EUROPEAN COMMISSION
DG Competition

Case M.9130 - SOCIETE GENERALE / COMMERZBANK EMC BUSINESS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 11/02/2019

In electronic form on the EUR-Lex website under document number 32019M9130

EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 11.02.2019
C(2019)1116

PUBLIC VERSION

To the notifying party:

Subject: **Case M.9130 - Société Générale / Commerzbank EMC Business**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 7 January 2019, the European Commission received notification of a proposed concentration (the "Transaction") pursuant to Article 4 of the Merger Regulation, by which Société Générale SA ("SG", France or the "Notifying Party") acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the Equity Markets & Commodities Business ("EMC", or the "Target") of Commerzbank AG ("Commerzbank", Germany)[3]. SG and the Target are collectively referred to as the "Parties".

1. THE PARTIES

(2) SG is globally active in retail banking and financial services, global investment management, and corporate and investment banking.

(3) Commerzbank EMC Business is active in asset management services as well as the design, structuring, issuance, and market making of structured investment products.

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 18, 15.01.2019, p. 42.

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

2. THE OPERATION

(4) On 8 November 2018, SG and Commerzbank signed a business purchase agreement pursuant to which SG would acquire sole control over the Target by way of a combined asset and share deal. The Transaction involves (i) the acquisition by SG of assets, liabilities, contracts, and employees pertaining to the Target and (ii) the acquisition by SG of 100% of the shares in Commerzbank affiliates pertaining to the Target.[4]

(5) The Transaction would therefore give rise to a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[5] (SG: EUR 23 954 million; the Target: EUR […]). Each of them has an EU-wide turnover in excess of EUR 250 million (SG: EUR […]; the Target: EUR […]), but they do not achieve more than two thirds of their aggregate EU-wide turnover within one and the same Member State.

(7) The Transaction therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Structuring, Issuance, and Market Making of ETSIPs

4.1.1. Product market definition

(8) Structured investment products ("SIPs") are innovative financial instruments, characterised by an underlying asset (*e.g.*, a specific share, bond, commodity, index, rate, or a basket thereof), pay-off formulae (defining the amounts payable to the investors based on reference performances of the underlying assets) and a wrapper (*e.g.*, a certificate, note, fund, bilateral master agreement, etc.).

(9) Financial institutions, such as the Parties, are active in the design and manufacturing of SIPs. This involves choosing an underlying financial instrument and wrapping it in the adequate legal wrapper. The new SIP is then issued and becomes available (for the first time) to investors in the primary market. Once a SIP has entered the primary market, it can then be traded further on the secondary market. SIPs are attractive when they can be easily traded, *i.e.*, the market is sufficiently liquid for the concerned product. To ensure such liquidity, financial institutions often act as "*market makers*". Market making consists in selling and buying SIPs to and from clients, making profit on price differentials.[6]

---

4 Namely, Commerz Funds Solutions S.A., Blue Amber Fund Management S.A., Commerz Pearl Ltd., and Commerz Securities Hong Kong Ltd..

5 Turnover calculated in accordance with Article 5 of the Merger Regulation.

6 See Case M.7151 – *BNP Paribas / Certain Assets of Royal Bank of Scotland*, paragraph 30.

(10) SIPs that are sufficiently generic and standardized can be traded on exchanges and are therefore called exchange-traded structured investment products (“ETSIPs”). ETSIPs include exchange-traded notes, warrants, certificates, and exchange traded funds (“ETFs”). ETSIPs are different from wholesale SIPs (“WSIPs”), which are tailor-made to meet requirements of specific customers and are traded over-the-counter (“OTC”).

(11) In *BNP Paribas / Certain Assets of Royal Bank of Scotland*, the Commission considered that there is one single relevant market including the structuring, issuance, and market making of ETSIPs.[7] The market investigation in that case showed that there is limited demand-side substitutability between ETSIPs and stocks, bonds, and listed equity derivatives, because they involve different levels of return and risk.[8] The market investigation also suggested that ETSIPs are not substitutable with other types of SIPs, like WSIPs.[9]

(12) In that case, the market investigation indicated that the market for structuring, issuance, and market making of ETSIPs should not be further sub-segmented based on the different asset classes underlying an ETSIP (*e.g.*, equities, commodities, fixed income).[10] Thus, the Commission concluded that “*the narrowest product market definition encompasses all structured ETSIP*”.[11]

(13) The Notifying Party agrees with the Commission’s past decisional practice regarding product market definition concerning ETSIPs.

(14) For the purposes of the present case, the Commission considers that the relevant product market includes the structuring, issuance, and market making of ETSIPs.

