balance sheet total from approximately EUR 5,32 billion in 2012 to EUR 4,98 billion by 31 December 2017.

(46) NKBM's commitments include the divestment and orderly winding-down of […] participations and subsidiaries […]. Those divestments include the sale of […].

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12 The NKBM's financial projections included in the restructuring plan do not take into account the effects of that capital repayment mechanism.

13 Core companies:[…]. Non-core companies: […].

14 That restriction does not apply to KBM Infond d.o.o.

(47) NKBM will reduce its market presence by reducing the number of branches of NKBM d.d. on a stand-alone basis and of Credy Banka (from [100-150] at 31 December 2012 to [100-150] at 31 December […]).

(48) NKBM will reduce its credit activities by ensuring that its RWA will be reduced from EUR 4,32 billion at 31 December 2012 to EUR [0-5] billion at 31 December […].

(49) Until 31 December […] NKBM will refrain from undertaking, either directly or indirectly, any type of new […] business. NKBM will comply with a coupon ban, an acquisition ban and a ban on advertising and aggressive commercial practices.

(50) A capital repayment mechanism will also be in place requiring NKBM to pay dividend disbursements in 2015, 2016 and 2017 under the terms and conditions described in recital (43). That mechanism will prevent NKBM from benefitting from excessive capital resources in the pursuit of its business. Without prejudice to the competences of the Bank of Slovenia as banking supervisor of NKBM, the dividend disbursement shall be suspended if it would endanger the solvency position of the bank in the following years.

4.4 Description of the impaired assets measure

a. Objective

(51) NKBM 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 NKBM will concentrate on the implementation of the restructuring plan.

b. Set up and characteristics

(52) 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.

(53) 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 NKBM 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 equal to or below their REV established by the Commission's experts in line with the State aid rules.

c. Scope of the transfer of impaired assets and loans

(54) The Slovenian authorities have submitted a list of non-performing assets selected for the transfer to the BAMC by NKBM. The list mainly contains defaulted loans to corporate clients, particularly in the construction and real estate sectors. The list encompasses claims against [200-300] clients of NKBM d.d. (gross exposure EUR [900-1 000] million as of […]) and against [10-20] clients of NKBM's subsidiaries PBS d.d. (Slovenia) and Adria Bank AG (Austria) (total gross value of EUR [30-

40] million). Further, it includes [40-50] exposures to real estate held by NKBM's subsidiaries: […] (total gross value of EUR [100-150] million). Finally, it includes [10-20] equity exposures held by NKBM (carrying value EUR [20-30] million). The size of the total portfolio to be transferred by NKBM is EUR [1 000-1 500] million.

(55) As a result of the asset transfer, the RWA of NKBM will be reduced by EUR [600-650] million. Those figures are an estimate based on the situation of those assets as of […].

d. Independent expert advice for the Commission

(56) The Commission has conducted an assessment of the portfolio with the assistance of external experts. The analysis was supported by the preliminary findings from the AQR/ST performed by the AQR consultant appointed by Slovenia.

e. The transfer value

(57) The transfer value of the assets of NKBM, as assessed initially by Slovenia, amounts to EUR [650-700] million, which is equal to [50-60] % of the gross book value of those assets. Slovenia committed that the transfer value of the assets transferred to the BAMC will be equal to or below their REV established by the Commission's experts in line with the State aid rules.

(58) As regards the portfolio, the experts of the Commission have computed stressed expected losses to arrive at the REV of the portfolio, which is in line with case practice. As nearly all loan exposures selected for transfer to the BAMC are in default, the analysis focused on determining the value of underlying collateral and the difficulty in effecting the recovery. The experts concluded that the REV of the portfolio is [30-40] % of the outstanding notional value and amounts to EUR [400-450] million.

f. Market price

(59) The Commission's experts also determined the current market value of the portfolio selected for transfer to the BAMC. They concluded that the best estimate in the current market conditions is [20-30] % of the gross exposure, i.e. EUR [200-250] million.

5 POSITION OF SLOVENIA

(60) 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 NKBM within the meaning of Article 107(1) TFEU. Further Slovenia is of the view that those measures are compatible with the internal market under Article 107(3)(b) TFEU.

(61) Slovenia argues that the restructuring plan complies with all conditions set forth in the Restructuring Communication[15] supplemented by the 2013 Banking Communication.

(62) In particular, Slovenia is of the opinion that the restructuring plan ensures the restoration of NKBM'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 the managing of the bank's activities Slovenia has provided specific commitments to strengthen its corporate governance arrangements and structure.

(63) 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. Further, Slovenia has committed that if its shareholding in NKBM is not fully divested by 31 December 2016, a divestiture trustee will be appointed having the exclusive mandate to sell the State's shareholding in NKBM (or the remainder thereof) by 31 December 2017 at no minimum price.

6 ASSESSMENT

6.1 Existence and amount of State Aid

(64) The Commission has concluded in the rescue decision that the first recapitalisation of NKBM had constituted State aid[16], 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 NKBM and the transfer of impaired assets to the BAMC) constitute State aid.

(65) 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.

(66) As the second recapitalisation will be provided directly by Slovenia, the Commission concludes that the measure stems from State resources.

(67) The second recapitalisation allows NKBM to obtain capital in a financial and economic crisis situation where due to the high uncertainty surrounding Slovenian banking sector it would be impossible to find such capital on the market. Therefore, the Commission considers that the second recapitalisation would not have been provided by a market economy investor. The second recapitalisation must therefore be regarded as providing an advantage to NKBM. Moreover, that advantage is selective since it only benefits one bank.

