



EUROPEAN COMMISSION

Brussels, 30.04.2017
C(2017) 3000 final

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

Subject: State Aids SA.39543 (2017/N-2), SA.41134 (2017/N-2), SA.43547 (2017/N-2) – Italy – Sale of the bridge banks Marche, Etruria and Carichiati to UBI Banca (third amendment to the resolution of the banks Marche, Etruria and Carichiati)

Sir,

1. PROCEDURE

- (1) By four decisions taken on 22 November 2015¹, one for each individual bank, (the "2015 decisions") the Commission approved the resolution of Banca delle Marche S.p.A., Banca Popolare dell'Etruria e del Lazio Soc. Coop., Cassa di Risparmio di Ferrara S.p.A and Cassa di Risparmio della Provincia di Chieti S.p.A. (together "the old banks"), all of which were previously in Special Administration under the Bank of Italy.
- (2) The resolution led to the immediate creation and capitalisation of four temporary credit institutions (one "bridge bank" each), Nuova Banca delle Marche S.p.A. ("Marche"), Nuova Banca dell'Etruria e del Lazio S.p.A. ("Etruria"), Nuova Cassa di Risparmio di Ferrara S.p.A. ("Carife"), Nuova Cassa di Risparmio di Chieti

¹ State Aid SA.39543– Resolution of Banca delle Marche S.p.A., SA.41134 – Resolution of Banca Popolare dell'Etruria e del Lazio Soc. Coop, SA.41925– Resolution of Cassa di Risparmio di Ferrara S.p.A and SA.43547 – Resolution of Cassa di Risparmio della Provincia di Chieti S.p.A.

Onorevole Angelino Alfano
Ministro degli Affari Esteri e della Cooperazione Internazionale
P.le della Farnesina 1
I - 00194 Roma

S.p.A. ("Carichiati") (together "the bridge banks"), fully capitalised and owned by the Italian Resolution Fund² ("the Resolution Fund").

- (3) In the notifications for each of the 2015 decisions, Italy committed³ to sell the respective bridge bank by 30 April 2016. If a bridge bank was not sold, it would have to stop new business, wind-down its current business and cease to exist after two years from the adoption date of the 2015 decisions. This meant that by 22 November 2017 at the latest, the bridge bank in question would enter liquidation under ordinary national insolvency procedures according to national law ("ordinary insolvency").
- (4) By decision of 29 April 2016⁴ ("the first amendment decision") the Commission approved the prolongation of the sale deadline for the four bridge banks until 30 September 2016, while Italy notified the advancement of the deadline for the liquidation under ordinary insolvency to 31 April 2017.
- (5) By decision of 7 October 2016⁵ ("the second amendment decision") the Commission approved the modification of the approved impaired asset measure and the prolongation of the sale deadline for each of the bridge banks until 31 December 2016. In case that by 31 December 2016, there was no binding market offer for one or more of those bridge banks in their entirety, Italy committed to create the conditions to put those bridge banks into liquidation under ordinary insolvency by 31 March 2017. To facilitate that process, Italy committed to invite bids for parts of the bridge banks already in November 2016, with non-binding offers expected by 31 January 2017.
- (6) On 28 April 2017 Italy notified the sale of three of the four bridge banks (Marche, Etruria and Carichiati – together the "three bridge banks") to Unione di Banche Italiane S.p.a. ("UBI"). The notification included additional State aid measures linked to the sale of the three bridge banks to UBI and an integration plan of the three bridge banks into UBI, supported by a set of commitments undertaken by Italy.
- (7) By letter of 27 April 2017, Italy agreed to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union ("TFEU") in conjunction with Article 3 of Regulation 1/1958⁶ and to have the present decision adopted and notified in English.

² The Resolution Fund was established by virtue of legislative decree of 16 November 2015 - Decreto legislativo (Dlgs) 180/2015.

³ See Annex I to the 2015 decisions.

⁴ State Aid SA.39543, SA.41134, SA.41925, SA.43547 – Italy: Amendment to the Resolution of Banca delle Marche S.p.A., Banca Popolare dell'Etruria e del Lazio Soc. Coop., Cassa di Risparmio di Ferrara S.p.A. and Cassa di Risparmio della Provincia di Chieti S.p.A,

⁵ State Aid SA.39543, SA.41134, SA.41925, SA.43547 – Italy: Amendment to the Resolution of Banca delle Marche S.p.A., Banca Popolare dell'Etruria e del Lazio Soc. Coop., Cassa di Risparmio di Ferrara S.p.A. and Cassa di Risparmio della Provincia di Chieti S.p.A,

⁶ Council Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

2. DESCRIPTION OF THE MEASURES

2.1. Description of the three beneficiaries and the resolution measures taken prior to the sale

- (8) Marche, Etruria and Carichieti are three of the four bridge banks resulting from the resolution decision taken by the Bank of Italy on 22 November 2015. As part of the 2015 decisions, the economic activity of the three banks in resolution was transferred to three newly created bridge banks, excluding shares and subordinated debt which remained in the three respective old banks that were sent into liquidation.
- (9) The old banks had significant NPL (i.e. Non-Performing Loans) ratios (between 38% and 50% of total loans) including *sofferenze* exposures (i.e. the worst category of NPLs) where the borrower is in a position of insolvency or in a substantially similar situation. To increase the facility of selling the bridge banks, it was envisaged to transfer all loans classified as *sofferenze* from the bridge banks to a newly created Asset Management Vehicle ("AMV"). The net book value of those *sofferenze* loans was written down to the envisaged transfer price approved in the 2015 decisions prior to being transferred to the bridge banks.
- (10) In the resolution process up to the sale, Italy applied to the three bridge banks the following measures that constituted State aid:

The State aid measures approved in 2015 ("the 2015 measures")⁷:

- (a) **Measure 1:** At the creation of the bridge banks, the Italian Resolution recapitalised the three bridge banks. This resulted in initial capital ratios of 9% CET1.
- (b) **Measure 2:** In addition, Italy transferred at net book value from the three bridge banks to the newly created AMV those *sofferenze* loans that were identified at the time.

The State aid measures approved in 2016 ("the 2016 measures")⁸:

- (c) **Measure 3:** In 2016, Italy notified an amendment to the transfer of *sofferenze* consisting of a higher amount in terms of gross book value of the transferred loans and an adjustment of the transfer values according to the results of the final valuation. This included further *sofferenze* exposures that existed but were not detected at the time of resolution.
- (11) The aid amount granted to the three bridge banks in the resolution process up to the sale can be summarised as follows:

⁷ State Aid SA.39543– Resolution of Banca delle Marche S.p.A., recital (37), SA.41134– Resolution of Banca Popolare dell'Etruria e del Lazio Soc. Coop, recital (32) and SA.43547 – Resolution of Cassa di Risparmio della Provincia di Chieti S.p.A., recital (30).

⁸ State Aid SA.39543, SA.41134, SA.41925, SA.43547 – Italy: Amendment to the Resolution of Banca delle Marche S.p.A., Banca Popolare dell'Etruria e del Lazio Soc. Coop., Cassa di Risparmio di Ferrara S.p.A. and Cassa di Risparmio della Provincia di Chieti S.p.A, recital (23).

| Overview of aid measures | Total (EUR Bn) |
|---|----------------|
| The 2015 measures: | 3.27 |
| - Measure 1 capital injection | 2.95 |
| - Measure 2 impaired assets measures (transfer of <i>sofferenze</i>) | 0.33 |
| The 2016 measures: | 0.04 |
| - Measure 3 correction of the impaired assets measure | 0.04 |
| Total aid measures up to the sale | 3.31 |

- (12) After the 2015 measure and 2016 measure ("resolution measures") had been implemented by the competent authority, the three bridge banks continued to be loss making and their loan portfolio continued to deteriorate. Following the resolution action, the three bridge banks' balance sheets continued to display high levels of NPL, consisting mainly of loans where the debtor is not yet in default but unlikely to pay its obligations in full ("UTP"). A significant amount of those UTP loans deteriorated further and migrated to the *sofferenze* category.
- (13) As of 31 December 2016 the three bridge banks presented the following balance sheet and profit and loss figures comparing to 31 December 2015:

| | Marche | | Etruria | | Carichiati | |
|-------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| | 31 Dec 2015 | 31 Dec 2016 | 31 Dec 2015 | 31 Dec 2016 | 31 Dec 2015 | 31 Dec 2016 |
| Total BS (EUR Bn) | 14.7 | 12.20 | 8.03 | 6.57 | 3.08 | 2.96 |
| P&L (EUR mn) | -0.06 | -0.77 | -0.02 | -0.27 | -0.02 | 0.01 |

2.2. The sale process

- (14) In the notification for the 2015 Decision, Italy committed to launch the sale process of the four bridge banks no later than 30 January 2016. If the four bridge banks were not sold by 30 April 2016, the orderly winding down procedure should have started and concluded no later than 2 years after the resolution date, i.e. 22 November 2017.
- (15) On 19 January 2016, Bank of Italy as the resolution authority (hereinafter also the "Resolution Authority") launched the sale process of the four bridge banks through a public call for expression of interest for the acquisition of one, more, or all four bridge banks or one or more of the non-core entities, i.e. the insurance subsidiaries (the so-called "the first phase of the sale process").
- (16) In April 2016, Italy informed the Commission that the sale process had encountered some unexpected delays, providing the delayed closing of the 2015 accounts as evidence which was deemed necessary to launch the due diligence phase. This led to a delay of roughly two months compared to the original planning and Italy requested a prolongation of the sale deadline to 30 September 2016. Italy also presented a schedule detailing how the sale process was to be successfully terminated by 30 September 2016 and which according to Italy included a safety buffer in the sale timeline. On 29 April 2016, the Commission approved the prolongation of the sale process until 30 September 2016.
- (17) On 19 April 2016 the Information Memorandum was made available to the potential investors. On 12 May 2016, when the deadline to provide non-binding

offers expired, ten out of 26 interested investors submitted eleven non-binding offers (one investor submitted two offers on different perimeters). Of the eleven offers, six were selected while the others were put on stand-by.