4.1.2. Geographic market definition

(15) In *BNP Paribas / Certain Assets of Royal Bank of Scotland*, the Commission’s market investigation indicated that the market for structuring, issuance, and market making of ETSIPs “*should be considered as national in scope since the competition between suppliers takes place at the national level*”.[12]

(16) The Notifying Party submits that the scope of the market for structuring, issuing, and market making of ETSIPs is EEA-wide. The Notifying Party explains that the situation in the market has considerably evolved since 2014 and the Commission’s investigation in *BNP Paribas / Certain Assets of Royal Bank of Scotland*. The Notifying Party recalls that a new pan-European regulatory framework has been introduced (namely, MiFID II[13] and MiFIR[14]) and pan-European trading platforms have emerged (*e.g.*, Euronext ETF Access or

---

7 See Case M.7151 – *BNP Paribas / Certain Assets of Royal Bank of Scotland*, paragraph 39.

8 See Case M.7151 – *BNP Paribas / Certain Assets of Royal Bank of Scotland*, paragraph 40.

9 See Case M.7151 – *BNP Paribas / Certain Assets of Royal Bank of Scotland*, paragraph 32.

10 See Case M.7151 – *BNP Paribas / Certain Assets of Royal Bank of Scotland*, paragraph 41.

11 See Case M.7151 – *BNP Paribas / Certain Assets of Royal Bank of Scotland*, paragraph 43.

12 See Case M.7151 – *BNP Paribas / Certain Assets of Royal Bank of Scotland*, paragraph 53.

13 See Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61, OJ L 173, 12.06.2014, p. 349.

14 See Regulation 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L 173, 12.06.2014, p. 84.

Euronext's platform for warrants and certificates). This facilitates the supply and purchase of ETSIPs across the EEA.

(17) The vast majority of customers participating in the market investigation confirmed that, when making their choice for ETSIPs, customers located in one EEA country also consider ETSIPs listed on exchanges in other EEA countries.[15] As customers put it, they purchase ETSIPs in the EEA in "*an integrated marke*[t] *place. Most ETSIPs are in direct competition with each other*" and "*the choice of the exchange is less important*".[16]

(18) In the market investigation, most customers considered that there are no particular advantages for an (institutional or retail) customer purchasing ETSIPs listed on a local exchange. Only a minority of respondents insisted that there are advantages for retail customers when purchasing ETSIPs on a local exchange, *e.g*., the availability of legal documentation in the customer's native language.[17]

(19) For the purposes of the present case, it can be left open whether the relevant market for structuring, issuance, and market making of ETSIPs is EEA-wide or national, as the Transaction does not give rise to serious doubts as to its compatibility with internal market under any plausible geographic market definition.

4.2. Distribution of investment products (including ETSIPs)

4.2.1. Product market definition

(20) In its past decisional practice, the Commission considered that the distribution of a specific type of investment products (in that case, mutual funds) constituted a separate relevant market.[18] In other cases, the Commission considered that the relevant product market could include distribution of mutual funds and other investment products.[19] The Commission ultimately left this question open.[20]

(21) The Notifying Party submits that the relevant product market in this case should comprise the distribution of all investment products.

(22) In *Crédit Agricole / Société Générale Asset Management*, the Commission also considered that distribution of mutual funds could be sub-segmented based on the channel of distribution. Specifically, the Commission envisaged different markets for (i) distribution of mutual funds through the general retail network

---

15 Replies to Q1 – Questionnaire to Customers, question 5.

16 Replies to Q1 – Questionnaire to Customers, question 5.1.

17 Replies to Q1 – Questionnaire to Customers, question 6.

18 See Case M.8359 – *Amundi / Crédit Agricole / Pioneer Investment*, paragraph 33 and Case M.6168 – *RBI / EFG EUROBANK / JV*, paragraph 12.

19 See Case M.6405 – *Banco Santander / Rainbow*, paragraph 12 and Case M.5293 – *Santander / Alliance & Leicester*, paragraph 9.

20 See Case M.8359 – *Amundi / Crédit Agricole / Pioneer Investment*, paragraph 33 and Case M.6168 – *RBI / EFG EUROBANK / JV*, paragraph 18, Case M.5293 – *Santander / Alliance & Leicester*, paragraph 9, and Case M.4844 – *Fortis / ABN AMRO Assets*, paragraphs 39-40 and 155.

and (ii) distribution of mutual funds through private banking.[21] The Commission ultimately left this question open.[22]

(23) The Notifying Party highlights the differences between the two channels and recalls that ETSIPs are essentially distributed to retail clients through online brokers, *i.e.*, through the general retail network.

(24) For the purposes of the present case, it can be left open whether the relevant market includes distribution of all investment products or only ETSIPs and whether it comprises all distribution channels or only one of them. The Transaction does not give rise to competition concerns under any plausible market delineation.

