Case No COMP/M.4844 - FORTIS / ABN AMRO ASSETS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

ARTICLE 6(1)(b) DECISION
IN CONJUNCTION WITH 6(2)
Date: 03/10/2007

In electronic form on the EUR-Lex website under document number 32007M4844

Office for Official Publications of the European Communities
L-2985 Luxembourg

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3-X-2007

SG-Greffe (2007) D/205893

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Subject: **Case No COMP/M.4844 - Fortis/ ABN AMRO Assets**
Notification of 14 August 2007 pursuant to Article 4 of Council Regulation No 139/2004[1]

Dear Sirs,

1. On 14 August 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation") by which Fortis N.V. (the Netherlands) and Fortis S.A./N.V. (Belgium) (together "Fortis" or "Notifying Party") acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of ABN AMRO Holding N.V. ("ABN AMRO assets", the Netherlands) by way of public bid announced on 29 May 2007.

2. On 12 September 2007, the Notifying Party submitted undertakings, which were subsequently improved on 2 October 2007. The proposed commitments were designed to eliminate the serious doubts identified by the Commission, in accordance with Article 6(2) of the Merger Regulation After examination of the notification and in the light of these undertakings, the Commission has concluded that the operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I. THE PARTIES

3. Fortis is a Belgo-Dutch financial services group with activities in banking, insurance and related services, such as asset management, leasing and factoring. Fortis' operations are centred, in particular in Belgium and in the Netherlands, with additional presence in other Member States, Asia and the United States.

1 OJ L 24, 29.1.2004 p. 1.

4. ABN AMRO is the ultimate parent entity of an international bank, active in 53 countries. ABN AMRO is active in four principal customer segments: Personal Banking, Private Banking, Business and Commercial Clients and Corporate and Institutional Clients. ABN AMRO is predominantly active in the Netherlands.

II. THE OPERATION

5. On 29 May 2007 a Consortium formed by the banks Royal Bank of Scotland ("RBS"), Banco Santander Central Hispano ("Santander") and Fortis announced its intention to launch a public tender offer for the acquisition of the entire issued share capital of ABN AMRO. The offer is conditional upon the acquisition of at least 80% of ABN AMRO's share capital.

6. If the bid of the Consortium is successful, it will lead to the break-up of ABN AMRO. The present notification relates to Fortis' acquisition of the following assets of ABN AMRO ("ABN AMRO assets"):

   – Business Unit Netherlands, including ABN AMRO's full banking portfolio in the Netherlands, but excluding most large corporate customers, which will be transferred to RBS;

   – Business Unit Private Clients (worldwide), which includes retail banking services for wealthy individuals; and

   – Business Unit Asset Management (worldwide).

7. The acquisition of the remaining assets of ABN AMRO has been notified separately as Cases No COMP/M.4843 RBS/ ABN AMRO assets and Case No COMP/M.4845 Banco Santander/ABN AMRO assets. Both concentrations have been authorised by the Commission by decisions of 19 September 2007.

8. Pursuant to paragraph 30 of the Commission Consolidated Jurisdictional Notice under the Merger Regulation, the overall Consortium's operation is considered to give rise to three different concentrations. In particular, on 29 May 2007 the Consortium members have entered into a binding agreement to split up the assets of ABN AMRO among them within a sufficiently short time frame.

III. CONCENTRATION

9. As a result of this transaction, Fortis would exercise sole control over ABN AMRO assets. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

10. The undertakings concerned have a combined aggregate world-wide turnover of more than 5 billion Euro[2]. Each of Fortis and ABN AMRO assets has a Community-wide turnover in excess of 250 million Euro, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The

2 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25).

notified operation therefore has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

V. RELEVANT MARKETS

A. RELEVANT PRODUCT MARKETS

11. The parties' activities overlap in retail and corporate banking, factoring, financial market services, payment cards issuing and acquiring, asset management and insurance services. Fortis will not acquire however any of ABN AMRO's investment banking activities.

12. The Commission has in previous decisions held that banking services can be divided into three main segments, (i) retail banking (products supplied to private individuals), (ii) corporate banking (with separate markets for small and medium-sized customers and large corporate customers) and (iii) financial market services.[3] Retail banking generally comprises all banking services to private individuals and very small enterprises. Corporate banking generally comprises banking services to large corporate customers (hereinafter referred to as "LCC's") and smaller commercial clients such as small and medium-sized enterprises (hereinafter referred to as "SME's").

