



Atentos à oferta pública de aquisição geral e obrigatória (“OPA”) do CaixaBank, S.A. (“CaixaBank” ou “Oferente”) sobre o Banco BPI, S.A. (“BPI” ou “Visada”) em curso e ao facto de conter as limitações à contagem de votos, a ATM, associação portuguesa de investidores, em conjunto com a AEMEC, associação espanhola de accionistas minoritários, e com a Better Finance, federação europeia de investidores e utilizadores de serviços financeiros, decidiram tomar um conjunto de iniciativas e procedimentos, incluindo legais, no sentido de melhor defenderem os interesses dos accionistas de ambas sociedades (oferente e visadas).

A ATM conta, em Espanha, com o aconselhamento legal e financeiro da sociedade de advogados Cremades & Calvo-Sotelo e em Portugal com a sociedade de advogados MSP - Sociedade de Advogados.

Entre as diligências já realizadas, dá-se nota:

a) de uma carta enviada pela ATM ao Senhor Dr. Carlos Tavares, presidente da Comissão de Mercado de Valores Mobiliários (CMVM), onde se manifestou discordar do entendimento do CaixaBank quanto à equidade da contrapartida, tendo sido solicitado a nomeação de um auditor independente para fixar a mesma.

Entende o CaixaBank que a contrapartida oferecida cumpre o disposto no artigo 188.º do Código de Valores Mobiliários (Cód.VM) uma vez que a mesma é igual ao preço médio ponderado dos valores mobiliários representativos do capital social do BPI negociadas na Euronext Lisbon nos seis meses imediatamente anteriores a 21 de Setembro de 2016, data em que se constitui o dever de lançamento da aludida OPA.

A ATM discorda de tal entendimento por considerar que a fixação da contrapartida com único recurso à referência do preço de mercado dos aludidos valores mobiliários presume-se não equitativa. Tal presunção de falta de equidade da contrapartida assenta no facto do preço de mercado dos referidos valores mobiliários terem sido afectados por acontecimentos excepcionais susceptíveis de alterar o modelo de formação de preço dada pelo livre encontro entre a oferta e a procura (artigo 188.º, n.º 3, al. c) do Cód.VM) e no facto do BPI alienar, por compra e venda, o total de 26.111 ações representativas de 2% do capital social do Banco de Fomento Angola, S.A. (“BFA”) à Unitel, S.A. (“Unitel”) por um preço global de 28 milhões de euros, em contrapartida da Unitel votar favoravelmente no sentido dos estatutos do BPI deixarem de conter as limitações à contagem de votos .

É isento de dúvida que qualquer OPA constitui uma perturbação, ainda que legalmente prevista, do normal funcionamento da sociedade visada, tanto que é o artigo 3.º da Diretiva 2004/25/CE do Parlamento Europeu e do Conselho de 21 de Abril de 2004 que o admite, razão pela qual se impõe que a mesma tenha uma duração limitada por um período que não vá mais além do razoável (artigo 183.º do Cód.VM), assim como os próprios poderes da sociedade visada são limitados a partir do momento em que tome conhecimento da decisão de lançamento de uma oferta pública de aquisição (artigo 182.º do Cód.VM), logo o preço dos valores mobiliários representativos do capital social da sociedade visada em mercado regulamentado não pode ser considerado equitativo.

Para além disso, ainda que a negociação de tais valores mobiliários registre grandes volumes de transacção (liquidez e turnover) o gráfico 1 (relativo ao preço de fecho do BPI durante toda a vigência da OPA voluntária) evidencia uma tendência do BPI para negociar em torno do valor da contrapartida oferecida na OPA. O preço de fecho em mercado regulamentado encontra-se dentro das bandas de referência de +2 desvio padrão em pelo menos 95% das vezes o que revela que tal operação condicionou a formação do preço – a moda dos preços de fecho é €1.11, ligeiramente abaixo dos €1.134 da contrapartida, diferença que traduz o prémio pelo risco e custo de oportunidade. Ou seja, a distribuição de preços (preço de fecho) verificada evidencia uma tendência a negociar em torno do valor da contrapartida oferecida na OPA (que desde início de Junho

nunca foi excedido em fecho) registando uma dispersão menor que +2 desvio padrão em torno da mesma.