4.2.2. Geographic market definition

(25) In past decisions, the Commission found that the market for the distribution of mutual funds and other investment products is national in scope.[23] The Notifying Party does not contest this geographic market definition.

(26) For the purposes of the present case, the plausible relevant markets for the distribution of ETSIPs and for the distribution of investment products are considered national in scope, regardless of the distribution channel used.

5. COMPETITIVE ASSESSMENT

Introduction

(27) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it.

(28) The Commission Guidelines on the assessment of horizontal mergers under the Merger Regulation (the "Horizontal Merger Guidelines") distinguish two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated effects and coordinated effects.[24]

(29) Non-coordinated effects may significantly impede effective competition by eliminating the competitive constraint imposed by one merging party on the other, as a result of which the merged entity would have increased market power without resorting to coordinated behaviour. According to recital (25) of the preamble of the Merger Regulation, a significant impediment to effective competition can result from the anticompetitive effects of a concentration even if the merged entity would not have a dominant position on the market

---

21 See Case M.5728 – *Crédit Agricole / Société Générale Asset Management*, paragraphs 68*ff.*

22 See Case M.5728 – *Crédit Agricole / Société Générale Asset Management*, paragraph 77.

23 See Case M.8359 – *Amundi / Crédit Agricole / Pioneer Investment*, paragraph 34, Case M.6405 – *Banco Santander / Rainbow*, paragraph 12, Case M.5293 – *Santander / Alliance & Leicester*, paragraph 9, Case M.4844 – *Fortis / ABN AMRO Assets*, paragraphs 155-158.

24 OJ C 31, 05.02.2004, p. 5. The remainder of this decision focuses on non-coordinated effects.

concerned. In this regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.[25]

(30) Indeed, the Horizontal Merger Guidelines list a number of factors which may influence whether or not significant non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. Not all of these factors need to be present for significant non-coordinated effects to be likely. The list of factors, each of which is not necessarily decisive in its own right, is also not an exhaustive list.[26]

(31) In addition, the Commission Guidelines on the assessment of non-horizontal mergers under the Merger Regulation (the "Non-Horizontal Merger Guidelines") distinguish between two main ways in which vertical mergers may significantly impede effective competition, namely input foreclosure and customer foreclosure.[27]

(32) For a transaction to raise input foreclosure competition concerns, the merged entity must have a significant degree of market power upstream.[28] In assessing the likelihood of an anticompetitive input foreclosure strategy, the Commission has to examine whether (i) the merged entity would have the ability to substantially foreclose access to inputs; (ii) whether it would have the incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on competition downstream.[29]

(33) For a transaction to raise customer foreclosure competition concerns, the merged entity must be an important customer with a significant degree of market power in the downstream market.[30] In assessing the likelihood of an anticompetitive customer foreclosure strategy, the Commission has to examine whether (i) the merged entity would have the ability to foreclose access to downstream markets by reducing its purchases from upstream rivals; (ii) whether it would have the incentive to do so; and (iii) whether a foreclosure strategy would have a significant detrimental effect on consumers in the downstream market.[31]

---

25 Horizontal Merger Guidelines, paragraphs 24-38.

26 Horizontal Merger Guidelines, paragraphs 24-38.

27 OJ L 24, 29.1.2004, p. 1.

28 Non-horizontal Merger Guidelines, paragraph 35.

29 Non-horizontal Merger Guidelines, paragraph 32.

30 Non-horizontal Merger Guidelines, paragraph 61.

31 Non-horizontal Merger Guidelines, paragraph 59.

Affected markets

(34) Both SG and the Target design, construct, and sell ETSIPs and the Transaction gives rise to horizontally affected markets regarding structuring, issuance, and market making of ETSIPs in the EEA and in several Member States.[32]

(35) In addition, SG distributes its own and third-party ETSIPs, among other investment products. In this respect, SG only acts as a broker, meaning that it does not buy and/or sell ETSIPs on its own behalf, making a profit on the price differential. When acting as a distributor, SG only concludes a transaction on behalf of a client (collecting a brokerage fee).

(36) The Transaction gives rise to affected markets regarding the vertical link between structuring, issuing, and market making of ETSIPs (upstream) and distribution of investment products such as ETSIPs (downstream).[33]

5.1. Horizontal Analysis

(37) The Parties' activities overlap in the structuring, issuance, and market making of ETSIPs in 16 EEA countries[34] and give rise to affected markets at the EEA level and in 12 EEA countries.[35] Given the volatility of market shares in ETSIPs, the Commission did not identify affected markets only based on 2017 market share data but also took into account the combined market shares of the Parties in 2015 and 2016. A market was considered as horizontally affected by the Transaction where the combined share of the Parties was 20% or higher in any of the years 2015, 2016, or 2017.

