



EUROPEAN COMMISSION
DG Competition

Case M.7947 - BANCO SANTANDER TOTTA / BANIF

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 07/07/2016

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EUROPEAN COMMISSION

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PUBLIC VERSION

MERGER PROCEDURE

To the notifying party

Dear Sir/Madam,

**Subject: Case M. 7947 – BANCO SANTANDER TOTTA / BANIF
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²**

- (1) On 2 June 2016, the European Commission ('the Commission') received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Banco Santander Totta, S.A. ('BST', Portugal), the Portuguese subsidiary of the Santander Group (Spain), acquires within the meaning of Article 3(1) of the Merger Regulation sole control of a set of assets and liabilities of Banco Internacional do Funchal, SA ('BANIF', Portugal), within the context of a resolution measure adopted by Banco de Portugal ('the Transaction').³ BST is hereafter designated as the Notifying Party and together with BANIF as 'the Parties', whilst the undertaking resulting from the Transaction is referred to as 'the merged entity'.

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 1, 3.1.1994, p. 3 (the 'EEA Agreement').

³ Publication in the Official Journal of the European Union No C 210, 11.6.2016, p. 18.

1. THE PARTIES

- (2) BST is the Portuguese subsidiary of the Santander Group, an international financial group of companies in the banking and financial sector with activity in Spain, the United Kingdom, other European countries and North and South America.
- (3) BANIF's assets and liabilities transferred to BST are mainly related to the banking activity of BANIF in Portugal and include deposits and most of the commercial activity, employment contracts for all workers except those working in the Central Services.

2. THE OPERATION

- (4) The implementation of the concentration was based on the resolution measure determined by the Resolution of the Bank of Portugal, under Article 145 – M (1) and (6) of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law No. 298/92, of 31 December ('RGICSF').
- (5) According to that measure, BST acquired and took control over the rights and obligations, namely certain assets, liabilities, off-balance sheet items and assets under BANIF's management and as a consequence is considered, for all legal and contractual purposes, as successor of BANIF in the rights and obligations concerning the assets transferred.
- (6) Most of the assets and liabilities that were not sold to BST were transferred to an asset management vehicle.
- (7) In view of the above, the operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million⁴ (Santander Group: EUR 76 793 million; BANIF: EUR 277 million). Each of them has an Union-wide turnover in excess of EUR 250 million (Santander Group: EUR [...] million; BANIF: EUR 277 million). BANIF achieves more than two-thirds of its aggregate Union-wide turnover in Portugal, but the Santander Group does not. The Transaction therefore has an Union dimension under Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

- (9) BST and BANIF perform a broad range of activities in the banking sector, including retail and corporate banking, factoring, and also offer card payment services. The Transaction has an impact, primarily within the Portuguese territory⁵

⁴ Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

⁵ Taking into account the minimal turnover created outside Portugal by BANIF, this will not be discussed further in this decision.

and in particular regarding the islands of Madeira and Azores, where BANIF has historically held a relatively strong position.

- (10) As regards banking services, the Commission distinguished in previous decisions⁶ three broad areas of activity for the purposes of product market definition:
- i. Retail Banking, which pertains to the supply of banking services to individuals and small businesses;
 - ii. Corporate Banking, which pertains to the supply of banking services to companies, financial institutions and public sector; and
 - iii. Investment Banking / financial market services, which includes investment operations in different types of assets such as stock, bonds or derivative financial instruments.
- (11) In addition, the Commission identified other banking or banking-related activities, such as for example factoring⁷, and (card) payment services⁸, which were assessed separately from those broad categories of activities.
- (12) Moreover, the Commission considered a variety of narrower product markets within these areas of activity, with the precise market definition being left open. In view of the fact that the Transaction gives rise only to potentially affected markets in retail banking and factoring, the following sections will solely focus on those activities.⁹

4.2. Retail banking

- (13) In the area of retail banking, the Commission previously considered in particular potentially separate markets for current accounts, savings, personal loans, consumer loans, credit cards, debit cards, mortgages, the distribution of mutual funds and other investment products.¹⁰ In one case, a separate market was considered for card-based revolving credit.¹¹ However, in all previous cases the precise market definitions were left open.¹²

⁶ For example M.4844 – *Fortis / ABN AMRO Assets* and M.6405 – *Banco Santander / Rainbow*.

⁷ M.4844 - *Fortis/ABN AMRO Assets* and M.7944 – *Credit Mutuel / GE Capital's factoring and equipment financing business in France and Germany*.

⁸ M.7873 – *Worldline / Equens / Paysquare*.

