

***Case No COMP/M.6956 - TELEFONICA/ CAIXABANK/
BANCO SANTANDER / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION

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EUROPEAN COMMISSION

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the Notifying Parties:

Dear Sir/Madam,

Subject: Case No COMP/M.6956 –Telefónica/ CaixaBank/ Banco Santander/ JV Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹

1. On 11 July 2013, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "Merger Regulation") by which Telefónica, S.A. ("Telefónica"), CaixaBank S.A. ("CaixaBank"), controlled by La Caixa, Caja de Ahorros ("La Caixa"), and Banco Santander, S.A. ("Banco Santander") acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control over a newly created company constituting a joint venture ("Newco") by way of purchase of shares ("the Transaction").² Telefónica, CaixaBank and Banco Santander are designated hereinafter as the "Notifying Parties".

I. THE PARTIES

2. **Telefónica** is the ultimate parent company of the Telefónica Group, an international group active in the telecommunication sector that provides communication, information and entertainment solutions, with presence in a number of EU Member States (Spain, Germany, Ireland, the Czech Republic, Slovakia and the UK) as well as in a number of countries in Latin America.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

² Publication in the Official Journal of the European Union No C 206, 20.7.2013, p. 22.

3. **CaixaBank** is a financial institution solely controlled by La Caixa, Caja de Ahorros ("La Caixa"), the ultimate parent company of La Caixa Group, an integrated financial group with banking, insurance, pension and investment fund activities that operates mainly in Spain with a relevant international presence achieved by means of strategic alliances with major financial groups as well as a network of representative offices and operational branches in several EU and non-EU countries.
4. **Banco Santander** is the ultimate parent company of the Santander Group, an international banking and financial group with a relevant international presence in Europe, South America, United States of America and marginally in Asia. It is active in retail banking, asset management, corporate and investment banking, treasury and insurance.
5. **Newco** will be active initially in Spain (and subsequently possibly in other countries). It will develop a virtual ecosystem that will provide to its members, both merchants and consumers (the "Virtual Community"), the following retail services which shall be accessible both through online (desktop) and mobile channels:
 - a) digital advertising services by enabling merchants of the Virtual Community to digitally advertise their products to be addressed to, and accessed by, current and potential consumers within the Virtual Community and allowing new interactive online and mobile based couponing and loyalty services. Newco will use a multichannel (static online and mobile) interface to communicate offers and promotions to consumers and to allow them to manage commerce services and redeem coupons and vouchers;
 - b) ancillary analytics services to merchants of the Virtual Community focused on analysing consumers' habits and purchasing preferences, as well as communicating and locating promotions, offers, vouchers and loyalty programmes of products and services marketed by the merchants to those consumers in order to improve commercial communications and offers and to personalise offers;
 - c) digital wallet services to consumers. Newco's digital wallet will provide the following functionalities for users of the Virtual Community:
 - Repository of payment methods: the Virtual Community's consumers will be able to upload the details of any kind of credit and debit cards, as well as prepaid payment cards issued by financial institutions into the wallet functionality. The consumer will be able use the uploaded information securely to pay online remotely and also in store (through the use of an internet enabled smartphone).³ However, the digital wallet does not constitute a payment

³ In order to be processed securely, a payment needs the presence of secure element ("SE"). The SE is a piece of hardware and software capable of securely hosting apps and their confidential and cryptographic data in accordance with the rules and security requirements set out in a set of well identified trusted authorities. There are several possible locations for an SE in the case of a payment transaction performed via a mobile handset: (a) on the Subscriber Identification Module ("SIM") card; (b) on a (micro)Secure Digital ("SD") card which can be integrated in some mobile handsets, including at the same time the NFC technology; (c) on an external device such a Universal Serial Bus ("USB") key; (d) in the chip which is embedded in the mobile handset's hardware ("embedded SE"); and (e) in the cloud.

method, but it is only the place where digitalised means of payment are stored and can be accessed in order to make a payment. The retail wallet will not have near field communication (NFC) functionality for payments without the use of the internet (mobile or static).

- Identification system: the wallet functionality will require a client ID to identify the consumer when making payments through the wallet functionality. This will provide users with a frictionless experience when carrying out transactions within the Virtual Community and will allow merchants to apply benefits and promotions offered to members of the Virtual Community.
- Ancillary peer-to-peer payment services to consumers who are members of the Virtual Community (“P2P service”). Via this functionality consumers will be able to make payments (in principle for small amounts) between themselves. To do so, a virtual prepaid card issued by a financial institution (stored value account) shall be first inserted into the wallet.

II. THE OPERATION

6. The proposed concentration consists of the creation of a joint venture, Newco, by Telefónica, CaixaBank and Banco Santander.

Joint control

7. Each of the Notifying Parties will hold an equal shareholding in Newco, and they will each have the possibility of exercising decisive influence over Newco by blocking actions which will determine Newco's strategic commercial behaviour.
8. In particular, unanimous shareholder approval will be required for the appointment of the managing director (the only executive director)⁴ and the senior management.⁵ Similarly, unanimous shareholders' approval will be required for the adoption and/or amendment of the budget and the business plan.⁶
9. Accordingly, the Notifying Parties will exercise joint control over Newco.

