



EUROPEAN COMMISSION  
DG Competition

***Case M.8553 – BANCO  
SANTANDER S.A. /  
BANCO POPULAR  
GROUP S.A.***

Only the English text is available and authentic.

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

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Article 7(3)

Date: 7.6.2017



Brussels, 7.6.2017  
C(2017) 4059 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

**Subject :**        **Case M.8553 – BANCO SANTANDER S.A. / BANCO POPULAR GROUP S.A.**  
                         **Commission decision pursuant to Article 7(3) of Council Regulation N° 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**  
                         **Request for derogation**

Dear Sir or Madam,

- (1) We refer to your application for a derogation from the suspension obligation provided for in Article 7(1) of the Merger Regulation with regard to the proposed acquisition by Banco Santander S.A. (“Santander”, Spain) of sole control over Banco Popular Español, S.A. (“BPE”, Spain) submitted pursuant to Article 7(3) of the Merger Regulation on 6 June 2017 (the Transaction). Santander is referred to as the Notifying Party, and together with BPE as the Parties.

**1. THE PARTIES AND THE TRANSACTION**

- (2) Santander is the parent company of an international group of banking and financial companies, operating mainly in Spain, other European countries

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<sup>1</sup> 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.

<sup>2</sup> OJ L 1, 3.1.1994, p.3 (“the EEA Agreement”).

including Portugal and the United Kingdom, Latin America and the United States. Santander is active in retail banking, treasury and insurance.

- (3) BPE is a Spanish financial entity listed in the Madrid, Barcelona, Bilbao and Valencia stock exchanges. BPE provides commercial, retail, investment and wholesale banking services, as well as insurance services, both in Spain and Portugal.
- (4) Due to BPE's recent stressed liquidity situation, the European Central Bank ("ECB") decided on 6 June 2017 that BPE was "failing or likely to fail" and notified the Single Resolution Board ("SRB") of its decision. The SRB therefore proposed a resolution scheme to the European Commission.
- (5) On 7 June 2017 the Commission endorsed, under the framework of the Single Resolution Mechanism set out in Regulation (EU) No 806/2014 ("SRMR"),<sup>3</sup> Article 18(7)<sup>4</sup> the resolution scheme of BPE, based on the proposal by the SRB. The resolution scheme of BPE entered into force on 7 June 2017.
- (6) According to information provided by the Notifying Party, the Transaction concerns the acquisition by Santander of sole control over BPE pursuant to the SRMR. The operation is carried out by virtue of a Sale of Business Tool as specified in the resolution scheme resulting in the transfer of the shares of BPE to Santander. As a result, the entire business of BPE and its subsidiaries have been transferred to Santander as of 7 June 2017.

## **2. EU DIMENSION**

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million. Each of them has an EU-wide turnover in excess of EUR 250 million, but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The proposed Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

## **3. THE APPLICATION FOR DEROGATION**

- (8) The Notifying Party submits that BPE has suffered a rapid deterioration of its liquidity situation that has led to a loss of [40-50]% of its market capitalisation in the [...] days preceding the request for derogation. The Notifying Party submits that the financial stability of BPE may only be preserved if it is rapidly acquired

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<sup>3</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225, 30.7.2014, p. 1-90.

<sup>4</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.6.2014, p.190-348.

by a stable and reputable market player who is entitled to take all appropriate measures aimed at redressing the situation.