5.1.1. EEA Level

(38) A possible EEA-wide market for structuring, issuance, and market making of ETSIPs would be affected by the Transaction based on 2015 market share data, when the combined entity would have been the market leader with a share of [20-30]%. In 2016 and 2017, the Transaction would not have affected the EEA-wide market for structuring, issuance, and market making of ETSIPs. Table 1 below summarizes the shares of the Parties and their competitors in this market in the EEA in 2015, 2016 and 2017.

32 The Parties' activities also overlap horizontally in (i) asset management services and (ii) WSIPs but the Transaction does not give rise to affected markets.

33 SG is further active in the markets for the distribution of mutual funds, in fund administration services and in custody services, which are all vertically related to the Parties' activities in the provision of asset management services. SG is also active in the distribution of investment products, which is vertically related to the Parties' activities in WSIPs. None of these vertical links gives rise to affected markets.

34 Namely, Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, and the United Kingdom.

35 Namely, Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, Poland, Portugal, Spain, and Sweden.

Table 1 – Market for structuring, issuance, and market making of ETSIPs (2017) Total Market Size and Market Share in the EEA (2015-2017)			
	2015	**2016**	**2017**
Total market size (M€)	**1 101 533**	**1 118 155**	**1 340 824**
SOCIETE GENERALE	[5-10]%	[5-10]%	[5-10]%
TARGET	[10-20]%	[10-20]%	[10-20]%
Merged entity	[20-30]%	[10-20]%	[10-20]%
FLOW TRADERS	[10-20]%	[10-20]%	[20-30]%
JANE STREET	[10-20]%	[10-20]%	[10-20]%
SUSQUEHANNA	[5-10]%	[5-10]%	[5-10]%
OPTIVER	[0-5]%	[0-5]%	[0-5]%
GOLDMAN SACHS	[0-5]%	[0-5]%	[0-5]%
BNP PARIBAS	[0-5]%	[0-5]%	[0-5]%
Others	[20-30]%	[20-30]%	[20-30]%
TOTAL	100%	100%	100%
Post-merger HHI	[1000-2000]	[1000-2000]	[1000-2000]
HHI increment	[0-250]	[0-250]	[0-250]

Source: Form CO

(39) The Transaction does not give rise to serious doubts as to its compatibility with the internal market regarding a possible EEA-wide market for structuring, issuance, and market making of ETSIPs for the following reasons.

(40) *First*, following the Transaction, the combined entity will continue facing strong competition from several players, including Flow Traders (the market leader with a share of [20-30]% in 2017), Jane Street ([10-20]%), and Susquehanna ([5-10]%) (all operating at EEA level for the market making of ETFs), but also Optiver ([5-10]%) Goldman Sachs ([0-5]%), BNP Paribas ([0-5]%), UniCredit ([0-5]%), Deutsche Bank ([0-5]%), Vontobel ([0-5]%), and Morgan Stanley ([0-5]%). The HHI in this market is between 1,000 and 2,000 and the delta HHI is below 250 in each of 2015, 2016, and 2017.[36]

(41) The market investigation confirmed that the combined entity will remain subject to strong competitive constraints in the EEA-wide market for structuring, issuance, and market making of ETSIPs. Customers described this market as "*highly competitive*"[37] and including a large number of competitors.[38] In this respect, the vast majority of respondents confirmed that, post-Transaction, the number of alternative providers of ETSIPs would remain sufficient for customers to obtain both competitive prices and a wide range of product options from suppliers of ETSIPs in the EEA.[39]

(42) *Second*, according to the results of the market investigation, in the market for structuring, issuance, and market making of ETSIPs in the EEA, the Parties are not each other's closest competitors. The vast majority of customers and competitors who responded to the market investigation identified players other than the Target as SG's closest competitor in the EEA (*e.g.*, BNP Paribas or

36 See Horizontal Merger Guidelines, paragraph 20.

37 Replies to Q1 – Questionnaire to Customers, question 8.

38 Replies to Q1 – Questionnaire to Customers, question 8.

39 Replies to Q1 – Questionnaire to Customers, question 17 and to Q2 – Questionnaire to Competitors, question 16.

Blackrock), taking into account the range of ETSIPs offered.[40] Similarly, the vast majority of respondents identified players other than SG as the Target's closest competitor in the EEA (*e.g.*, Deutsche Bank), taking into account the country where the ETSIP provider is based.[41] In any event, the market investigation provided indications that there are no significant differences between the ETSIP products that the various suppliers offer. In this context, some market participants explained that "*the product types offered are highly standardized*" and "*there is no specific feature which differentiates [SG or the Target Business] from other large pan-European issuers*".[42]