Full functionality

10. Newco will perform all of the functions of an autonomous economic entity with respect to the provision of various services addressed to businesses and final consumers in Spain, other than the parent companies. It will have a management dedicated to its day-to-day operations and access to sufficient resources, including finance,⁷ staff⁸ and assets (tangible and intangible) that will enable it to conduct its business activities and generate returns in a time frame of [...].⁹

⁴ Section 5.1.7, paragraph 3, point (xxix) and paragraph 4 of the Joint Venture and Shareholders Agreement.

⁵ Section 6.1 of the Joint Venture and Shareholders Agreement.

⁶ Section 5.1.7, paragraph 3, point (ix) and paragraph 4 of the Joint Venture and Shareholders Agreement.

⁷ Section 3.8 of the Joint Venture and Shareholders Agreement.

11. Accordingly, Newco is a full-function joint venture performing on a lasting basis all the functions of an autonomous economic entity.

Conclusion

12. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

13. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million¹⁰ [Telefónica: EUR [...]; La Caixa: EUR [...]; and Banco Santander: EUR [...]]. Each of them has an EU-wide turnover in excess of EUR 250 million [Telefónica: EUR [...]; La Caixa: EUR [...]; and Banco Santander EUR [...]], but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

14. The proposed concentration therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. THE RELEVANT MARKETS

1. Digital advertising services

15. As mentioned in paragraph 5a), Newco will provide merchants with the possibility to digitally advertise their products to consumers in the Virtual Community, and to create new and improve existing commercial links between those merchants and consumers in order to increase and promote commercial transactions within the Virtual Community and therefore the sales of those merchants.

Product market definition

16. The Notifying Parties submit that the relevant product market is the market for digital (online and mobile) advertising.
17. In previous decisions, the Commission distinguished between the provisions of online and offline advertising space.¹¹ The Commission also considered, but left open the question of whether mobile (search and non-search) advertising constitutes a product market separate from static online (search or non-search) advertising.¹² Finally, the Commission also considered, but left open the question of whether mobile marketing

⁸ The Notifying Parties report that Newco will be provided with a managing director and stand-alone finance, human resources, operations, sales and marketing and other support functions. The total number of employees is expected to be [...] full-time equivalent employees split between the various business activities..

⁹ Consolidated Budget.

¹⁰ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.04.2008, p. 1).

¹¹ See Commission decision of 18 February 2010 in Case COMP/M.5727 – *Microsoft/Yahoo! Search Business*, paragraphs 61 – 81; Commission decision of 11 March 2008 in Case COMP/M. 4731 – *Google/Doubleclick*, paragraphs 44 -56.

¹² See Commission decision of 4 September 2012 in Case COMP/M.6314 – *Telefónica UK/VodafoneUK/Everything Everywhere/JV*, paragraphs 143-181.

messaging is a separate market from (search and non-search) mobile advertising and if so, whether it should be further segmented according to different types of mobile messages.

Geographic market definition

18. The Notifying Parties submit that the market(s) for digital advertising services are at least national in scope although some of the most important online players are multinational companies which offer their advertising services worldwide.
19. In a previous decision, the Commission left open the exact geographic market definition as regards digital advertising services, although it indicated that some factors, such as customers' purchasing preferences and the presence of publishers through intermediaries located at national level, militate in favour of a national geographic dimension.¹³

Conclusion

20. For the purposes of the present decision, the exact delineation of the relevant product and geographic market(s) for digital advertising services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

2. Data analytics services

21. As mentioned in paragraph 5b), Newco will provide the merchants of its Virtual Community ancillary services in the form of data analytics services, by way of analysis of consumers' preferences and purchasing habits to improve and personalise commercial communications and offers.

Product market definition

22. The Notifying Parties submit that a segmentation of the market for data analytics services either on the basis of the type of service (market research services and marketing information services) or the type of channel or media (mobile or online data analytics) is not appropriate.
23. In previous decisions, the Commission considered that marketing data services ("data analytics services") could be further segmented into (i) a market for marketing information services comprising the supply of data on individual consumers (for example age, social group, activities, consuming habits, address) for direct marketing purposes; (ii) a market for market research services (which aims at measuring and understanding consumer attitudes and actual purchasing behaviour and patterns), that could be further sub-divided by research type (consumer panel services, retail measurement services and customized market research); and (iii) a market for media

¹³ See Commission decision of 4 September 2012 in Case COMP/M.6314 – *Telefónica UK/VodafoneUK/Everything Everywhere/JV*, paragraphs 225-229.

measurement services, which are aimed at measuring the audience of specific media, such as television and internet.¹⁴

24. In a previous decision, the Commission left open the exact product market definition for data analytics services, particularly whether the provision of data analytics services for mobile advertising constitutes a separate product market, and if so, whether it should be further segmented.¹⁵

Geographic market definition

25. The Notifying Parties submit that the market for data analytics services is at least national in scope.
26. In a previous decision, the Commission left open the exact geographic market definition, although it indicated that some factors, such as the relevance of local presence, knowledge of the local markets and language, militate in favour of a national geographic dimension of the market(s) for data analytics services.¹⁶

Conclusion

27. For the purposes of the present decision, the exact delineation of the relevant product and geographic market(s) for data analytics services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

3. Retail distribution of digital wallet services

28. As mentioned in paragraph 5c), Newco will provide digital wallet services to users of the Virtual Community.

Product market definition

29. The Notifying Parties submit that the relevant product market comprises all kinds of digital wallets that are accessible online (desktop or mobile handset), and through different offline alternative technologies incorporated in a mobile handset (smartphone or tablet), one of which could be Near Field Communication ("NFC").
30. In a previous decision, the Commission distinguished between a market for the wholesale provision of platform services for mobile wallets and a market for the retail distribution of mobile wallet services.¹⁷
31. In that decision, the Commission examined, in particular, whether the retail distribution of mobile wallet services (including both offline and online mobile

¹⁴ See Commission decision of 12 February 2001 in Case COMP/M.2291 - *VNU / ACNielsen*, paragraphs 10 to 12.

