

***Case No COMP/M.5293 -
SANTANDER /
ALLIANCE &
LEICESTER***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERCER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 15/09/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15-IX-2008

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party¹

Dear Sir/Madam,

**Subject: Case No COMP/M.5293 - Banco Santander/ Alliance & Leicester
Notification of a concentration pursuant to Article 4 of Council Regulation
(EC) No 139/2004**²

1. On 8 August 2008, the Commission received a notification of a proposed concentration by which the undertaking Banco Santander, S.A ("Banco Santander", Spain) acquires control of the whole of the undertaking Alliance & Leicester plc ("A&L", UK) by way of a scheme of arrangement and exchange of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No 139/2004 and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES

3. Banco Santander is active in retail banking, asset management, corporate and investment banking, treasury and insurance. It is organised in three main business areas: retail banking, wholesale banking (for large companies, institutional investors and international financial institutions) and asset management and insurance. Banco

¹ This decision contains information which is confidential as against the notifying party. Accordingly, and with the consent of that party as well as of the entity furnishing the confidential information, it is being sent to the external legal representative only.

² OJ L 24, 29.1.2004 p. 1.

Santander is the parent company and exercises sole control over a UK bank, Abbey National plc ("Abbey"), which it acquired in 2006.

4. A&L provides financial services in the UK for personal and commercial customers and has two main business areas, retail banking (personal customers) and commercial banking (business customers). In respect of the main banking services, Santander's existing activities through Abbey are substantially similar to those of the acquired business.

II. THE OPERATION

5. The proposed transaction consists in the acquisition by Banco Santander of 100% of A&L shares by means of a scheme of arrangement and exchange of shares.

III. CONCENTRATION

6. Following implementation of the transaction, Banco Santander will acquire sole ownership and control of A&L. Therefore the transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned had a combined aggregate worldwide turnover of more than EUR 5 000 million (Santander: €6 360 million; A&L: €7 064 million) and each of them had a Community-wide turnover in excess of EUR 250 million in 2007 (Santander: [...]; A&L: €7 064 million)³. The Parties do not both achieve more than two thirds of their Community-wide turnover in one and the same Member State. Therefore, the present transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

V. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

8. In previous decisions⁴ the Commission has notably considered the following relevant product and geographic markets in the banking sector⁵.

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

⁴ See e.g. Case No COMP/M.4844 – Fortis/ABN AMRO ASSETS, Commission decision of 3 October 2007

⁵ Leaving aside specialized markets such as leasing services, private banking, asset management, consumer credit and payment transaction processing. These are not affected markets in the present case as the Parties' activities in these areas do not materially overlap,

(i) Retail Banking

9. In respect of banking services for natural persons, the following segments have been considered in previous Commission decisions, whilst leaving open the question of whether such segments constitute separate product markets: current accounts, savings, personal loans, mortgages and distribution of mutual funds and other investment products. All markets have been considered national in scope⁶.

(ii) Banking for corporate customers

10. In respect of corporate banking, the Commission has, in the past, distinguished between Small and Medium-sized Enterprises customers ("SME customers") and Large Commercial Customers ("LCCs") which in respect of core banking services – i.e. domestic payments, international payments, savings, loans, documentary credits, export financing and cash management services – in one case was considered to give rise to separate product markets⁷. In addition, with respect to SME customers the various segments listed have also been considered, leaving open the question whether they constitute separate product markets⁸. The markets for SME customers have been defined as national while for LCCs the question on whether the market(s) for these services are national or wider has been left open.
11. The parties also indicate that according to the Competition Commission (UK), the market for SME customers has been split into four markets: liquidity management services, general purpose business loans, other types of business loans to SME customers and other business deposit accounts held by SME customers. Moreover, for liquidity management services and general purpose business loans three separate geographic markets have been defined (England/Wales, Northern Ireland and Scotland) whereas for "other types of business loans" and "other business deposit accounts" the market has been defined as the UK as a whole.

(iii) Factoring

12. Factoring has been defined by the Commission as a separate relevant product market with a national dimension⁹.

⁶ The segment of banking services for natural persons may also, depending on the specifics of commercial practice in the individual markets, include services relating to the business banking needs of sole traders, members of the professions and micro-undertakings.

⁷ M.4844 – Fortis/ABN AMRO ASSETS, recital 16.

⁸ M.4844 – Fortis/ABN AMRO ASSETS and Case No COMP/M.3894 – Unicredito/HVB, Commission decision of 18 October 2005.

⁹ Cases No. COMP/M.2577 GE Capital/Heller Financial, Commission Decision of 23 October 2001, recitals 9 through 11 and 17; COMP/M.3894 Unicredito/HVB, recital 42;

(iv) Payment cards

13. Within the market for payment cards, at least two separate markets have been previously considered: (1) card issuing, split into credit/deferred debit and immediate debit cards and alternatively between private and corporate cards, and (2) card acquiring. A distinction by scheme or scope of scheme has also been considered. However, the final definition of these markets for merger control purposes has been left open. The issuing markets have been considered to be national in scope whereas the geographic scope of the acquiring markets has been left open in respect of international payment cards¹⁰.