- (18) On 21 July 2016, the final date for the submission of binding offers, three investors presented an offer, which the seller considered not compliant with the process letter, as it considered them non-binding due to conditions put forward, and therefore dismissed them.
- (19) Therefore, on 4 August 2016, the Resolution Authority declared the first phase of the sale process as concluded and opened a negotiated sales procedure ("the second phase of the sale process").
- (20) On 6 August 2016, a new formal letter of invitation was sent to eight national and international potential investors – including bidders that had taken part in the previous procedure as well as other banking and financial investors. A term sheet specifying the minimum acceptable requirements for binding offers was included in the invitation letter.
- (21) On 29 August 2016, the final day for the submission of binding offers in the second phase of the sale process, four investors provided offers. Two investors who had already taken part in the previous phase submitted offers as well as two unsolicited offers from bidders present in the first phase of the sale process but which had not been invited to the second phase. The Resolution Authority decided to declare all offers as not compliant with the process letter and dismissed them accordingly.
- (22) On 30 August 2016, the Resolution Authority launched the third phase of the sale process by inviting six investors that had either submitted an offer or shown interest, as UBI, in the previous stage of the sale procedure or have showed interest in a previous phase to submit binding offers.. The deadline to receive binding offers was set for 30 September 2016, i.e. the deadline committed to in the Commission decision in force at the time (the first amendment decision).
- (23) On 16 September 2016, Italy took contact with the Commission services to signal that the sale process might require more time than approved in the first amendment decision and requested on 30 September 2016 an additional prolongation of the sale deadline by three months to 31 December 2016.
- (24) Italy submitted that in case that the sale of one or more bridge banks would be unsuccessful by 31 December 2016, it would remain possible to sell bundles of assets and liabilities out of a bridge bank until the end of their existence period, which was brought forward by one month to 31 March 2017. To this end, Italy committed to invite bidders by 1 November 2016 to submit offers for parts of the bridge banks. Any of the bridge banks or parts of bridge banks that remained unsold would be put into ordinary insolvency by 1 April 2017. On 7 October 2016, the Commission approved the prolongation of the sale process until 31 December 2016 by means of the second amendment decision.
- (25) On 27 October 2016 Italy submitted to the Commission services a document by the Resolution Authority on the progress of the resolution action started in November 2015, with a particular focus on the sale process of the bridge banks. Inter alia, Italy informed that the sale process has been carried on through

multiple non-exclusive bilateral negotiations with all the interested investors. These negotiations were conducted without setting any specific conditions in terms of minimum price and indeed some of the offers/expressions of interest received would include mechanisms for a transfer of the credit portfolio related losses to the Resolution Fund. Italy thus concluded that the sale of the bridge banks as a whole would require an additional contribution by the Resolution Fund, but that this was preferable to a sale in parts or liquidation.

- (26) On 4 November 2016, Italy informed the Commission services that it considered notifying the sale of the three bridge banks to UBI. On 6 November, Italy shared with the Commission services a draft plan that UBI had submitted previously to the SSM. The Commission services emphasised to Italy that this possibility was in principle open to all bidders, but the Commission services did not receive other plans related to the sale of the bridge banks.
- (27) However, in the understanding of the Commission, when the deadline for the sale of the banks in their entirety until 31 December 2016 was prolonged, Italy had communicated this to bidders. Also, in the beginning of November 2016, Italy sent letters to five banks inviting for interest in a sale of parts of the banks, and for submitting bids by January 2017. Moreover, since September 2016 the seller had resorted to multiple non-exclusive bilateral negotiations which it had been conducting by informal means (conference calls, meetings). Therefore, during numerous exchanges in November and December 2016, the Commission services voiced concerns to Italy on the conduct of the process up to date. While formal unconditional binding offers had not yet been received (before the December 2016 deadline), the bilateral negotiations in the last phase so far risked to have been conducted in a way not meeting the conditions regarding openness, non-discrimination and transparency.
- (28) On 3 January 2017, the Resolution Authority sent letters to those 14 bidders which had previously made non-binding offers during the different phases of the sale process inviting them to express their interest in further participating in the sale process by 9 January 2017 and if so, offering further due diligence and announcing a new deadline for binding offers by 27 January 2017. In these letters, the Resolution Authority indicated the relevant perimeters and the possibility to consider the following actions to positively complete the transaction, namely (i) possible equity contribution from the Resolution Fund, (ii) carve-out of NPL with transfer of losses and risks connected to the transfer of NPL to be covered also by the Resolution Fund, and (iii) representations and warranties indicating the relevant caps.
- (29) On 10 January 2017, Italy informed the Commission services that the Resolution Authority had not received any further expression of interest in participating in the sale process. With UBI remaining the only interested party in the three bridge banks, Italy confirmed to continue the process with UBI.

2.3. Description of the sale agreement and contained measures (the "2017 measures") for the three bridge banks sold to UBI

- (30) On 27 January 2017 Italy submitted to the Commission the Share Purchase Agreement ("UBI SPA") signed by UBI and by the Resolution Authority for the acquisition of the three bridge banks. According to that offer, UBI offered EUR 1

for the equity of the three bridge banks and included the following conditions to be fulfilled:

- (a) Capital injection by the Resolution Fund for an aggregate amount of
 - (i) EUR 350 million as Base Capital Increase,
 - (ii) additional guarantees of EUR 100 million related to two sale and lease back real estate transactions of Marche and Etruria,
 - (iii) an amount equal to the capital losses arising from the transfer from the three bridge banks to a third party of an NPL portfolio of EUR 2.2 billion (EUR 1.7 billion of *sofferenze* and EUR 0.5 billion of UTP) at lower consideration than [70-80] % of gross book value for the *sofferenze* loans and [20-30]% of gross book value for UTP loans.; however, at the time of signature of the UBI SPA, the NPL sale process had not advanced sufficiently to know the outcome and related conditions;
 - (iv) an additional amount needed in order to reach specific minimum requirements on a number of key financial indicators to be verified prior to closing; the verification would occur on the 2016 year-end accounts of the three bridge banks if closing occurred prior to 30 April 2017 and on end-March 2017 figures (and moving forward further) if closing occurred later;
- (b) Unlimited guarantees in favour of UBI for misrepresentation, fraud and for liabilities resulting from the 2015 resolution action.
- (c) guarantees to cover:
 - (i) the risk linked to any potential losses and liabilities against the three bridge banks up to EUR [...](*))million (the General Cap);
 - (ii) the risk linked to [specific legal risks] of the three bridge banks up to EUR [...] million (the Special Cap);
 - (iii) in favour of UBI for part of those guarantees which the three bridge banks have to provide to the buyer of the NPL portfolio described in (30)(a)(iii). At the moment of the signing of the UBI SPA, the total amount of those guarantees was unknown but limited to the existence of the transferred assets and the relevant mortgages.
- (d) Positive ruling by the Italian tax authority regarding the availability of at least EUR 600 million of accumulated DTAs in the three bridge banks for the use of UBI at consolidated level;

(*) Covered by the obligation of professional secrecy

- (31) In addition to the EUR 1 sale price, the UBI SPA also contains a profit sharing mechanism in favour of the Resolution Authority: of the up to EUR 600 million of available DTA required under the conditions in the UBI SPA, the Resolution Fund will receive ten percent of the amount used. For every Euro of DTA used above EUR 600 million, the Resolution Fund will receive ninety percent. The resulting profit for the Resolution Fund will be used to offset potential liabilities resulting from guarantees in favour of UBI under the UBI SPA.
- (32) On 12 April 2017, Italy submitted to the Commission two purchase agreements (one for the *sofferenze* portfolio and one for the UTP portfolio) dated 7 April 2017, between the three bridge banks and Quaestio Capital Management SGR S.p.a. Unipersonale – the manager of the Atlante fund ("Atlante") – as well as a letter of confirmation of Atlante's binding commitment to underwrite the sale of the NPL portfolio described in (30)(a)(iii) (the "Atlante PA").
- (33) The envisaged transaction refers to a gross book value of EUR 2.2 billion of NPLs and will be implemented through different securitisation vehicles for which only senior and mezzanine tranches would be issued. According to the letter of confirmation Atlante will provide financing for the mezzanine tranche of the securitisation structures for a total amount of EUR 515 million. In order to speed up the transaction on the 13 April 2017 Atlante formally confirmed its interest for the entire senior tranche of the securitisation structures up to EUR 200 million raising its total contribution to EUR 715 million.
- (34) Under the Atlante PA, the three bridge banks provide a number of guarantees to Atlante in line with the restrictions of possible guarantees under the UBI SPA (see recital (30)(c)(iii)), related to the existence of loans and mortgages as well as the state of the real estate collateral. Those guarantees have caps adding up to EUR [250-300] million.
- (35) On 20 April 2017, Italy confirmed that the maximal total amount of capital injection necessary under the UBI SPA as described in recital (30)(30)(a) in order to conclude the sale of the three bridge banks by the Resolution Fund to UBI will be no greater than EUR 810 million. Italy also stated that not all elements are currently known yet and provided a number for the currently known elements of EUR 708 million broken down into a EUR 556 million capital injection for Marche and a EUR 152 million capital injection for Etruria.

