EN

Case No COMP/M.5363 - SANTANDER / BRADFORD & BINGLEY ASSETS

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 17/12/2008

In electronic form on the EUR-Lex website under document number 32008M5363

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.12.2008
C(2008)8753

SG-Greffe(2008) D/208327

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: COMP/M.5363 – SANTANDER / BRADFORD&BINGLEY ASSETS
Notification of 12 November 2008 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 12 November 2008, the Commission received a notification of a proposed concentration by which the undertaking Abbey National plc ("Abbey", UK), which is a wholly owned subsidiary of Banco Santander, S.A. ("Santander", Spain) acquires control of certain assets, formerly part of the undertaking Bradford and Bingley plc ("B&B", UK), by virtue of a statutory order in return for a net consideration in cash. The assets transferred and the terms of the transaction are detailed further below.

I. THE PARTIES

2. **Santander** is the parent company of an international group of banking and financial companies operating in the UK, Spain and some other European countries as well as in Latin America. It 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.

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1 OJ L 24, 29.1.2004 p. 1.

3. **Abbey** is a subsidiary of Santander which was acquired in 2004. Abbey offers a full range of personal financial services in the UK, including current and savings accounts, loans, credit cards, mortgages, investments and pension products. It also offers corporate banking services to both SMEs and large corporate customers (LCCs), financial market services, and distributes third party insurance products.

4. **B&B** offered, prior to the transaction, and almost exclusively in the UK, a range of personal financial services including savings accounts, loans, mortgages and financial planning.

5. The assets acquired by Abbey (the "**Transferred Assets**") are as follows:

   a. all retail savings account deposits made with B&B (the "B&B deposits");

   b. the issued shares of Bradford & Bingley International Limited, a deposit-taking institution incorporated and authorized in the Isle of Man;

   c. all freehold and leasehold property of B&B, including all branches, agencies and call centers, and;

   d. all contracts and arrangements, intellectual and personal property relating to the retail savings accounts business of B&B, subject to certain specified exceptions.

6. In addition, the contracts of employment of those employees of B&B whose work relates wholly or mainly to the savings account business of B&B were transferred to Abbey, as well as 47 mortgage advisors.

7. The rump B&B has been put into liquidation and its remaining assets (the "**Retained Assets**") transferred to the State. These assets notably include all existing mortgages, securities and wholesale borrowing and lending businesses.

8. Alliance and Leicester plc ("**A&L**", UK) is a company which was acquired, and is now solely controlled, by Santander by virtue of a transaction which closed on 10 October 2008. The acquisition was authorized by the Commission on 15 September 2008.[2] 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 activities through Abbey are substantially similar to those of A&L. In order correctly to represent the current market position of Santander, the figures taken for basis of the analysis in this decision include the activities of A&L in the relevant period, notwithstanding that it was not, at that date, controlled by Santander.

II. THE CONCENTRATION

9. The proposed transaction consists in the acquisition by Santander of the Transferred Assets, by means of statutory order pursuant to the Banking (Special Provisions) Act England and Wales 2008, for a net consideration of 612 million pounds sterling.

2 See case COMP/M.5293 *Santander/Alliance & Leicester*.

B&B's past mortgage business, which continues to generate cash flow, has been retained in public ownership.

10. The part of the B&B business not acquired by Santander, i.e. the Retained Assets, may be considered to represent financial assets only. Such assets do not generate new business and do not result in a change in the structure of the market.

11. Accordingly, all the necessary assets for B&B to generate future mortgage business, such as the B&B deposits, the branches, the employees as well as the mortgage advisors, will be transferred to Abbey as a result of the transaction. All future commercial activity on the market resulting from the former assets of B&B will thus be realized by employing the Transferred Assets. Therefore, the Commission takes the view that such acquisition constitutes a notifiable transaction under the ECMR, since, in accordance with paragraph 24 of the Consolidated Jurisdictional Notice, the acquisition of control over such assets has to be considered a concentration within the meaning of Article 3 of the Merger Regulation as those assets constitute the whole or a part of an undertaking, i.e. a business with a market presence in the future.

III. COMMUNITY DIMENSION

12. Although the Transferred Assets do not include the past mortgage business of B&B and the turnover linked to this business in the last financial year, in the Commission's view, the assets transferred do, however, represent the essential productive assets of the savings business of B&B and most or all of the productive assets of the mortgage lending business namely, in the latter case, the deposits against which loans can be made, the customer relations with savings account holders, and the distribution channels.