¹⁵ See Commission decision of 4 September 2012 in Case COMP/M.6314 – *Telefónica UK/VodafoneUK/Everything Everywhere/JV*, paragraphs 197 to 203.

¹⁶ See Commission decision of 4 September 2012 in Case COMP/M.6314 – *Telefónica UK/VodafoneUK/Everything Everywhere/JV*, paragraphs 197 to 203.

¹⁷ See Commission decision of 4 September 2012 in Case COMP/M.6314 – *Telefónica UK/VodafoneUK/Everything Everywhere/JV*, paragraphs 118-139.

payments) constitute a market separate from existing online payment services (through credit/debit cards/ PayPal, etc., via the internet on a static PC, tablet, or on a mobile handset). While it considered that currently existing methods of online payments and mobile payments may belong to different relevant product markets, the Commission ultimately left the question open.

32. Similarly, the Commission examined whether the retail distribution of mobile wallet services (including both offline and online mobile payments) constitutes a market separate from existing offline payment services (NFC-enabled credit and debit cards, and traditional means of payment such as credit, debit cards and cash). While it considered that mobile payments are likely to continue to coexist in the foreseeable future with non-mobile means of payment including NFC and non NFC-enabled credit and debit cards, the Commission ultimately left the question open.
33. Finally, the Commission examined whether the market for the retail distribution of mobile wallet services should itself be further subdivided between offline and online mobile payments services. While it considered that online and offline mobile payments are likely not part of the same relevant product market at least at present and while the evolution in the short to medium term is not entirely clear, the Commission ultimately left the question open.
34. In the present case, on the basis of the market investigation, the Commission considers that the retail distribution of digital wallet services allowing consumers to upload their payment card details into a digital wallet and use their mobile handset, tablet, laptop or static PC to access their digital wallet and carry out financial transactions, can be distinguished as a separate market or, at least, as a separate segment, from other existing (online and offline) means of payments.
35. In particular, as regards the existence of a potential market for the mobile use of digital wallet services a number of respondents to the market investigation indicated that, while from a supply-side perspective there is potentially full substitutability between the different means of payments, from a demand-side perspective the additional functionalities available at the time of processing mobile payments through a digital wallet make the user's experience easier and potentially more secure, in comparison to online payments through static devices (such as PC, laptop, or tablet). On this basis, the Commission considers that the mobile use of digital wallet services can be distinguished as a separate market or, at least, as a separate segment, from existing static online payment services (through the use of credit/debit cards/ PayPal, etc., via the internet on a static PC, laptop, or tablet).
36. Similarly, some evidence gathered during the market investigation point towards the existence of a market for the retail distribution of digital wallet services that is distinct from offline payment services (NFC-enabled credit and debit cards, payment cards used at the point of sale, and cash). In particular, respondents to the market investigation indicated that NFC payments are not yet available in Spain. In addition, some respondents stated that different means of making payments (credit and debit cards and cash) will continue to co-exist and are complementary rather than interchangeable.
37. Finally, as regards a potential sub-segmentation of the market for the provision of P2P payment services to consumers enabling financial transactions between end-users, the vast majority of respondents to the market investigation indicated that, from a

demand-side perspective, P2P payments services through a digital wallet are interchangeable with traditional online banking or off-line transactions. In particular, the market investigation provided indications that in Spain there are already a number of mobile/online P2P payment applications which are offered to consumers to carry out transactions with end-users, and which are substitutable with traditional online payments, such as money transfers, or direct debit.

Geographic market definition

38. The Notifying Parties submit that the geographic market is at least national, although some of the most important online players are multinational companies which are offering – or could easily offer – wallets worldwide (such as Google, PayPal, Amazon and Apple).
39. In a previous decision, the Commission indicated that the market for the retail distribution of mobile wallet services seems to be at least national in geographic scope, but it ultimately left open the geographic market definition.¹⁸
40. The market investigation provided indications towards a national delineation of the market for the retail distribution of digital wallet services. In particular, respondents to the market investigation pointed towards the existence of legislative and regulatory differences as well as different patterns of consumers' behaviour at national level.

Conclusion

41. For the purposes of the present decision, the exact delineation of the relevant product and geographic market for the retail distribution of digital wallet services can be left open since the proposed concentration does not raise competition concerns under any possible market definition.

4. Provision of card payment services

42. CaixaBank and Banco Santander are both active in the provision of card payment services in Spain. CaixaBank and Banco Santander are both active in card issuing, while only Banco Santander is active in merchant acquiring. There is a vertical or conglomerate relationship between card payment services and the retail distribution of digital wallet services, including the P2P payment services. As regards the provision of P2P payment services, this activity can be considered as vertically-related to the provision of digital wallet services offered by Newco, since Newco's digital wallet will in principle need to incorporate a prepaid virtual payment card issued by a financial institution to facilitate P2P payments. As regards the use by consumers of payment cards details within the digital wallet to be offered by Newco to make payments to merchants who are members of the Virtual Community, the provision of card payment services in Spain constitutes a complementary, neighbouring market to Newco's provision of digital wallet services.