⁹ Further overlaps, but no affected markets also arise with respect to card payment services and corporate banking markets. As regards (card) payment services, the Commission has previously identified separate markets for payment card issuing and for merchant acquiring (see for example M.7873 – *Worldline / Equens / Paysquare*) and contemplated a number of plausible sub-segments. The geographic scope of these markets has always been considered to be at least national. Likewise, the Commission has previously considered a number of plausible sub-segments in the corporate banking area (M.6405 – see for example M.7873 – *Banco Santander / Rainbow*), but has consistently defined the geographic market to be national or wider.

¹⁰ M.4844 - *Fortis/ABN AMRO Assets*.

¹¹ M.5384 - *BNP Paribas/Fortis*.

¹² M.4844 - *Fortis/ABN AMRO Assets*.

- (14) In the present case, the submissions of the Notifying Party and the findings of the market investigation¹³ indicate that all banks in Portugal offer broadly the same types of retail banking products and services, which suggests that a certain degree of supply-side substitutability exists.
- (15) In any event, the Commission considers that, for the purpose of this decision, the exact scope of the market for retail banking, and whether narrower product markets can be identified within this activity, can be left open, since the Transaction does not give rise to serious doubts about its compatibility with the internal market under any plausible product market definition.
- (16) With regard to the geographic scope of the markets for retail banking, in previous decisions the Commission mostly assessed them at a national level, but also considered the existence of regional markets, or took the regional distribution of branches into account in its competitive assessment.¹⁴
- (17) With particular regard to the potential existence of regional markets for retail banking, which the Notifying Party contests, the Commission considers that there may be some reasons justifying the definition of regional markets, in particular for the insular regions of Madeira and Azores. This is because BANIF's activities are predominantly focused on those areas, where its position has traditionally been significantly stronger than in continental Portugal. On the other hand, the Parties' competitors indicated in the course of the market investigation¹⁵ that their pricing policy is national, which is a strong indication of national geographic markets.
- (18) Even if regional markets were defined for Madeira and Azores, the fact that the pricing policy of Portuguese banks is largely defined at a national level would be an important factor to take into account in the competitive assessment.
- (19) In any event, the Commission considers that it is not necessary, for the purposes of this decision, to conclude on the precise geographic scope of the markets for retail banking, as no serious doubts arise as to the compatibility of the Transaction with the internal market on the basis of either a regional (for both Madeira and Azores) or national market definition.

4.3. Factoring

- (20) Factoring is a financial service by which a commercial client pledges its debtors to a factoring company that will collect the money. Factoring comprises the purchase of all kinds of receivables from businesses, thereby providing customers with additional liquidity.¹⁶

¹³ M.3894 - *Unicredit/HVB*; M.4356 - *Deutsche Bank/Berliner Bank*; M.4844 - *Fortis/ABN AMRO Assets, COMP/M.5811 - Erste Bank/ASK*, M.5960 - *Credit Agricole / Cassa di Risparmio di della Spezia / Agences Intesa Sanpaolo*, and M.6405 - *Banco Santander / Rainbow*.

¹⁴ M.3894 - *Unicredit/HVB*; M.4356 - *Deutsche Bank/Berliner Bank*; M.4844 - *Fortis/ABN AMRO Assets, COMP/M.5811 - Erste Bank/ASK*, M.5960 - *Credit Agricole / Cassa di Risparmio di della Spezia / Agences Intesa Sanpaolo*, and M.6405 - *Banco Santander / Rainbow*.

¹⁵ Minutes of conference calls held with competitors on 12 May 2016, 13 May 2016, 16 May 2016 and 19 May 2016.

¹⁶ M.3894 - *Unicredit/HVB*.

- (21) In previous cases, the Commission considered factoring as a separate market from other financing services. The Commission also contemplated whether different types of factoring might constitute separate relevant product markets, but ultimately left open the precise product market definition.¹⁷
- (22) In any case, the Commission considers that, for the purposes of this decision, the exact scope of the market for factoring, and whether narrower product markets can be identified within this activity, can be left open, since the Transaction does not give rise to serious doubts about its compatibility with the internal market under any plausible product market definition.
- (23) In terms of geographic scope, the Commission in previous decisions consistently defined factoring market(s) at a national level.¹⁸

5. COMPETITIVE ASSESSMENT

5.1. Affected markets

- (24) After examining the Transaction in light of the Parties' market shares in national markets, as provided by the Notifying Party and the results of the market investigation, the Commission considers that none of the national banking markets or segments, either in retail banking, corporate banking or payment services, amounts to an affected market as the merged entity's market share remains below 20%, with the exception of the factoring market (see Table 1).