(43) *Third*, the majority of customers and competitors that participated in the market investigation stated that customers switch easily between suppliers of the structuring, issuance, and market making of ETSIPs.[43] The price of an ETSIP is the most important parameter that customers take into account in purchasing decisions,[44] considering also the return and performance prospects of the product. As explained by one customer: "*ETSIPs business is a transparent and competitive, therefore customers can compare different product offers easily and decide what fits best for them*".[45]

(44) *Fourth*, the market investigation did not reveal any substantiated competition concerns in relation to the proposed Transaction in a possible EEA market for the structuring, issuance, and market making of ETSIPs.[46]

(45) In light of the above, the Transaction does not give rise to serious doubts as to its compatibility with the internal market regarding a possible market for the structuring, issuance, and market making of ETSIPs in the EEA.

5.1.2. National level

(46) If the market for the structuring, issuance, and market making of ETSIPs were defined at national level, the Transaction would lead to horizontally affected markets in 12 EEA countries, namely Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, Poland, Portugal, Spain, and Sweden.

(47) Table 2 below summarises the Parties' combined market shares in each of these national markets in 2015, 2016 and 2017. It also includes information on the market size and the share increment that either SG or the Target contribute to the combined entity (whichever is the lowest in each case).

40 Replies to Q1 – Questionnaire to Customers, question 12 and to Q2 – Questionnaire to Competitors, question 12.

41 Replies to Q1 – Questionnaire to Customers, question 13 and to Q2 – Questionnaire to Competitors, question 13.

42 Replies to Q2- Questionnaire to Competitors, questions 6, 8, and 9.

43 Replies to Q1 – Questionnaire to Customers, question 15.

44 Replies to Q1 – Questionnaire to Customers, question 9.

45 Replies to Q1 – Questionnaire to Customers, question 15.1.

46 Replies to Q1 – Questionnaire to Customers, question 17 and to Q2 – Questionnaire to Competitors, question 17.

Table 2 – National Markets for structuring, issuance, and market making of ETSIPs Combined market shares in affected EEA countries over the 2015-2017 period									
EEA Member State	**2015**			**2016**			**2017**		
	Market size (M€)	**Combined Share**	**Share Δ**	**Market size (M€)**	**Combined Share**	**Share Δ**	**Market size (M€)**	**Combined Share**	**Share Δ**
Austria	20 588	[30-40]%	[10-20]%	20 867	[30-40]%	[10-20]%	27 237	[10-20]%	[5-10]%
Belgium	6 778	[20-30]%	[10-20]%	6 745	[20-30]%	[10-20]%	8 796	[20-30]%	[5-10]%
Finland	11 408	[20-30]%	[10-20]%	11 177	[10-20]%	[5-10]%	14 434	[20-30]%	[5-10]%
France	124 269	[30-40]%	[10-20]%	125 098	[20-30]%	[10-20]%	162 280	[10-20]%	[5-10]%
Germany	317 977	[20-30]%	[0-5]%	279 322	[20-30]%	[0-5]%	322 771	[20-30]%	[0-5]%
Ireland	13 272	[20-30]%	[5-10]%	13 451	[30-40]%	[5-10]%	17 557	[20-30]%	[5-10]%
Italy	162 303	[20-30]%	[10-20]%	161 597	[20-30]%	[5-10]%	185 911	[10-20]%	[5-10]%
Luxembourg	11 154	[40-50]%	[20-30]%	11 305	[40-50]%	[20-30]%	14 756	[30-40]%	[10-20]%
Poland	2 600	[20-30]%	[0-5]%	2 537	[20-30]%	[0-5]%	2 600	[10-20]%	[0-5]%
Portugal	3 427	[20-30]%	[5-10]%	3 473	[10-20]%	[5-10]%	4 533	[10-20]%	[5-10]%
Spain	17 256	[30-40]%	[5-10]%	17 093	[30-40]%	[5-10]%	21 838	[30-40]%	[5-10]%
Sweden	19 544	[30-40]%	[10-20]%	20 427	[10-20]%	[5-10]%	22 008	[10-20]%	[0-5]%

Source: Form CO

(48) To account for the volatility of market shares[47] Table 3 below shows the Parties' average combined market shares for the same markets over the last five years (2013-2017).