2.4. The integration plan for the three bridge banks into UBI

- (36) On 6 November 2016, Italy shared with the Commission an integration plan of the three bridge banks into UBI, which was previously presented to the SSM, covering the period from 2017 until the end of 2020.
- (37) According to that plan, UBI will speedily integrate the three bridge banks into its own organisation. It is envisaged that IT systems will be fully integrated, the brand names of the bridge banks will disappear and the legal entities will cease to exist by 31 December 2017 for Marche and Etruria and by 28 February 2018 for Carichiati.
- (38) While the integration plan focuses on the combined entity, it also provides a pro-forma projection of the perimeter of the three bridge banks after legal integration into UBI. As the cost structure of the three bridge banks has been particularly

bad, the integration plan foresees a reduction of [20-30]% in branches representing [100-150] branches and 31% in headcount representing 1 569 headcounts with a further reduction in personnel expenses from measures other than headcount reduction (mandatory part-time, etc.).

(39) On a pro-forma stand-alone basis under the integration plan, the gross margin of the three bridge banks will be increased while the total cost will be decreased. As a consequence the Return On Equity ("RoE") after tax for the pro-forma isolated perimeter of the integrated bridge banks is expected to increase from below zero in 2016 to [15-20]% in 2020 and the Cost Income Ratio is expected to decline from [100-110]% in 2016 to [50-55]% in 2020.

(40) For the combined entity, the key financial projections provided by Italy are summarised in the following table:

| | 2017 | 2018 | 2019 | 2020 |
|----------------------------|---------------|---------------|---------------|---------------|
| RoE after tax | [3-5]% | [5-7]% | [8-10]% | [9-11]% |
| Cost Income Ratio | [65-70]% | [60-65]% | [55-60]% | [50-55]% |
| Net Income (EUR, millions) | [350-400] | [500-550] | [850-900] | [1000-1100] |
| RWA (EUR, millions) | [65000-70000] | [65000-70000] | [70000-75000] | [70000-75000] |

(41) The business plan foresees a combination of revenue enhancing and cost-cutting measures although the focus lies on cost-cutting measures.

(42) Net interest income for the resulting entity is projected to increase from EUR 1.8 billion in 2016 to EUR 2.3 billion in 2020. This is driven by a similar increase in interest income from an increase in loan volume by [5-10]% and an expected increase in the underlying Euribor rates while the interest expenses only increase slightly.

(43) The gross margin is expected to increase from EUR 3.6 billion in 2016 to EUR 4.5 billion in 2020. This is based on an expected increase in net interest income explained in recital (42) and an expected substantial increase in net fee income.

(44) The loan loss provisions are expected to decrease substantially over the integration period further supporting an improving profitability of the resulting entity over the integration period. The non-performing exposure stock for the combined entity is expected to decrease by [20-30]% by 2020.

(45) The total cost of the combined entity is being brought down by amongst others a reduction in the number of branches and the headcount. The headcount is expected to be reduced by 3 080 or 14% and the number of branches by [400-450] or [20-30]%.

(46) Net income is positive from 2017 onwards and is projected to reach EUR [1-1.1] billion in 2020. This increase is underpinned by a decrease in costs, an increase in the gross margin and a decrease in provisioning and impairments.

3. COMMITMENTS BY ITALY

- (47) In order to substantiate a speedy integration of the three bridge banks into UBI, the adherence to State aid rules and the return to viability of the combined entity, Italy has provided the following commitments.
- (48) Italy commits not to provide any capital or liquidity support to UBI or the three bridge banks or the old banks after the closure of the sale.
- (49) No future claim of shareholders and holders of subordinated debt or any hybrid instruments of the old banks or the residual entities of these may be transferred to the respective bridge bank.
- (50) Italy commits to ensure that UBI implements the integration plan, submitted to the Commission for the combined entity after the purchase. In particular, the bridge banks' IT systems will be migrated to UBI's IT system, the corporate names will be changed, the trademarks discontinued and the bridge banks will cease to exist as separate legal entities with separate banking licenses by the following deadlines: 31 December 2017 for Marche and Etruria and 28 February 2018 for Carichieti. If those deadlines are not met, Italy will present to the Commission a proposal containing remedy measures.
- (51) During their existence as stand-alone entities, the three bridge banks will apply strict executive remuneration policies. The bridge banks will not pay to any employee, director or manager a total annual remuneration (wage, pension contribution, bonus) higher than that currently paid by the bridge banks.
- (52) The number of branches of the bridge banks will be reduced to a maximum of [400-450] on 31 December 2017.
- (53) The bridge banks will apply UBI's credit policy as soon as possible and in any case no later than 2 months after the closing date of the sale. The credit policy shall be approved by the Management Board, ensure a fair treatment for all customers through non-discriminatory procedures based on credit risk and define the thresholds above which the granting of loans must be approved by higher levels of management. The decision-making process shall be centralized at group level and provide clear safeguards to ensure a consistent implementation of UBI's instructions within the bridge banks.
- (54) In addition the credit policy shall require that the pricing of loans and mortgages complies with strict guidelines by UBI that include the obligation to respect strictly the credit policy's standard tables of interest rate bands (ranges) depending on the maturity of the loan, the credit risk assessment of the customer, the expected recoverability of pledged collateral (including the time frame to a potential liquidation), the overall relationship with the bridge banks (e.g. level and stability of deposits, fee structure and other cross-sales activities) and the funding cost of the bridge banks. Infringements of that pricing policy shall be reported to the Monitoring Trustee.
- (55) The bridge banks shall monitor credit risk through a well-developed set of alerts and reports, which enables the bridge banks' Risk Management Department to: (i) identify early signals of loan impairment and default events; (ii) assess recoverability of the loan portfolio (including but not limited to alternative

repayment sources such as co-debtors and guarantors as well as collateral pledged or available but not pledged); (iii) assess the overall exposure of the bridge banks on an individual customer or on a portfolio basis; and (iv) propose corrective and improvement actions to the Board of Directors as necessary. The Monitoring Trustee shall be given access to that information.

- (56) In order to ensure viability of the combined entity, Italy commits to ensure a strict control of costs by the combined entity through the following measures:
- (a) The number of branches of the combined entity shall amount to maximum [1700-1900] at the end of 2017, [1600-1800] at the end of 2018, [1500-1700] at the end of 2019 and 2020 respectively.
 - (b) The remaining headcount taken over from the bridge banks will be reduced cumulatively in the combined entity by at least [350-400] by the end of 2017, [850-900] by the end of 2018, [1100-1200] by the end of 2019 and 1 569 by the end of 2020. The number of overall headcount of the combined entity shall amount to maximum [20000-22000] at the end of 2017, [20000-22000] at the end of 2018, [19000-21000] at the end of 2019 and 19 505 at the end of 2020.
 - (c) The total costs for the combined entity shall amount to EUR [2-3] billion at the maximum at the end of 2017, EUR [2-3] billion at the maximum at the end of 2018 and EUR 2.4 billion at the maximum at the end of 2019 and 2020 respectively. If the costs in a given year turn out to be higher by more than 5% than these targets, Italy will present to the Commission a proposal containing remedy measures to further reduce costs to bring total costs back to these original targets.
- (57) Italy commits that a Monitoring Trustee is appointed to report to the Commission on the compliance with the above commitments.

4. POSITION OF ITALY

- (58) Italy accepts that the 2017 measures constitute State aid and requests the Commission to verify their compatibility with the internal market on the basis of Article 107(3)(b) TFEU on the Functioning of the European Union ("TFEU"), as they are necessary in order to remedy a serious disturbance in the Italian economy.
- (59) Italy considers that aid is needed to conclude the sale procedure of the three bridge banks, that otherwise would be put into liquidation, with the consequence of a huge disruption of value, a massive intervention of the Deposit Guarantee Scheme and the loss of the amount already injected in the three bridge banks by the Resolution Fund with severe repercussions on the whole banking sector and risks for financial stability.
- (60) Italy also submits that the amount of aid has been determined in an open, fair and transparent sale procedure leading to a sale at market terms.
- (61) In a paper submitted by Italy on 27 October 2016, Italy considers that the capital increase by the Resolution Fund is fully consistent with the resolution action as described in the resolution measures adopted by the Italian authorities in

November 2015. It follows as a financial effect of the evolution of the market situation in the course of the implementation of the resolution measures. Even a negative price may represent indeed a maximum price, whenever it corresponds to the highest consideration that the market is ready to pay in the given circumstances. Under this perspective, the higher financial burden for the Resolution Fund is nothing more than the consequence of the due implementation of the resolution measures according to its terms and within a certain envisaged time span.

- (62) In the same paper Italy argues that since November 2015 when the resolution measures were adopted, the market conditions have worsened and given cause to a depreciation of the bridge banks' assets that could not have been foreseen at the time of the 2015 decisions and now hinders the possibility of a successful sale process in the absence of additional funding. The negotiations conducted with potential investors have shown that the sale of the bridge banks was not possible without a further contribution of the Resolution Fund.
- (63) Italy puts forward a budget of EUR 810 million for the 2017 measures corresponding to the recapitalisation amount necessary.
- (64) Italy submitted commitments to ensure that UBI implements the integration plan of Marche, Etruria and Carichieti and the necessary measures for the combined entity as described in recitals (47) to (57).