(68) Given that NKBM 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

[15] 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.

[16] See recitals (24) – (27) of the rescue decision.

recapitalisation therefore constitutes State aid within the meaning of Article 107(1) TFEU.

(69) The aid element in the second recapitalisation amounts to EUR 870 million.

(70) 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 NKBM 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.

(71) In order to assess the existence of aid in the transfer of assets to the BAMC, the Commission's experts have independently determined the current market value of the portfolio to be transferred as well as the REV, which at the same time will constitute the price at which the assets will be transferred. As the transfer value of the portfolio is higher than the current market value, the measure constitutes an advantage to NKBM.

(72) That advantage strengthens NKMB'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 NKBM is and will be active in the financial sector, which is open to intense international competition.

(73) As regards the aid amount in the transfer of impaired assets to the BAMC it should be noted that 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 (normally based on their REV) and the market price. As regards NKBM, the transfer price is EUR [400-450] million, while the market price is estimated at EUR [200-250] million. The aid granted to NKBM as a result of the transfer of impaired assets to the BAMC amounts to EUR 195 million.

(74) As a result, the total aid granted to NKBM both in 2012 and 2013 as a result of the first recapitalisation of EUR 100 million, the second recapitalisation of EUR 870 million and the transfer of impaired assets to the BAMC (resulting in an aid of EUR 195 million) amounts to EUR 1 165 million, representing [30-40] % of NKBM's RWA as of 31 December […].

6.2 Compatibility of the aid

6.2.1. Legal basis for the compatibility assessment

(75) 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 six Crisis Communications[17] as

[17] 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

well as in the 2013 Banking Communication. The 2013 Banking Communication applies to State aid measures notified from 1 August 2013 onwards. In NKBM's case, Slovenia has notified additional State aid in the form of a second recapitalisation and asset relief after measure after that date. As a result the provisions of the 2013 Banking Communication apply to the compatibility assessment of NKBM's restructuring plan.

(76) The Commission's various approvals of the measures undertaken by the Slovenian authorities to combat the financial crisis[18] 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

(77) 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.

(78) As regards the compatibility of the first and second recapitalisations provided to NKBM and the transfer of assets to the BAMC, they constitute restructuring aid to NKBM. 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

(79) 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

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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 and 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.

18 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.

internal market. Those criteria comprise: (i) the eligibility of the assets; (ii) transparency and disclosure of impairments; (iii) the management of the assets; (iv) the correct and consistent approach to valuation; and (v) the appropriateness of the remuneration and burden-sharing.

Eligibility of assets

(80) 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.

(81) 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 have triggered the financial crisis (the Impaired Assets Communication explicitly refers to US mortgage-backed securities), 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".

(82) As regards the present case, the impaired assets measure is targeted at non-performing assets mostly related to defaulted loans to corporate clients, particularly from the construction and real estate sectors. Those sectors were at the core of NKBM's difficulties with significant portfolios of non-performing loans. The portfolio to be transferred accounts for EUR [450-500] million of impairments booked by NKBM d.d. as 31 July 2013. Those assets are therefore in line with the eligibility criteria of the Impaired Assets Communication.

Transparency and disclosure

(83) 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.

(84) As regards the impaired assets measure of NKBM, the Commission notes that independent consultants have been engaged by Slovenia to review the quality of assets in the context of the system-wide AQR 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. The asset classes to be transferred have been clearly identified in the submission of 5 July 2013 and updated with several submissions, most recently on 29 November 2013. Slovenia has thus provided sufficient transparency and disclosure on the entirety of NKBM's impaired assets to be transferred to the BAMC.

Management of the assets

(85) 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.

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

Valuation

(87) 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 valuation 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.

(88) 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.

(89) 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 NKBM could be used to assess the REV;

(ii) estimate the REV and current market value of the portfolio earmarked to be transferred.

(90) With the support provided by the external experts the Commission assessed the REV of the portfolio.

(91) The Commission concludes that the REV of the portfolio is EUR [400-450] million and current market value EUR [200-250] million. The commitments provide for a transfer of the assets to the BAMC at their REV.

(92) Therefore the amount of aid is the difference between the transfer value and the market value, i.e. EUR 195 million.

Burden-sharing and remuneration

(93) 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.

(94) As Slovenia undertakes to transfer the impaired assets of NKBM at a price not higher than 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

(95) 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.

(96) 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.

(97) 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

(98) 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 return on equity, taking into account the risk profile of the bank. The return to viability should mainly derive from internal measures and be based on a credible restructuring plan.

(99) Slovenia has submitted a restructuring plan for NKBM covering the period up to 31 December 2017 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, as well as the cleaning up of NKBM's balance sheet resulting from the planned transfer of impaired assets to the BAMC. NKBM will also profit from an improved operational efficiency resulting from cost reduction measures and

stabilization of income. To ensure the bank's viability after having also taken in account the transfer of impaired assets the BAMC, the financial plan is based on the assumption of a second recapitalisation of EUR 870 million in 2013, as well as a full write-down of shareholders' equity and subordinated debt.

(100) Point 10 of the Restructuring Communication requires that the proposed restructuring measures remedy the entity's weaknesses. The restructuring plan first explains the causes of NKBM's difficulties. The concentration of NKBM's loan portfolio in the construction, manufacturing and financial holding sectors made the bank particularly vulnerable to the crisis and generated high amounts of impairment losses. More generally, the bank was seriously affected by the increasing level of bankruptcies of small and medium-sized enterprises and corporates, and the general reduction in real estate prices that reduced the values of real estate assets directly owned by banks and of posted collateral based on real estate properties.