- (9) The resolution scheme awards full control of BPE to Santander. However, the stand-still obligation provided for in Article 7(1) of the Merger Regulation would prevent Santander from taking such appropriate measures and would therefore seriously affect the economic stability of BPE and the financial interests of Santander.
- (10) In order to implement the measures necessary for the financial stability of BPE before the adoption of the final decision of the Commission under the Merger Regulation (“interim period”) the Notifying Party requests the Commission for the derogation from the standstill obligation provided for in Article 7(1). The measures would be limited to what is necessary to avoid a further deterioration of BPE’s solvency and other regulatory ratios and would not lead to the operational integration of BPE within Santander. The Notifying Party requests for derogation to implement the following measures:
  - (a) appoint the members of the board of directors and the managing bodies of BPE and any BPE affiliate to the extent that it is strictly necessary for the implementation of points (b) to (i) below
  - (b) manage and implement any measures to ensure compliance by BPE and its participated entities with any regulation regarding money laundering and terrorism financing prevention, and adapting BPE’s policy to Santander’s global policy in this regard;
  - (c) manage the evolution of BPE’s liquidity, treasury, solvency, credit, market and operational risks;
  - (d) adopt measures aimed at enabling BPE to comply with regulatory financial ratios, including solvency and liquidity;
  - (e) manage BPE’s prudential supervision, including contacts with the European Central Bank, Banco de España and national resolution authorities;
  - (f) manage BPE’s audit and accounting obligations;
  - (g) approve the secondment of Santander’s employees to BPE as a temporary measure. The number of these employees will be limited to what is strictly necessary and they will not carry out operational integration activities;
  - (h) adopt any other measure that may be deemed appropriate to preserve BPE’s financial stability during the interim period and which are not of a commercial nature; and
  - (i) in general, adopt any measure to comply with (a) the resolution scheme approved by the SRB in relation to BPE, (b) the Spanish National Resolution Authority governing committee resolution approving the acts implementing the SRB resolution scheme, and (c) the SPA to be entered into with the FROB acting on behalf of BPE’s shareholders.

- (11) The Notifying Party further commits to minimize any exchange of sensitive information to what is strictly necessary.
- (12) Subject to the Commission's approval the Notifying Party will appoint an independent trustee to act as exclusive trustee to supervise that Santander complies during the interim period with the terms under which the derogation is granted. The Notifying Party will enter into the standard trustee mandate with the trustee as soon as possible from the submission of this request for derogation.
- (13) Lastly, the Notifying Party commits to keep during the interim period a separate operational structure of BPE. In particular, Santander will adopt the organizational measures to ensure that the BPE's operational structure is ring-fenced and not operationally integrated with the Notifying Party until the Commission has taken a final decision on the Transaction.
- (14) The Notifying Party considers that the benefits flowing from the derogation outweigh any potential adverse effects that it may have on any third party

#### **4. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE MERGER REGULATION**

- (15) 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).
- (16) Article 7(3) of the Merger Regulation provides that, 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.
- (17) Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where suspension provided for in the Merger regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.

##### **A. The Transaction falls under the suspension obligation pursuant to Article 7(1) of the Merger Regulation**

- (18) The Commission considers that the proposed Transaction constitutes, on the basis of the information provided by the parties so far, a concentration within the meaning of Article 3 of the Merger Regulation and would have an EU dimension according to Article 1(2) thereof. Hence the operation falls under the suspension obligation laid down in Article 7(1) of the Merger Regulation.

##### **B. The effects of the suspension on the undertakings concerned and third parties**

- (19) The Commission notes that BPE is in serious financial distress.

- (20) In particular the Commission notes that the SRB has concluded that the conditions for resolution, as referred to in Article 18(1) SRMR, were met and the Commission has endorsed this conclusion. In particular:
- (a) On 6 June 2017, the ECB has concluded that BPE is failing or likely to fail on the basis of Article 18(4)(c) SRMR. In particular, taking into account the rapidly deteriorating liquidity situation of the BPE, the ECB considered that there were sufficient grounds supporting the determination that the BPE would, in the near future, be unable to pay its debts as they fall due.
  - (b) There is no reasonable prospect that any alternative private sector measures or supervisory action would prevent the failure of BPE within a reasonable timeframe. Given that the private sale process initiated by the BPE had not led to a positive outcome and given the difficulties of BPE to mobilise sufficient additional liquidity within the given timeframe, the SRB concluded that this condition is met.
  - (c) Resolution action would be necessary in the public interest. The SRB concluded that resolution action would be necessary to achieve the following resolution objectives outlined in Article 14 SRMR:
    - to ensure the continuity of critical functions, namely: deposit taking from households and non-financial corporations (small and medium sized enterprises –“SMEs”- and non-SMEs); lending to SMEs; and payment and cash services; and
    - to avoid adverse effects on financial stability.
- (21) The SRB has concluded that the winding up of BPE under normal insolvency proceedings would not meet those resolution objectives to the same extent and the Commission has endorsed this conclusion.
- (22) In this context the Commission considers that the grant of a derogation pursuant to Article 7(3) of the Merger Regulation is appropriate, as otherwise there may be a considerable negative effect on BPE, on its customers and creditors as well as generally on financial stability. Therefore, it appears that the continuation of BPE’s critical functions can only be preserved if BPE is rapidly acquired by a stable and reputable market player who is entitled to take the necessary measures aimed at redressing the situation. Absent the derogation the Notifying Party would be prevented from taking such measures.
- (23) The Commission considers that the suspension obligation imposed by Article 7(1) of the Merger Regulation could lead to serious harm to BPE, its customers and creditors, as well as to financial stability, while no negative effects are likely to arise in relation to third parties from providing derogation from this obligation.