5. ASSESSMENT OF THE MEASURE

5.1. Existence of aid

- (65) Pursuant to Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market. The Commission will assess in the following sections whether those cumulative conditions are met for the resolution measures.

5.1.1. The 2015 measures

| Overview of the 2015 aid measures | Total (EUR Bn) |
|-------------------------------------|----------------|
| Total aid amount: | 3.27 |
| - Measure 1 capital injection | 2.94 |
| - Measure 2 impaired asset measures | 0.33 |

- (66) On the basis of the assessment carried out in recitals 51 to 88 of the State aid Decision SA.39543 – Resolution of Banca delle Marche S.p.A. ("The Banca Marche decision"), in recitals 46 to 83 of the Decision SA.41134 – Resolution of Banca Popolare dell'Etruria e del Lazio Soc. Coop, ("The Banca Etruria decision") and in recitals 44 to 81 of the Decision SA.41925 – Resolution of Cassa di Risparmio della Provincia di Chieti S.p.A. ("the Carichieti decision"), the Commission found that the 2015 Measures fulfil all the conditions laid down in Article 107(1) TFEU and qualify as State aid to the three bridge banks.

5.1.2. The 2016 measures

| Overview of the 2016 aid measure | Total (EUR Bn) |
|---|----------------|
| Total aid amount: | 0.04 |
| - Measure 3 correction of the impaired assets measure | 0.04 |

- (67) On the basis of the assessment carried out in recitals 49 to 69 of the second amendment decision, the Commission found that the 2016 measures fulfil all the conditions laid down in Article 107(1) TFEU and qualify as State aid to the three bridge banks.

5.1.3. The 2017 measures

- (68) The 2017 measures contain four separate categories of measures (see recital (30)):
- (a) *Measure 4a*: A capital injection from the Resolution Fund;
 - (b) *Measure 4b*: Unlimited guarantees from the Resolution Fund with respect to the correctness of the information provided to UBI as well as for legal risks connected to the resolution measures, in particular the transfer of NPL to the Italian AMV;
 - (c) *Measure 4c*: Limited guarantees from the Resolution Fund with specific caps towards specific, identified risks;
 - (d) *Measure 4d*: A certain amount of DTAs stemming from the three bridge banks which can be used by the combined entity going forward.
- (69) Regarding *Measure 4d*, the Commission considers that the measure is based on legislation that is unspecific and relates to a benefit that could be available to any company under Italian law. No specific law or decree law was passed by the Italian authorities in order for the three bridge banks or UBI to obtain the related benefit. On that basis, the Commission does not consider that the related advantage was selective.
- (70) *Measures 4a to 4c* refer to contributions of the Resolution Fund. In line with established case-law⁹, the Commission considers that the intervention by the Resolution Fund – even if financed through private contributions – involves State resources. In the present case, the use of Resolution Fund resources has been triggered by the resolution measures adopted by the Resolution Authority.
- (71) The management and use of Resolution Fund resources is decided in accordance with the law with the aim to provide financial assistance to the implementation of resolution measures adopted by the resolution authority with respect to its public policy objectives. The decision taken by the Resolution Authority is taken in its capacity as a body fulfilling a public mandate rather than in the capacity of a

⁹ See Case C-345/02 *Pearle and others* EU:C:2004:448, paragraphs 37 and 38. That approach was applied in Commission decision in the State aid case NN 61/2009 – "Rescue and restructuring of Caja Castilla-La Mancha", Spain, 29.06.2010, C(2010)4453 corr., recitals 96-118.

market economy operator.¹⁰ The Commission therefore considers that *Measures 4a to 4c* are financed through State resources and are imputable to the State.

- (72) Regarding *Measure 4b*, the Commission considers that unlimited guarantees against misrepresentation of information by the seller towards the buyer, be it fraudulent or through negligence, do not confer a selective advantage to either the three banks or the buyer as such a guarantee corresponds to standard market practice. The buyer has to be in a position to rely on the information provided by the seller to be factually correct and representative in order to make its purchase decision.
- (73) Moreover, the Resolution Authority in exercising its duties will incur a certain amount of legal risk that is recognised by the relevant legislation and gives rise to specific risks of legal challenges. The Commission considers it normal market practice for a buyer to exclude liability for any such resolution action undertaken by the Resolution Authority in the exercise of its duties.
- (74) Regarding *Measure 4a* and *Measure 4c*, the Commission notes that Italy has only provided an overall figure of EUR 810 million as maximal amount of capital injection provided to the three bridge banks by the Resolution Fund under *Measure 4a* and has only not excluded the presence of further aid in *Measure 4c* but without providing a specific quantification for that measure.
- (75) The Commission notes that the 2017 measures are the outcome of an open, fair and transparent sale process on market terms (see recitals (93) to (97)). The 2017 measures result in a highly negative sale price. The fact that those measures are required for the sale to take place demonstrates the highly distressed state of the three bridge banks.
- (76) There is clear evidence from the sale process that no other market buyer was available to buy the three bridge banks under economically more advantageous conditions. Given the highly distressed state of those banks, the Commission therefore has no doubts that *Measure 4a* and *Measure 4c* provide a clear selective advantage to the three bridge banks' activities which was only available to them and kept their activities alive and allowed their sale to a buyer.
- (77) Even if *Measure 4a* and *Measure 4c* had to be assessed in comparison to the conduct of a comparably situated market economy operator, under the current circumstances no private operator acting on the basis of market economy principles would be willing to re-capitalise the three bridge banks, due to the fact that those bridge banks are by definition temporary institutions with the goal of selling all their assets. Only in order to maximise the value of those assets, the bridge banks are allowed to continue their business and compete with other private operators on the market until the eventual sale. Since a sale in the market would not have procured a positive price, a market economy operator would have preferred to simply allow the three banks to enter into liquidation proceedings, instead of injecting more funds in order to reach a sale price of only 1 euro.
- (78) The Commission finds that the 2017 measures distort or threaten to distort competition as they allow the economic activities of the three bridge banks to

¹⁰ See Case C-124/10 P *Commission v EDF* EU:C:2012:318, paragraphs 80 and 81.

obtain the necessary conditions to enable their sale to the buyer and thereby continue competing in the market rather than exiting it as required under the commitments attached to the second amendment decision if a sale had failed (and also as it would have happened without the aid measures assessed in the present decision). That distortion is all the more important because of the fact that the three bridge banks will continue competing in the market as separate legal entities until the end of 2017 under the present commitments.

- (79) The Commission finds that the 2017 measures are also affecting trade between Member States as the financial services market is by its nature global, and some of the competitors of the bridge bank in Italy are subsidiaries or branches of foreign banks.
- (80) On the basis of the foregoing, the Commission finds that *Measure 4a* and *Measure 4c* fulfil all the conditions laid down in Article 107(1) TFEU and qualify as State aid to the bridge banks.
- (81) Regarding the quantification of *Measure 4a*, Italy has provided a currently known amount of EUR 708 million which includes the required EUR 350 million direct capital injection and EUR 283 million of direct capital injection to make up for losses arising from the NPL sale to Atlante. Italy has notified the total amount of up to EUR 810 million which correspondingly includes a buffer of at least EUR 177 million against other conditions in the UBI SPA explained in detail in recital (30)(a).
- (82) The Commission considers the full amount of the notified recapitalisation of EUR 810 million by the Resolution Fund as State recapitalisation aid. Italy recognises the aid nature of *Measure 4a*.
- (83) Regarding the quantification of *Measure 4c*, the Commission notes that the UBI SPA contains a number of different guarantees with different cap amounts.
- (84) Italy has requested a Commission decision on the present measures to be taken prior to the end of April 2017 in order to avoid the SPA conditions precedent being checked on accounts other than those of end of year 2016, presumably to avoid having to indemnify to UBI further losses incurred by the three banks which would further increase the direct State recapitalisation aid required.
- (85) In view of the time pressure, the Commission will have to resort to safe harbour assumptions in order to quantify the aid amount contained in *Measure 4c* under the UBI SPA. In this respect, the Commission recalls that Italy has not explicitly contested the presence of further aid in the guarantees contained in the UBI SPA.
- (86) With respect to *Measure 4c*, the Commission recalls that there are three elements:
- (a) The General Cap of EUR 250 million;
 - (b) The Special Cap of EUR 280 million;
 - (c) The guarantee arising from guarantees provided by the three bridge banks under the Atlante PA where indemnifications sum up to EUR 285 million.