¹⁸ See Commission decision of 4 September 2012 in Case COMP/M.6314 – *Telefónica UK/VodafoneUK/Everything Everywhere/JV*, paragraphs 220 to 224.

Product market definition

43. The Notifying Parties submit that the provision of card payment services entails two separate markets: (i) the market for the issuing of payment cards, and (ii) the market for merchant acquiring.
44. In previous decisions, the Commission identified separate markets for payment card issuing market and for merchant acquiring.¹⁹
45. As regards the market for payment card issuing, in previous decisions, the Commission considered, but ultimately left open the question of whether the market should be further sub-divided into the following markets: (i) cards issued to households and cards issued to commercial customers; (ii) international and national cards; (iii) debit and credit cards; (iv) selective and general cards.²⁰
46. As regards the merchant acquiring market, in previous decisions, the Commission indicated that the merchant acquiring market may be further subdivided according to the type of scheme organisation (international / domestic), customer type (consumer/commercial), type of card (debit/credit) or according to the brand (American Express Personal Green Card/Personal Gold Card/Personal Platinum Card/Corporate Card/Visa/Visa electron/V pay/MasterCard/Maestro, etc.).²¹

Geographic market definition

47. The Notifying Parties submit that the market for payment card issuing and the market for payment card acquiring are at least national in scope.
48. As regards the market for payment card issuing, in previous decisions, the Commission has previously defined the market as being likely national in scope.²²
49. As regards the merchant acquiring market, in previous decisions, the Commission has previously defined the market as being likely national in scope.²³

¹⁹ See Commission decision of 3 October 2008 in Case COMP/M.5241 - *AMERICAN EXPRESS/FORTIS/ALPHA CARD*, paragraph 23; Commission decision of 3 October 2007 in Case COMP/M.4844 - *Fortis/ABN AMRO Assets*, Commission decision of 2 June 2005 in Case M.3740 - *Barclays Bank/Foreningssparbanken/JV*, paragraph 11. In the context of antitrust proceeding see Commission decision of 19 December 2007 in Cases COMP/34.579 - *MasterCard*, COMP/36.518 - *EuroCommerce* and COMP/38.580 - *Commercial Cards*.

²⁰ See Commission decision of 3 October 2008 in Case COMP/M.5241 - *AMERICAN EXPRESS/FORTIS/ALPHA CARD*; Commission decision of 29 September 2006 in Case COMP/M.4316 - *Atos Origin/Banksys/BCC*, paragraphs 22-23; Commission decision of 18 October 2005 in Case COMP/M.3894 - *Unicredito/HVB*, paragraph 13; Commission decision of 8 November 2001 in Case COMP/M.2567 - *Nordbanken/Postgirot*, paragraphs 15-16.

²¹ See Commission decision of 3 October 2008 in Case COMP/M.5241 - *AMERICAN EXPRESS/FORTIS/ALPHA CARD*; Commission decision of 29 September 2006 in Case COMP/M.4316 - *Atos Origin/Banksys/BCC*; Commission decision of 2 June 2005 in Case M.3740 - *Barclays Bank/Foreningssparbanken/JV*; Commission decision of 8 November 2001 in Case COMP/M.2567 - *Nordbanken/Postgirot*.

²² See Commission decision of 3 October 2008 in Case COMP/M.5241 - *AMERICAN EXPRESS/FORTIS/ALPHA CARD*; Commission decision of 3 October 2007 in Case COMP/M.4844 - *Fortis/ABN AMRO Assets*; Commission decision of 2 June 2005 in Case M.3740 - *Barclays Bank/Foreningssparbanken/JV*; Commission decision of 8 November 2001 in Case COMP/M.2567 - *Nordbanken/Postgirot*.

Conclusion

50. For the purposes of the present decision, the Commission considers that the relevant product markets are the markets for payment card issuing and the merchant acquiring, which are likely national in scope. It can be left open whether these markets should be further sub-divided, since the proposed concentration does not raise competition concerns under any possible market definition. In the present case, the merchant acquiring market is however not an affected market since Banco Santander's share on this market and any of its possible subdivisions is below 25%.

5. Retail mobile telephony services and retail provision of fixed broadband internet access

51. In order to access the digital wallet offered by Newco, users of the virtual community will need an internet connection (mobile or static). The provision of mobile internet access and the provision of static internet access therefore constitute complementary, neighbouring markets to the provision of a digital wallet.

Product market definition

52. By relying on the Commission's decisional practice,²⁴ the Notifying Parties submit that the retail mobile services market constitutes a relevant product market without any further subdivision by type of customer (corporate or private, post-pay subscribers or prepaid customers) or by type of network technology (2G/GSM or 3G/UMTS).
53. The Commission considers that the market for the retail provision of fixed broadband Internet access, as defined in previous decisions,²⁵ constitutes a relevant product market in the present case.

