

***Case No COMP/M.5797 -
STATE STREET
CORPORATION /
INTESA SANPAOLO
SERVIZI
TRANSAZIONALI /
SANPAOLO BANK***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/04/2010

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EUROPEAN COMMISSION

Brussels, 26.4.2010
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5797 – State Street Corporation/ Intesa Sanpaolo Servizi Transazionali/ Sanpaolo Bank
Notification of 19 March pursuant to Article 4 of Council Regulation No 139/2004¹**

1. On 19 March 2010, the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, by which State Street Corporation, ("STT", USA) will acquire from Banca Intesa Sanpaolo S.p.A. sole control within the meaning of Article 3(1)(b) of the Merger Regulation of Intesa Sanpaolo Servizi Transazionali S.p.A. (Italy) and Sanpaolo Bank s.a. (Luxembourg), by way of purchase of shares.

I. THE PARTIES

2. State Street Corporation ("STT", USA) is a financial holding company based in Boston and organized under the laws of the Commonwealth of Massachusetts. STT, through its direct and indirect subsidiaries, is active in the field of financial services at global level, and more specifically in the provision of domestic and global securities services to support institutional and individual investors in developing and executing their global investment strategies. Its main activities comprise global and local custody, fund administration, securities lending, operations outsourcing, record keeping, performance management and analytics and transfer agency services.
3. Intesa Sanpaolo Servizi Transazionali S.p.A. (ISPSS, "Italy") and Sanpaolo Bank s.a. ("SB", Luxembourg; collectively "the Target"), provide, respectively in Italy and Luxembourg, global custody services, fund administration services and selected ancillary

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.

services such as securities lending, foreign exchange, transition and collateral management and investment analytics. Before the transaction, the Target provides these services mainly to funds belonging to the Intesa Sanpaolo group ("ISP", Italy), its parent company, and to a lesser extent to third party funds and other clients.

II. CONCENTRATION

4. Under the terms of the Sale and Purchase Agreement, STT's subsidiary State Street Bank Luxembourg s.a. will acquire from ISP 100% of the share capital of the Target.
5. The notified transaction therefore constitutes a concentration in the sense of Article 3(1)(b) of the Merger Regulation.

III. UNION DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million² (STT: 7 270 million, the Target: 370 million). Each of them has a Union-wide turnover in excess of EUR 250 million (STT: [...] million; the Target [...] million), but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State.
7. The notified operation therefore has a Union dimension in the sense of Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

Relevant Product Markets

8. The parties' activities overlap in global custody and fund administration. STT will not acquire any of ISP's local custody activities³. In previous decisions, the Commission indicated that global custody and fund administration constitute two distinct relevant product markets⁴. In the context of the present case, nonetheless, STT submits that these services are commonly provided together and that therefore it is unclear whether they should be considered as two separate markets or just as a single market comprising all securities services.
9. For the purposes of the decision in the present case, this question can, however, be left open, as serious doubts do not arise as to the compatibility of the notified transaction with the internal market, regardless of the exact market definition retained.

Global custody services

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

³ The Target does not provide local custody services, i.e. services in a given class or classes of assets constituted under national law. To the extent that such services are performed by ISP itself, they are outside the scope of the transaction.

⁴ COMP/M.3027 State Street Corporation/Deutsche Bank Global Security, decision of 16 January 2003; COMP/M.3781, Credit Agricole/Caisse d'Epargne/JV, decision of 14 June 2005.

10. Global custody is the service whereby a custodian holds a range of financial assets on behalf of its clients. Such clients may include fund managers, insurance companies, banks, government institutions and pension funds.
11. In previous Commission decisions⁵, global custody services have been held to include safekeeping of assets, presentation of securities for and reception of securities from clearing and settlement platforms, income and dividend processing, arranging of withholding tax relief and tax reclaim, other corporate actions such as notification and dealing with bonus issues, rights issues and takeovers, proxy voting services, sweeping of uninvested cash and transaction and portfolio reporting services. STT submits that global custodians may also provide to their clients foreign exchange trading, securities lending, performance measurement and risk analysis, and management of cash accounts and cash funds linked to securities held in custody.
12. The market investigation in case M.3781 - Credit Agricole/Caisse d'Epargne/JV confirmed that these services all form part of a single product market but left open whether global custody should be systematically distinguished from local custody (subcustody).
13. The exact product market definition may be left open in this case, as regardless thereof, the notified transaction does not lead to serious doubts as to its compatibility with the internal market.

