



## Report by the Related Transactions Audit and Control Committee

### Participation of Banco Santander, S.A. in Project Mega

#### 1. Introduction

According to the Regulations of the Audit and Control Committee (*Comisión de Auditoría y Control*) ("**CAC**") of Merlin Properties Socimi, S.A ("**Merlin**" or the "**Company**"), the CAC is responsible for the following:

- (i) under article 10 (iv) (b), for informing the Board, before it adopts any decisions on related transactions; and
- (ii) under article 10 (v), for overseeing the fulfillment of the regulations regarding related transactions and reporting these to the market, and informing on those transactions involving or potentially involving any conflicts of interest and, in general, on any operations with board members or significant shareholders.

Under article 529 *vicies* of the Royal legislative Decree 1/2010, dated July 2, approving the consolidated text of the Capital Companies Law (*Ley de Sociedades de Capital*) ("**LSC**"), related transactions will be taken as meaning those performed by the company with its board members and/or shareholders holding 10 % or more of the voting rights or represented on the board of directors of the company.

Banco Santander, S.A. ("**Banco Santander**"), directly or indirectly holding 115.472.676 shares (around 24.6% of the share capital) of Merlin, is a related party in any transaction is carried out with Merlin, as:

- (i) it has nominee directors appointed to the Board; and
- (ii) its stake exceeds 10%.

#### 2. Description of Project Mega and of the participation of Banco Santander

The Company is analyzing the possibility of developing the project of growth in the Data Centers line of business for which it has had assistance from investment banks and legal and tax advisors (together, the "**Advisors**"). After reviewing the existing alternatives, this report is being issued in the scenario whereby the Board of Directors eventually concludes that the most suitable option for carrying out this project is through a capital increase which, where applicable, would be approved by the Board through the execution of the delegation granted to this end by the general meeting of shareholders, and which would consist of the following specifics:

- (i) it would be executed through an accelerated bookbuilding transaction (a form of

privately offering shares between institutional investors characterized by the speed of its execution);

- (ii) it would exclude any preemptive subscription right (notwithstanding which, the recognition is being considered of a soft preemption for those shareholders classified as institutional and interested in subscribing new shares, on the basis of objective criteria meaning that the shareholders contacted have common features, objectively determined and differentiated from those of the rest of the shareholders), and
- (iii) it would be carried out once the results of the first half of the year have been published, provided that the prior bookbuilding process confirms the existence of demand in terms of the expected value.

This increase, in order to be adjusted to the scope of the delegation for increasing capital granted by the general meeting of shareholders of Merlin to the Board and the provisions of the LSC, would be up to a maximum of 93,954,149 shares, representing around 20% of the share capital at the time of such delegation (the **“Maximum Number of Shares”**) with a maximum issue discount as established under article 504.3 of the LSC.

This operation is the so-called **“Project Mega”**.

Within the framework of this operation is the related transactions consisting of the fact that Banco Santander has expressed its intention to sign an irrevocable commitment to (1) participate in the increase, subscribing the number of shares necessary in order to maintain the percentage stake in the share capital that it holds at present, at the price resulting from the accelerated bookbuilding offering, with the limit indicated subsequently; (2) not transfer the shares within the period of the 90 days following the execution of the increase, subject to the usual market exceptions in these types of transactions, and (3) inform the market and allow the publicizing of its commitment. To this end, it has expressed its intention to sign the appropriate document formalizing the aforementioned commitments. In exchange for these commitments, the Company would undertake to allocate it the number of shares to the subscribing of which it has committed.

This Report is issued on the assumption that this subscription commitment is eventually signed by Banco Santander and the Company in the terms indicated.

### **3. Purpose of the Report**

The purpose of this report is to comply with the duties assigned to the CAC and, as a result, to issue its report on the participation of Banco Santander in Project Mega and the commitment of the Company to allocate it shares in the terms indicated above (the **“Report”**).

### **4. Analysis of the terms and conditions of the participation of Banco Santander in Project Mega**

The CAC understands that the participation of Banco Santander in the increase (including the commitment to allocate shares), in the terms indicated, would be a

transaction meeting the requirements in order to be considered related, and the approval of which, due to its size and volume, would correspond to the Board of Directors.

