EN

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

Only the English text is available and authentic.

REGULATION (EC) No 139/2004 MERGER PROCEDURE

Article 7 (3)
Date: 28.09.2008

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.09.2008
C(2008) 5619

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 7(3) DECISION

To the notifying party:

Dear Sir/Madam,

Subject: Abbey National plc/Bradford & Bingley plc
Request of derogation pursuant to Article 7 (3) of Council Regulation No. 139/2004

1. We refer to your application on Sunday 28 September 2008 for a derogation from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 (the "EC Merger Regulation") with regard to the proposed acquisition by Abbey National plc of sole control over certain assets of Bradford & Bingley ("B&B", UK), submitted pursuant to Article 7(3) of the EC Merger Regulation.

I. THE PARTIES AND THE OPERATION

2. **Abbey National** ("Abbey") is a wholly owned UK subsidiary of Banco Santander, S.A ("Banco Santander", Spain). Banco Santander is an international group of banking and financial companies operating in the UK, Spain, and some other European countries, as well as Latin America. Banco Santander is also in the process of acquiring Alliance & Leicester plc[1].

3. B & B is a UK-based financial services institution providing inter alia specialist mortgages and savings products, and retail banking services.

1 See decision of 15 IX 2008, Case M. 5293, Banco Santander/Alliance & Leicester.

4. The acquisition is to comprise certain assets (hereinafter the Target):

   (a) the transfer of the entire retail deposits of B & B (the "Deposits") along with a cash amount deposited at the Bank of England;

   (b) the transfer of the entire issued share capital of Bradford & Bingley International Limited (which operates B & B's Isle of Man deposit business);

   (c) the transfer of the B & B branches, agencies and employees; and

   (d) the transfer of B & B's headquarters (including all systems, associated employees and infrastructure) (it is not yet finally determined whether this will be included in the transaction).

5. Abbey will enter into a transitional services agreement with B & B, in order to allow depositors to operate their accounts in the normal course, pending the integration of the relevant deposit accounts into Abbey's own operational systems. The transfers will be undertaken pursuant to a transfer order made under the Banking (Special Provisions) Act 2008.

6. At this stage of the procedure, as the assets transferred to Abbey together form a business with a market presence, and therefore constitute (part of) an undertaking, the proposed transaction qualifies as a concentration within the meaning of Article 3 of the EC Merger Regulation. This is without prejudice to the precise turnover that should be attributed to the acquired business.

II. THE COMMUNITY DIMENSION

7. Santander's s worldwide turnover was €66.4 billion, and its EEA-wide turnover was €[…] billion.

8. As to the Target, Abbey submits that, on the basis of currently available information, the turnover that should be attributed to it would amount to £[…] million and would thus exceed €250 million. On the basis of the available information, the parties do not both achieve more than two thirds of their Community-wide turnover in one and the same Member State. Therefore, without prejudice to a final assessment of the relevant turnover of the Target, the present transaction has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

III. THE APPLICATION FOR DEROGATION

9. Abbey submits that, as a result of the events in the UK and worldwide financial markets, doubts have arisen about the viability of B&B's business, in large part due to its significant exposure to UK and worldwide mortgages.

10. Abbey further submits that the Government of the UK has determined that the transaction is required in order to protect the deposits and customers of B&B and to prevent customers losing confidence in the ability of B&B to safeguard their deposits and seeking to withdraw their deposits (a so-called "run on the bank"). Should such an event occur, the business of B&B would be unsustainable. There is the possibility that the assets of B&B would be insufficient to pay out all of the deposits of depositors. There may also be associated detriments to UK financial and banking markets resulting from a second high profile collapse of a UK retail bank.

11. The overall scheme of the transaction is formed of two parts:

(a) the assumption of control of Bradford & Bingley by the UK Government; and

(b) the transfer of the Target to Abbey.

The remainder of the Bradford & Bingley business, including in particular its mortgage book, will remain under public ownership.

12. According to Abbey, the benefits to UK depositors and to the stability of the UK financial markets of the transaction far outweigh any possible competition detriment that may be associated with the transaction. Accordingly, even if the Commission were to consider that the transaction may give rise to an effect on competition, Abbey considers that the interests of consumers and the public interest in the stability of the UK financial system would be served by the transaction being permitted to be closed prior to clearance being granted.

