

EN

***Case No COMP/M.6405 -
BANCO SANTANDER /
RAINBOW***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/11/2011

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EUROPEAN COMMISSION

Brussels, 29.11.2011

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

C(2011) 9031

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6405 - BANCO SANTANDER / RAINBOW
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 21.10.2011, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the undertaking Banco Santander S.A. ("Banco Santander", Spain) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of the undertaking The Royal Bank of Scotland Group (assets collectively referred to as "Rainbow", UK) by way of purchase of assets.³ The transaction in question was originally cleared by the Commission in its Decision of 15 October 2010 in case COMP/M.5948 and has been renotified following a change in the perimeter of the assets transferred.

I. THE PARTIES AND THE OPERATION

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 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

³ Publication in the Official Journal of the European Union No C 324, 09.11.2011, p.13

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.
3. **Rainbow** consists of (i) the Royal Bank of Scotland Group plc's ("RBS") branch-related retail and small and medium sized-enterprise ("SME") business in England and Wales, (ii) the NatWest branch-related retail and SME business in Scotland, along with (iii) certain mid-corporate customer accounts in the UK. In total, Rainbow consists of approximately 300 branches and around 40 SME and business banking centres, including ATMs, together with related contracts, intellectual property and other related assets. Excluded from the scope of the transaction are insurance products, as well as financial market services.
4. On 30 August 2011, Santander and RBS amended the acquisition agreement to include credit and charge cards held by transferring Rainbow customers in order to avoid split customer relationships following closing, as well as certain Rainbow customers with cash handling services requirements that will be serviced by Santander post transaction , together with certain other minor changes.
5. The sale of Rainbow business results from an undertaking submitted by the UK authorities as part of RBS' restructuring plan following state support approved by the Commission in its decision of 14 December 2009⁴. In that decision, it is stated that the "UK authorities commit that the buyer of the Rainbow Business must, together with the rest of the buyer's group, in combination with the Rainbow Business, have a market share of no more than 14% in the UK SME market (on a number of customers basis), prior to the signing of the sale and purchase agreements relating to the sale of the Rainbow Business to the buyer"⁵.

II. CONCENTRATION

6. The proposed transaction will result in Santander acquiring sole control over Rainbow. As Rainbow is not a legal entity, the transaction is structured as an asset deal, with Santander acquiring the branches together with related contracts, guarantees/securities and debts relating to customers of those branches (together with direct customer transfers), as well as intellectual property, goodwill, office equipment and books and records.
7. The proposed transaction constitutes a concentration within the meaning of Article 3(1)(b) of Regulation 139/2004.
8. As the amended acquisition agreement of 30 August 2011 has led to the change of the perimeter of the transaction, with the addition of additional customer relations, the transaction has been re-notified under the terms of the Merger Regulation.

III. EU DIMENSION

⁴ Decision in Cases N422/2009 and N621/2009, OJ C 119 of 7 May 2010, p. 1.

⁵ Paragraph 99 of the decision in Cases N422/2009 and N621/2009.

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion⁶ (Banco Santander S.A: EUR 75 325 million; Rainbow: EUR [...]). Each of them has a EU-wide turnover in excess of EUR 250 million (Banco Santander S.A: EUR [...]; Rainbow: EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

IV. RELEVANT MARKETS

10. As Rainbow is active only in retail banking and corporate banking, overlaps with the activities of Santander arise in banking services to private individuals and to corporate customers (SME and large corporate customers)⁷. There are also some overlaps in card based consumer credit and to a very minor extent also in cash handling services.
11. Regarding retail and corporate banking, the Commission in previous decisions⁸ considered in particular the following relevant product and geographic markets.⁹

(i) Retail Banking

12. In respect of banking services for natural persons, the following segments have been considered: current accounts, savings, personal loans, consumer loans, credit cards¹⁰, debit cards, mortgages and distribution of mutual funds and other investment products¹¹. Regarding the geographic definition of retail banking markets, the Commission has generally considered national markets¹², but has also looked at, where relevant, the regional distribution of branches in making its assessment.¹³

⁶ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

⁷ As specified in recital 3, no financial market services business is included in Rainbow. However, contracts relating to these services are being transferred to Santander. Given that in any event Santander's presence in financial market services is limited with a share of less than [0-5%] in any segment, this market segment will not be discussed further.

⁸ See COMP/M.4844 – Fortis/ABN AMRO ASSETS; COMP/M.5384 - BNP Paribas/Fortis; COMP/M. 5726 - Deutsche Bank/ Sal. Oppenheim.