Table 3 – National Markets for the structuring, issuance, and market making of ETSIPs Average combined market shares in affected EEA countries (2013-2017)			
EEA Member State	**SG Share**	**Target Share**	**Combined Share**
Austria	[10-20]%	[10-20]%	[20-30]%
Belgium	[5-10]%	[10-20]%	[20-30]%
Finland	[10-20]%	[10-20]%	[20-30]%
France	[10-20]%	[5-10]%	[20-30]%
Germany	[0-5]%	[10-20]%	[20-30]%
Ireland	[5-10]%	[10-20]%	[20-30]%
Italy	[10-20]%	[5-10]%	[10-20]%
Luxembourg	[10-20]%	[20-30]%	[30-40]%
Poland	[10-20]%	[0-5]%	[10-20]%
Portugal	[5-10]%	[10-20]%	[10-20]%
Spain	[20-30]%	[20-30]%	[20-30]%
Sweden	[10-20]%	[10-20]%	[30-40]%

Source: Form CO

(49) In Finland, Poland, and Portugal, the Parties' combined market shares remain below [20-30]% in each of 2015, 2016 and 2017 and on average for the period 2013-2017. The market investigation did not reveal any competition concerns in relation to ETSIPs in Finland, Poland, and Portugal.[48] In all three countries, the combined entity will continue to face competition by at least four players with

47 Cf. Case M.7151 – *BNP Paribas / Certain Assets of Royal Bank of Scotland*, paragraph 67 and Table 1. In that decision, the Commission acknowledged (in paragraph 69) that *"... high volatility is a structural characteristic of the* [ETSIPs] *market"*.

48 Replies to Q1 – Questionnaire to Customers, question 18 and to Q2 – Questionnaire to Competitors, question 18.

average shares of 5% or more in 2013-2017.[49] In light of this,[50] the Transaction does not give rise to serious doubts as to its compatibility with the internal market regarding markets for structuring, issuance, and market making of ETSIPs in Finland, Poland, and Portugal.

(50) In Belgium, Ireland, and Italy, the Parties' combined market share exceeded [20-30]% in 2015, 2016, and/or 2017 but the average combined market shares remained below [20-30]% over the 2013-2017 period. In all three countries, the combined entity will continue to face competition by at least four players with average shares of approximately 5% or more in 2013-2017.[51] The market investigation did not reveal any competition concerns in relation to the market for structuring, issuance, and market making of ETSIPs in Belgium, Ireland, and Italy.[52] In light of this, the Transaction does not give rise to serious doubts as to its compatibility with the internal market regarding markets for structuring, issuance, and market making of ETSIPs in Belgium, Ireland, and Italy.

(51) In each of Austria, France, and Sweden, the Parties' combined market shares exceeded [20-30]% in 2015 and/or 2016, but fell below [20-30]% in 2017. Moreover, in Austria and France, the average combined market share of the Parties in 2013-2017 period does not exceed [20-30]%. In France and Sweden, the Parties' combined market shares have been steadily decreasing between 2015 and 2017. In all three countries, the combined entity would face competition by at least four players with average market shares above 5% in 2013-2017.[53] The market investigation did not reveal any competition concerns in relation to the market for structuring, issuance, and market making of ETSIPs in Austria, France, and Sweden.[54] In light of this, the Transaction does not give rise to serious doubts as to its compatibility with the internal market regarding markets for structuring, issuance, and market making of ETSIPs in Austria, France, and Sweden.

(52) In Germany, the Parties' combined market share in 2017 and their average combined market share in 2013-2017 was below [20-30]%. The Parties' combined market share was [20-30]% in 2015. In any event, the post-merger HHI remains below 2,000 post-Transaction based on market share data of 2015, 2016, and 2017. The HHI increment in each of these years would be less than 250.[55] The market investigation did not reveal any competition concerns in relation to the market for structuring, issuance, and market making of ETSIPs in

49 In Finland: Flow Traders ([20-30]%), Jane Street ([10-20]%), Susquehanna ([10-20]%), and Optiver ([5-10]%); in Poland: Flow Traders ([20-30]%), Jane Street ([20-30]%), Susquehanna (11%), and Optiver ([5-10]%); in Portugal: Flow Traders ([20-30]%), Jane Street ([20-30]%), Susquehanna ([10-20]%), and Optiver ([5-10]%).

50 See Horizontal Merger Guidelines, paragraph 18.

51 In Belgium: Flow Traders ([20-30]%), Jane Street ([20-30]%), Susquehanna ([10-20]%) and Optiver ([5-10]%); in Ireland: Flow Traders ([20-30]%), Jane Street ([20-30]%), Susquehanna ([10-20]%)) and Optiver ([5-10]%); in Italy, these are Flow Traders ([20-30]%), Jane Street ([10-20]%), Susquehanna ([5-10]%), and Optiver ([5-10]%).

52 Replies to Q1 – Questionnaire to Customers, question 18 and to Q2 – Questionnaire to Competitors, question 18.

53 In Austria: Flow Traders ([20-30]%), Jane Street ([20-30]%), Susquehanna ([10-20]%), and Optiver ([5-10]%); in France: Flow Traders ([20-30]%), Jane Street ([10-20]%), Susquehanna ([10-20]%), and Optiver ([5-10]%); in Sweden: Morgan Stanley ([10-20]%), BNP Paribas ([10-20]%), Flow Traders ([5-10]%), and Jane Street ([5-10]%).