13. However, regardless of the approach taken to this issue the present transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation, since even if, as proposed by the Parties, the Commission were only to consider the interest on the deposit amounts transferred to Abbey at the then prevailing base rate of the Bank of England (5%), the turnover related to these deposits, which amounts to almost […] million pounds sterling, would have been about £[…] million (€[…] million at the ECB exchange rate for August 2008), well in excess of the threshold of € 250 million.

14. As far as Santander is concerned, its worldwide turnover for 2007, including the turnover of A&L, was € 73 424 million. The undertakings concerned therefore have a combined aggregate worldwide turnover of more than € 5 000 million and Community-wide turnover in excess of € 250 million in 2007. Neither of the parties achieves more than two thirds of its Community wide turnover in one and the same Member State, since Santander achieves only about 35% of its turnover in the UK.

IV. RELEVANT MARKETS

15. The transaction gives rise to horizontal overlaps between Santander and the Transferred Assets only in relation to a subset of retail banking products, more specifically in the retail savings account and mortgage markets.

16. In respect of banking services for natural persons and microenterprises (retail banking), 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, saving accounts, personal loans, mortgages and distribution of mutual funds and other investment products.[3] In the case of the UK, however, the relevant national competition authorities, namely the Office of Fair Trading ("OFT") and the Competition Commission ("CC"), have consistently determined that saving accounts and mortgages constitute, for the purposes of national law, separate relevant product markets.[4]

17. The Commission has, in the past, considered all retail banking markets to be national in scope,[5] although it has not specifically investigated the situation in the UK. In the UK, the CC has identified a separate market for personal current accounts in Northern Ireland as opposed to the remainder of the UK.[6] However, with regard to the markets for savings and mortgage products, both OFT and CC have concluded in a number of cases that the relevant geographic market is the UK as a whole. [7]

18. In the present case, the exact product and geographic market definitions can be left open, as serious doubts do not arise as to the compatibility of the notified transaction with the common market, regardless of the market definition considered.

V. COMPETITIVE ASSESSMENT

Retail banking

19. As regards retail banking as a whole, it should be noted that B&B, prior to the merger, did not offer a full range of retail banking products but was focused on savings and mortgage products, and thus cannot be considered a competitor for the primary banking relationship of retail customers. Accordingly, it would be inappropriate, in this instance, to analyze the market for retail banking as a whole, since, on such a basis, the Parties' activities would not overlap.

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[3] See e.g. Case No COMP/M.4844 – *Fortis/ABN AMRO ASSETS*, of 3 October 2007

[4] Case ME/2660/06 *Nationwide Building Society/Portman Building Society* of 21 November 2006; OFT, *Anticipated acquisition by Lloyds TSB plc of HBOS plc, Report to the Secretary of State for Business Enterprise and Regulatory Reform*, 24 October 2008

[5] 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.

[6] CC Report on *Personal current account banking services in Northern Ireland; market investigation, 15 May 2007.*

[7] See e.g. OFT Case ME/00295 *Abbey National plc/Bank of Scotland* from 30 January 2001; OFT Case ME/1246/01 *Halifax Group Plc /Bank of Scotland* from 11 July 2001; OFT report in *Lloyds/HBOS*, op.cit.

20. Even if the Commission were to consider the existence of an overall market for retail banking affected by the merger, the only reliable indicator readily available to determine market share is the number of branches. Post-merger, the merged entity would have at most 1155 branches in the UK, i.e. 11.1% of the total[8] (assuming that no overlapping branches were closed), representing a limited increment of 1.9% due to the Transferred Assets.

21. Therefore the notified transaction does not raise serious doubts as to its compatibility with the common market on a hypothetical affected market for retail banking in the UK.

Savings accounts

22. The proposed transaction does not give rise to an affected market in the UK market segment of savings accounts, where the Parties achieve a combined share of [10-15]% (based on value of stock at the end of 2007). With regard to new business this share was [10-15]%.[9]

23. The Commission has also looked at the number of customers for savings accounts, which may, however, be a not entirely reliable indicator since many customers appear to have accounts at several banks and some of these accounts may be dormant or carry only small balances. On this basis, the Parties would achieve a [10-15]% market share of savings account customers (increment of [below 5]% due to B&B).[10]

24. Therefore the notified transaction does not raise serious doubts as to its compatibility with the common market in respect of savings accounts in the UK.

