

***Case No COMP/M.1964 -
PLANET INTERNET /
FORTIS BANK / MINE
JV***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 10/07/2000

*Also available in the CELEX database
Document No 300M1964*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.07.2000
SG (2000) D/104852

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

Planet Internet NV/SA
Rijnkaai 37
B – 2000 Antwerpen

Fortis Bank NV/SA
Montagne du Parc 3
B – 1000 Brussels

Via
M. Paul Hermant and Marc Pittie
Loeff Claeys Verbeke
avenue de Tervueren 268 A
B – 1150 Brussels

Fax: 02/778.25.17

Date of notification: 06/06/2000
Legal Deadline: 10/07/2000

Subject: Case No COMP/M. 1964 – Planet Internet / Fortis Bank / Mine JV
Notification of 06.06.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. The above operation involves the creation of a joint venture which will be active in the Internet sector in Belgium. The parents of the proposed joint venture are Planet Internet; a Belgian based Internet Service Provider; and Fortis Bank, a Belgian bank owned by the Belgian-Dutch Fortis group.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Planet Internet is a fully owned affiliate of the Dutch telecom operator KPN and is currently the second largest Internet Service Provider in Belgium. Its main services are the provision of Internet access and Internet content.
4. Fortis Bank is, as part of the Belgian-Dutch Fortis group, the largest Belgian retail and corporate bank, providing a wide range of financial services.

II. THE OPERATION

5. According to the Joint Venture Shareholders Agreement (JVSA), the parties will set up a joint venture, whose equity will be held in equal shares by Planet Internet and Fortis bank. The joint venture will be named Mine.be, and will be active in the Internet sector, both as an Internet access provider and, through the Mine.be portal, as an Internet content provider. Both activities are combined in what is known in the industry as Internet Service Provider (ISP). To this effect, the joint venture will set up and further develop a web site which will contain advertising banners and e-commerce opportunities, as well as general information for a target group that consists of young people (aged between 12 and 25 years). Through Mine.be Planet Internet and Fortis bank will try to increase their subscriber base for Internet access and enhance communication with their targeted potential banking services customers.

III. COMMUNITY DIMENSION

6. The combined aggregate worldwide turnover of the undertakings concerned exceeds € 5000 million. The aggregate Community-wide turnover of each party exceeds € 250 million. They do not achieve more than two-thirds of their aggregate Community-wide turnover within in one and the same Member State. The notified operation, therefore, has a Community dimension according to Article 1(2) of the Merger Regulation.

IV. CONCENTRATION

Joint control

7. The joint venture will be jointly controlled by Planet Internet and Fortis Bank. Each party will own half of the shares of the joint venture and will appoint three directors each to the board of the joint venture. As the board's decisions can only be taken if half of its members attend the meeting, it is considered that the parties have veto rights on strategic business decisions.

Full function

8. Examination of the business plan of the joint venture clearly shows that the joint-venture will operate on a long-lasting basis. The duration of the JVSA is for a period of six years, but can be prolonged with 1 year periods. The content will be predominantly provided by the parents or their suppliers but the joint venture will be responsible for the running of the Internet portal and its editorial staff will increasingly develop its own production. Planet Internet is designated as the provider of all operational services, but will do so on the basis of arms length commercial terms. The joint venture will be allocated with sufficient financial and other resources including staff and assets to operate on a long-lasting basis. It is expected that the joint venture will generate most of its revenues from third parties' advertising and e-commerce opportunities. It can be

concluded that the joint venture will perform, on a long-lasting basis, all the functions of an autonomous economic entity.

V. COMPATIBILITY WITH THE COMMON MARKET

Relevant Product Market

9. In previous decisions¹, the Commission has identified distinct product markets for (a) dial-up Internet Access, (b) provision of paid for content, (c) provision of Internet advertising space, (d) web hosting services. The parties have not disagreed with this definition but argue that, as the joint venture will be active in all product markets, the relevant product market should be identified as the provision of Internet portals for young customers. However, portals could not be considered as a market, since they simply package services which belong to other markets. In the present case, the precise relevant product market definition can be left open since irrespective of the market definition chosen, the proposed concentration does not give rise to the creation or strengthening of a dominant position.