Table 1: National market shares¹⁹

	BST's market shares	BANIF's market shares	Combined market shares
<i>Retail banking: residential customers and micro-enterprises</i>			
A1. Sight deposits/account	[10-20]%	[0-5]%	[10-20]%
A2. Saving/Investment	[10-20]%	[0-5]%	[10-20]%
A.2.1. Term Deposits and other Saving Applications	[10-20]%	[0-5]%	[10-20]%
A.2.2. Retail Sale of Mutual Funds	[10-20]%	[0-5]%	[10-20]%
A.3. Credit Solutions	[10-20]%	[0-5]%	[10-20]%
A.3.1. Mortgage Credit	[10-20]%	[0-5]%	[10-20]%
A.3.2. Consumer credit including motor vehicle	[10-20]%	[0-5]%	[10-20]%

¹⁷ M.3894 - *Unicredit/HVB*; M.6244 –*BNP Paribas / Fortis Commercial Finance Holding*, and M.7944 – *Credit Mutuel / GE Capital's factoring and equipment financing business in France and Germany*.

¹⁸ M.3894 - *Unicredit/HVB*; M.5293 – *Santander/Alliance & Leicester*, M.6168 *RBI/EFG Eurobank/JV*, M.6244 –*BNP Paribas / Fortis Commercial Finance Holding*.

¹⁹ According to information provided by the Notifying Party, the market shares in the sub-segments of the markets which the Commission has considered in previous decisions are not materially different from the respective broader markets included in the table.

<i>Corporate banking and public bodies</i>			
B.1. Sight deposits/accounts	[5-10]%	[0-5]%	[10-20]%
B.2.1. Term Deposits	[10-20]%	[0-5]%	[10-20]%
B.3.2. Factoring	[20-30]%	[0-5]%	[20-30]%
B.4. Medium and long-term treasury	[5-10]%	[0-5]%	[10-20]%
B.4.1. Leasing	[10-20]%	[0-5]%	[10-20]%
B.4.2. Bank Credit	[5-10]%	[0-5]%	[10-20]%
<i>(Card) payment services</i>			
C.1 Issuing	[5-10]%	[0-5]%	[10-20]%
C.1.1. Debit	[10-20]%	[0-5]%	[10-20]%
C.1.2. Credit	[5-10]%	[0-5]%	[5-10]%
C.2. Network and technology platform			
C.2.1. ATMs	[10-20]%	[0-5]%	[10-20]%
C.2.2. Point of sales (POS) terminals	[10-20]%	[0-5]%	[10-20]%

Source: Form CO, page 38 and 39.

- (25) In terms of number of branches, the Notifying Party reports that BST has a national total of 538 branches (10.7% share) and BANIF 163 (3.2% share), which would also remain below 20% of the total number of branches.
- (26) In view of the national market share data and the regional footprint of BANIF, with strong presence in the autonomous regions of Madeira and Azores, the only potentially affected markets²⁰ arising from the Transaction are:
- a. the national market(s) for factoring, which will be discussed in Section 5.2, and
 - b. the regional markets for retail banking in each Madeira and Azores, due to BANIF's strong presence in these regions, discussed in Section 5.3.

5.2. National market(s) for factoring

- (27) In relation to the market(s) for factoring, Table 2 presents the market shares for Portugal as submitted by the Notifying Party.

²⁰ In relation to the non-affected national banking markets the Notifying Party argues that the national markets are competitive, with a significant number of domestic players and some recent entrants (i.e. Banco CTT). According to a study submitted by the Notifying Party, ("the study"), BST is usually ranked fourth in size in Portugal, BANIF being much smaller.

Table 2: Market shares for the markets for factoring in Portugal²¹

	BST's market shares	BANIF's market shares	Combined market shares	Delta HHI
Domestic factoring	[20-30]%	[0-5]%	[20-30]%	[90-100]%
International factoring	[10-20]%	[0-5]%	[10-20]%	[0-5]%
Confirming	[30-40]%	[0-5]%	[30-40]%	[40-50]%
Total factoring	[20-30]%	[0-5]%	[20-30]%	[70-80]%

Source: Notifying Party's submission "A Study of the Concentration of the Portuguese Banking Industry after BST's Acquisition of Banif in December 2015", data as of June 2015 based on balance sheet items, Table 6.

- (28) In the overall factoring market, or any plausible sub-segment thereof, the Parties' market shares would remain modest (market share of [20-30]% in the overall factoring market and an HHI delta of [70-80]%). Moreover, the increment post-Transaction would be minimal.
- (29) Moreover, the market investigation did not reveal any indications that the merged entity would attain market power as a result of the Transaction.²²
- (30) In conclusion, in light of the outcome of the market investigation and the information available to it, and taking particularly into account the low market share of the merged entity and the very limited increment resulting from the Transaction, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the markets for factoring in Portugal.