- (87) With respect to (86)(c), the Commission specifies that under the UBI SPA, the resulting guarantee is ensured for 100% only if it can be satisfied from the remaining portion of the General Cap. If the General Cap was already used up, deductions to the guarantee apply. If the full amount of EUR 285 million was to be provided by the three bridge banks to Atlante and the General Cap was entirely used for other claims, the resulting deductions under the UBI SPA would result in only a EUR 220 million claim by UBI on the Resolution Fund.
- (88) On the basis of the figures described in recital (86) and (87), the Commission considers that the maximal State aid amount contained in those guarantees is EUR 750 million.
- (89) Correspondingly, the Commission considers that the overall State aid amount in the 2017 measures is confined to up to EUR 810 million under *Measure 4a* and up to EUR 750 million under *Measure 4c*, corresponding to a total aid amount of up to EUR 1 560 million.

| Overview of the 2017 aid measures | Total (EUR Bn) |
|---|-------------------|
| Total aid: | up to 1.56 |
| Capital injection | up to 0.81 |
| of which cash contribution | 0.63 |
| of which buffer for additional costs | up to 0.18 |
| Other guarantees | up to 0.75 |
| of which the General Cap | up to 0.25 |
| of which the Special Cap | up to 0.28 |
| of which additional guarantees stemming from the NPL transaction between the bridge banks and Atlante | up to 0.22 |

5.2. Beneficiary of aid

5.2.1. Assessment of the sale process

- (90) The 2015 decisions, as well as the first and second amendment decisions, were based inter alia on the commitment by Italy that "the sale of the bridge banks or parts thereof will be conducted through open, transparent, non-discriminatory and competitive sale processes that take place on market terms and with the aim to maximize the sale price".
- (91) Compliance with this condition is of key importance, as it would allow excluding that the buyer is also a potential aid beneficiary. Under recitals 79 and 80 of the 2013 Banking Communication¹¹, the sale of a credit institution during an orderly liquidation procedure may entail State aid to the buyer, unless the sale is organised via an open and unconditional competitive tender and the assets are sold to the highest bidder. In particular, when determining if there is aid to the buyer of the credit institution or parts of it, the Commission will examine whether:

¹¹ 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 ("*2013 Banking Communication*"), OJ C 216, 30.7.2013, p. 1.

- (a) the sales process is open, unconditional and non-discriminatory;
- (b) the sale takes place on market terms;
- (c) the credit institution or the government, depending on the structure chosen, maximises the sales price for the assets and liabilities involved.

(92) A sale procedure can be considered:

- (a) Open/Competitive: if all interested and qualified bidders were able to participate in the process.
- (b) Transparent: if all interested bidders were equally and duly informed at each stage of the procedure. In addition, the interested bidders have to have access to information, sufficient time to assess it and to be informed of the selection and award criteria.
- (c) Non-discriminatory: if all interested bidders are aware of the selection and award criteria specified in advance of the process. To guarantee equal treatment the criteria for the award of the contract should enable bids to be compared and assessed objectively.
- (d) Unconditional/fair: if a potential buyer is generally free to acquire the assets to be sold and to use them for its own purposes irrespective of whether or not it runs certain businesses.

5.2.2. *Conclusions on the sale process and on the absence of aid to the buyer*

- (93) The Commission attaches great importance to the fact that on 3 January 2017 the seller sent letters to those investors that had submitted at least a non-binding offer during the entire sales process, inviting them to express whether they would still be interested in the sales process. In that letter, the seller stated the possibility of an equity contribution on or before closing into the bridge banks by the Italian Resolution Fund or other subject; of a carve-out of a meaningful portion of the bridge banks NPLs, with transfer of losses and risks connected to the transfer of the NPLs to a third party to be covered by the Resolution Fund; and of a meaningful set of guarantees, indicating the possible caps.
- (94) The mentioned letter set a deadline of 9 January to confirm interest, indicating the perimeter of the bridge banks of interest and the actions and minimum requirements in terms of (i) possible equity contribution, (ii) NPLs carve out, and (iii) guarantees and relevant caps, viewed as key elements towards the submission of the final binding offer. The letter offered the possibility for further due diligence and asked to submit a final, binding and unconditional offer on a certain funds basis for the bridge banks and the non-core entities by 27 January 2017.
- (95) The Commission considers that by this letter all parties having registered serious interest as evidenced by a non-binding offer in one of the previous phases were informed of the changes of the minimum acceptable requirements for binding offers as detailed in recital (28) and were granted additional time to confirm their interest to participate further in the sale process. Therefore, the Commission considers that thereby compliance with the conditions of transparency, non-

discrimination and absence of undue conditionality was ensured, also in view of the fact that the first three phases were not finalised due to the absence of valid bids.

- (96) The Commission therefore concludes on the basis of the available evidence that the sale process that led to the selection of UBI's offer in January 2017 can be considered as open, transparent, non-discriminatory and competitive, that it took place on market terms and was aimed at maximising the sale price.
- (97) The Commission is hence in the position to exclude the presence of aid to the buyer of the three bridge banks, and to identify the three bridge banks as the sole beneficiaries of the 2015, 2016 and 2017 aid measures.

5.3. Compatibility of aid

5.3.1. Legal basis for the compatibility assessment

- (98) Article 107(3)(b) TFEU enables the Commission to find aid compatible with the internal market if it is "to remedy a serious disturbance in the economy of a Member State." The Commission has acknowledged that the global financial crisis may create a serious disturbance in the economy of a Member State which can be addressed through State measures supporting financial institutions. This has been successively detailed and developed in the six Crisis Communications¹², as well as in the 2013 Banking Communication.
- (99) In the 2013 Banking Communication, the Commission acknowledged that Member States should encourage the exit of non-viable players, while allowing for the exit process to take place in an orderly manner so as to preserve financial stability.
- (100) Since the 2015, 2016 and 2017 measures are aimed at allowing the positive outcome of a sale that ensures the orderly market exit of the three bridge banks as stand-alone entities through their absorption by an eventual purchaser, the Commission considers that it will assess the compatibility of the 2015, 2016 and 2017 measures by reference to the 2013 Banking Communication.
- (101) When notifying the aid measures in the resolution of the three banks in November 2015, Italy did not present a restructuring plan for the three bridge banks to the

¹² Communication on the application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis ("*2008 Banking Communication*"), OJ C 270, 25.10.2008, p. 8; Communication on the recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition ("*Recapitalisation Communication*"), OJ C 10, 15.1.2009, p. 2; Communication from the Commission on the treatment of impaired assets in the Community financial sector ("*Impaired Assets Communication*"), OJ C 72, 26.3.2009, p. 1; Communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules ("*Restructuring Communication*"), OJ C 195, 19.8.2009, p. 9; 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.

Commission. As no demonstration of the return to viability of the three bridge banks had been provided, the Commission therefore assessed the compatibility of the aid measures under section 6 of the 2013 Banking Communication on liquidation aid. Such aid can be considered compatible with the goal to terminate the ailing credit institution's activity over a limited period of time.

- (102) Points 71 to 78 of the 2013 Banking Communication set forth the compatibility conditions for aid measures in the context of an orderly winding down. Point 70 states that the Commission will assess the compatibility of measures aimed at resolving credit institutions on the same lines *mutatis mutandis* as set out in sections 2, 3 and 4 of the Restructuring Communication. Point 78 of the 2013 Banking Communication states that sections 3.1.2 and 3.1.3 must be complied with *mutatis mutandis*.
- (103) Points 79 to 82 of the 2013 Banking Communication provide that it is possible to sell the economic activity of an entity having benefited from liquidation aid, where the sale is organised via an open and unconditional competitive tender and the assets are sold to the highest bidder. If aid is granted to the economic activity to be sold (as opposed to the purchaser of that activity), the compatibility of such aid will be subject to an individual examination. If therefore the economic activity is not wound down but sold to a market participant on competitive terms, the compatibility of liquidation aid will require an assessment of the restoration of viability through that market participant. As detailed in the 2015 decisions and the first and second amendment decisions, the aid measures were considered compatible taking into account the possibility of a sale of the economic activity by the Resolution Authority.
- (104) Therefore, the Commission considers that, in order for the notified aid measures to be compatible under Article 107(3)(b) TFEU, it must comply with the following criteria:
- (a) *Limitation of costs of winding down*: aid amounts should enable the credit institution to be wound down in an orderly fashion, while limiting the amount of aid to the minimum necessary;
 - (b) *Limitation of distortions of competition*: aid should not result in longer-term damage to the level playing field and competitive markets and measures to limit distortions of competition due to State aid have to be taken as long as the beneficiary credit institution continues to operate;
 - (c) *Own contribution (burden-sharing)*: appropriate own contribution to the costs of winding down should be provided by the aid beneficiary, particularly by preventing additional aid from being provided to the benefit of the shareholders and subordinated debt holders. Therefore, the claims of shareholders and subordinated debt holders must not be transferred to any continuing economic activity;
 - (d) *Restoring long-term viability*: the sale of an ailing bank to another financial institution can contribute to the restoration of long-term viability, if the purchaser is viable and capable of absorbing the transfer of the ailing bank, and may help to restore market confidence.

5.3.2. *Compatibility of 2015 and 2016 measures with the 2013 Banking Communication and the Restructuring Communication*

Limitation of the aid to the minimum

- (105) The Commission has concluded in recitals 97 to 101 of the Banca Marche decision, 92 to 96 of the Banca Etruria decision, 90 to 94 of the Carichiati decision and 102 to 108 of the second amendment decision that aid entailed by the 2015 and 2016 aid measures was limited to the minimum.

Limitation of distortions of competition

- (106) The Commission has concluded in recitals 102 to 109 of the Banca Marche decision, 97 to 104 of the Banca Etruria decision, 95 to 102 of the Carichiati decision and 102 to 108 of the second amendment decision that distortions of competitions stemming from the market presence of the bridge banks as a result of the 2015 and 2016 aid measures are limited.

Own contribution (burden-sharing)

- (107) The Commission has concluded in recitals 110 to 114 of the Banca Marche decision, 105 to 109 of the Banca Etruria decision, 103 to 107 of the Carichiati decision and 93 of the second amendment decision that shareholders and holders of subordinated debt have contributed to the maximum extent possible.