Geographic market definition

54. By relying on the Commission's decisional practice,²⁶ the Notifying Parties submit that the market for the provision of retail mobile telephony services is national in

²³ See Commission decision of 3 October 2008 in Case COMP/M.5241 - *AMERICAN EXPRESS/FORTIS/ALPHA CARD*; Commission decision of 29 September 2006 in Case COMP/M.4316 - *Atos Origin/Banksys/BCC*; Commission decision of 2 June 2005 in Case M.3740 - *Barclays Bank/Foreningssparbanken/JV*; Commission decision of 8 November 2001 in Case COMP/M.2567 - *Nordbanken/Postgirot*.

²⁴ See Commission decision of 4 September 2012 in Case COMP/M.6314 - *Telefónica UK/Vodafone UK/ Everything Everywhere/ JV*, paragraph 206; Commission decision of 1 March 2012 in Case COMP/M.5650 - *T-Mobile/Orange*, paragraph 24; Commission decision of 27 November 2007 in Case COMP/M. 4947 - *Vodafone/Tele2 Italy/Tele2 Spain*, paragraph 14; Commission decision of 26 April 2006 in Case COMP/M.3916 - *T-Mobile Austria/tele.ring*, paragraph 18; Commission decision of 24 September 2004 in Case COMP/M.3530 - *TeliaSonera/Orange*, paragraph 13; and Commission decision of 16 September 2003 in Case COMP/M.3245 - *Vodafone/Singlepoint*, paragraph 12.

²⁵ See Commission decisions in Case COMP/M.5734 - *Liberty Global Europe/ Unitymedia* of 25 January 2010, paragraph 42 and of 27 November 2007 in Case COMP/M.4947 - *Vodafone/Tele2 Italy/Tele2 Spain*, paragraph 11.

²⁶ See Commission decision of 4 September 2012 in Case COMP/M.6314 - *Telefónica UK/Vodafone UK/ Everything Everywhere/ JV*, paragraph 240; Commission decision of 1 March 2012 in Case COMP/M.5650 - *T-Mobile/Orange*, paragraph 25; Commission decision of 26 April 2006 in Case COMP/M.3916 - *T-Mobile Austria/tele.ring*, paragraph 19.

scope. Furthermore, in previous decisions, the Commission also considered the retail provision of broadband Internet access to be national in scope.²⁷

Conclusion

55. For the purpose of this decision, the Commission considers the provision of retail mobile telephony services (including mobile data access) and the retail provision of fixed broadband internet access to constitute relevant product markets that are both national in scope.

V. COMPETITIVE ASSESSMENT

56. The proposed transaction gives rise to a limited horizontal overlap (i) in the (possible) market for digital advertising services in which both Newco and Telefónica will be present; and (ii) in the (possible) market for retail distribution of digital wallet services in which both Newco and CaixaBank will be present. In addition, there are non-horizontal competitive relationships (i) between the retail distribution of digital wallet services by Newco and card payment services by CaixaBank and Banco Santander; and (ii) between the retail distribution of digital wallet services by Newco and the provision of retail mobile telephony services and the retail provision of fixed broadband access services by Telefónica.

1. HORIZONTAL ASSESSMENT

1.1. Digital advertising services

57. Newco will be a new entrant in the Spanish market for digital advertising services and its sub-segments. Of the Notifying Parties, only Telefónica offers advertising inventory (as online display formats, banners on its mobile portals and advertising messaging sold by aggregators). However, according to the Notifying Parties, Telefónica's position on these markets is limited, even if looking at the mobile advertising segment alone. In addition, Telefónica is mainly focused on message advertising which is sold through aggregators. Telefónica's digital advertising inventory accounts for less than EUR [...] in an estimated market of EUR 899 million for digital advertisement in Spain (on the basis of 2011 figures). Finally, both Newco and Telefónica will continue to compete with a number of global competitors such as Google, Yahoo!, Millennial Media, InMobi, Madvertise, Amobee, and Smaato.
58. The respondents to the market investigation did not raise any concerns as regards the possible impact of the proposed concentration on competition in this market.
59. In light of the above, the Commission considers that the proposed concentration does not give rise to serious doubts as to its compatibility with the internal market on the market for digital advertising services, irrespective of the exact market definition.

²⁷ See Commission decisions in Case COMP/M.5734 – *Liberty Global Europe/ Unitymedia* of 25 January 2010, paragraph 42 and of 27 November 2007 in Case COMP/M.4947 – *Vodafone/Tele2 Italy/Tele2 Spain*, paragraph 16.

1.2. Retail distribution of digital wallet services

60. Newco will be a new entrant in the nascent and quickly-evolving market for the retail distribution of digital wallet services in Spain. The Notifying Parties are not currently active in the retail distribution of digital wallet services in Spain, save from a minor presence of CaixaBank through its 'CaixaWallet' product. CaixaWallet has [...] registered users and a billing volume of EUR [...]. Its estimated market share would be around [0-5]%
61. According to the Notifying Parties, post-transaction Newco will continue to face competition from a number of well-established players, such as multinational players (PayPal, Google, Apple, Amazon, Facebook), global card scheme brands (Visa (V.me account), MasterCard (MasterPass wallet) and American Express (Serve)) as well as local start-ups which have already launched these types of services in Spain (MomoPocket, Kuapay, Paymet, etc).
62. The market investigation confirmed that a number of players, including financial institutions, Mobile network operators ("MNOs"), and other providers, currently offer or intend to start offering credible alternative digital wallet services in Spain, with foreseen increasing margins of profit. A number of respondents also indicated that their digital wallet will provide similar services and functionalities to merchants and consumers as those provided by Newco.
63. In light of the above, the Commission considers that the proposed concentration does not give rise to serious doubts as to its compatibility with the internal market on the (possible) market for the retail distribution of digital wallet services, irrespective of the exact market definition.