### **C. The threat to competition posed by the concentration**

- (24) Both Santander and BPE are active in the provision of banking services. BPE is active in Spain and Portugal, while Santander is a global banking and financial company. The activities of the Parties therefore overlap in Spain and Portugal in the areas of banking and insurance services.

- (25) The Commission notes that the available information on market shares does not allow drawing definitive conclusions regarding the Parties' competitive position in the possible relevant markets. It can however provide an indication of the combined position of the Parties in the geographic markets where BPE is active, i.e. Spain and Portugal.
- (26) On the basis of information provided by the Notifying Party the Parties' combined market shares would be below [20-30]% in Spain in terms of overall market for credits, customer funds and the number of branches, and would be close to [20-30]% in the area of SMEs. In all these markets a number of credible competitors would remain present on the market, such as CaixaBank, BBVA and Bankia.
- (27) As regards the markets in Portugal, the increment brought by BPE is estimated around [0-5]% and the combined market share of the Parties on the Portuguese banking markets is expected to be below [20-30]%.
- (28) In conclusion, on the basis of the information provided by the Notifying Party and the information publicly available, the likelihood that the Transaction would raise serious doubts does not seem high, both regarding horizontal overlaps and vertical relationships or with regard to negative effects on a third party and to competition.
- (29) Therefore, on the basis of the information provided by the parties, it appears *prima facie* that the Transaction is not likely to pose a threat to competition within the EEA.

#### **D. Balance of interests**

- (30) Based on the above, it appears that whilst the suspension obligation could seriously affect BPE, its customers and creditors, as well as financial stability, it is unlikely that granting the derogation would result in significant impediment of effective competition, and derogation does not appear to have adverse effects on one or more of the parties or on any third party. Therefore the Commission finds that derogation can be granted in accordance with the application and to the extent specified below.

### **5. TERMS AND CONDITIONS**

- (31) According to Article 7 (3), fourth sentence, of the Merger Regulation, a derogation from the suspension obligation laid down by Article 7 (1) thereof may be made subject to conditions and obligations in order to ensure effective competition.
- (32) On 6 June 2017 the Notifying Party committed that the requested derogation would only apply to measures listed in recital (10) above and only to the extent necessary to avoid a further derogation of BPE's solvency and other regulatory ratios. Furthermore, the Notifying Party commits that the proposed measures will not lead to the operational integration of BPE within Santander before the Commission has taken a final decision on the transaction.
- (33) Santander also commits to minimise any exchange of sensitive information to what is strictly necessary.

- (34) Based on the preceding considerations, the Commission has decided to grant a derogation from the suspension obligation with regard to the proposed concentration subject to the following conditions:
- Santander shall submit a complete notification of the Transaction to the Commission without delay, and in any event no later than [...] from the adoption of the Article 7(3) decision in order to allow the assessment of the compatibility of the proposed concentration with the internal market and the EEA agreement.
  - Until the Commission has adopted its decision on the compatibility of the Transaction, this derogation would allow Santander to take only actions which are necessary to restore Banco Popular's viability as described in this Decision.
  - The derogation is made subject to the condition that Santander will adopt the organizational measures to ensure that the BPE's business is ring-fenced and not operationally integrated with the Notifying Party, limiting the Notifying Party's influence to the minimum necessary, until the Commission has taken a final decision on the Transaction.

## **6. CONCLUSION**

- (35) The Commission considers that the reasons given by the Notifying Party for derogation from the suspension obligations meet the requirements set out in Article 7(3) of the Merger Regulation.
- (36) On the basis of the above considerations, and in accordance with Article 7(3) of the Merger Regulation and Article 57 of the EEA Agreement, Santander is granted a derogation from the obligations imposed by Article 7 (1) of the Merger Regulation in accordance with the foregoing terms and conditions until the acquisition has been declared compatible with the internal market and the EEA Agreement by means of a decision pursuant to Article 6(1)b or 8(2) or a presumption pursuant to Article 10(6).

*For the Commission*

*(Signed)*

*Margrethe VESTAGER*

*Member of the Commission*