Restoring long-term viability

- (108) In the 2015 Decisions, the Commission explained that it will establish in a separate decision whether the transferred economic activity is viable in the long term, taking into account among others the restructuring actions planned by the buyer.

5.3.3. *Compatibility of the 2017 measures with the 2013 Banking Communication and the Restructuring Communication*

Limitation of the aid to the minimum

- (109) As assessed in recitals (93) to (97), the sale process that led to the selection of UBI's offer was open, transparent, non-discriminatory and competitive, it took place on market terms and was aimed at maximising the sale price.
- (110) On the basis of that sale process, the UBI offer was selected as the offer presenting the best commercial terms for the sale of the three bridge banks in spite of the fact that it results in a negative sale price overall. Therefore, that negative sale price has to be considered as minimising the costs linked to the sale of the three bridge banks.
- (111) As such, the Commission considers that the Resolution authority selected UBI's offer because it was the one that minimised the costs linked to the sale and thereby also the additional State aid required.
- (112) On that basis, the Commission concludes that the State aid contained in the 2017 measures is limited to the minimum and necessary in order to conclude a sale of the three bridge banks to a market buyer.

Limitation of distortion of competition

- (113) The Commission recalls that a continued market presence of both residual entities and bridge banks might give rise to competition concerns.
- (114) Due to the absence of assets, the residual entities (the resolved banks) stopped all activities at the moment of the transfer of their assets to the three bridge banks. On 9 December 2015 the residual entities were formally put under compulsory winding up by ministerial decrees at the proposal of Bank of Italy, in line with the commitment undertaken by the Italy in the context of the 2015 decisions. The residual entities therefore no longer compete on the market or pursue any new activities.
- (115) As far as the three bridge banks are concerned, as presented in recitals (66) to (89), the State aid entailed by the 2015, 2016 and 2017 measures amounts to a sum between EUR 4.12 billion and EUR 4.87 billion representing between 19% and 22% of the total assets of the 3 bridge banks as of 31 December 2016.
- (116) The Commission notes that the bridge banks have been offered for acquisition to competitors through an open and competitive sale process, and have been ultimately sold to the highest bidder.
- (117) In addition the Commission notes that in the notification of the sale, Italy has provided commitments ensuring that the three bridge banks will cease to exist as stand-alone entities, will be fully integrated within UBI according to the process described in recitals from (36) to (46) and will entirely disappear as stand-alone entities.
- (118) The Commission notes that the SPA between the Resolution Fund and UBI Banca was signed on 18 January 2017, after the deadline provided by Italy in the commitments attached to the second amendment decision (i.e. 31 December 2016). However, as Italy had signalled its intention to send a final process letter to investors before the deadline and in view of the sales process having been in an advanced stage, the additional distortions of competition are limited considering the very short period between the deadline and the signing date and the small size of the three bridge banks.
- (119) Hence, the Commission considers that the distortions of competition stemming from the market presence of the residual entities during their orderly winding-down and of the bridge banks during their existence period are limited, despite the large amount of aid they received and the absence of remuneration to the State for the aid it has already provided and for the aid now notified.

Own contribution (burden-sharing)

- (120) As recalled in recital (107) the Commission has concluded that shareholders and holders of subordinated debt have contributed to the maximum extent possible.

Long-term viability of the combined entity

- (121) According to the 2013 Banking Communication, if the market exit of an aided entity is achieved through a sale to a competitor, the Commission will have to ensure that the aided entity is restored to long-term viability through the

integration efforts of the buyer. When assessing such a restructuring or integration plan, the Commission needs to determine whether the combined entity is able to restore its long-term viability without further recourse to State aid (section 2 of the Restructuring Communication). According to the Restructuring Communication, 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.

- (122) The balance sheet of the three bridge banks, after the second NPL carve-out, represents roughly 20% of the balance sheet of the purchaser. The three banks' operations have been loss-making so far and little operational restructuring has been undertaken by the Resolution Authority. At the same time, UBI itself is in the process of completely restructuring its organisation. Therefore, the Commission has asked Italy to provide a detailed integration plan, in order to reassure the Commission that the combined entity is viable.
- (123) The integration plan as presented by Italy projects a RoE after tax of [9-11]% at the end of the integration period in 2020 that would indicate a successful return to long-term viability of aided businesses in the combined entity. However, the Commission has to ascertain that the assumptions used in the financial projections are prudent and realistic. Furthermore, it is necessary to ensure that during the integration period, sufficient capital or capital generating measures remain available to ensure that the bank is able to sustain further shocks without requiring recourse to further State aid.
- (124) Finally, given the badly depressed state of the three bridge banks and the source of their problems, the Commission takes very positive note of the commitment by Italy to ensure a speedy integration into UBI and in particular the almost immediate migration of the credit risk and credit management procedures to UBI standards (less than two months after closing).

Operational profitability of the combined entity

- (125) Net interest income is expected to grow strongly over the integration period. This is based to some extent on the projected increase in the Euribor rates from -0.30% in 2017 to 0.29% in 2020.
- (126) The Commission considers those assumptions as realistic and prudent but recalls that the impact on the profitability and hence the viability will be important if the Euribor rates deviate significantly from the projected path and remain lower for a longer period of time. Postponing the Euribor recovery by one year would reduce the overall post-tax RoE by 0.4 percentage points.
- (127) Moreover, funding costs are likely to decrease through a rebalancing of funding towards customer deposits which tend to be generally cheaper and more reliable than either debt securities or wholesale funding. Here, the plan foresees a significant increase of almost [0-5]% annually, significantly above the growth of the market for deposits.
- (128) At the same time, indirect funding – Assets under Management and Assets under Custody – is projected to grow significantly as well. In particular, Assets under Management are expected to grow by about [10-15]% annually – partially explained by a commercially driven shift from Assets under Custody to Assets under Management in order to increase fee income.

- (129) Overall, the integration plan foresees a [3-7]% annual growth in total retail funding resulting in a EUR [30-35] billion increase in retail funding between 2016 and 2020.
- (130) While the Commission considers those growth rates generally optimistic, it takes comfort from the explanation by Italy that a significant part of the growth in retail funding is explained by the fact that maturing bonds that are currently held by retail customers – retail bonds – will in general no longer be replaced with such bonds. Retail clients are therefore expected to convert their holding into either deposits or indirect funding. According to the integration plan, debt instruments held by retail and corporate customers will decline by EUR [15-20] billion over the integration period, explaining a significant fraction of the overall growth rate of annually [3-7]% and reducing the commercial growth rate to more sustainable figures of around [1-5]%.
- (131) The fee generating power of Assets under Management is particularly important for the profitability of the bank and the achievement of the significant growth rate will depend on two separate questions – the overall growth in retail funds and the possibility of shifting existing funds to Assets under Management. Reducing the overall growth in indirect funding to a more easily achievable [1-5]% (in 2016, UBI has grown indirect funding by [5-10]% while shifting all that growth to Assets under Management), would reduce the overall post-tax RoE by 0.5 percentage points.
- (132) The integration plan also includes some significant assumptions regarding growth in income generating assets. One particular area is a significant growth of [10-15]% annually in consumer loans. According to the plan, the combined entity emphasises consumer loans because of their profitability. While Italy agreed that the growth rates are ambitious, it indicated that UBI has been able to deliver those growth rates in 2016. The Commission still has some concerns regarding this growth rate. A reduction to a more sustainable [1-5]% annualised would reduce the overall post-tax RoE by 0.5 percentage points.
- (133) Another category of the loan book that is showing high growth rates in the integration plan are the loans to financial organisations and others. The displayed annual growth rate is [15-20]% over the integration period. This is an increase of EUR [2-4] billion over the integration period. Here, the growth seems driven [...]. Excluding that agreement, the growth rate is a much more sustainable [1-5]% annualised. On that basis, the Commission considers that particular item as acceptable.
- (134) Regarding costs, the Commission takes note that the overall reduction targets in both branch and headcount reduction are less ambitious than in the past case practice. In particular with respect to headcount reductions, Italy has highlighted that those would be difficult to achieve given the already maximal use of solidarity funds and the complex legal framework for formal layoff procedures. Additional headcount savings could only be achieved through voluntary resignations which would impose some heavy one-time cost for the combined entity.
- (135) The headcount reduction for the 3 bridge banks in the integration plan amounts to 31% of the total or 1 569 headcounts between 2016 and 2020. Branches will be reduced by roughly [20-30]%.
- (136) On the level of the combined entity, staff expenses will be diminished by reducing the headcount by 14% or 3 080 including the reductions at the level of

the three bridge banks. A further [900-1100] headcount will be switched to a mandatory (but temporary) part time working schedule which will further reduce staff expenses of the resulting entity. This will result in a headcount of maximum 19 505 at the end of 2020 for the resulting entity. A simple reversal of the [900-1100] headcount at mandatory part time back to full time would reduce the overall post-tax RoE by 0.2 percentage points.