⁹ Leaving aside specialized markets which include leasing services, private banking, asset management and payment transaction processing. These are not analysed in the present case as according to the Parties, their activities in these areas do not overlap. The Commission has also looked at the markets for factoring and for cash handling and sales, but these markets are not affected markets in the context of the notified transaction.

¹⁰ In one case, COMP/M.5384 - BNP Paribas/Fortis, a separate market was identified for card-based revolving credit.

¹¹ COMP/M.4844 - Fortis/ABN AMRO ASSETS.

¹² COMP/M.4844 - Fortis/ABN AMRO ASSETS; COMP/M.5384 - BNP Paribas/Fortis; COMP/M. 5726 - Deutsche Bank/ Sal. Oppenheim.

¹³ COMP/M.3894 Unicredit/HVB, Commission decision of 18 October 2005; COMP/M.4356 – Deutsche Bank/Berliner Bank; COMP/M.5811 – Erste Bank/ASK.

(ii) Card-based consumer credit

13. The Commission has considered that the provision of card-based consumer credit should be viewed as a separate market, distinct from card issuing and from personal loans¹⁴. In terms of geographic scope this market has been viewed as national.

(iii) Cash handling and sales

14. In addition, the Parties are active in the provision of certain money transmission services for corporate customers. In addition to the small horizontal overlap in cash handling, both cash handling and cash sales may be considered an input used by financial institutions, even though no such relationship currently exists between Santander and Rainbow, and therefore a vertical relationship could in principle arise. The Commission has in the past¹⁵ defined a market for cash in transit ("CIT"), distinguishing it from cash handling services¹⁶.

15. Cash handling consists in sorting and crediting customer accounts for the value of physical cash (notes and coins) delivered by customers, in the case of Santander to cash centres or Post Office counters. Other companies provide similar services whilst some banks self-supply or outsource the service. The scope of the service offered may also extend to cheques and other bearer means of payment.

16. Cash sales consist in the provision of cash to corporate customers, financial institutions and ATM operators (both bank-owned ATMs and ATMs operated by independent operators).

17. In terms of geographic scope, in case no. COMP/M.5293 *Banco Santander/Alliance & Leicester*, although considering that it was not necessary to conclude as to the precise geographic scope, the Commission considered that the geographic markets for cash handling and cash sales were unlikely to be wider than national given, in particular, that cash handling and cash sales services related overwhelmingly or exclusively to national currency, i.e. pounds sterling.

(iv) Banking for corporate customers

18. In respect of commercial banking services the Commission has looked at the segments of domestic payments, international payments, savings, loans, documentary credits, export financing and cash management services¹⁷. In addition, the Commission has made a distinction between large corporate customers ("LCCs") and smaller commercial

¹⁴ Case COMP/M.5384 *BNP Paribas / Fortis*, paragraph 41 et seq; see also case COMP/M.6164 *Barclays Bank/Egg Credit Card Assets*. The Commission has also left open the question of whether the provision of card-based consumer credit should be divided into credit offered on universal cards and credit offered on private label store cards, but this question is not relevant to the present case since the parties do not overlap in private label store cards.

¹⁵ Case No. COMP/M.3396 - Group 4 Falck / Securicor, Commission decision of 28 May 2004 and Case No. COMP/M.5293 *Santander/Alliance & Leicester*, para. 17

¹⁶ Case NO. COMP/M.3396 - Group 4 Falck / Securicor, recital 14.

¹⁷ M.4844 - *Fortis/ABN AMRO ASSETS*; M.5384 *BNP Paribas/Fortis*, recital 16.

clients such as SMEs¹⁸. In cases falling under the Commission's jurisdiction, the markets for banking services to commercial clients have been considered national in scope while for LCCs the question on whether the market(s) for these services are national or wider in scope has been left open.

19. As regards commercial clients, the Parties have provided data on the basis of customers with turnover of up to GBP 25m as they have indicated that this is how both parties distinguish internally between SMEs and large customers¹⁹. On the other hand, SMEs are distinguished from retail personal customers by virtue of having a dedicated business account. They have, however, indicated that even if a wider definition of commercial clients were used (up to an annual turnover of GBP 250 million), market shares would be substantially unchanged²⁰.

V. COMPETITIVE ASSESSMENT

20. The proposed transaction gives rise to potentially affected markets due to horizontal overlaps in four segments in retail banking in the UK, on the basis of new business in 2010: (a) personal current accounts (b) mortgages²¹ (c) card-based consumer credit and (d) cash handling²².
21. With respect to horizontal overlaps in retail banking, other than in personal current accounts and mortgages, the combined market shares exceed 15% in personal current accounts and mortgages (measured in both cases as share of new business)²³, as well as in cash handling.
22. For personal current accounts in the UK the combined share of new business in 2010 is [10-20%] (Santander: [10-20%]; Rainbow: [0-5%])²⁴.