(101) In addition to the general slowdown of the Slovenian economy, NKBM's performance suffered from internal factors such as weak credit and risk management procedures and weak corporate governance. NKBM granted loans to highly leveraged companies without pursuing appropriate diversification and did not introduce necessary organisational changes in good time. In addition NKBM has been involved in some cases of alleged corruption, showing weaknesses in corporate governance. Those events triggered several changes in the governing bodies of NKBM, in particular the appointment of a new President and Member of the Management Board and a new Supervisory Board in second half of 2012.

(102) Between 2010 and 2012, the NPL ratio increased from 12 % to 23 % due to strong exposure policies to defaulting corporate clients in particular in construction, real estate and financial holdings. NKBM had losses of EUR 80 million in 2011 and EUR 211 million in 2012, thus consuming capital and bringing the Tier 1 ratio under the "CRR" below required minimum levels by 31 December 2012.

(103) 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, NKBM must clean its balance sheet and reduce its exposure to problematic sectors, either through a proper provisioning and deleverage of problematic assets or through a transfer of problematic loans to the BAMC. Fourth, the bank must repair its balance sheet structure through a recapitalisation. Fifth, the bank must improve its operational efficiency to secure a sufficient level of profitability.

a) Strengthening the corporate government framework

(104) The commitments will guarantee independence of the board and management to set lending criteria. Those commitments will guarantee 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.

(105) The planned changes to NKBM's corporate governance appear to properly address and remedy the main weakness of NKBM's corporate governance. The commitments appear to properly address and remedy the main weakness of NKBM's corporate governance. They establish adequate safeguards to prevent conflicts of interest. They also ensure that strategy and decisions are business-oriented and are neither 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.

(106) NKBM 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 2017, in line with points (37) to (39) of the 2013 Banking Communication.

(107) In addition, in line with the objective of maintaining NKBM as a profit- and business-oriented undertaking operating in the market, Slovenia has committed to fully divest its shareholding in NKBM by […]. If the State shareholding in NKBM is not fully sold by that date […].

(108) As a result, the commitments appear to properly address and remedy the main weakness of NKBM's corporate governance. They establish adequate safeguards to prevent conflicts of interest, ensure that NKBM'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 NKBM's organisational structure and corporate governance will make NKBM less vulnerable to potential undue influence by shareholders and at the same time will introduce more market discipline through enhanced control and transparency in management decisions. Those measures will contribute to NKBM's viability in the long term.

b) Strengthening the pricing policies risk management framework

(109) 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 training of the staff, the scoring of clients, 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.

(110) In particular the pricing of new loans will lead by 31 December 2017 to a positive RoE of at least [10-20] % on each client relationship. That pricing will be progressively phased in, starting at [5-10] % RoE on each client relationship in 2014, to reach and reaching [10-20] % in […].

(111) NKBM will also refine its credit rating and client rating processes, 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.

(112) The resulting improvements in NKBM'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 NKBM that caused its low profitability as a result of the poor quality of its loan portfolio, an excessive level of NPLs and a high cost of credit and provisioning. By addressing those causes of weaknesses, those measures contribute to the long-term viability of NKBM.

c) Rebalancing the business towards less risky activities

(113) Five different measures will help rebalancing the balance sheet of the bank.

(114) First, NKBM will transfer a portfolio of impaired assets to the BAMC. The size of the portfolio transferred (gross exposure of EUR [1 000-1 500] million) will enable NKBM to focus on the management of the performing loans, while releasing resources for the workout of the remaining non-performing loans.

(115) Second, the commitment to reduce the RWA ensures that the risk associated with credit exposures will decrease over the restructuring period and release capital resources. NKBM’s RWA will be reduced from EUR 3,67 billion at 31 December 2013 to EUR [0-5] billion at 31 December […]. Under the new business model, NKBM will also introduce a stricter origination and collateral policy. NKBM will introduce new production rules for sectors and clients in order to steer the lending activity towards safe and high potential projects, while reducing the concentration per sector and per client.

(116) Third, an AQR/ST of the Slovenian banking sector was performed during the third and fourth quarters of 2013. Its results were taken into account when assessing the static and dynamic capital needs of Slovenian banks. The restructuring plan incorporates the results of the AQR/ST.

(117) Fourth, NKBM commits to significant divestments either in the form of a sale or orderly winding-down, representing a total book-value of EUR [500-550] million at 31 December […]. The divestments include […] activities and […] activities, as well as […]. A reduction in NKBM’s foreign corporate credit portfolio is also planned through […].

(118) That commitment underlines that NKBM’s future strategy is to refocus on its core markets […]. The resulting business model will be more sustainable and less risky. The envisaged divesture and discontinuation of non-core business will also release resources that will be more efficiently used to increase the profitability of core activities.

(119) As a result of the restructuring plan, NKBM’s total assets will decrease from EUR 5,32 billion at 31 December 2012 to EUR [0-5] billion at 31 December […] and its RWA from EUR 4,32 billion at 31 December 2012 to EUR [0-5] billion at 31 December […]. Those measures will contribute to rebalancing the risk profile and balance sheet of NKBM, so also improving its capital adequacy.

d) Repairing the balance sheet structure

(120) Through the first recapitalisation NKBM already received State aid of EUR 100 million in the form of CoCos.