(v) Financial market services

14. Financial market services include a broad range of services such as trading in securities, bonds, derivatives, foreign exchange and money market instruments, and the Commission has left open the question whether these segments constitute separate product markets. The market has normally been considered wider than national in scope, although in some cases an assessment at national basis has been carried out¹¹.

(vi) Insurance sector

15. The insurance sector has been previously segmented into three main areas: life insurance, non-life insurance and reinsurance, leaving, in most cases, open the question of whether further segments according to the kinds of risks covered constitute separate product markets. In addition, the distribution of these products by third parties has also been looked at as potentially a separate market¹². From the geographic point of view, life insurance and most forms of non-life insurance have been considered as national markets, whereas reinsurance and the insurance of shipping and other large risks has been considered international in scope¹³.

(vii) Cash handling and sales

16. In addition, A&L is active in the provision of certain money transmission services for corporate customers, in respect of which there is, in the present case, a vertical relationship between A&L and Abbey. These services are in particular "cash handling" and "cash sales". The Commission has in the past¹⁴ defined the market for "cash in

¹⁰ Cases No. COMP/M.4844 – Fortis/ABM AMRO ASSETS, recitals 42 through 60 and 87; COMP/M.3740 Barclays Bank/Föreningssparbanken/JV, Commission Decision of 2 June 2005, recital 16; COMP/M.2567 Nordbanken/Postgirot, Commission decision of 8 November 2001, recital 37

¹¹ Case No. COMP/M.3894 Unicredito/HVB, recital 42

¹² Cases No. COMP/M.5075 Vienna Insurance Group/EBV, Commission Decision of 17 June 2008 (publication pending); COMP/M.4844 – Fortis/ABM AMRO ASSETS, recitals 71 to 74.

¹³ See most recently Vienna Insurance Group/Erste Bank Versicherungssparte, Commission Decision of 17 June 2008.

¹⁴ Case No. COMP/M.3396 - Group 4 Falck / Securicor, Commission decision of 28 May 2004.

transit" ("CIT"), distinguishing it from cash handling services¹⁵, but did not specifically assess the markets for cash handling and cash sales.

17. Cash handling consists in sorting and crediting customer accounts for the value of physical cash (notes and coins) delivered by customers, in the case of A&L, to cash centres or Post Office counters. Other companies provide similar services whilst some banks self-supply or outsource the service. The scope of the service offered may also extend to cheques and other bearer means of payment.
18. In the present case, Abbey outsources its cash handling to A&L, meaning that notes and coins deposited by Abbey customers at its branches are sorted by A&L which credits Abbey with the value of the funds collected.
19. The parties submit that the geographic scope of this market is national, i.e. the whole of the UK, although they recognise that there are some companies providing these services only at regional level. The geographic scope of the market is unlikely to be wider than national in this case given, in particular, that these services relate overwhelmingly or exclusively to national currency, i.e. pounds sterling.
20. In the present case, however, it is not necessary to conclude as to the precise scope of the relevant product and geographic markets as serious doubts do not arise as to the compatibility of the notified transaction with the common market regardless of the exact product and geographic market definitions.
21. Cash sales consist in the provision of cash to corporate customers, financial institutions (such as Abbey) and ATM deployers (both bank-owned ATMs and ATMs operated by independent operators). The parties submit that the geographic market is Great Britain or the UK given that most suppliers are active nationally, prices are set on a national basis, it is not necessary to own cash depots to cover a specific area since the Post Office counters and/or other cash centre services providers can be used instead, and there is no geographic break in the areas of coverage.
22. As the provision of cash to ATM operators may have specific characteristics as regards the sorting and packaging of banknotes, the Parties have provided data also on market shares in this possible segment of the market, in which A&L is somewhat stronger than in the cash sales market as a whole. Abbey is not active in this market but is a customer of A&L.
23. The parties submit that the geographic scope of this market is national, i.e. the whole of the UK, although they recognise that there are some companies providing these services only at regional level. The geographic scope of the market is unlikely to be wider than national in this case given, in particular, that these services relate overwhelmingly or exclusively to national currency, i.e. pounds sterling.
24. In the present case, however, it is not necessary to conclude as to the precise scope of the relevant product and geographic markets as serious doubts do not arise as to the compatibility of the notified transaction with the common market regardless of the exact product and geographic market definitions.

¹⁵ Case NO. COMP/M.3396 - Group 4 Falck / Securicor, recital 14.