Gráfico 1 Preço de fecho do BPI entre 19-04-2016 e 10-10-2016



Fonte dos dados: Euronext Lisbon

É igualmente claro que o acordo de compra e venda das ações representativas de 2% do capital social do BFA à Unitel, que garantiu que esta última votasse favoravelmente no sentido dos estatutos do BPI deixarem de conter as limitações à contagem de votos, faz presumir que o preço mais alto pago pelo CaixaBank e partes relacionadas foi definido no âmbito de um acordo entre o BPI, CaixaBank e Unitel, pelo que se entende que a contrapartida não é equitativa – para além que tal traduz um tratamento desigual de accionistas uma vez que tal faculdade (negócios com o BFA) não é disponibilizada a qualquer outro accionista.

A ATM entende ainda que o voto favorável da Unitel e que permitiu que os estatutos do BPI deixasse de conter as limitações à contagem de votos, foi geradora de uma situação de enriquecimento sem causa, portanto injusto, do CaixaBank em prejuízo dos pequenos acionistas que dessa forma se viram privados do prémio pelo controlo obtido (ainda que “licita”) pelo CaixaBank.

b) a) de uma carta enviada pela AEMEC ao conselho de administração do CaixaBank a solicitar informação sobre quais os objectivos dos contratos de SWAP celebrados entre o CaixaBank e o seu accionista controlador, o Criteria, qual a verdadeira razão para o CaixaBank lançar uma OPA geral sobre o BPI e qual a necessidade do CaixaBank realizar uma colocação privada das ações próprias.

Pela sua relevância transcreve-se na íntegra a carta enviada pela AEMEC ao conselho de administração do CaixaBank:

*Madrid, October 14th, 2016*

*Board of Directors of CaixaBank, S.A.*

*Att .: Mr. Secretary of the Board*

*Av. Diagonal, 621*

*08028-Barcelona (Spain)*



REF: Resolutions of the Board of Directors of CaixaBank, S.A. (CaixaBank) reported to the CNMV in relation to the private placement of treasury shares of the company and the activities of CaixaBank in relation to the takeover bid on Banco BPI, S.A. (BPI) in Portugal.

Dear Mr. Secretary,

Serve this letter to request from AEMEC (Spanish Association of minority shareholders of listed companies) certain clarifications in relation to the recent Significant Events reported by CaixaBank to the CNMV regarding the private placement of treasury shares of CaixaBank to certain institutional investors as well as to the Significant Events reported by BPI (whose controlling shareholder is CaixaBank, holding 45% of its stake) to the National Securities Commission of Portugal, referring to certain agreements that have been reached in BPI which directly affect the minority shareholders of CaixaBank.

First we find necessary to make a brief summary of the resolutions that Board of Directors of CaixaBank and BPI have adopted which represent the reason for this letter from AEMEC:

**(i) On the Swap Agreement (the "Transaction") signed on December 3rd between CaixaBank and its controlling shareholder – Criteria - and the serious consequences of this Transaction for the minority shareholders of CaixaBank (who represent more than 40% of its stake) and for the Company itself.**

The aim of AEMEC has been repeatedly inform the Board of Directors of the Company about the irregularities in the aforementioned swap transaction, detrimental to CaixaBank shareholders.

AEMEC has shown repeatedly and unequivocally - in multiple communications and at the last AGM of CaixaBank- the doubts raised from the swap transaction. Furthermore, AEMEC has manifested its willingness to cooperate with the Company. Precisely its lack of dialogue and the new events occurring around this swap transaction forces us to insist on the damages that this Swap Agreement have caused to the minority shareholders of CaixaBank.

**(ii) On the imminent takeover bid that CaixaBank will launch on BPI, since numerous news and publications have linked the sale of shares in BEA to finance the purchase of BPI.**

On September 21st, the AGM of BPI where the elimination of restrictions on voting rights which were stated in the bylaws of the Portuguese company until that moment was approved took place. Following the approval of the elimination of such limitations, now CaixaBank has a free hand to advance with the takeover bid launched on 100% of the shares of BPI -at a price of 1,113 Euros per share-. Removing the limitation of these voting rights was the condition for CaixaBank not to withdraw the takeover bid for 55% of BPI which it does not holds yet.