Relevant Geographical Market

10. Concerning the definition of the geographic market, the parties have submitted that the Mine.be portal will be devoted to young customers living in Belgium, and that as such, Belgium is the relevant geographical market. In the case BT/Esat², the Commission indicated that it is a common view that the geographical market for ISP dial up services is essentially national based on the need for a local loop service. In Telia/Telenor³ the Commission concluded that this characteristic limits the extent to which existing access markets could be wider than national. In the BBL/BT/ISP-Belgium case⁴, it was submitted that the markets for paid for content and webhosting are national due to linguistic and cultural restrictions. In the light of the above, it seems as though the market for Internet advertising could be national which is emphasised by the fact that the demand will predominantly be from Belgian advertisers. In the present case, however, the precise relevant product market delimitation can be left open since even on the narrowest possible basis, there are no competition issues.

Competitive assessment

11. The parties have submitted that there are no affected markets because Fortis Bank does not offer services in the market for Internet portal services in Belgium. It can be concluded that, on the basis of the product markets identified in previous Internet cases, the operation does not raise competition issues. Concerning the market for dial up internet access, Planet Internet currently holds the second place in the Belgian market, which is characterised by the presence of five mature Internet service providers (Belgacom's Skynet, MCI Worldcom's UUNET; France Telecom's EuroNet-Wanadoo,

¹ Case IV/JV.1, Scandinavian On Line; IV/JV 11, @Home Benelux BV.

² Case COMP/M.1838 BT/ESAT

³ Case IV/M.1439 Telia/Telenor

⁴ Case IV/M.1667 – BBL / BT / ISP-BELGIUM

KPN's Planet Internet and World Online) and a growing number of new market entrants. Like its competitors, the joint venture will offer Internet access on a subscription free basis (at this moment, around 76% of the consumers part of the Internet access market have a free connection account), with revenues being secured from advertising, commissions on e-commerce and interconnect payments.

12. Concerning the provision of paid for content, Internet advertising space and web hosting services, all above mentioned ISP's play a significant role. The independent Internet company AdValvas is considered to be the most important Belgian portal offering these services, followed by Belgacom's Belcast and Planet Internet.
13. The Mine.be portal has been preceded by the establishment of other Internet portals with the active support of banking institutions operating in the Belgian banking services markets (for example: YUCOM, joint venture of British Telecom and Bank Brussels Lambert⁵, and DEXIA's AXXION web). As in the YUCOM case, there is no direct vertical relationship between the services offered by Mine.be and the banking services provided for by Fortis Bank in the Belgian retail banking market.
14. As the joint venture will face strong competition on the above markets, from both established players and new entrants, the Commission is of the opinion that the concentration will not create or strengthen a dominant position in the EEA territory or a substantial part of it.

VI. ANCILLARY RESTRAINTS

15. The parents have agreed that, up to a period of two years after the termination of the joint venture agreement, they will not participate in any activity that could compete with the mine.be portal and its described target group. As such, Planet Internet agrees not to provide such services with another bank, financial services or insurance company, and Fortis agrees not to provide such services with another ISP. This non-compete covenant is motivated as essential to ensure the parent companies' commitment to the successful establishment of Mine.be in the market.
16. On the one hand, the Commission considers that a non-compete clause, insofar as it applies for the duration of the joint venture, is directly related and necessary to the establishment of the joint venture and therefore is covered by the present decision. On the other hand, the Commission considers that the extended 2 years period of non competition following the termination of the joint venture agreement is neither an integral part of the notified transaction nor necessary for the implementation of the concentration. Therefore, the 2 years extended clause is not covered by the present decision
17. According to the JVSA, Mine.be will refrain from explicitly mentioning (through advertising or other means) competitors (as mentioned in the above paragraph) to Fortis Bank and Planet Internet. The Commission considers that this restriction is neither directly related nor has a direct link with the concentration. Indeed, it cannot be argued that clause is necessary for the implementation of the concentration as its absence will

⁵ Case COMP/M.1667- BBL/BT/ISP-Belgium.

not affect the probability of success of the joint venture. Therefore, this clause is not covered by the present decision.

VII. CONCLUSION

18. For the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

For the Commission,

Signed by Mr. Mario Monti
Member of the Commission