VI. COMPETITIVE ASSESSMENT

25. The proposed transaction does not give rise to affected markets due to horizontal overlaps. The possible markets for cash sales and/or the possible narrower market for cash sales to ATM operators in the UK are technically affected markets due to vertical links but, as discussed below, this situation is not expected to persist post-merger or to lead to competitive concerns.
26. With respect to horizontal overlaps, the parties' overlaps give rise to combined market shares below 15% in all cases: (i) in retail banking, the combined market shares range between [5-10%] and [10-20%] in any possible segment, (ii) in corporate banking to SME customers, the market shares range between [0-5%] and [5-10%] (also at regional level when applicable) in any possible segment; for LCCs the combined market shares are below [5%] as a whole and in any possible segment; (iii) in factoring, the combined market share is around [0-5%]; (iv) in payment cards: combined market shares are [0-5%] for credit cards and [10-20%] for debit cards; (v) financial market services: the combined market shares are below [5%] for the overall market and below [5%] in any possible segment thereof; (vi) insurance sector: the combined market shares are below [5%] both for life and nonlife insurance, and below [10%] in any possible segment of these markets, except for mortgage insurance in which the combined market share is [10-20%].
27. In cash handling and cash sales, only A&L is present pre-merger and therefore there is no horizontal overlap. With respect to the vertical relationships, the market shares of A&L in cash handling and cash sales and the market structure of these markets are not indicative of competitive problems.
28. In the market for cash handling, A&L's market share is around [20-30]¹⁶, other important competitors being RBS, Barclays, HSBC and Lloyds TSB with market shares estimated at [20-30]%, [10-20]%, [10-20]% and [5-10]% respectively¹⁷. This market is therefore not vertically affected¹⁸.
29. In the market for cash sales, A&L's [...] market share is [20-30% following adjustments needed to take account of the status of current contracts]¹⁹ (the current market share would be [30-40]% if the market is further restricted to sales to ATM operators²⁰). The Abbey contract, which represents a further significant portion of the remaining market share, will also be internalized by the merger. A&L submits that this market share is, moreover, overstated since the APACS Payments Market Report for 2008 (source of data) understates the size of the segment as only total cash withdrawn from ATMs is

¹⁶ Source: APACS Payment Market Report 2008 (for the market size); A&L for its own sales (information confidential as against the notifying party)

¹⁷ Source: estimates furnished by A&L (information confidential as against the notifying party)

¹⁸ Commission Regulation (EC) No. 802/2004 of 7 April 2004, Annex 1, Section 6, Point III(b), OJEU L133 of 30 April 2004, p. 16

¹⁹ Source: APACS Payment Market Report 2008 (for the market size); A&L for its own sales (information confidential as against the notifying party).

²⁰ Source: A&L. Information confidential as against the notifying party.

considered, excluding over-the-counter transactions. In addition, even if the market is split between cash sales for ATMs and for non-ATMs, the adjusted market shares still would be below [20-30]% in both cases²¹. Other competitors are RBS, HSBC and Barclays, with estimated market shares of [20-30]%, [20-30]% and [10-20]% respectively²².

30. A&L estimates that the above market shares would not be higher on a regional level.
31. Given the small combined market shares that the transaction will bring about and the limited impact that the vertical relationships have on the market for cash sales, the Commission has concluded that the proposed transaction does not give rise to serious doubts as to its compatibility with the common market under any alternative product and geographic market definition. This is consistent with the fact that no third parties have raised concerns with the Commission during the notification period.

State Aid issues

32. In the context of the proposed merger, two different aspects of Spanish tax law which might constitute aid within the meaning of Article 87(1) of the EC Treaty and from which Santander may benefit on the occasion of the acquisition of A&L, ought to be considered. First, the ability for companies purchasing shareholdings in foreign companies directly to offset up to 15% of the price paid against tax to the extent to which the purchase leads to increased export activities.²³ The parties have confirmed that Santander will not benefit from this measure since this scheme does not consider financial and insurance companies as directly related with export activities. Secondly, the possibility under Spanish legislation to amortize part of the financial goodwill when Spanish companies acquire significant shareholdings in foreign companies, leading to a reduction of the taxes paid and which might constitute a state aid²⁴. [...]
33. In any event, it is not clear whether such subsidies would be compatible with the common market. Therefore, the Commission is not in a position to take into account the possible effects of such measures in this Decision. Any possible effects of these measures on competition will therefore have to be taken into account in the course of a possible State Aid assessment by the Commission. It should be added that the assessment of this case for the purposes of Council Regulation No. 139/2004 would not have been affected even by a possible qualification as incompatible state aid. This Decision does not prejudice the outcome of a possible Commission investigation under the State aid rules.

²¹ Information confidential as against the notifying party

²² Source: estimates furnished by A&L (information confidential as against the notifying party)

²³ The Commission has, on 22 March 2006, declared this scheme incompatible with the common market and requested Spain to gradually repeal it by 2010. Spain amended its national legislation as requested by the Commission. *Proposal of appropriate measures under article 88(1) EC on the aid scheme implemented by Spain in the form of direct tax incentives in favour of export related investments - Aid E 22/2004 ex NN 13/2004*; Commission press release IP/06/355. Both available on the Commission website

²⁴ On 10 October 2007 the Commission informed Spain of its decision to initiate a procedure pursuant to Article 88(2) of the EC Treaty. No final decision has yet been taken.

VI. CONCLUSION

34. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission
(Signed)
Neelie KROES
Member of the Commission