

**INTESA SANPAOLO REPLY TO THE EUROPEAN COMMISSION PUBLIC CONSULTATION
ON THE FUNCTIONING OF THE EC MERGER REGULATION 139/2004**

Intesa Sanpaolo is one of the largest Italian and European banking groups, resulting from the merger between Banca Intesa and Sanpaolo IMI. The Group is one of the top players in the Italian banking market and enjoys strategic coverage and commercial effectiveness in Central-Eastern European markets, where it is currently positioned among the major players in several countries.

The Group welcomes the opportunity to submit its comments to the European Commission consultation on the functioning of Regulation 139/2004 ("Merger Regulation") on the control of concentrations between undertakings.

Intesa Sanpaolo believes that the rules on jurisdictional thresholds and referral mechanisms should be better tailored to the business' needs of speed, legal certainty and predictability in the carrying out of transactions, while ensuring cost and time savings. Furthermore, this will undoubtedly contribute to make the entire process of notification less burdensome for the industry and, ultimately, increase compliance with the merger control regime.

A. The functioning of the turnover thresholds in Article 1(2) and (3) of Council Regulation (EC) No 139/2004 (the EC Merger Regulation)

The functioning of the turnover thresholds in Article 1(2) and (3) generally

1. Do you believe that Article 1(2) and (3) of the Merger Regulation is functioning as an effective means of distinguishing those transactions which are most appropriately the subject of merger control at the Community level from those which are not? Please explain your answer, if possible illustrating your explanation by reference to your practical experience with the provisions.

If you do not believe that Article 1(2) and (3) of the Merger Regulation is functioning effectively in this way, please indicate any suggestions you may have as to how any shortcomings might be remedied.

Intesa Sanpaolo provides various banking and financial services and it is also active in the corporate and investment banking sector as well as in the insurance one. Due to the wide range of its activities (and the territorial extension), Intesa Sanpaolo carries out a multi-jurisdictional analysis with respect to any concentration in which it is involved.

Considering that this exercise is aimed only at determining if and where a concentration is to be notified, it would be important for Intesa Sanpaolo (likewise for

any international player) to keep the relevant costs as much as possible down. However, even to preliminarily determine whether or not a concentration has a community dimension, a concerned party has to calculate its turnover with the methods provided by the Merger Regulation for the different business sectors. Furthermore, it has to geographically allocate such turnover in the various countries where it operates. Based on our experience, this process involves a thorough analysis which is particularly complex when the concerned party is an international player (such as Intesa Sanpaolo) active in many different product areas (financial services, insurance, industrial) and in several European countries.

Given the above complexity, Intesa Sanpaolo believes that it might be advisable to simplify the turnover thresholds adopted by the Merger Regulation, so as to limit the time and financial and human resources that companies have to devote to the pre-notification analysis. The above consideration is much more true considering that the methods for calculating the relevant turnover could vary from jurisdiction to jurisdiction. As a result, in some cases the concerned party may be required to calculate its turnover based on the Merger Regulation rules and then, as long as the Commission's jurisdiction is excluded, based on the different rules provided for by the national laws. For instance, when it comes to the banking sector, Italian law sets forth turnover calculation methods which significantly differ from those adopted in the Merger Regulation.

The functioning of the turnover thresholds in Article 1(2) and (3) in specific markets or economic sectors

2. Are there any specific markets or economic sectors where, in your view, the turnover thresholds in Article 1(2) and (3) are not functioning in the manner intended, namely to identify those concentrations which would most appropriately be the subject of merger control at the Community level?

If there are any such markets or sectors, please indicate them and explain why you believe that the turnover thresholds do not always identify those concentrations which would most appropriately be the subject of merger control at the Community level. Please also indicate any manner in which you think this shortcoming might be remedied.

For the purpose of assessing whether or not a merger is likely to trigger a notification obligation with the Commission, banking groups have to take into account also the turnover of all portfolio companies held by different investment funds managed by a company/entity belonging to the same group. In particular, the relevant party is required to compute the turnover related to all industrial and/or commercial undertakings held by the investment funds, adopting for each of such undertakings the proper calculation method as set forth by the Merger Regulation and then allocating the turnover to the jurisdictions where the relevant customers are located. This process might further complicate the turnover analysis to be carried out in order to assess whether a concentration falls under the Commission's jurisdiction.

Thus, in Intesa Sanpaolo's view, a simplification of the turnover thresholds in Article 1(2) and (3) of the Merger Regulation is particularly advisable with regard to the investment funds sector.