54 Replies to Q1 – Questionnaire to Customers, question 18 and to Q2 – Questionnaire to Competitors, question 18.

55 Form CO, Annex 12.

Germany.[56] In light of this, the Transaction does not give rise to serious doubts as to its compatibility with the internal market regarding the market for structuring, issuance, and market making of ETSIPs in Germany.

(53) In <u>Luxembourg</u>, the Parties' combined share was [30-40]% in 2017. The merged entity would become the number one player in the market. The average combined share of the Parties over 2013-2017 would be [30-40]%. However, the Transaction does not give rise to serious doubts as to its compatibility with the internal market in the market for structuring, issuance, and market making of ETSIPs in Luxembourg:

- Post-Transaction, the combined entity will face competition in Luxembourg by at least three major competitors with average shares of above 5% in 2013-2017.[57] One customer active in Luxembourg stated: "*[w]e absolutely believe that the market of ETSIPs will remain competitive, after the Transaction, the reason being that the market counts +/- 15 issuers which provide the market with plenty of structure, maturities etc.";*[58]

- The vast majority of respondents confirmed that the Parties are not each other's closest competitors in Luxembourg;[59]

- As in the EEA, in Luxembourg, customers can (and do) easily switch from one ETSIP provider to another because products are similar and there is high price transparency. The price of the ETSIP is the key criterion that customers take into account when making their purchasing decisions,[60] considering also the return on investment and performance prospects of the product; and

- The market investigation did not reveal any competition concerns in relation to the market for structuring, issuance, and market making of ETSIPs in Luxembourg.[61]

(54) In <u>Spain</u>, the Parties' combined share was [30-40]% in 2017. The merged entity would be the number one player in the market. The average combined share of the Parties over 2013-2017 would be [20-30]%. However, the Transaction does not give rise to serious doubts as to its compatibility with the internal market in the market for structuring, issuance, and market making of ETSIPs in Spain:

- Post-Transaction, the combined entity will face competition in Spain by at least three major competitors with shares above 5% in 2013-2017;[62]

- As in the EEA, in Spain, customers can (and do) easily switch from one provider to another because products are similar and there is high price

56 Replies to Q1 – Questionnaire to Customers, question 18 and to Q2 – Questionnaire to Competitors, question 18.

57 Namely, Flow Traders ([10-20]%), Jane Street ([10-20]%), and Susquehana ([5-10]%).

58 Replies to Q1 – Questionnaire to Customers, question 17.

59 Replies to Q1 – Questionnaire to Customers, questions 12-13 and to Q2 – Questionnaire to Competitors, questions 10-11.

60 Doc ID 256, Minutes of Call with customer active in Luxembourg, 4 December 2018, paragraphs 4 and 8.

61 Replies to Q1 – Questionnaire to Customers, question 18 and to Q2 – Questionnaire to Competitors, question 16.1.

62 Namely, Flow Traders ([20-30]%), Jane Street ([10-20]%), and Susquehana ([5-10]%).

transparency. The price of the ETSIP is the key criterion that customers of take into account when making their purchasing decisions,[63] considering also the return on investment and performance prospects of the product; and

- The market investigation did not reveal any competition concerns in relation to the market for the structuring, issuance, and market making of ETSIPs in Spain.[64]

5.2. Vertical analysis

(55) SG is active in the EEA in the distribution of investment products (including ETSIPs), which is downstream from the market for structuring, issuance, and market making of ETSIPs.

(56) The Notifying Party submits that SG's share is far below 30% in the downstream market for the distribution of investment products (including ETSIPs), regardless of the precise relevant market delineation.

(57) The Transaction only gives rise to affected markets in countries where the combined share of the Parties is 30% or more in the *upstream* market (*i.e.*, the market for structuring, issuance, and market making of ETSIPs) and SG is active in the *downstream* market (regardless of its precise delineation). These countries are Austria, France, Ireland, Luxembourg, and Spain.[65] Table 4 includes SG's estimated market share in distribution of investment products in each of these five countries, under all plausible market delineations.

---

63 Doc ID 63, Minutes of Call with customer active in Spain, 4 December 2018, paragraph 4.

64 Replies to Q1 – Questionnaire to Customers, question 17 and to Q2 – Questionnaire to Competitors, questions 16.1 and 17.1; Doc ID 63, Minutes of Call with customer active in Spain, 4 December 2018, paragraph 6.