The approval of the resolution by the AGM of BPI to eliminate the limitation vote came hours after an agreement between BPI and Ms. Isabel Dos Santos was disseminated through the Commission on the Securities Market of Portugal for which it will get 2% of Banco de Fomento de Angola ("BFA"). This purchase she will get the control over 50% of its shares. In exchange she will pay 28 million euros. In addition, although not stated in the statement, Ms. Isabel Dos Santos did not vote against the removal of restrictions on voting at the General Meeting of BPI, as had been happening to date which meant the approval of this resolution.

Moreover, according to different news appear in the media few weeks ago CaixaBank granted a loan of 400 million euros to the Republic of Angola, presided for the last 36 years by Mr. Eduardo Dos Santos, Ms. Isabel Dos Santos' father.

**(iii) Finally, on private placement of treasury shares of CaixaBank to finance the takeover bid on BPI.**

Continuing the analysis of the ins and outs and irregularities that the Transaction has brought - harming just the interests of the Company and its minority shareholders – must be highlighted the information and news that have taken place in relation to the decision taken by the Company about proceeding with the sale of 9.9% of its treasury share capital through a private placement with qualified investors, reported to the CNMV by Significant Event on September 22nd.

Indeed, the treasury shares were acquired by CaixaBank under the Swap Agreement where CaixaBank sold Criteria its shares in The Bank of East Asia ("BEA") and Inbursa, plus cash.

However, since the ultimate goal of CaixaBank was to acquire BPI, it would have been more beneficial to CaixaBank that all the consideration received from Criteria for these shares of BEA and Inbursa had been cash, instead of receiving only 642 million euros in cash and the rest in treasury shares of CaixaBank, treasury shares that it has had to place having lost more than one point of their market value with respect to the time of acquisition.

Specifically, in this private placement of treasury shares, the valuation of the treasury shares of CaixaBank amounted at a market value of 1.372 billion euros, i.e. 2.26 euros per share, while the assessment of the CaixaBank shares when the Swap Agreement with Criteria was formalized amounted 3.48 euros per share, which meant a market value of 2.009 billion Euros.

To the effects of the private placement of treasury shares, the valuation of the treasury shares of CaixaBank amounted to a market value of 1.372 billion euros, ie 2.26 euros per share. The valuation of shares of CaixaBank when the Swap Agreement between CaixaBank and Criteria was formalized amounted to 3.48 euros per share, which amounted to a market value of those shares of 2.009 billion euros.

Also, according to the new Significant Event that CaixaBank reported to the CNMV, Mutua Madrileña and Inbursa have become new shareholders of CaixaBank after attending the private placement on the market of 9.9% of treasury shares. Specifically, Mutua Madrileña reaches 2.13% of the share capital while Inbursa acquired 0.76% of the share capital.

In view of the facts described above, AEMEC has the following considerations:

**First. Which has been the real aim of the Swap Agreement between CaixaBank and its controlling shareholder, Criteria?**

Certainly AEMEC has been insisting on that the Swap Agreement aimed, among others, favouring the controlling shareholder of the Company, this is Criteria, at the expense of the other shareholders. This fact was denounced by AEMEC by letters that were submitted to the Audit and Control Committee of CaixaBank, dated February 12 and March 23, 2016, the one sent to you personally dated April 12, 2016 and during the actual CaixaBank AGM held on April 28, 2016.

It should also be reminded that the position of AEMEC has been backed by the major shareholder and international investors associations, i.e. the World Federation of Investors ("WFI") and Better Finance, associations that bring together a large number of shareholders and international



investors which publicly denounced that the approval of the Swap Agreement had not followed the practices of good corporate governance nor the spirit of legislative reforms being approved in the European Union (in particular with the amendment of the Directive on the rights of the minority shareholders, as well as the amendment of the transparency Directive regarding related party transactions).

The assessment of the shares of BEA not only took from CaixaBank and all its shareholders the actual market value of the shares that the company held in BEA, but additionally usurped the latent gains that all shareholders held in a Bank that, for the first time, may be subject of a takeover bid to exclusively transfer it to its controlling shareholder, Criteria.

In view of the current value of BEA's shares (around HK\$32.4), a future sale from Criteria of its shares in BEA would end up in a serious damage for the minority shareholders of CaixaBank, who have been deprived of their legitimate rights on shares of the Asian entity.

What is more, the rise in the BEA's shares price, owned now by Criteria, has been 12.4% in just 9 months, going from HK\$28.65 in December 2015 when the Transaction was announced to a value of HK\$32.4 in September 2016, it means an impact for CaixaBank because of the sale of the shares of BEA of 143 million Euros.