Merger control filings at the national level

3. *Some merger transactions are subject to review under the merger control laws of more than one EU Member State. If you have any specific concerns about the fact or the manner in which some transactions are reviewed under the merger control laws of multiple EU jurisdictions, please explain those concerns - if possible by reference to your practical experience - and any suggestions you may have as to how they might be remedied.*

Intesa Sanpaolo has been involved in several concentrations in the past few years. Most of those concentrations not falling under the Commission's jurisdiction have been subject to review under the merger control laws of more than one Member State. Based on our experience, these transactions often have no appreciable competitive impact in any of the countries where a filing is required and they are cleared without any questions. This circumstance raises concerns taking into account that national legislations often provide for different procedural rules in terms of timing, filing fees, turnover calculation methods and relevant thresholds.

As a consequence, on the one hand, parties have to incur considerable expenses and spend valuable time in order to fulfil the notification requirements provided for by the different concerned Member States and, on the other hand, it is difficult for them to predict the timing for the clearance and thus for the closing of the transaction.

Given the above, Intesa Sanpaolo believes that an intervention at European level aimed at harmonising the procedural rules provided for by national merger control rules would improve the speed, efficiency and legal certainty of the merger review process, thus allowing the parties to effectively plan their activities.

The functioning of the two-thirds rule in Article 1(2) and (3)

4. Please describe any specific concerns you may have about the functioning of the "two-thirds rule" in Article 1(2) and (3) of the Merger Regulation, if possible by reference to your practical experience with the provisions. Please also describe any suggestions you may have as to how these concerns might be remedied.

We do not have any specific concerns.

B. The functioning of the case referral provisions in Article 4(4), 4(5), 9 and 22 of Council Regulation (EC) No 139/2004 (the EC Merger Regulation) since May 2004

The functioning of Article 4(4)

5. *Do you believe that Article 4(4) is functioning effectively as a means of reallocating "original" jurisdiction from the Community level to the national level on the basis that a case is more appropriately dealt with in the national jurisdiction to which referral is requested?*

If there are any particular concerns which you have about the functioning of Article 4(4), please describe those concerns – preferably by reference to your experience with a specific cases/s – and any suggestions you may have as to how they might be remedied.

Please see answer to question 6 below.

The functioning of Article 4(5)

6. Do you believe that Article 4(5) is functioning effectively as a means of reallocating "original" jurisdiction from the national level to the Community level on the basis that a case is more appropriately dealt with by the Commission?

If there are any particular concerns which you have about the functioning of Article 4(5), please describe those concerns – preferably by reference to your experience with a specific cases/s – and any suggestions you may have as to how they might be remedied.

Articles 4(4) and 4(5) are intended to offer the parties the option, prior to notification, to request the Commission to refer back a concentration with a community dimension to a Member State and to request the Commission to examine a merger that does not have a community dimension.

Intesa Sanpaolo has some concerns about the time limits within which, according to the Merger Regulation, the requests for referral are to be handled. Indeed, the timing provided by many national legislations for the obtainment of the clearance is often shorter than that set forth by Articles 4(4) and 4(5) for the decision on the referral to be taken (respectively 25 and 15 working days of receiving the reasoned submission). Intesa Sanpaolo believes that such circumstance can discourage use of the referral system. This to the detriment of a potentially effective tool to ensure the efficient jurisdictional allocation of cases.

The functioning of Article 9

7. Do you believe that Article 9 is functioning effectively as a means of reallocating "original" jurisdiction from the Community level to the national level on the basis that a case is more appropriately dealt with in the national jurisdiction to which referral is requested?

Has the introduction of Article 4(4) had, in your opinion, any impact on the functioning/usefulness of Article 9? Please explain your answer.

If there are any particular concerns which you have about the functioning of Article 9, please describe those concerns – preferably by reference to your experience with a specific cases/s – and any suggestions you may have as to how they might be remedied.

We do not have any specific concerns.

The functioning of Article 22

8. Do you believe that Article 22 is functioning effectively as a means of referring a concentration to the Commission on the basis that the case is more appropriately dealt with at the Community level?

Has the introduction of Article 4(5) had, in your opinion, any impact on the functioning/usefulness of Article 22? Please explain your answer. If there are any particular concerns which you have about the functioning of Article 22, please describe those concerns – preferably by reference to your experience with a specific cases/s – and any suggestions you may have as to how they might be remedied.

We do not have any specific concerns.

C. The functioning of the Council Regulation (EC) No 139/2004 (the EC Merger Regulation) generally

9. Do you have any comments on the functioning of the Merger Regulation generally? In particular, are there any aspects of the Regulation, or of its application in practice, which you believe are not functioning effectively? If so, please explain your answer – if possible by reference to your practical experience with the functioning of the Regulation – and any suggestions you may have as to how this/these shortcoming/s might be remedied.

We do not have any comments on the functioning of the Merger Regulation generally.

For any further comments or questions, please contact:

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