13. In any event, Abbey considers that the transaction does not give rise to any adverse effect on competition. According to Abbey, B&B's share of UK retail deposit account balances in 2007 was [0-5]%. This amount has declined in the period June 2008 to September 2008, as B&B has seen a net outflow of £[…] billion (from a base of £[…] billion). Abbey's share of UK retail deposit account balances in 2007 was [5-10]% (and Alliance & Leicester's [0-5]%). Accordingly, even if both transactions are completed, the combined share of the merged entity in retail deposit accounts will be [10-20]%. Abbey considers that the merged business will continue to face competition from a number of large competitors, including Nationwide ([10-20]%), Barclays ([10-20]%), Royal Bank of Scotland ([5-10]%), Lloyds TSB ([5-10]% and HBOS – [10-20]%).

IV. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE EC MERGER REGULATION

14. Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the common market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on reasoned request, grant derogation from the obligation imposed in Article 7(1). Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where suspension provided for in the EC Merger Regulation would cause serious damage to the undertakings concerned by a concentration or to a third party. In deciding on

the request, the Commission must take into account, inter alia, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

A. THE TRANSACTION FALLS UNDER THE SUSPENSION OBLIGATION PURSUANT TO ARTICLE 7(1) OF THE EC MERGER REGULATION

15. Given that the proposed transaction appears to qualify as a concentration with Community dimension within the meaning of the EC Merger Regulation - without prejudice to the final determination of the relevant turnover - it falls under the suspension obligation laid down in Art. 7(1) of the EC Merger Regulation.

B. THE EFFECTS OF THE SUSPENSION ON THE UNDERTAKINGS CONCERNED AND THIRD PARTIES

16. On the basis of the derogation request and representations made by the UK Government which the Commission finds persuasive, the Commission considers that the reasons given for a derogation from the suspension obligations are sufficient.

17. B&B is in serious financial distress, and there is a real likelihood that B&B would cease to be a viable business.

18. In addition, the consequences of a financial failure of B&B, absent the acquisition of the Target by a stable and reputable market player in today's context, would have an impact not only on B&B and the assets being transferred to the Target but also on the stability of financial markets and consequently on third parties, including B&B's customers. Such a risk would be seriously increased if the acquisition does not take place rapidly. The resulting risk for the public would be very significant.

19. The acquisition is also important, as any negative outcome for B&B could also have a knock-on effect for other players in financial markets in the UK and beyond. The same applies to third parties.

20. Delay in the implementation of the transaction due to the standstill obligation imposed by the EC Merger Regulation may cause this disruption to magnify, as without the waiver the UK authorities would not be in a position to close the bid within the timescale required, which would significantly affect consumer confidence.

C. THE THREAT TO COMPETITION POSED BY THE CONCENTRATION

21. From the information available, it appears that the only affected market would be the market for retail deposits in the UK. B&B's share on this market was only [0-5] % in 2007 and has declined between June 2008 and September 2008. As a result the operation will only result in a minimal overlap. The merged entity will have an overall market share of around [5-15]% and will continue to face competition from a number of large competitors, including Nationwide, Barclays, Royal Bank of Scotland, and Lloyds TSB. Therefore, on the basis of the information provided by the parties prima facie the transaction is not likely pose a threat to competition within the EEA.

D. BALANCE OF INTERESTS

22. Based on the above, it appears that the suspension obligation could seriously affect the financial interests of the parties and financial stability generally and the benefits flowing from the derogation outweigh any potential adverse effects that it may have on one or more of the parties or on any third party. Therefore the Commission finds that the derogation can be granted in accordance with the application so as to allow the acquirer to take all actions that are reasonably necessary to restore the viability of the Target and thereby contribute to ensuring financial stability.

VI. CONCLUSION

23. Based on the above considerations and in accordance with Article 7(3) of the Merger Regulation, Abbey is granted a derogation from the obligations imposed by Article 7(1) of the Merger Regulation until the acquisition has been declared compatible with the common market by means of a decision pursuant to Article 6(1)b or Article 8(1) or Article 8(2) or a presumption pursuant to Article 10(6).

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