In terms of consideration the transaction is also hardly comprehensible by the minority shareholders of CaixaBank, because as previously exposed, it would have been more profitable for CaixaBank that all consideration received from Criteria had been cash, not only 642 million Euros while the rest was paid in treasury shares of CaixaBank, which, as it will be developed later, has resulted in the loss of more than 687 million Euros for CaixaBank and its shareholders because of the private placement of such shares in order to obtain cash enough to face its takeover bid on BPI.

Thus, minority shareholders of the Company, through AEMEC, wonder again about the real reasons that led the Company to formalize a Transaction whose only result has been to transfer the greatest possible value to its controlling shareholder -Criteria- at the expense of the interests of the Company and its minority shareholders. All this, in exchange for BPI's control and a millionaire loss on treasury shares transaction, which has not only led the Company to the current scenario of confrontation with its minority shareholders, but has also questioned the prestige and reputation of La Caixa Group.

### **Second. What was the real reason for CaixaBank to launch a takeover bid on 100% of BPI?**

Minority shareholders of CaixaBank wonder what has been the real motivation that has led to CaixaBank to set a bunch of disreputable transactions to launch a takeover bid for the remaining share package of BPI and the damages that all these actions could cause to the Company.

To that end, and as long as there have been numerous news which have revealed that the sale of the block of shares in BEA was made by CaixaBank in order to finance the purchase of BPI,

AEMEC wonders what is the real interest of the Company in a transaction that resulted in the sale of a strategic asset of CaixaBank -BEA- in exchange for the control of a Bank of a little entity from a sagging economy like the Portuguese. Even more - as manifested on several occasions - since after the lifting of restrictions on BEA, the Hong Kong entity may be subject of a takeover bid for the first time in nearly 10 years.

This strategy of divesting an asset that the company itself defined as strategic to destine it to the Portuguese entity is not only surprising, but also the legal and media crusade conducted by the Company with the aim of removing the restrictions on voting rights that prevented this takeover bid, when CaixaBank was well aware of its unconstitutionality at a Portuguese level.

What is more, these unremitting efforts of the Company to undertake the control of BPI for which to date there is no justification whatsoever for the minority shareholders of CaixaBank, found its peak with the granting of a loan of 400 million Euros to the Banco de Fomento de Angola. Casually entity controlled by Ms. Isabel Dos Santos, the second largest shareholder of BPI. Unconscionable efforts of the Company to take control of BPI have led the Board of Directors of CaixaBank to take decisions that could lead to a serious danger to the Company, and therefore for its shareholders.

To this end, it is at least suspicious the fact that within a control operational of this scale, a transaction intended to benefit the condition of Ms. Isabel Dos Santos occur, not only by the grant of that loan, but also with the sale by BPI of 2% of Banco de Fomento de Angola. Undoubtedly, these parallel to the takeover bid of CaixaBank on BPI transactions seriously endanger the integrity of the offer of CaixaBank to all shareholders. It would have broken the law of parity with the favourable treatment to Ms. Isabel Dos Santos and its serious consequences under the Portuguese regulation of the securities market.

The granting of this credit line of 400 million has been made to the Republic of Angola a developing country and whose form of government is not a democracy. An important aspect that marks the government of Angola is the numerous allegations of human rights violations during his administration, and the high environment of corruption and legal uncertainty in that country.

In this sense, we understand that the granting of this credit line to Angola had as consideration the support of Ms. Isabel Dos Santos to the removal of the voting restrictions of BPI which could affect the value of CaixaBank.

### **Third. What has been the real need for CaixaBank to conduct a private placement of treasury shares?**

Similarly, AEMEC wonders what was the need for CaixaBank to conduct a private placement of treasury shares for such low value per share, when the purchase of BPI -estimated in 1 billion - could have coped with the 642 million Euros received in cash from Criteria through the Swap Agreement and the 400 million granted to the Republic of Angola under the credit line.

The loss that the private placement of treasury shares has meant to CaixaBank has been approximately 700 million Euros. Specifically, the valuation of shares of CaixaBank when the Transaction was announced (December 2015) was 2,009 billion euros and the income from the private placement of treasury shares of CaixaBank was 1,332 billion Euros. Thus, the economic damage caused to CaixaBank is evident.