(121) The restructuring plan envisages a further capital increase second recapitalisation for viability purposes in the maximum amount of EUR 870 million to be implemented by the State. After that second recapitalisation and the transfer of assets to the BAMC, the Tier 1 ratio of NKBM under the "CRR" will reach [10-20] % by 31 December […] and increase to [20-30] % by 31 December […] at the end of the restructuring plan. That second recapitalisation will cover static and dynamic capital needs as calculated in the AQR/ST and so will immediately improve the capital adequacy of NKBM.

(122) Further, NKBM will clean its balance sheet though the transfer of a substantial portfolio of non-performing and impaired assets to the BAMC.

e) Restoring the long-term profitability

(123) The restoration of long-term profitability will result from NKBM's future strategy of refocusing on its core markets in Slovenia by pursuing essentially retail and selected corporate business activities. That strategy will allow the bank to meet its RoE targets.

(124) The net interest margin of NKBM 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 of at least [5-10]7 % in […], [5-10] % in […], [5-10] % in […] and [10-20] % in […] on each client relationship.

(125) NKBM 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.

(126) NKBM is also planning a far-reaching cost-reduction programme resulting in a reduction of operating costs of [10-20] % from 31 December 2012 to 31 December […] through a significant consolidation of its business premises and branch network, a reduction in personnel, improved operational efficiency, the acquisition of clients on a risk-adjusted profitability-driven basis, optimisation of liquidity costs by pooling treasury positions and optimisation of other costs. As a result the restructuring plan foresees a reduction of the cost-income ratio to less than [60-70] %, a value comparable to the levels attained by the bank pre-crisis.

(127) At 31 December […] NKBM will achieve a RoE after tax of [5-10] % and a Tier 1 ratio of [20-30] % under the "CRR". Those figures are calculated on an amount of capital maintained at a level appropriate to sustain a stress situation in line with result of the AQR/ST and so are well above the regulatory minimum. However, as pointed out in recital (36) the financial projections included in the restructuring plan do not take into account the effects of the capital repayment mechanism referred to in recital (43) which is designed to prevent a build-up of excess capital in NKBM. In […], NKBM projects that its net income will amount to EUR [30-40] million.

(128) Finally, the flow of impairments is expected to decrease over time as the restructuring plan is gradually implemented. The bank will have a sounder credit risk profile as a result of the commitments related to the management of credit risk and the restructuring of NPLs as well as other measures enhancing its risk management framework.

(129) The Commission therefore considers that the restructuring plan is apt to restore NKBM's long-term viability.

ii) Own contribution and burden-sharing

(130) 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.

(131) 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.

(132) 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 NKBM. The capital shortfall which needs to be covered by the second recapitalisation measure was determined on the basis of the AQR/ ST in line the provision of 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 realisation of the AQR/ST has given further certainty on the appropriate level of capital needed. The amount of the second recapitalisation makes it possible for the bank to meet its regulatory capital requirements, cover the capital shortfall established by the AQR/ST and meet market expectations. In addition, a capital repayment mechanism will be in place to limit the build-up of excess capital in NKBM, under which NKBM will have to pay dividends for the fiscal years 2015, 2016 and 2017 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.

(133) Notwithstanding the dividend ban, in order to allow NKBM d.d. to obtain dividends from its subsidiaries and to avoid the build-up of liquidity in them they may pay out dividends. Those companies may make such dividends payments if NKBM d.d. is – directly or indirectly – the majority shareholder and all external shareholders combined hold less than 15 % of shares and voting rights in the relevant company[19]. The Commission considers that the possibility for the subsidiaries to make such dividend payments to NKBM d.d. contributes to maintain the aid amount to the minimum necessary, will allow an appropriate degree of flexibility for the efficient management of NKBM's consolidated capital and liquidity and will facilitate the repayment of aid. The fact that as a result that

[19] The condition related to the shareholders structure does not apply to […].

also minority shareholders of the subsidiaries would receive part of the dividends represents a proportionate spill-over effect compared to those benefits, considering in particular the relative small amount of dividends eventually payable to all shareholders other than NKBM d.d., which will not exceed of more than one-tenth the amount of dividends eventually payable to NKBM d.d.

(134) First, the commitments regarding the burden-sharing of subordinated debt holders comply with the Restructuring Communication supplemented by the 2013 Banking Communication.

(135) In that respect, Slovenia committed that before any State aid is granted to NKBM (i.e. the second recapitalisation and the transfer of impaired assets to the BAMC), the latter will write-down in full its shareholders' equity and outstanding subordinated debts so ensuring compliance with the requirements of 2013 Banking Communication. The Commission positively notes that the contribution of subordinated debt holders is achieved to the maximum extent possible, thus ensuring adequate burden-sharing. The State capital recapitalisation will only be implemented after the complete implementation of the wipe-out of the subordinated debt holders. That sequence ensures that all existing subordinated debt holders have to fully contribute to the restructuring costs of the bank prior to the State stepping in. The State will thereby own 100 % of the bank's shares after the second recapitalisation compared to 27,7 % prior to the first recapitalisation.

(136) Second, point 24 of the Restructuring Communication provides that an adequate remuneration of State capital is also a means of achieving burden-sharing.

(137) As regards the first recapitalisation, the Commission notes that it was conducted at prices compatible with the burden-sharing principles[20]. As for the second recapitalisation, the State will own 100 % of the bank after the recapitalisation, thereby maximising the burden-sharing. Finally, the Commission has also already established that the transfer of impaired assets to the BAMC is adequately remunerated.