2. NON-HORIZONTAL ASSESSMENT

2.1. Issuing of payment cards and retail distribution of digital wallet services including the P2P functionality

64. As mentioned in paragraph 42, there is a vertical and/or conglomerate competitive relationship between card payment services and the retail distribution of digital wallet services, including the P2P payment services. Both are examined in turn below.

Vertical relationship between the issuing of (virtual prepaid) payment cards and the provision of P2P payment services as a functionality of a digital wallet

65. In order to provide P2P payment services, the digital wallet provided by Newco will include a virtual prepaid payment card issued by either CaixaBank, Banco Santander or a third party institution under a contractual framework to be arranged with Newco. This particular feature is also referred to as stored value account. The virtual prepaid card will be an integral part of the digital wallet. Hence there is a vertical relationship between the issuing of payment cards where two of Newco's parents are active and the provision of the P2P payment functionality within Newco's digital wallet. As regards such vertical relationship, the Commission generally assesses the risks of input and customer foreclosure. As regards both types of foreclosure risk, the Commission examines, first, whether the merged entity would have the ability to foreclose access to respectively inputs and customers, second, whether it would have the economic incentive to do so

and, third whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.²⁸

Risk of input foreclosure of competing digital wallets

66. A risk of input foreclosure of competing digital wallets in Spain would arise, if CaixaBank and Banco Santander had the ability and incentive to restrict the use of payment cards issued by them in order to create a stored value account in competing digital wallets and thereby rendering the provision of a P2P payment functionality in a competing digital wallet impossible.
67. In this context, the Commission firstly notes that in Spain there are sufficient credible alternative issuers of payment cards. In fact, Banco Santander's and CaixaBank's combined market share in the Spanish market only amounted to [30-40]% in 2012. Indeed, there are several relatively strong competitors that issue payment cards, such as Bankia, BBVA and Banco Popular (with market shares of [10-20]%, [5-10]% and [5-10]% respectively in 2011). In addition, the Spanish market for payment card issuing services is highly fragmented, with the five biggest players accounting for less than 50% of the market. Hence, providers of competing digital wallets will be in a position to partner, if necessary, with a competing financial institution to integrate virtual payment cards into their digital wallet if this is needed in order to provide P2P payment functionality. This finding was also confirmed by the market investigation. The majority of respondents to the market investigation, which currently offer or intend to start offering P2P payment functionality, either offer such functionality without the support of a financial institution, or have entered into a partnership with a financial institution, different from Banco Santander and Caixa Bank for the provision of this service.²⁹
68. Furthermore, it should be noted that there are also other set-ups to provide P2P payment functionality within a digital wallet, which do not require the integration of a virtual payment card and a stored value account.³⁰
69. Based on the above, the Commission considers that a risk of input foreclosure can be excluded in the present case.

Risk of customer foreclosure for competing payment card issuers

70. In order to create the stored value account within the digital wallet, Newco will either integrate prepaid virtual payment cards issued by CaixaBank or Banco Santander or by a third party into the digital wallet. The use of this prepaid card is restricted to payments carried out with Newco's digital wallet. Hence, in addition to payment cards that they possibly already own, users of Newco's digital wallet services will receive a virtual payment card the use of which is limited to the Virtual Community. Against this background a risk of customer foreclosure for competing payment card issuers in

²⁸ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C265 of 18.10.2008, p. 6, paragraphs 32 and 59.

²⁹ See responses to questions 22 to 22.2 of Questionnaire 2 to competing digital wallet providers and responses to question 24 of Questionnaire 1 to MNOs and MVNOs; responses to Questionnaire 3 to financial institutions.

³⁰ See responses to questions 22.1 of Questionnaire 2 to Competing digital wallet providers and responses to question 24 of Questionnaire 1 to MNOs and MVNOs; responses to question 26.1 of Questionnaire 3 to financial institutions.

Spain would only arise if (i) Newco opted to integrate virtual payment cards issued by one of its parents, and (ii) the users of the Virtual Community would renounce to the use or cancel other payment cards that they own and (iii) thereby competing issuers of payment cards would lose a critical mass of customers. Given the limited scope of use of the virtual prepaid card in Newco's digital wallet (at least in its initial stages), it appears highly unlikely that consumers would stop using their pre-existing payment cards. Furthermore, Newco is a new market entrant. Hence, even if all of its future users will stop using pre-existing payment cards, this would only concern a relatively small number of consumers and cannot possibly drive issuers of payment cards, which compete with CaixaBank and Banco Santander, out of the market.

71. These findings were confirmed by the market investigation. The majority of respondents to the market investigation indicated that, even in case Newco were to restrict the use of P2P services by integrating virtual payment cards issued only by one of its parents, this would not have any impact on the competitors of CaixaBank and Banco Santander active in the markets for card issuing and retail banking.³¹
72. Based on the above, the Commission considers that a risk of customer foreclosure can be excluded in the present case.