5.3. Potential regional (Azores and Madeira) markets for retail banking services

- (31) The Notifying Party submitted that it cannot obtain precise market shares for plausible regional markets for all potential sub-segments, in particular not for its competitors, but provided estimates of market shares on the basis of branches and deposits, which it argues are the best available proxy for all plausible segments.
- (32) As regards branches, BANIF's market share in Madeira is around 24% and BST is below 11%, which results in a combined market share of around 35%. The second largest bank is CGD with 15.5% of the branches. BCP is the third largest player in number of branches with 14% followed by Novo Banco with 13%.
- (33) In Azores, BANIF's market share in terms of branches is around 22% and BST is below 5%, which results in a combined market share of around 25%. The second largest bank is CGD with 18% of the branches, followed by Montepio with 14% and Novo Banco and SICAM with around 12-13% each.

²¹ The Notifying Party further submits that BST does not operate in the potential markets/segments within factoring of: (i) invoice discounting, (ii) floor planning, and (iii) inventory finance (Form CO, page 28).

²² Minutes of conference calls held with competitors on 12 May 2016, 13 May 2016, 16 May 2016, 19 May 2016 and 3 June 2016.

- (34) These market shares were broadly confirmed during the Commission's investigation.²³
- (35) According to the data submitted by the Notifying Party, the merged entity's own market shares in the following segments of retail banking would be between [10-20]% and [40-50]% in Madeira, with increments ranging from [5-10]% to [10-20]%.

Table 3: Market shares in the region of Madeira²⁴

	BST's market shares	BANIF's market shares	Combined market shares
<i>Deposits</i>			
A1. Sight deposits/account	[10-20]%	[10-20]%	[30-40]%
A2. Saving/Investment	[10-20]%	[20-30]%	[30-40]%
A.2.1. Term Deposits and other Saving Applications	[10-20]%	[20-30]%	[30-40]%
A.2.2. Retail Sale of Mutual Funds	[5-10]%	[0-5]%	[10-20]%
<i>Loans</i>			
A.3. Credit Solutions	[5-10]%	[10-20]%	[20-30]%
A.3.1. Mortgage Credit	[10-20]%	[10-20]%	[20-30]%
A.3.2. Consumer credit including motor vehicle	[5-10]%	[5-10]%	[10-20]%
<i>Cards</i>			
Debit	[10-20]%	[20-30]%	[40-50]%
Credit	[5-10]%	[5-10]%	[10-20]%

Source: Form CO, Annex 8.

- (36) In Azores, the merged entity's market share would be between [5-10]% and [40-50]%. The increments are moderate, ranging between [0-5]% and [5-10]%, which confirm the minor position of BST in the region of Azores.

²³ Minutes of conference calls held with competitors on 12 May 2016, 13 May 2016, 16 May 2016, 19 May 2016 and 3 June 2016.

²⁴ According to information provided by the Notifying Party, the market shares in the sub-segments of the markets which the Commission has considered in previous decisions are not materially different from the respective broader markets included in the table.

Table 4: Market shares in the region of Azores²⁵

	BST's market shares	BANIF's market shares	Combined market shares
<i>Deposits</i>			
A1. Sight deposits/account	[0-5]%	[10-20]%	[10-20]%
A2. Saving/Investment	[0-5]%	[10-20]%	[20-30]%
A.2.1. Term Deposits and other Saving Applications	[0-5]%	[20-30]%	[20-30]%
A.2.2. Retail Sale of Mutual Funds	[0-5]%	[0-5]%	[5-10]%
<i>Loans</i>			
A.3. Credit Solutions	[0-5]%	[20-30]%	[20-30]%
A.3.1. Mortgage Credit	[0-5]%	[20-30]%	[20-30]%
A.3.2. Consumer credit including motor vehicle	[0-5]%	[30-40]%	[30-40]%
<i>Cards</i>			
Debit	[5-10]%	[30-40]%	[40-50]%
Credit	[0-5]%	[10-20]%	[10-20]%

Source: Form CO, Annex 8.