(138) Third, as regards covering the restructuring costs associated with the implementation of the restructuring plan through NKBM's internal measures, NKBM will carry out cost-cutting measures resulting in a decrease of its cost-to-income ratio from 61,7 % in 2012 (and a peak of [60-70] % expected for […]) to [50-60] % by 31 December […]. NKBM's restructuring plan also foresees a divestment of non-banking activities.

(139) Fourth, in addition to those structural measures, Slovenia also committed to a behavioural measure entailing a ban on coupon ban, an acquisition ban and a ban on advertising and aggressive commercial practices which will also contribute to provide appropriate burden-sharing.

(140) In that regard the Commission notes that the coupon ban does not apply to newly issued capital instruments (meaning instruments issued after the adoption 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

[20] See recitals (33) to (49) of the rescue decision.

NKBM's securities existing at the moment of the adoption of this decision[21]. 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 NKBM 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 NKBM's new capital instruments will not create a legal obligation to make any coupon payments on NKBM's existing securities will prevent any unnecessary outflow of capital.

(141) Accordingly, the full write-down of shareholders' equity and outstanding subordinated debts of NKBM, cost reduction measures, divestment commitments and adequate remuneration for the aid result in a sufficient own contribution by NKBM to the costs of its restructuring and ensure appropriate burden-sharing..

(142) For those reasons, the Commission concludes that the Restructuring Plan provides for an appropriate own contribution and burden-sharing.

iii) Measures limiting the distortion of competition

(143) 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.

(144) NKBM will receive State aid in the form of first and second recapitalisations and the impaired asset measure amounting to EUR 1,165 billion. The aid amount of EUR 1,165 billion is equivalent to [30-40] % of NKBM's RWA as of 31 December […]. The adequate remuneration of the aid and the need to implement measures to limit potential distortions of competition are necessary in particular given the relatively large amount of aid and NKBM's market position.

(145) A first measure that will limit distortions of competition is the sale of NKBM's […] shareholding in […].

[21] Other decisions refer to similar commitments: see recital (218) of Commission Decision 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 and 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.

(146) In addition, NKBM will discontinue […] and non-core business […] so further contributing to limit the possible spill-over effect of the State aid received to activities other than its core banking business.

(147) NKBM will continue operating in its core markets under conditions limiting the distortion of competition. It will in particular implement a more efficient lending policy with enhanced pricing and risk management policies. Those measures not only contribute the viability in the long-term of NKBM but also limit distortions of competition possibly resulting from lending below sustainable market condition.

(148) A further appropriate measure to limit the distortion of competition is represented by the capital repayment mechanism referred to in recital (50) which is designed to limit the build-up of excess capital in NKBM.

(149) 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 NKBM using the aid for anti-competitive market conduct. Slovenia committed also to an acquisition ban, designed to ensure that, under the term and conditions provide therein[22], NKMB 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 NKBM during the restructuring period to sustain a stress situation.

(150) 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 NKBM.

6.2.5. Monitoring of the restructuring plan

(151) 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.

(152) To ensure proper implementation of the restructuring plan throughout its duration, the Slovenian authorities will take all the necessary measures to ensure that NKBM complies with the commitments listed in the Annex.

(153) 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 NKBM for

[22] For example acquisitions that take place as a result of the due performance of contractual obligation as regards KBM Banka AD Kragujevac entered into before the 20 December 2012 are expressly excluded from the scope of the acquisition ban because the relevant contractual obligation have been entered into before the adoption of the rescue decision.

explanations and clarifications. Slovenia and NKBM 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

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

6.2.7 Conclusion on the compatibility of the measures

(155) The Commission concludes that the first recapitalisation (temporarily approved by the rescue decision on 20 December 2012), the second recapitalisation of NKBM of EUR 870 million and the transfer of impaired assets to the BAMC (resulting in aid of EUR 195 million) constitute restructuring aid in favour of NKBM. In view of the assessment of the restructuring plan and commitments undertaken by Slovenia, the Commission concludes that NKBM 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 NKBM 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 NKBM and the transfer of impaired assets to the BAMC can therefore be considered 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 Slovenia regarding the restructuring of NKBM, to consider the first recapitalisation of EUR 100 million (temporarily approved by the rescue decision on 20 December 2012), the second recapitalisation of EUR 870 million and the transfer of impaired assets to the BAMC (resulting in aid of EUR 195 million) to be compatible with the internal market pursuant to Article 107(3)(b) of the Treaty on the Functioning of 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
Rue Joseph II, 70
B - 1049 Brussels
Fax No: +32 2 296 12 42

Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President

Annex: Commitments

*** Commitments NKBM***

Commitments provided by Slovenia

The Republic of Slovenia ("**Slovenia**") ensures that Nova KBM d.d. and its affiliates ("**NKBM**") will implement the restructuring plan submitted on 22 March 2013 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 2017. The Commitments apply throughout the restructuring period unless the individual Commitment states otherwise.

(1) **[reduction of the balance sheet]** According to the content of the restructuring plan NKBM will reduce its group balance sheet total from approximately EUR 5.32 billion in 2012 to EUR [0-5] billion by the end of […] and EUR [0-5] billion by the end of […], with essentially no change in the overall conditions governing the balance sheet and the legal environment relevant for the balance sheet total. Should those factors indeed change, the effects of such changes will be separately reported to the Monitoring Trustee. If the bonds received from BAMC in return for the assets transferred to the BAMC are not ECB eligible, the balance sheet limits will be adjusted.