- (137) Regarding branch closures, the integration plan foresees the closure of [400-450] branches for the combined entity of which [200-250] will be realised at the level of the three bridge banks. According to Italy the number of branch closures at the level of the three bridge banks is limited due to the limited geographical overlap of the branch networks of UBI and the three bridge banks.
- (138) On the basis of the integration plan, the combined entity is projected to have a Cost Income Ratio of [50-55]% in 2020 with total costs close to EUR 2.4 billion. The Commission considers that such a Cost Income Ratio can be considered as acceptable.
- (139) More specifically regarding costs, targets are less ambitious than the Commission would normally consider. However, the Commission appreciates that branch closures are more effectively contributing to cost reductions if they are accompanied by corresponding staff reductions and recognises that the limiting factor is the latter. The Commission considers that the potential for measures to reduce costs has not been exploited in full. Therefore, particular scrutiny has to be put on the income side.
- (140) The commitments provided by Italy as described in recital (56)(c) relate to total costs and offer assurance that the resulting entity will follow the integration plan. Italy will present an action plan in case the total cost targets are exceeded by more than 5%. They also provide the Commission with increased confidence that specific targets such as the limited staff and branch reductions will be implemented.
- (141) At the same time, the Commission takes negative note of the fact that Italy has not provided any specific commitments with respect to the Cost Income Ratio, which further underlines the importance of a particularly prudent assessment of the assumptions on the income side.
- (142) In sum, reducing over-optimistic assumptions in the income items to more sustainable figures as well as correcting for temporary reductions in staff costs would reduce the post-tax RoE to [8-10]%. If in addition the Euribor assumptions would turn out to be delayed by one year that would result in a post-tax RoE of [7-9]%. As the RoE would even then remain at levels where the combined entity should be able to source further capital from market sources if required, the Commission considers that the plan leaves room for further downsides in any of the projected growth or return rates. The Commission also takes positive note of the rather prudent assumptions with respect to Euribor and the related limited upside from a potential recovery in Euribor which has been included in the plan.

Asset quality and down-side risks

- (143) As a separate point, the asset quality of the combined entity needs to be considered. The three bridge banks have significantly cleaned-up balance sheets which helps the overall NPL ratio of UBI. The Commission has made a detailed assessment of the adequacy of the projected loan loss provisions in the integration plan and has come to the conclusion that projections are somewhat on the low

side but can be considered acceptable based on the details of the loan portfolio provided.

- (144) While further downside cannot be excluded, again the effect would be considered limited to the legacy portfolio with UBI having a good capitalisation that allows it to support even a moderate stress scenario without making significant further losses or generating a further capital need.
- (145) Finally, the SPA between the Resolution Authority and UBI contains the tax shield from the DTA. The benefits arising from the tax shield are significant but have not been taken into account in the viability assessment (given that they are overall one-time effects that cannot be considered as part of the steady state). Those tax benefits will provide a further buffer for an increase in capital build-up which will further increase the solidity of the combined entity.

Conclusion

- (146) In conclusion, the Commission considers that the integration plan as presented by Italy demonstrates the return to long-term viability of the combined entity.

5.3.4. Overall conclusion on compatibility

- (147) The Commission considers that the resolution measures are compatible with the internal market within the meaning of Article 107(3)(b) TFEU.

6. COMPLIANCE OF THE RESOLUTION OF THE BANK WITH THE PROVISIONS OF DIRECTIVE 2014/59/EU ON BANK RECOVERY AND RESOLUTION

- (148) The Commission needs to assess whether the measures violate indissolubly linked provisions of Directive 2014/59/EU, which Italy has transposed into national law¹³.
- (149) That obligation is in line with the jurisprudence of the Union Courts, which have consistently held¹⁴ "that those aspects of aid which contravene specific provisions TFEU other than [Articles 107 and 108 TFEU] may be so indissolubly linked to the object of the aid that it is impossible to evaluate them separately to that their effect on the compatibility or incompatibility of the aid viewed as a whole must therefore of necessity be determined in the light of the procedure prescribed in [Article 108 TFEU]".¹⁵
- (150) The Commission has already assessed the compliance with indissolubly linked provisions of Directive 2014/59/EU in the 2015 Decisions, in the first amendment decision and in the second amendment decision.
- (151) The Commission maintains that the present decision to use the resolution financing arrangements in order to support the sale of the bridge institution does not violate indissolubly linked provisions of Directive 2014/59/EU on bank recovery and resolution, and in particular Article 101 thereof.

¹³ "DECRETO LEGISLATIVO 16 novembre 2015, n. 180" and "DECRETO LEGISLATIVO 16 novembre 2015, n. 181".

¹⁴ See *inter alia* Joined Cases C-134/91 and C-135/91 *Keramina-Keramische v Greece* EU:C:1992:434, paragraph 20; Case T-184/97 *BP Chemicals v Commission* EU:T:2000:217, paragraph 55; and Case T-289/03 *BUPA and others v Commission* EU:T:2005:78, paragraphs 313 and 314.

¹⁵ Case 74/76 *Ianelli v Meroni* EU:C:1977:51 paragraph 14.

- (152) The Commission notes that Article 101(1) of Directive 2014/59/EU specifies the use of the resolution financing arrangements for different purposes in support of resolution tools. In particular, Article 101(1)(d) of Directive 2014/59/EU provides that the financing arrangements may be used to make contributions to a bridge institution. This is complemented by the second subparagraph of Article 101(1) of Directive 2014/59/EU, which provides that the financing arrangements may be used also in respect to the purchaser in the context of the sale of business tool. Article 40(6)(b) of Directive 2014/59/EU provides that following an application of the bridge institution tool the resolution authority may transfer shares or other instruments of ownership, or assets, rights or liabilities from the bridge institution to a third party. Hence, the Union legislator anticipated that that the process commenced with application of the bridge institution tool may be completed by a sale of the bridge institution.
- (153) The Commission notes that in 2015, as part of the resolutions, Italy created the bridge banks as temporary institutions for sale and, if not sellable, for their wind down eventually under national insolvency law. The sale of bridge institutions was also indicated in 2015 Commission decisions on the compatible aid. It should be noted that in the circumstances, offsetting a negative sale price of bridge institutions is in conformity with Article 101(1) of Directive 2014/59/EU for the purpose of supporting the effectiveness of the bridge institution tool.
- (154) The Commission also maintains that the measure is not in breach of Article 101(2) Directive 2014/59/EU. This provision stipulates that, if the use of the financing arrangements indirectly results in part of the losses being passed on to the financing arrangements, the bail-in provisions laid down in Article 44 of the Directive 2014/59/EU must apply. Yet, this provision is not applicable in the current case: according to Article 130(1) subparagraph 3 of Directive 2014/59/EU Member States were obliged to apply the bail-in provisions laid down in Section 5 of Chapter IV of Title IV of Directive 2014/59/EU only from 1 January 2016. In the current case however the institution in question entered into resolution already in November 2015, i.e. before 1 January 2016.
- (155) As the resolution process foreseeing creation of bridge institutions and their subsequent sale was initiated in 2015, in order to ensure compliance with the principles of legal certainty and legitimate expectations the process should continue to be governed by the BRRD provisions applicable at the time, i.e. without the bail-in provisions set out in Article 44 of Directive 2014/59/EU.
- (156) Regulation (EU) No 806/2014 is not applicable to this case either, as the institution in question was placed under resolution by the Italian authorities before the date of application of the second subparagraph of Article 7(3) of Regulation (EU) No 806/2014 that have conferred to the SRB the responsibility for the resolution of less significant institutions if the Single resolution fund is used. The resolution process of these institutions therefore continues to remain under the responsibility of the national resolution authorities.
- (157) This is without prejudice to the prerogative of the Commission to initiate infringement procedures against a Member State for breach of Union law, including breach of the provisions of Directive 2014/59/EU.

7. CONCLUSION

The Commission has accordingly decided:

- not to raise objections to the notified aid of up to EUR 810 million capital injection from the Resolution Fund to the bridge banks and up to EUR 750 million additional guarantees under the UBI SPA on the grounds that it is compatible with the internal market pursuant to Article 107 (3) b of the Treaty on the Functioning of the European Union

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 electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission



ANNEX I - ITALY COMMITMENTS

COMMITMENTS OF THE REPUBLIC OF ITALY TO THE EUROPEAN COMMISSION

which are an integral part of resolution measures applied to:

SA 39453 – Resolution of Banca delle Marche S.p.A

SA 41134 – Resolution of Banca Popolare dell'Etruria e del Lazio Soc.Coop.

SA 43547 – Resolution of Cassa di Risparmio della Provincia di Chieti S.p.A.

INTRODUCTION

Italy commits to ensure that UBI Banca implements the integration plan, attached to the notification form (the "Integration Plan") of Banca delle Marche S.p.A, Banca Popolare dell'Etruria e del Lazio Soc.Coop., Cassa di Risparmio della Provincia di Chieti S.p.A. and the necessary measures, as detailed below, for the Combined Entity after the purchase.

Italy hereby provides the following Commitments (the "Commitments") which are integral part of the said integration plan. These Commitments entirely replace the Commitments submitted to the Commission for its decision of 22 November 2015 and those submitted to the Commission for its decisions of 29 April 2016 and 7 October 2016.

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

The text of the Commitments shall be interpreted in the light of the Decision in the general framework of Union law, and by reference to Council Regulation (EC) No. 2015/1589.

DEFINITIONS

- a) The "Bridge Banks" refers to the following banks:
 - Nuova Banca delle Marche S.p.A. ("Marche")
 - Nuova Banca Popolare dell'Etruria e del Lazio Soc.Coop. ("Etruria")
 - Nuova Cassa di Risparmio della Provincia di Chieti S.p.A. ("Carichieti")
- b) The "Old Banks" refers to the following banks:
 - Banca delle Marche S.p.A.
 - Banca Popolare dell'Etruria e del Lazio Soc.Coop.
 - Cassa di Risparmio della Provincia di Chieti S.p.A.
- c) Purchaser: Unione di Banche Italiane (UBI Banca) s.p.a.
- d) Combined Entity: Purchaser and the Bridge Banks.
- e) Closing date: has the same meaning as in share purchase agreement by and between the Italian Resolution Fund and Unione di Banche Italiane (UBI Banca) s.p.a. dated 18 January 2017
- f) End of integration period: 31 December 2020, with final compliance assessment based on the accounts at 31 December 2020.