Fund administration

14. According to the notifying Party, fund administration comprises a menu of outsourced service offerings such as fund accounting, net asset valuations, depositary bank etc, provided to a diverse array of funds such as UCITS⁶, private equity funds, real estate funds, hedge funds and individual accounts. In case M.3781, it was concluded that all of these services appeared to constitute a single relevant product market.
15. In STT's view, all these types of client request substantially the same types of services from fund administration providers, with minor differences based on the applicable regulatory framework.
16. The question nevertheless arises of whether individual managed accounts (IMAs) are rightly included within the market definition for fund administration, as argued by the Parties, given that the scope of services provided to individual clients appears to be narrower than those provided to institutional clients. However, even if IMAs were to be excluded from the relevant market in the present case, serious doubts would not arise as to the compatibility of the notified transaction with the internal market. On a market of fund administration services for IMAs only, the activities of the Parties do not overlap as STT does not have individual clients for fund administration in the EU.

Relevant geographic markets

⁵ M.3027 and M.3781, previously cited. Case COMP/M.5728, Credit Agricole/Societe Generale Asset Management, decision of 22 December 2009, para.114; Case COMP/M.5495, Unicredit/Banca IMI/EUROTLEX SIM JV, decision of 23 November 2009, para. 43; Case COMP/M.5509, Credit Agricole/CACEIS, decision of 8 June 2009, para.11.

⁶ I.e. funds constituted according to Directive 2001/108/EC.

Global custody

17. The Parties have argued that global custody is, by its very nature, worldwide in scope. In case COMP/M.3781 the Commission looked, however, into the possible existence of distinct markets for global custody for clients resident in specific countries, in that case in France, based on the observation that a large number of clients held a significant part of their investments in French instruments and therefore might prefer a provider of global custody having its own local French custody service. However, the Commission did not reach a conclusive view and left the exact definition open.
18. In the present case, STT argues that even if the Commission were again to consider such national markets, it may not be appropriate to define national markets in the cases of Italy and Luxembourg as these Member States do not, in its view, present the characteristics which would be necessary to distinguish national markets as previously considered in the case of France.
19. In the event that the Commission were nonetheless to decide on the existence of national markets for global custody, overlaps would arise in Italy and Luxembourg, but according to STT the combined market shares in both cases would still be below 15%.
20. Accordingly, the exact geographic market definition may be left open in this case, as regardless thereof, the notified transaction does not lead to serious doubts as to its compatibility with the internal market.

Fund administration

21. The Parties argue that the relevant geographic market for fund administration is at least EU-wide. In case M.3027, the Commission considered a possible national definition of the relevant market, but noted in case M.3781, without concluding on the matter, that the arguments of the Parties in that case that the market may be wider than national had been in part confirmed by the market investigation.
22. However, even if the relevant market for fund administration were to be national in scope, serious doubts would not arise in the two Member States where overlaps arise, namely Luxembourg and Italy. Therefore, the exact geographic market definition may be left open in the present case.

Assessment

23. In respect of global custody, no affected markets arise, regardless of the market definition retained.
24. In respect of fund administration, if this market were to be considered EU-wide in scope then the Parties would have, according to their own estimate, a market share of [10-20]%. Post-transaction, STT will continue to face competition from a number of large competitors such as JP Morgan, BNY Mellon, BNP Paribas and CACEIS (Credit Agricole) as well as numerous smaller players.
25. Based on figures from the industry association EFAMA, which the Parties believe to significantly overestimate their position due to a number of exclusions in the data (namely pension funds, most alternative funds and IMAs), STT would have a market share of [10-20]% and the Target a market share of [0-5]%.

26. On a national basis, an affected market would arise only in Italy, with a combined market share of at most [20-30]%, although STT is currently present in Italy only on a marginal basis with a [0-5]% market share. Excluding IMAs, this figure rises to [30-40]% but the increment, at [0-5]%, remains minimal. There is thus no material structural change on a hypothetical Italian market for fund administration, on which a number of other competitors remain active (Societe Generale, BNP Paribas, RBC Dexia, Banco Popolare and a number of smaller providers).
27. The Parties also argue that the fund administration market is contestable and switching costs are low.
28. Based on the information provided, serious doubts do not arise as to the compatibility of the notified transaction with the internal market on an EU-wide or national market for fund administration.
29. Finally, if the Commission were to follow the suggestion of the Parties and define a single market comprising both fund administration and global custody, combined shares on such a market would be lower than on the market for fund administration considered separately, and therefore a fortiori serious doubts as to the compatibility of the notified transaction with the internal market would not arise.

V. CONCLUSION

30. For the above reasons, the European Commission has decided not to oppose the notified operation 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 European Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the European
Commission