Conglomerate relationship between the issuing of payment cards and the provision of digital wallet services

73. As previously noted, two of the Notifying Parties, CaixaBank and Banco Santander, are active in payment card issuing services. Newco will be active in the market for the retail distribution of digital wallet services. Given that a user will need to upload his or her payment card details into the digital wallet in order to use the latter for online and mobile payments to merchants of the Virtual Community, there is a complementary relationship between the issuing of payment cards and the provision of digital wallet services, which can potentially give rise to conglomerate effects.
74. As regards such effects, the Commission generally examines, first, whether the merged entity would have the ability to foreclose its rivals, second, whether it would have the economic incentive to do so and, third whether a foreclosure strategy would have a significant detrimental effect on competition, thus causing harm to consumers.³² In the present case, the Commission assessed whether the notified transaction will lead to (i) a risk of foreclosure of competing digital wallets and (ii) a risk of foreclosure of the providers of competing payment card issuers.

Risk of foreclosure of providers of competing digital wallets

75. A risk of foreclosure of competing digital wallets in Spain would arise if, firstly, CaixaBank and Banco Santander would have the ability to restrict or totally block the use of payment cards issued by them in competing digital wallets and, secondly, there would not be sufficient alternative issuers of payment cards that could be used in competing digital wallets.

³¹ See responses questions 31.1 and 31.2 of Questionnaire 3 to financial institutions.

³² Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C265 of 18.10.2008, p. 6, paragraph 94.

76. In this respect, the Commission firstly considers that CaixaBank's and Banco Santander's position on the market for the issuing of payment cards in Spain is not sufficiently strong in order to foreclose providers of competing digital wallet services. As regards the issuing of payment cards, CaixaBank and Banco Santander held market shares in Spain of [10-20]% and [10-20]% respectively in 2012, and similar shares in the previous years. The combined market share of [30-40]% does not reach a level that is to be considered as conferring significant market power upon these two banks. Furthermore, there are credible alternatives for the issuing of payment cards, such as Bankia, BBVA and Banco Popular (with market shares of [10-20]%, [5-10]% and [5-10]% respectively in 2011). In addition, the Spanish market for payment card issuing services is highly fragmented, with the five biggest players accounting for less than 50% of the market. Hence, CaixaBank and Banco Santander will not have the ability to foreclose competing digital wallets by restricting or totally blocking the use of payment cards issued by them in such competing digital wallets.
77. Secondly, the respondents to the market investigation did not raise any specific concerns as regards a possible foreclosure deriving from the combination of CaixaBank and Banco Santander's activities in the market for card issuing and Newco's activities in the provision of digital wallet services.³³
78. Based on the above, the Commission considers that the notified transaction does not give rise to a risk of foreclosure of providers of competing digital wallets.

Risk of foreclosure of competing payment card issuers

79. A risk of foreclosure of competing payment card issuers in Spain would arise if (i) Newco would have the ability and the incentive to restrict the use of payment cards in its digital wallet to cards issued by CaixaBank and Banco Santander, thus refusing to accept any other payment cards in its digital wallet, and (ii) such foreclosure would significantly restrict the use of payment cards issued by competing financial institutions and thereby create the risk for them to be driven out of the market.
80. In this context, the Commission firstly notes that according to the Notifying Parties, both from a technical and contractual perspective, Newco's Virtual Community will allow its users to upload any credit, debit or prepaid cards into the digital wallet irrespectively of the issuing financial institution and they will be able to purchase products and services with the payment method of their choice in each transaction, including physical payment in stores.
81. More importantly, Newco is a new entrant in the market for the retail distribution of digital wallet services in Spain. The Notifying Parties submit that closing the digital wallet to only accept those payment cards issued by CaixaBank and Banco Santander would most likely mean its failure in the nascent market for the retail distribution of digital wallets. All its current competitors support payment cards irrespectively of the issuing entity, which is precisely the consumers' preference that Newco will offer.
82. The vast majority of the respondents to the market investigation confirmed that Newco has an interest in ensuring that the details of payment cards issued by financial institutions other than its parent companies can be uploaded into its digital wallet in

³³ See responses to questions 18, 19 and 26 of Questionnaire 2 to competing digital wallet providers.

order to make the digital wallet more attractive to merchants and consumers, as competing digital wallet services already allow.

83. Furthermore, even if Newco was to restrict the use of payment cards in its digital wallet to cards issued by CaixaBank and Banco Santander, there are competing digital wallets, already available in Spain, supporting the use of payment cards issued by competing financial institutions.³⁴
84. Based on the above, the Commission considers that the notified transaction does not give rise to a risk of foreclosure of competing payment card issuers.

Conclusion

85. In light of the above, it can be concluded that the transaction will not give rise to any competitive concerns as a result of the combination of CaixaBank and Banco Santander's activities in relation to the market for payment card issuing services in Spain and Newco's activities in the market for the retail distribution of digital wallet services in Spain.

2.2. Retail mobile telephony services/retail provision of fixed broadband Internet access and retail distribution of digital wallet services

86. Telefónica is active in the provision of retail mobile telephony services and the retail provision of fixed broadband Internet access services in Spain. Newco will be active in the market for the retail distribution of digital wallet services. In order to access the digital wallet, users need to connect via a mobile or static internet connection. Hence, there is a conglomerate relationship between the provision of mobile telephony and internet access services on the one hand and the provision of digital wallet services on the other hand, which may give rise to foreclosure concerns.