Italy ensures that the Bridge Banks and the Purchaser or its legal successors shall take the measures necessary to correctly and fully comply with the present Commitments until the end of the integration period.

- 1) Italy commits that the Purchaser will implement the Integration Plan
- 2) Italy will not provide any capital or liquidity support to the Purchaser or the Bridge Banks or the Old Banks after the closure of the sale, additional to the support considered in the Commission's decision approving the Integration Plan.

COMMITMENTS RELATED TO THE BRIDGE BANKS

- 3) No future claim of shareholders and holders of subordinated debt or any hybrid instruments of the Old Banks or the Residual Entity of these may be transferred to the respective Bridge Banks.
- 4) The Bridge Banks will apply strict executive remuneration policies. The Bridge Banks will not pay to any employee, director or manager a total annual remuneration (wage, pension contribution, bonus) higher than that currently paid by the Bridge Banks.
- 5) The Purchaser has prepared an integration plan for the Bridge Banks with milestones as to the integration dates in commitments 7) to 10). The monitoring trustee will monitor the progress towards the fulfilment of those commitments in line with the integration plan and related milestones.
- 6) The Purchaser shall prepare an integration plan regarding the insurance activities by 30 September 2017. Following the submission of that integration plan, the monitoring trustee will monitor the implementation of the resulting actions according to the milestones contained in that plan.
- 7) The number of branches of the Bridge Banks will be reduced to a maximum of [400-450] on 31 December 2017.
- 8) The Bridge Banks' IT systems will be migrated to the Purchaser's IT system by:
 - 31 December 2017 for Marche;
 - 31 December 2017 for Etruria; and
 - 28 February 2018 for Carichieti.

If those deadlines are not met, Italy will present to the Commission a proposal containing remedy measures to finalise the migration.

- 9) The Purchaser at the first shareholders' meeting of the Bridge Banks shall change the respective corporate name Nuova Banca delle Marche, Nuova Banca dell'Etruria e del Lazio and Nuova Cassa di Risparmio di Chieti into a name that does not include any reference to the afore mentioned names. The Purchaser of the Bridge Banks will discontinue the respective trademarks of the Bridge Banks (or any combinations of it) by:
 - 31 December 2017 for Marche;
 - 31 December 2017 for Etruria; and
 - 28 February 2018 for Carichieti.

If those deadlines are not met, Italy will present to the Commission a proposal containing remedy measures to discontinue the respective corporate names of the Bridge Banks.

- 10) The Bridge Banks will cease to exist as separate legal entities with separate banking licenses by:
 - 31 December 2017 for Marche;
 - 31 December 2017 for Etruria; and

- 28 February 2018 for Carichieti.

If those deadlines are not met, Italy will present to the Commission a proposal containing remedy measures to ensure that the Bridge Banks will cease to exist as separate legal entities with separate banking licenses.

- 11) The Bridge Banks will apply the Purchaser's credit policy as soon as possible and in any case no later than 2 months after the closing date. That credit policy should respect the principles laid out in Commitments below. Once it is established by the Monitoring Trustee that the same credit policy is applied within the Bridge Banks as within the Purchaser, the Monitoring Trustee will verify that the credit policy is applied correctly by looking into a representative sample of loan applications during the last monitoring period.
- 12) The Credit Policy shall specify that all customers shall be treated fairly through non-discriminatory procedures based on credit risk. The Credit Policy defines the thresholds above which the granting of loans must be approved by higher levels of management. Similar thresholds shall be defined regarding the restructuring of loans and the handling of claims and litigations. The Credit Policy shall be centralized in selected centres for a decision-making process at Group level, and provide clear safeguards to ensure a consistent implementation of its instructions within the Bridge Banks.
- 13) The Credit Policy, approved by the Management Board, shall require that the pricing of loans and mortgages to comply with strict guidelines. Those guidelines shall include the obligation to respect strictly the credit policy's standard tables of interest rate bands (ranges) depending on the maturity of the loan, the credit risk assessment of the customer, the expected recoverability of pledged collateral (including the time frame to a potential liquidation), the overall relationship with the Bridge Banks (e.g. level and stability of deposits, fee structure and other cross-sales activities) and the funding cost of the Bridge Banks. Specific loan asset classes are generated (e.g. commercial loan, mortgage, secured/unsecured, etc.) and their pricing framework is tabulated to an appropriate Credit Policy table that shall be updated on a regular basis by the Credit Committee. Any exception must be duly authorized by the Credit Committee, or at lower level of authority when allowed by the Credit Policy. Tailor-made transactions such as syndicated loans or project finance shall respect the same principles, with due account being taken of the fact that they may not fit in standardized credit policy tables. Infringements of that pricing policy shall be reported to the Monitoring Trustee.
- 14) The Bridge Banks shall monitor credit risk through a well-developed set of alerts and reports, which enable the Risk Management Department to: (i) identify early signals of loan impairment and default events; (ii) assess recoverability of the loan portfolio (including but not limited to alternative repayment sources such as co-debtors and guarantors as well as collateral pledged or available but not pledged); (iii) assess the overall exposure of the Bridge Banks on an individual customer or on a portfolio basis; and (iv) propose corrective and improvement actions to the Board of Directors as necessary. The Monitoring Trustee shall be given access to that information.

COMMITMENTS RELATED TO THE COMBINED ENTITY

- 15) In order to ensure viability of the combined entity, Italy commits to a strict control of costs by the combined entity (in the above mentioned group perimeter) through the following measures:

- 16) In order to ensure viability of the combined entity, Italy commits to a strict control of costs by the combined entity (in the above mentioned group perimeter) through the following measures:
- a) The number of branches of the Combined Entity shall amount to maximum [1700-1900] at the end of 2017, [1600-1800] at the end of 2018, [1500-1700] at the end of 2019 and 2020 respectively.
 - b) The remaining headcount taken over from the Bridge Banks will be reduced cumulatively in the combined entity by at least [350-400] by the end of 2017, [850-900] by the end of 2018, [1100-1200] by the end of 2019 and 1569 by the end of 2020. The number of overall headcount of the Combined Entity shall amount to maximum [20000-22000] at the end of 2017, [20000-22000] at the end of 2018, [19000-21000] at the end of 2019 and 19 505 at the end of 2020.
 - c) The total costs (banking and non-banking activities) for the Combined Entity, as resulting from the published reclassified financial statements prepared in accordance with ESMA rules, shall amount to EUR [2-3] billion at the maximum at the end of 2017, EUR [2-3] billion at the maximum at the end of 2018 and EUR 2.4 billion at the maximum at the end of 2019 and 2020 respectively. If the costs in a given year turn out to be greater by more than 5% than these targets, Italy will present to the Commission a proposal containing remedy measures to further reduce costs to bring total costs back to these original targets.

ANNEX II - MONITORING TRUSTEE ANNEX

MONITORING TRUSTEE

- 17) Italy commits that the Purchaser shall appoint a Monitoring Trustee whose mandate is to report to the Commission on compliance by Italy and by the Combined Entity with the Commitments listed in this document.
- 18) The Monitoring Trustee shall be independent of the Combined Entity and shall possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall not be subject to a conflict of interests throughout the exercise of his mandate.
- 19) The Trustee shall be remunerated by the Combined Entity in a way that does not impede the independent and effective fulfilment of the Trustee's mandate.

7.1. PROPOSALS BY THE PURCHASER

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

7.2. APPROVAL OR REJECTION BY THE COMMISSION

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

7.3. NEW PROPOSAL

- 22) If all the proposed Trustees are rejected, Italy commits that the Purchaser shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in clauses 19-20.

TRUSTEE NOMINATED BY THE COMMISSION

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

7.4. FUNCTIONS OF THE TRUSTEE

- 24) The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Italy or the Purchaser, give any orders or instructions to the Trustee in order to ensure compliance with the Commitments. The Combined Entity and Italy are not entitled to give instructions to the Trustee.

7.5. DUTIES AND OBLIGATIONS OF THE MONITORING TRUSTEE

- 25) The Monitoring Trustee shall:
- a. Propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the Commitments. The first report should be delivered by [31/10/2017] at the latest;
 - b. Monitor the compliance with the Commitments;
 - c. Propose such measures as the Monitoring Trustee considers necessary to ensure Italy's and the Combined Entity compliance with the Commitments;
 - d. Submit a semi-annual written report to the Commission, based on the semi-annual and annual accounts.

DUTIES AND OBLIGATIONS OF ITALY AND THE COMBINED ENTITY

- 26) Italy commits that the Combined Entity shall provide and shall cause its advisors to provide the Monitoring Trustee with all such cooperation, assistance, managerial, administrative support and information as the Monitoring Trustee may reasonably require to perform its tasks.

7.6. REPLACEMENT, DISCHARGE AND REAPPOINTMENT OF THE TRUSTEE

- 27) If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- a. The Commission may, after hearing the Monitoring Trustee, request the Purchaser to replace the Trustee; or
 - b. The Purchaser, with the prior approval of the Commission, may replace the Trustee.
- 28) If the Trustee is removed, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred in clauses 19-20.
- 29) Besides the removal, the Trustee shall cease to act only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.