1) Banking products for corporate customers

13. In particular in Cases No. COMP/M.2567 Nordbanken/Postgirot and COMP/M.3894 Unicredito/HVB, the Commission considered the possibility of separate product markets for certain corporate customer segments, i.e. separate relevant product markets for large corporate customers on the one hand and other corporate customers, including SME's on the other hand. According to the Notifying Party, however, it is not possible to distinguish between different product markets for large corporate customers and other corporate customers. According to the Notifying Party, the main difference between products and services for SME's and products and services for large corporate customers is that the former are standardised products and the latter are tailor made. The Notifying Party states that the smallest customers receive relatively standardised products and the largest customers require highly customised products.

14. The Commission considers that the needs and behaviour of smaller corporate customers are distinct from the needs and behaviour of LCC's. Indeed, for the purpose of merger control, a distinction as to the size of the corporate customer appears to be relevant. This is also pointed out in a study on mergers in the Dutch financial sector conducted by an economic institute (NEI) in the Netherlands for the Dutch Competition Authority ("NMa")[4]. Banks in the Netherlands approach smaller corporate clients with a different marketing strategy than they would approach LCC's with. Banks offer smaller and medium sized corporate customers in general standardised products such as payment facilities, deposit facilities, and various forms of standard credits. The expertise necessary to assess the risk of a certain client differs significantly when LCC's and other corporate customers are compared. Furthermore, smaller and medium sized corporate customers are characterised by smaller transactions, fewer in-house knowledge about banking products

3 Case No COMP/M.1910 – Meritanordbanken/Unidanmark, para. 7; Case No COMP/M.117 – Fortis AG / Generale Bank, para 11 – 12; Case No COMP/M.3894 – Unicredito/HVB, para. 8, Case No COMP/M.850 – Fortis/MeesPierson para. 8 and Case No COMP/M.2225 – Fortis/ ASR, para.8.

4 "Fusies en Overnames in het Nederlandse Bankwezen, een instrument voor de NMa", NEI Kenniscentrum voor Marktwerking en Mededinging, juli 2000, page 7.

and less alternatives to source from. Smaller and medium sized corporate customers have less bargaining power vis-à-vis their bank(s) as compared to LCC's. Small enterprises also have two or three banking relationships at most, compared to sometimes as many as 15 for LCC's.[5]

15. Furthermore, the Commission has found that smaller corporate customers generally do not have access to (foreign) corporate banks. LCC's can substitute the services needed with the services offered by foreign banks and institutions, but smaller corporate customers often cannot. According to the Notifying Party, LCC's are "able, even if they choose not to, to access the capital markets to raise debt and equity. Fortis submits that empirical evidence shows that companies are in a position to make this transition at around 250 million Euro in consolidated turnover. Above this level, private placements, syndicated loans, corporate bonds and IPOs start to become attractive financing options. Hence, companies above the 250 million Euro turnover mark (in most countries) start to outgrow the traditional commercial banker relationship (…)".[6]

16. The Commission's market investigation has confirmed that corporate banking services to (i) SME's and (ii) LCC's belong to separate relevant product markets because large corporate customers require more complex products (e.g. bonds issues as opposed to loans) and they have access to a wider range of international financial service providers than SME's, who depend largely on domestic branch-based banks. However, there appears to exist no obvious single parameter by which companies can be designated as SME's or large corporate customers. Individual banks segment the market in different ways, i.e. some international banks may target only blue chip companies while others may also be interested in smaller corporate customers. Customers' potential profitability may depend not only on their size by turnover, but also on other characteristics that make them attractive customers (e.g. international activities). However, because Fortis designates customers with a turnover of up to 250 million Euro as SME's and serves them through local business centres, the present transaction affects this customer group in a distinct fashion. By contrast, Fortis serves customers with a turnover below 2.5 million Euro through its retail branch network.

17. In view of the above, the Commission considers that, for the purpose of the present decision, banking products for corporate customers with a turnover between 2.5 million Euro and 250 million Euro form distinct relevant product markets (hereinafter referred to as "commercial clients").