(2) **[reduction of costs]** NKBM's operating costs amounted to EUR 119.5 million in 2012 at Group level. NKBM's 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 [100-150] million by the end of […], EUR [100-150] million by the end of […], EUR [100-150] million by the end of […] and to EUR […] million by the end of […].

If the annual inflation in the period 2013 - 2017 exceeds [0-5] % the 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 subsidiaries]**

NKBM will sell, wind down or liquidate the following businesses:

- […]: sale of NKBM’s […] stake by 31 December […]. […]. In any case, […] will stop new lending origination starting from […].
- […];
- […];
- […];
- […];
- […];
- […].

As of 31 December 2012, these participations represented a total book value of EUR [500-550] million in NKBM accounts.

(3.1) 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 NKBM 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 NKBM.

(3.2) The commercial activity of companies that have not been divested within the deadlines set out in para 3 above, e.g. due to pending lawsuits or disputes with other shareholders, will be terminated in accordance with the duration and nature of the underlying business. No new business will be executed, except forced prolongations of legally binding and non-revocable engagements and commitments included those resulting from the participation to a syndicated loan, agreed upon on or prior to 20 December 2012. In such a case, the respective divestment is deemed to be completed if either the total assets of a particular participation have been reduced to [10-20] % compared to the total assets of the participation as of 31 December 2012, or the statutory formal liquidation procedure has been initiated, or the sum of capital requirements for the subsidiaries concerned does not exceed a total of EUR [5-10] million on a consolidated level.

(3.3) Until the end of the restructuring period NKBM will refrain from undertaking, either directly or indirectly, any type of new leasing business.

(4) **[reduction of credit business and closure of foreign branches]** NKBM will reduce its market presence in the following ways:

(a) reduction of the number of branches of NKBM d.d. stand alone and Credy Banka (operating from 2 September 2013 onward under the new business name of KBM banka AD Kragujevac) from [100-150] at 31 December 2012 to [100-150] by 31 December […], and [100-150] by 31 December […].

(b) reduction of credit business at Group level

The risk weighted assets ("RWA") on group level amounted to EUR 4,3 billion on 31 December 2012. NKBM will ensure that the RWAs of this portfolio will be reduced according to the following schedule (outstanding volume in EUR billion):

By 31.12.2013	By 31.12.2014	By 31.12.2015	By 31.12.2016	By 31.12.2017
[0-5]	[0-5]	[0-5]	[0-5]	[0-5]

(4.1) If any of the reduction targets provided under par 4 above are missed by more than [10-20] %, NKBM d.d. shall refrain from undertaking any new credit activities in Slovenia until the respective reduction target is achieved. In addition, NKBM shall promptly submit to the Commission a contingency plan showing its ability to achieve by 31 December 2017 the relevant reduction target(s).

(5) **[business with foreign clients]** NKBM d.d. shall refrain from undertaking any new credit activities with […]. NKBM d.d. will limit its activities with such clients to the orderly execution and management of existing credit contracts. For the sake of clarification, […] are not subject to this limitation.

(6) **[corporate governance]** Slovenia undertakes to implement in NKBM up-to-date corporate governance structures in accordance with the EU Capital Requirements Directive and Slovenian domestic legislation. The related necessary changes to NKBM d.d. bylaws and internal rules have to be implemented in three months after the adoption of the decision of the Commission on the restructuring plan of NKBM. In particular:

(6.1) Slovenia undertakes to observe:

(a) the corporate governance rules according to clauses from 6.2 to 6.10.

(b) the framework and segregation of duties set by Slovenian corporate and banking/regulatory legislation for shareholders, management and supervisory board of financial institutions; and

(c) the Commission's Guidance on Corporate Governance and Relationship Framework for Banks in which the State has a stake;

(6.2) the management board of NKBM d.d. will have the sole powers and responsibilities for managing the day-to-day business of NKBM 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;

(6.3) 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.

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

(6.5) 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 NKBM'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;

(6.6) 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;

(6.7) NKBM will ensure an effective, independent and objective internal audit function. For this purpose, the internal audit function will report and be answerable only to independent non-executive members of the Management Board or to the Audit Committee, which is comprised solely of independent non-executive directors, of whom at least one 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 Audit Committee/Management Board, 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.

(6.8) NKBM will follow a prudent, sound business policy geared towards sustainability while implementing the planned measures. NKBM 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. NKBM'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 work employed in the front office function: […];
(c) employees performing special work employed in other functions: […]

The payment of at least […] % of the variable remuneration will be deferred over the period of […].

(6.9) Notwithstanding the commitment of paragraph 6.8 above, in any case, for the whole restructuring period, the total remuneration to any board member and employee performing 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 NKBM d.d. The restriction to total remuneration referred to above will apply until the end of the restructuring period.

(6.9.1) After informing the monitoring trustee, NKBM may adjust the above maximum limit for the annual remuneration in line with Slovenian inflation.
(6.9.2) To the extent legally possible, NKBM shall remunerate members of its bodies and committees, employees and essential agents in line with the following principles:
(b.1) the relevant person's contribution to NKBM economic position, especially in the context of previous business policies and risk management; and
(b.2) the necessity of a market oriented salary, so as to be able to employ particularly suitable persons who can achieve sustainable growth.

(6.10) 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 the bank 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.