¹⁸ M.4844 - Fortis/ABN AMRO ASSETS and Case No COMP/M.3894 – Unicredito/HVB.

¹⁹ According to the notification, a different team of relationship managers will service customers with a turnover above GBP 25m.

²⁰ In M.4844 Fortis/ABN AMRO ASSETS, a turnover threshold of €250 million was applied based on the commercial practice of the Parties in that case.

²¹ If only share of total stock were taken into account there would be no horizontally affected markets. However, given that this measure compounds information from previous years, in particular for long-term assets and liabilities, the acquisition of new business is likely to be a better proxy for the effective competitive pressure currently exercised by the players in the marketplace.

²² The possible markets for cash handling and/or cash sales would not constitute vertically affected markets as Santander has a market share of [10-20%] and [5-10%] respectively. The vertical relationship in such markets therefore does not need to be analysed further.

²³ The Parties overlap in respect of card-based consumer credit, but on any measure their combined market share is below [5-10%] and therefore this market is not an affected market.

²⁴ Figures for new business in regard to personal current accounts have been provided by the Parties for 2009 based on calculations by a third party, GFK, using a survey methodology in which customers were asked about new products taken out in the six months prior to the interview. According to the Notifying Party

23. Regarding mortgage loans, the combined share of new business in 2009 is [10-20%] (Santander: [10-20%]; Rainbow: [0-5%])²⁵.
24. In both cases, a number of strong competitors exist. In personal current accounts: Lloyds ([30-40%]), RBS ([10-20%]), Barclays ([10-20%]), and HSBC ([10-20%]). In mortgage loans: Lloyds ([20-30%]), Nationwide ([5-10%]), Barclays ([10-20%]), RBS ([10-20%]) and HSBC ([5-10%])²⁶.
25. Even if the Commission were to consider the competitive impact at a regional level, the picture would not change to any significant or relevant degree²⁷.
26. Finally, in cash handling Santander has a market share of [10-20%], and the transaction results in a horizontal increment to this which is, however, minimal ([0-5%]).
27. None of the possible segments in corporate banking gives rise to an affected market. However, as the SME market in the UK was considered specifically in the state aid decision regarding the restructuring of RBS it may be noted that, according to the notifying party, the combined market shares range between [0-5%] and [10-20%] for any of the possible market segments within SME banking, on the basis of SME main bank relationships²⁸.
28. Given the limited combined market shares that the transaction will bring about and the significant number of large and credible competitors, it can be concluded that the transaction does not raise serious doubts on any of the possible markets.

VI. RELATIONSHIP WITH STATE AID RULES

29. Based on the information available at this stage, the Commission has no indication that RBS is in breach of any of its obligations regarding the sale of the Rainbow business within the framework of the State aid procedure²⁹. The present decision under the EU

there have not been any material changes as there has been no adverse change to the fascia count in any of the local markets where Rainbow is present.

²⁵ According to the Parties, Santander and other players in the UK report new gross lending as a separate line in their annual reports and accounts, whilst the Bank of England provides total new gross lending figures for the overall market. As a share of stock, the figures for 2009 are [10-20%] and [10-20%] respectively.

²⁶ All market shares quoted in terms of new business in 2010.

²⁷ The highest combined market share provided by the Parties on the basis of possible regional segmentations is [10-20%] for personal loans ([...]), [20-30%] for savings and [20-30%] for mortgages ([...]).

²⁸ This is based on PH data, also used in the state aid decision. According to the notification there are two primary information sources on UK SMEs and the SME market - PH and TNS. The notifying party considers PH is the only comprehensive source of gross market size information and that it was selected as the appropriate measure in the state aid process for this reason. TNS is a sample-based survey – it only provides information on market size by extrapolation but does provide an indicator of a cross market view of relative size of each player. In any event, the market shares would not vary to any significant effect if the TNS data were used. It should also be noted in this regard that the PH database used to collate these shares does not distinguish between stock and new business and therefore does not allow a separate calculation of new business. The data refers to 2009 as being the latest available but according to the Parties it is not expected to have changed to any material extent for 2010.

²⁹ Cases N422/2009 and N621/2009.

Merger Regulation in no way prejudices, however, the ongoing monitoring of RBS' implementation of its obligations in line with the above decision of the Commission of 14 December 2009.

VII. 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 Commission,

(signed)
Joaquim Almunia
Vice-President