Risk of foreclosure of competing digital wallets

87. As regards a possible risk of foreclosure of competing digital wallets in Spain, the Commission assessed the following two issues: (i) whether Telefónica holds a sufficient degree of market power in the markets for retail mobile telephony and fixed broadband Internet access services, which would allow it to profitably adopt a foreclosure strategy, and (ii) whether such foreclosure strategy would actually be technically possible. These issues were examined together, as they are closely intertwined.³⁵
88. It is true that Telefónica's market position is at least still quite considerable. Indeed, as regards retail telephony services, in Spain Telefónica's market share amounted to [30-40]% in 2012 followed by Vodafone with a market share of [20-30]%, Orange with a market share of [20-30]% and Yoigo with a market share of [5-10]%. As regards the retail provision of fixed broadband Internet access in Spain, Telefónica's market share

³⁴ See responses to questions 16, 21, 21.1, and 21.2 of Questionnaire 3 to financial institutions; responses to question 12 of Questionnaire 2 to competing digital wallet providers; responses to question 12 of Questionnaire 1 to MNOs and MVNOs.

³⁵ Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C265 of 18.10.2008, p. 6, paragraph 94.

amounted to [40-50]% in 2012, followed by Ono ([10-20]%), Orange ([10-20]%), Jazztel ([10-20]%) and Vodafone ([5-10]).

89. However, regardless of the exact strength of Telefónica's with regard to retail telephony and retail provision of fixed broadband Internet access in Spain, the central question in this context is whether Telefónica would be technically able to block or restrict the use of competing digital wallets on its own mobile and fixed broadband internet networks.
90. A number of respondents to the market investigation suggested that Telefónica would have the technical ability to prevent competing digital wallets from operating on its network by preventing their installation, download, and/or update, or simultaneous working on handsets with Newco's digital wallet already installed.
91. The Commission does not consider these concerns to be well-founded for the following reasons.
92. First, as the Notifying Parties argue, Newco's digital wallet will not be linked to an exclusive or preferential basis to Telefónica or any broadband providers (mobile or fixed).
93. Second, as confirmed by a number of respondents to the market investigation digital wallet activities are usually not dependent on any specific fixed or mobile broadband network, provided the secure element (SE) is either placed on the cloud (such as in the case of Newco's digital wallet) or is embedded on a specific device.
94. Third, if a mobile wallet chose to place their SE on MNOs' SIM cards, then each MNO (including Telefónica) would need to give permission for access to its SIM card and thus in theory would have the ability to foreclose such competing wallet. However, given the alternative methods of placing the SE, such strategy would not be likely to succeed in the longer term.
95. Fourth, this restriction only applies to mobile wallets, as digital wallets (i.e. wallets which are used both on static and mobile internet) would not be using a SIM based SE in any event.
96. Fifth, according to respondents to the market investigation, the only possibility for such conduct to take place would be by controlling the mobile operating system (e.g. iOS or Android) which is designed to protect applications. Hence, as long as the customer's mobile phone device, tablet or computer supports the software required to download the digital wallet app (currently, nearly all types of smartphone and other feature phones), clients from any mobile phone operators will be able to download the digital wallet app to their mobile phones irrespective of the mobile operator providing the mobile phone service.
97. Based on the above, the Commission considers that the proposed transaction does not give rise to a risk of foreclosure of competing digital wallet services.

Risk of foreclosure of competing providers of retail mobile telephony services and fixed broadband Internet access services

98. A risk of foreclosure of competing providers of retail mobile telephony services and fixed broadband Internet services in Spain is hard to conceive. Such risk could only arise if Newco's digital wallet was (i) only accessible via Telefónica's mobile and broadband networks, and (ii) was of such appeal that consumers would switch their mobile telephony and broadband Internet services contracts with Telefónica's competitors in order to be able to access Newco's digital wallet services.
99. The Commission firstly notes that according to its technical and contractual set-up, Newco's digital wallet will not be linked on an exclusive or preferential basis to any mobile phone service providers and will be accessible via any mobile network of broadband Internet connection. Indeed, a number of respondents to the market investigation indicated that Newco has an interest in ensuring that its digital wallet services can be accessed by customers of non-participating MNOs and mobile virtual network operators ("MVNOs"), i.e. non-Telefónica customers, in order to make the "Virtual Community" more attractive and more profitable.³⁶
100. In addition, a number of respondents to the market investigation suggested that the offering of a digital wallet does not represent a significant competitive differentiator in itself in the retail mobile telephony market. In particular, in the view of a respondent to the market investigation, consumers are not likely to take an MNO's or MVNO's offering of digital wallet services into account when choosing a provider of mobile telephony.
101. In light of the above, the Commission considers that the proposed concentration does not give rise to serious doubts as to its compatibility with the internal market as a result of the relationship between the Notifying Parties' activities in retail fixed broadband and mobile telephony services and Newco's activities in the market for the retail distribution of digital wallet services.

VI. CONCLUSION

102. For the above reasons, the Commission has decided not to oppose the proposed concentration and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(Signed)

Joaquín ALMUNIA

Vice-President

³⁶ See responses to question 15 of Questionnaire 1 to MNOs and MVNOs and question 15 of Questionnaire 2 to competing digital wallet providers.