(7) **[risk management and credit policies]** NKBM will overhaul its risk management process and in particular NKBM d.d., Poštna Banka Slovenije d.d. and Credy banka AD Kragujevac (operating from 2 September 2013 onward under the new business name of KBM banka AD Kragujevac) will:

(7.1) price every new loan (considering as new loan any new business not related to an existing transactions) by using an appropriate internal pricing tool (such as the currently used "internal transfer pricing methodology" and its future versions) or (in the case of mass market retail and SME transactions) 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 ("**RoE**") of at least [5-10] % in […], [5-10] % in […], [5-10] % in […] and [10-20] % in […] 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 […] on standalone level and by […] for all members of NKBM Group.

(a) For the purpose of this calculation, the volume weighted average of all loans with a single client (since the date 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 individual loan and 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 in the amounts set in the previous paragraph in each year until maturity.

(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 7.5.

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

(7.2) 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 loan exposure with any client. Every customer to which NKBM d.d. has an exposure exceeding EUR 1 million should be re-rated annually;

(a) document all restructuring decisions *i.e.* all new credit deals with non-performing corporate clients with an exposure over EUR [10 000-15 000] 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 [10-20] % can be obtained, restructuring decisions will be such that the bank is able to terminate the engagement at least every […] months. Where NKBM d.d. 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.

(7.3) 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 […];

(7.4) implement a refinement of LGD data collection and calculation according to the demands of internal ratings based calculation by no later than […]. Implement a refinement of the client rating process to internal ratings based system for segments of retail and companies by no later than […]. Request for approval of internal ratings based system from the Bank of Slovenia is subject to prior comparison of capital calculation according to internal ratings based and standardised approach.

(7.5) should the Monitoring Trustee reveal a failure on behalf of NKBM to comply with any of the Commitments under this paragraph 7 NKBM d.d. 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, NKBM d.d. 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 a Commitment under paragraphs 7.1, 7.2 and 7.3 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 10 million EUR of deals is affected by such breach.

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

(9) **[behavioural commitments]** Slovenia commits to introduce the following behavioural safeguards in respect of NKBM's restructuring:

(9.1) **[bans on advertising and aggressive commercial strategies]** to impose a ban on advertising related to the state support to NKBM and to the state ownership in NKBM (or to any competitive advantages arising in any way from the aid to NKBM or the state ownership in NKBM) and to prevent NKBM from employing any aggressive commercial strategies which would not be pursued without state support (advertisement ban);

(9.2) **[coupon ban]** to ensure that NKBM 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 capital instruments (meaning instruments issued after the adoption by the Commission of the Restructuring Decision), provided any payment of coupons on such newly issued capital instruments will not create a legal obligation to make any coupon payments on NLBM's securities existing at the moment of the adoption by the Commission of the Restructuring Decision(coupon ban);

(9.3) **[acquisition ban]** to ensure that NKBM 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, NKBM may, after obtaining the Commission’s approval, acquire businesses if that is in exceptional circumstances necessary to restore financial stability or to ensure effective competition;

(b) Exemption not requiring Commission's prior approval: NKBM may acquire stakes in undertakings provided that the purchase price is less than […] % of NKBM’s total assets as of December […] in each individual case and that the cumulative purchase prices paid by NKBM for all such acquisitions over the whole restructuring period is less than […] % of NKBM’ total assets as of December […].

(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; 2) Disposals and restructuring within NKBM Group, including buy-outs of minority shareholders; 3) acquisitions that take place as a result of the due performance of contractual obligation as regards KBM Banka AD Kragujevac, entered into before the 20 December 2012.

(10) **[Burden sharing]** Slovenia commits that before any State aid is granted the bank will write-down in full its shareholders' equity and outstanding subordinated debts.

(11) [**Capital repayment Mechanism and Dividend ban**] Based on the audited year end accounts Nova KBM d.d. will 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) [100-150] % 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.

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

(11.2) For the fiscal years […] and […] no dividend will be paid.

(11.3) The subsidiaries of NKBM d.d. are subject to a dividend ban along the same lines as outlined above for NKBM d.d. Notwithstanding this ban, NKBM Group companies may pay out dividends to their shareholders if NKBM d.d. is – directly or indirectly - the majority shareholder and all external shareholders combined hold less than [10-20] % of shares and voting rights in the respective company. This restriction does not apply forto KBM Infond d.o.o.

(12) [**Divesture of the State's shareholding in NKBM**]. The Republic of Slovenia will fully divest its shareholding in NKBM through a competitive, non-discriminatory, open and transparent bidding process to one or more Purchasers independent and unconnected to NKBM and to the Republic of Slovenia.

(12.1) To carry out the disposal, Slovenia shall start approaching potentially interested buyers for NKBM by […]. It shall use its best efforts to sign a sale and purchase agreement with a prospective purchaser by no later than […].

(12.2) If NKBM is not fully sold by the above date, […]. If, by […], the general conditions in the banking sector in the EU remain under stress, Slovenia may request a prolongation of the end date for disposal of NKBM.

(12.3) Should Slovenia sell all its shareholding in NKBM d.d. by […] all commitments will cease to apply from […] onward, with the exception of the commitment to restrict to an appropriate level the total remuneration to any board member and employee performing special work according to paragraph (6.9) which will apply and be complied with until […].

(13) **[Transfer of assets to the BAMC]** The transfer value of the assets transferred to the BAMC will be equal to or below their Real Economic Value (REV) established by the Commission's experts in line with the state aid rules

(14) **[Recapitalisation of subsidiaries]** a) 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 NKBM'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 banks, 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). b) 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 a)).