To this end, minority shareholders quantify the financial loss suffered by CaixaBank from the time the transaction was formalized, in accordance with the following amounts:

- In December 2015, Criteria and CaixaBank signed the swap agreement ("the transaction") by which CaixaBank gives away GFI and BEA's shares valued at 2,561 billion Euros over the transaction date.

- BEA shares were valued at 1,549 billion Euros and GFI shares were valued at 1,102 billion Euros.



- CaixaBank receives 642 million euros in cash and 2.009 billion euros in treasury shares, representing 9.9% of the share capital of the entity.

- In the last 9 months, shares of BEA owned by Criteria now have increased their value by 12.4% counting it from the announcement of the transaction in December 2015.

- The assessment conducted in late 2015 was 28.65 HKD per share of BEA while in September 2016 the same shares were valued at 32.4 HKD per share.

- The transfer of shares of BEA to Criteria and the subsequent increase in value has had a 143 million Euros impact on CaixaBank.

- At the time of the transaction, the valuation of CaixaBank shares was 2.009 billion Euros.

- The CaixaBank income earned by the private placement of treasury stock was 1.322 billion Euros.

- The loss suffered by CaixaBank during such private placement of treasury shares amounts to 687 million Euros.

Therefore, AEMEC wonders: Were there no other avenues of funding for CaixaBank rather than the sale of the treasury shares to meet the disbursement that will mean the takeover bid on BPI?, and even more, is it not strange that one of the new major shareholders "elected" by CaixaBank after the private placement of treasury shares is precisely Inbursa whose main shareholder is an important shareholder of Criteria at the same time?

Indeed, as brought up by AEMEC in its previous communications, it would have been more beneficial, as expressed before, that the entire consideration received from Criteria for the shares of BEA and Inbursa to CaixaBank had been cash and not just a small part in cash, 642 million Euros, and the rest in treasury shares, concluding, therefore, that all the motivation of this Transaction was based on the transmission of value to its controlling shareholder, Criteria.

As the foregoing, we again require the following:

- For the Company to clarify all the issues rose by the minority shareholders, pointing up again that the minority shareholders of CaixaBank will not stop in the legal defence of their rights - Extra judicially or judicially - and in the assumption of their responsibility by the Board of Directors of CaixaBank in the approval of the Swap Agreement and the other transactions.

- AEMEC asks you to expose the interest to CaixaBank and the adopted formula that has led the Company to divest one of the main assets of the Company - the shares it held in BEA which were sold to Criteria- for the control of an entity that does not enjoy the solvency and market value of BEA and which is additionally seriously threatened by the ECB because of the qualifying holding ratios ban.

Finally, although it has already been reiterated on numerous occasions, including in a personal meeting with representatives of CaixaBank prior to the conclusion of the AGM this year, from AEMEC we reiterate our willingness to cooperate with the Company, trying this way to open channels of dialogue and meeting points for the social interest of it and in defence of minority shareholders.

Precisely for this reason, we can not help showing our surprise at the lack of interest shown by the Company towards AEMEC so far, since the previous meeting to the AGM of CaixaBank held between representatives of our Association and the Company the commitment of both sides to continue on a path of dialogue that would attend and seek solutions to complaints by minority shareholders was firm. This commitment was reiterated by both parties in subsequent days to the AGM and Mr. Fainé's will - transmitted by representatives of the Company - to meet with representatives of AEMEC with the aim of reaching a solution .

This lack of commitment to the minority shareholders also embodied in the figure of Mr. Fainé, key figure in this whole operational since he held the chairmanship of CaixaBank and Criteria at the time of its execution and knew perfectly the strategic plan drawn up by the company for future. The secrecy and lack of interlocution of the company dazzles, moreover in a strategy which only goal was to prolong the time until reaching the ECB's approval.

Therefore serve this letter as a last call for dialogue and amendment by the Company, so you can take measures to safeguard the legality and social interest, understanding the social interest as the interest of all shareholders and not just the interest of its controlling shareholder. Thus from AEMEC we are trying to avoid a scenario of confrontation between minority shareholders and the Company, with the consequent reputational damage that it and the members of its Board would suffer.

We remain at your disposal.

Sincerely,

Ms. Maria Fernandez Conradi

Executive Director of AEMEC"



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[Texto completo da carta enviada pela AEMEC ao conselho de administração do CaixaBank disponível aqui \(PDF\) - versão em língua espanhola.](#)