Thus, considering the Maximum Number of Shares that could be issued by the Company, a total of 23,094,534 shares would correspond to Banco Santander.

The CAC considers that its analysis in this case makes it necessary to differentiate between the various issues arising from the related transactions due to the specifics at hand. In this sense:

a) As regards the participation of Banco Santander in the capital increase:

As has already been mentioned, Project Mega is a capital increase executed through an accelerated bookbuilding offering ("**ABO**"). This procedure involves accelerated research into market interest in taking up a shareholding stake in a company and the price at which the interested parties would acquire the stake. In these types of operations, the market tends to be limited to qualified investors in order to avoid the obligation to publish a prospectus subject to prior approval by the Spanish Securities and Exchange Commission (*Comisión Nacional del Mercado de Valores*).

In ABOs, it is common for the investors contacted by the banks to including pre-existing shareholders of the issuer.

In this case, in particular, the CAC and the Advisors of the operation positively value the participation in and commitment to the proportional subscription of the shareholders with representation on the board, since (i) this implies explicit recognition of support and trust in the Company and in its business project and (ii) it facilitates placement among other institutional investors, including other existing shareholders of the Company, who could be excluded from a transaction of this type (in terms of strategy and in terms of the relative and absolute size of the transaction) without the support and commitment of one of the largest shareholders of the Company. Other institutional investors, for example, might have reservations over a transaction of this type without the support and commitment of one of the largest shareholders of the Company.

As a result, the CAC considers that the participation of Banco Santander would be in line with common market practices for facilitating the interest in participating and taking a stake in Merlin of the institutional investors to which the ABO is addressed.

b) As regards any preference in the subscription:

The Advisors have stated that there are two ways of explicit participation of the current shareholders in the ABOs, both being common on the market and accepted in practice. One initial way is the mere expression of interest, which does not involve any commitment to subscribe shares on the part of the current shareholder, and another way is the assuming of the firm commitment to subscribe at the price resulting from the procedure.

In the first case, as there is no commitment, it is common for the issuing company not to assume a firm commitment to allocate the shares to the current shareholders. However, in the second case in particular, in addition, as would be the case here, if the shareholders and board members assume a commitment not to dispose of the shares within a reasonable period (with 90 days being the market standard), it is considered that, under certain circumstances, and depending on the specific transaction, it is market practice for the issuing company to allocate these shareholders the shares they need in order to maintain the percentage stake in the capital that they held before the increase, which will be transferred to them at the price resulting from the procedure.

As a result, the CAC considers that the preference that Banco Santander would be granted would be market practice.

- c) As regards the price or consideration of the related transactions being in line with the market:

In any primary ABO, the issue price of the new shares offered is determined following the conclusion of a demand bookbuilding process, so that it is considered that the price resulting from such procedures represents the fair value of the share of the Company, as it is a result of the actual the market demand bookbuilding process, using methods that are generally accepted on a national and international level for determining the fair value, and represents the value at which the qualified investors express their commitment to acquire.

The participation of Banco Santander in this procedure does not alter the pricing mechanism. In particular, Banco Santander will not actively take part in the price discovery process among the qualified investors, given that it has agreed to subscribe the new shares at the price decided by the Company depending on the demand generated among institutional investors in the ABO, only indicating a maximum price, which would be above the listing price of the Company at the time of the ABO, with it being common in these types of transactions for the price resulting from the bookbuilding procedure to come with a discount in respect of the listing price.

As a result, the Committee considers that the commitment of the Company to allocate shares to Banco Santander in the terms mentioned previously would not affect the pricing mechanism, with there being sufficient guarantees of this being in line with market standards.

## **6. Conclusions**

The CAC has reported favorably to the Board on the related transactions described in this Report.

In addition, the CAC states that, given that the related transaction of Banco Santander would exceed the limit indicated in article 529 unvicies, section 1. (b) of the LSC, in line with the provisions of the LSC, this will be announced and this report published both on the webpage web of the Company and through a communication to the Spanish Securities and Exchange Commission (*Comisión Nacional del Mercado de Valores*), with

the information required in the aforementioned article 529 *unvicies* of the LSC being completed in such announcement.

In Madrid, on July 22, 2024