The commitment in this point 14 applies only in cases where shareholders of NKBMs' subsidiaries other than NKBM do not participate in the capital increase or subscription of hybrid instruments in the existing shareholding proportions.

(15) **[Monitoring Trustee]** The complete and correct implementation of all Commitments and obligations set out in this catalogue will be continuously and thoroughly monitored and checked by a suitably qualified Monitoring Trustee who: i) is independent from NKBM and the government of Slovenia; ii) possesses the necessary qualifications to carry out its mandate; iii) will neither have nor become exposed to a conflict of interest. The appointment, mandate and duties of the Monitoring Trustee […].

(15.1) The Commission will have a discretion to approve or reject the proposed trustees, and to approve the proposed mandate subject to any modifications it deems necessary for the trustees to fulfil their obligations.

(15.2) The trustee(s) will assume its specified duties in order to ensure compliance with the Commitments. The Commission may give any orders or instructions to the trustee in order to ensure compliance with the conditions and obligations referred to in this Decision and the Commitments.

(15.3) Slovenia (Ministry of Finance) commits that NKBM d.d., Poštna Banka Slovenije d.d. and Credy banka AD Kragujevac (operating from 2 September 2013 onward under the new business name of KBM banka AD Kragujevac) will provide and cause to provide the Monitoring Trustee with all such cooperation, assistance, rights, powers and information as the Monitoring Trustee may reasonably require and need for the proper performing of its tasks, duties and obligations […].

(15.4) NKBM d.d., Poštna Banka Slovenije d.d. and Credy banka AD Kragujevac (operating from 2 September 2013 onward under the new business name of KBM banka AD Kragujevac) will set up an internal process to channel to the Monitoring Trustee all necessary information and documentation in order to monitor the implementation of the Commitments. NKBM d.d., Poštna Banka Slovenije d.d. and Credy banka AD Kragujevac (operating from 2 September 2013 onward under the new business name of KBM banka AD Kragujevac) will give the Monitoring Trustee upon its request full and complete access to any of its books, records (including board minutes), documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties. NKBM will make available to the Monitoring Trustee one or more offices in the bank's head office and will be available for meetings on request of the Monitoring Trustee.

(15.5) For the proper performing of its tasks, duties and obligations, the Monitoring Trustee shall be entitled to participate at the meetings of the Supervisory board and the committees of NKBM d.d., Poštna Banka Slovenije d.d. and Credy banka AD Kragujevac (operating from 2 September 2013 onward under the new business name of KBM banka AD Kragujevac) in line with the relevant legislation, to receive in advance all the relevant documentation and to interview Management and Supervisory Board members of NKBM d.d., Poštna Banka Slovenije d.d. and Credy banka AD Kragujevac (operating from 2

September 2013 onward under the new business name of KBM banka AD Kragujevac) in relation to the compliance with the Commitments and to:

(a) monitor the internal organisation of NKBM, in cooperation with NKBM's internal control bodies. For this purpose, the Trustee will be entitled to interview the members of the Supervisory board of NKBM d.d., Poštna Banka Slovenije d.d. and Credy banka AD Kragujevac (operating from 2 September 2013 onward under the new business name of KBM banka AD Kragujevac) and their Risk and Audit Committees. The Trustee will upon its request receive all reports emanating from internal control bodies. The trustee shall monitor (i) that recommendations related to the Commitments from permanent supervisors or periodic controllers/auditors are dully enforced and (ii) that action plans are implemented in order to correct any failure identified within the internal control framework;

(b) monitor commercial practices of NKBM d.d., Poštna Banka Slovenije d.d. and Credy banka AD Kragujevac (operating from 2 September 2013 onward under the new business name of KBM banka AD Kragujevac), with a focus on credit policy and deposit policy. The Trustee may interview members of all relevant credit committees, in particular those responsible for (i) the scoring/rating of customers,(ii) the granting of loans to customers (iii) the management of non-performing loans and restructured loans and (iv) the provisioning of non-performing loans and restructured loans.

(c) monitor policies of NKBM d.d., Poštna Banka Slovenije d.d. and Credy banka AD Kragujevac (operating from 2 September 2013 onward under the new business name of KBM banka AD Kragujevac) toward the restructuring and provisioning of non-performing loan, and interview all members of the relevant committees responsible for the restructuring and the provisioning of non-performing loans. NKBM shall upon its requests communicate to the Trustee any risk report communicated to the Supervisory Board, or any analysis/review aimed at assessing the credit exposure of NKBM. The trustee shall perform its own analysis, on the basis of the above-mentioned reports, interviews, and, if need be, the review of individual credit files (this should be without prejudice to the banking secrecy framework). In that regard, the Trustee should be entitled to interview credit analysts and risk officers who were involved in the sample cases when deemed appropriate.

(16) **[Divestiture Trustee]** The following provisions apply to the appointment of a Divestiture Trustee:

(a) Slovenia must propose to the European Commission for approval, no later than one month before the deadlines specified in (12) a list of one or more persons whom it proposes to appoint as Divestiture Trustee;

(b) 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;

(c) Slovenia must grant comprehensive powers of attorney to the Divestiture Trustee:

(i) to effect the disposal of NKBM (including the necessary powers to ensure the proper execution of all the documents required for effecting the disposal); 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;

(d) NKBM 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

(e) the Divestiture Trustee shall be remunerated by NKBM and in a way that does not impede the independent and effective fulfilment of the Divestiture Trustee's mandate.