65 Taking into account the combined share of the Parties in any of the years 2015, 2016, or 2017.

Table 4 – Distribution of ETSIPs and other investment products SG Market Share (2017)			
Country	**Product Distributed**	**Channel of Distribution**	**2017 Share of SG[66]**
Austria	Distribution of all investment products (including ETSIPs)	All channels	[0-5]%
		General retail banking network	[0-5]%
		Private banking network	[0-5]%
	Distribution of ETSIPs	All channels	[0-5]%
		General retail banking network	[0-5]%
		Private banking network	[0-5]%
France	Distribution of all investment products (including ETSIPs)	All channels	[10-20]%
		General retail banking network	[10-20]%
		Private banking network	[5-10]%
	Distribution of ETSIPs	All channels	[10-20]%
		General retail banking network	[0-5]%
		Private banking network	[10-20]%
Ireland	Distribution of all investment products (including ETSIPs)	All channels	[0-5]%
		General retail banking network	[0-5]%
		Private banking network	[0-5]%
	Distribution of ETSIPs	All channels	[0-5]%
		General retail banking network	[0-5]%
		Private banking network	[0-5]%
Luxembourg	Distribution of all investment products (including ETSIPs)	All channels	[0-5]%
		General retail banking network	[0-5]%
		Private banking network	[0-5]%
	Distribution of ETSIPs	All channels	[0-5]%
		General retail banking network	[0-5]%
		Private banking network	[0-5]%
Spain	Distribution of all investment products (including ETSIPs)	All channels	[0-5]%
		General retail banking network	[0-5]%
		Private banking network	[0-5]%
	Distribution of ETSIPs	All channels	[0-5]%
		General retail banking network	[0-5]%
		Private banking network	[0-5]%

Source: Notifying Party's Reply to RFI of 28 January 2019

5.2.1. Input Foreclosure

(58) The combined entity is unlikely to foreclose competing distributors of ETSIPs post-Transaction by restricting access to its ETSIPs:

- The combined entity would not have the ability to foreclose downstream rivals because it would not have a significant degree of market power in the upstream market for ETSIPs.

  In Austria, France, and Ireland, the combined share of the Parties exceeded 30% in 2015 or 2016 in the upstream market for ETSIPs but in 2017 and on average over the period 2013-2017, it is far below this threshold.[67]

  In Luxembourg and in Spain, the Parties held combined shares exceeding 30% in 2017 in the upstream market for ETSIPs. However, the combined entity would still not have a significant degree of market power within the meaning of the Non-horizontal Merger Guidelines. In both countries, the combined entity cannot restrict the overall availability of ETSIPs in the market in terms of either price or quality. The combined entity is unlikely to increase ETSIP prices, because there is high transparency for customers

66 Shares based on volumes traded.

67 See Tables 2 and 3 above.

purchasing ETSIPs in both Luxembourg and Spain and switching is easy.[68] If the combined entity downgraded the quality of the ETSIPs it offers downstream, distributors would switch to alternatives from rivals, as there are no fundamental differences among the ETSIPs offered in the market.[69] In any event, if the combined entity were to limit access to its ETSIPs for distributors, its competitors would be able to respond immediately expanding their output (*e.g.,* proposing more, differentiated ETSIPs) in response to the supply restriction.

- The combined entity would not have the incentive to restrict access to its ETSIPs. ETSIPs need to be distributed (and traded) as widely as possible and in high volumes to be most profitable for the issuer.

5.2.2. Customer Foreclosure

(59) The combined entity is unlikely to foreclose competing ETSIP providers post-Transaction by restricting access to its distribution services:

- The combined entity would not have the ability to foreclose upstream rivals because it would not have a significant degree of market power in the downstream market, irrespective of its precise delineation.

  In Austria, Ireland, Luxembourg, and Spain, the combined entity holds less than [0-5]% in the downstream market (under all plausible sub-segmentations).

  In France, the share of the combined entity would reach [10-20]% in a potential market for distribution of investment products via the general retail network. However, even in this case, the combined entity would not be in any way a "*must-go*" distributor for ETSIP providers. Several alternative options remain for the distribution of ETSIPs in France, including online brokers and traditional bank networks (*e.g.,* Citi, BNP, Crédit Agricole).

- The combined entity would not have the incentive to restrict the portfolio of ETSIPs it distributes and exclude third-party products. ETSIP end-purchasers always opt for distributors who can offer the widest possible choice of products. The market investigation confirmed that today, SG distributes, alongside the SG ETSIPs, a wide range of third-party products, *e.g.*, from BNP Paribas, Credit Suisse, and Natixis, etc.[70]

68 See paragraphs (52) and (53) above.

69 See paragraph (41) above.

70 Replies to Q2 – Questionnaire to Competitors, question 2.1.

6. CONCLUSION

(60) 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