Retail mortgages

25. As set out above, all future commercial activity on the market resulting from the former assets of B&B will be realized by employing the Transferred Assets. The Transferred Assets contain all the assets necessary in order to carry out a mortgage business, in the same volume as carried out by B&B in the past.

26. In taking account of all relevant circumstances at the time of the transaction, the impact on competition of the acquisition by Santander of the B&B Transferred Assets needs to be considered, at least on a worst case basis, by taking into account the market shares generated by B&B in the past. A successful re-establishment of a similar business on the basis of the Transferred Assets is by no means excluded *a priori*.

27. Proceeding on this basis, the combined market share in terms of the value of outstanding loans at the end of 2007 would be 16.2%, an increment of 3.3% due to the Transferred Assets. Even assuming the completion of the proposed Lloyds/HBOS merger, the HHI post-merger would be 1306 with a delta of 85, a

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8 For the total number of branches, source: British Bankers' Association (2006 figures)

9 Source for both figures: GfK Financial Research.

10 Source: GfK, op. cit.

value which is well below the threshold for serious doubts established in the Horizontal Guidelines. Based on the value of new business, the corresponding values for 2007 are 17.3% (including an increment of 3.9% due to the Transferred Assets) and HHI of 1298 (delta 104).[11]

28. The merged entity will continue to face competition from Lloyds TSB (8.5%), HBOS (19.8%, if combined with Lloyds TSB 28.3%[12]), Nationwide (10%), RBS (6.1%) and Barclays (5.9%) as well as the nationalized bank Northern Rock (7.6%).[13]

29. Therefore, even if the entirety of the mortgage turnover of B&B prior to the transaction were considered to correctly reflect the incremental position of Santander on the market post-merger, the proposed transaction does not raise serious doubts as to its compatibility with the common market on the UK retail mortgage market.

State Aid aspects

30. On 10 October 2007 the Commission informed Spain of its decision to initiate a procedure pursuant to Article 88(2) of the EC Treaty. The procedure in question deals with a possible case of state aid due to 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.

31. The impact on competition in a merger procedure of this possible state aid has been considered previously by the Commission on the case of the acquisition by the Spanish company Iberdrola of the UK based company Scottish Power in 2007.[14]

32. The Commission has already examined the eligibility of Santander to receive this aid and its likely level in its decision in case COMP/M.5293,[15] and found this to be marginal and without any impact on the competitive position of the Parties. This conclusion equally applies in the present case.

33. In its Decision of 1 October 2008, the Commission concluded that Santander did not benefit from UK State Aid in the context of its acquisition of the Transferred

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11 Source for market size and market shares for both calculations: UK Council of Mortgage Lenders, Bank of England

12 The recommendation from the OFT to refer the merger between Lloyds and HBOS to the Competition Commission was overruled by the Secretary of State on 31 October 2008, whose decision was upheld by the Competition Appeals Tribunal on appeal. As a result, this merger is expected to go ahead. In any case, for the purposes of this decision, the competition analysis is unaffected by whether or not this merger goes ahead.

13 All values are based on outstanding loans at end 2007.

14 See case COMP/M.4517 – *Iberdrola / Scottish Power* of 26 March 2007.

15 Case COMP/M.5293 *Santander/Alliance & Leicester* of 15 September 2008.

Assets.[16] It moreover concluded that the aid granted by the UK to B&B primarily benefitted retail depositors and constituted aid compatible with the common market.

34. It must be recalled that, under Regulation 139/2004, state aid is considered in the assessment merely in order to verify that the state measures in question are not such, in combination with other elements of the market situation, as to confer on the merged entity a market position which would result in a significant impediment to effective competition.

35. As the UK State measures mentioned above have been approved by the Commission as compatible with the common market and can only be adopted in the framework set by the approval decision, it follows that the Commission has concluded that such state measures will not lead to any significant distortion of competition.

36. In conclusion, the Commission sees no circumstances specific to the merger whereby either the compatible aid granted in the UK, or the Spanish aid scheme still under examination, would alter its competition analysis under the ECMR as set out above. This decision is entirely without prejudice to the Commission's assessments in the State Aid field.

VII. CONCLUSION

37. 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

[16] C (2008)5673 final.