- (37) Moreover, according to a study submitted by the Notifying Party ('the study'),²⁶ the Azores and Madeira markets for retail banking are competitive, as results from the granularity of the branch distribution across the autonomous regions: while BANIF had around 22-24% of the existing branches in each region, closely followed by state-owned CGD, most banking groups are active in Madeira and Azores, where their footprint in terms of branch network is very much similar to that of the entire Portuguese market, so that customers have the option of mobility between banks. The Parties' main competitors confirmed that they are present in those regions and offer the same range of products as in the remaining Portuguese territory.
- (38) In the case of Madeira, it is also stated in the study that a significant part of the banking activity provided by BANIF (i.e. [30-40]% of the total turnover with non-corporate clients) is dedicated to Portuguese nationals living abroad. These clients should not be affected by the Transaction since they also have access to the banking system of their countries of residence or could otherwise transfer their accounts to branches in the Portuguese mainland. The results of the market investigation, confirm the importance of Portuguese nationals living abroad as

²⁵ According to information provided by the Notifying Party, the market shares in the sub-segments of the markets which the Commission has considered in previous decisions are not materially different from the respective broader markets included in the table.

²⁶ "A study of the concentration of the Portuguese banking industry after BST's acquisition of BANIF in December 2015", submitted on 10 May 2016.

customers of the banking sector in Madeira.²⁷ This is also consistent with the relatively higher market shares of BANIF in saving products.

- (39) In view of the above, the market shares as submitted by the Parties probably overestimate BANIF's importance for customers living in Madeira.
- (40) Furthermore, the Notifying Party submitted that the products and pricing policy for retail banking products and services are defined at a national level by all banks active in Portugal, and therefore there is a sufficiently competitive banking environment at a national level which imposes a constraint on the behaviour of banks in all regions. As mentioned in paragraphs (14) and (16) above, the results of the market investigation support this argument. The Commission considers that, even if Azores and Madeira are considered separate regional markets, the capacity of the merged entity to leverage its locally stronger position would be to some extent limited by the fact that the commercial policy is mainly determined at national level, where the competitive constraint exercised by other banks is more intense.
- (41) In addition, the results of the market investigation show that, both in Madeira and Azores, BST and BANIF have different approaches to the market and primarily focus on different types of clients.²⁸
- (42) Moreover, the results of the market investigation indicate that BANIF is a bank with a strong regional focus. First, it has strong relationships with the local government and the payments of public servants are done through it. Second, it is mainly focused on the public sector and construction. Third, it is also strong with non-corporate clients and SMEs given a traditional proximity to those clients. And fourth, it has a low focus on cross-selling.
- (43) Unlike BANIF, BST does not have a significant public sector activity on Madeira or the Azores, similarly to its policy on the continent. BST has a stricter policy for consumer credit, and is more focused on large corporate clients and large projects. Contrary to BANIF, BST has a strong focus on cross-selling.
- (44) The results of the market investigation also show that BANIF's closest competitor appears to be CGD which is also highly focused on the public sector and supporting SMEs.²⁹
- (45) In the light of the above considerations, the Commission concludes that the Parties are not particularly close competitors in the market(s) for retail banking in the regions of Madeira and Azores.
- (46) The Notifying Party further argues that entry barriers in the banking sector are low and give the example of the entry of some competitors in the regions of Madeira and Azores, namely Banco CTT and Bankinter. The results of the market

²⁷ Minutes of a conference call held with a competitor on 13 May 2016.

²⁸ Minutes of conference calls held with competitors on 12 May 2016, 13 May 2016, 16 May 2016 and 19 May 2016.

²⁹ Minutes of conference calls held with competitors on 12 May 2016 and 13 May 2016.

investigation confirm the entry of these players, although competitors do not expect a significant impact of these entries on the market.³⁰

- (47) The Notifying Party has also submitted that the situation of BANIF was rapidly deteriorating prior to the resolution decision that led to the Transaction. During the Commission's investigation some competitors confirmed that they were able to gain some customers from BANIF in the period before the resolution decision.³¹ This provides an indication that the competitive constraint exercised by BANIF prior to its resolution was of less significance than its historical market position would suggest.
- (48) Finally, in the course of the market investigation competitors stated that they do not expect a significant detrimental effect on competition resulting from the Transaction given that there are alternatives in the market. Some competitors explained that BANIF could even benefit from the higher capacity of BST to obtain liquidity in larger amounts and at lower prices, and offer more competitive terms to a larger base of customers.³²
- (49) In light of the outcome of the market investigation and the information available to it, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to the retail banking market(s) in the regions of Madeira and Azores.

6. CONCLUSION

- (50) 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 and Article 57 of the EEA Agreement.

For the Commission
(Signed)
Margrethe VESTAGER
Member of the Commission

³⁰ Minutes of conference calls held with competitors on 13 May 2016 and 19 May 2016.

³¹ Minutes of conference calls held with competitors on 13 May 2016 and 19 May 2016.

³² Minutes of conference calls held with competitors on 16 May 2016 and 17 May 2016,