18. In Case No COMP/M.2567 Nordbanken/Postgirot, the Commission found that the various banking products supplied to commercial and retail customers are linked extensively due to the fact that they are distributed through the same branch offices, telephone and internet banking facilities. For some products, market power arises primarily at the distribution level, rather than the product generation level, and there exists a degree of supply-side substitutability between the various products. For example, a bank with an established branch network and customer base is likely to find it relatively easy to develop and market a new banking product through its existing distribution channels, as long as no significant (sunk) investment in assets at the product generation level is required. The level of required sunk investment appears to vary between product types. For example, an

5 "Fusies en Overnames in het Nederlandse Bankwezen, een instrument voor de NMa", NEI Kenniscentrum voor Marktwerking en Mededinging, juli 2000, pages 32 and 33.

6 Mercer Oliver Wyman, "Business as usual?, The future of business banking in Europe.", January 2004.

established bank is likely to find it easy to introduce a new type of loan, to adjust the features of the payment systems it offers to commercial customers or to offer a specific derivative from a product group where it is already active. By contrast, certain more complex products, such as factoring or leasing, may entail more substantial barriers-to-entry.[7]

19. For each relevant customer group, according to function of the product a further distinction could be made. A first distinction between categories of products that appear to have a limited substitutability can be made between products with a payment function, products with a savings function and products with a loan function. Consequently the question arises whether within those product categories certain products form a separate distinct product market.

a. Payment

20. The products that are offered as domestic payment services are current accounts and are often linked with cash management services and international payment services. Current accounts serve mostly to transfer money, either by telephone, electronically or through deposits of cash at the counter of a branch office. These kinds of transactions recur very frequently. Banks offer standardised software for integrating the electronic banking system of the bank with the client's automation system(s). Customers cannot generally substitute current accounts with other banking products. In many instances commercial customers are even legally obliged to have a current account.

21. Apart from domestic payment services several specialised payment services to corporate customers appear to constitute a distinct relevant product market each:

22. Cash management services are often sold separately and include the management of the liquidity position of the commercial client. Several accounts are coupled and monitored and excess liquidity is temporarily invested, for example by means of overnight deposits. There appear to be very limited alternatives for cash management services; one alternative for a commercial client would be to do it in house. Cash management services are linked to the current accounts. The bank that holds the current account has an advantage over other potential providers for this service.

23. Foreign payment services include transfers to and from foreign countries and sale and purchase of foreign currencies. Large banks have an extensive international network with "in-house" international cash management capability, others do not. As an alternative to the own in-house system common initiatives have been developed such as the Trans-European Automated Real Time Gross Settlement Express Transfer system. For larger corporate customers transferring and receiving internationally can occur frequent. Foreign payment services, in theory at least, could be substituted by forcing the foreign customers of the commercial client to use credit cards for their payments only. This would only be a viable alternative when the amounts of money to be transferred are relatively small. Another substitute for a commercial client to receive and transfer international payments is to open and maintain several accounts with local banks in foreign countries. This can be however in many instances very costly as it is more complex and thus more expensive to manage (the liquidity) on all accounts.

---

7 Case No COMP/M.2567 Nordbanken/Postgirot, paras. 38 and 39.

b. Loans

24. There are several kinds of credit facilities for corporate customers. The main differentiation between different credit facilities such as short term and long term current account credits, mortgages and all sorts of guarantees appears to be the term of the loan and conditions such as the type of security and liens. Between the different loans appears to exist a certain degree of demand substitutability. However, for export financing and documentary credits the demand side substitutability appears to be very limited.[8]

c. Savings

25. Within the product group for savings there are various methods for saving for corporate customers. The substitutability between those deposits and saving products appears to be extensive.

d. Conclusion

26. In view of the above, there are several indications that within the defined relevant product market for commercial clients distinct relevant product markets for a. domestic payment services, b. foreign payment services, c. cash management services, d. loans and e. savings could be defined. However, since the transaction as modified by the commitments entered into by the Notifying Party, would under any alternative product market definition not raise serious doubts as to the compatibility with the common market, the question as to further defining relevant product markets for each product within the relevant market for commercial clients can be left open.

27. For LCC's (with a turnover of above 250 million Euro), given the minimal overlap in the large corporate market (the relevant assets being transferred to RBS), the exact product market definition can be left open in this area.

2) Factoring

28. 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 added liquidity. In this respect, it includes the ongoing purchase of short-term trade accounts receivable by a factoring company as well as the individual well-directed purchase of a customer's receivables for particular refinancing purposes.[9]

29. Many large banks have subsidiaries that provide this service via specialised companies that offer it. Factoring is a service that corporate customers may need frequently. Although it is rather a specialised service with limited apparent substitutability, it is complementary to credit facilities as it allows commercial clients to have an additional source of financing.

8 "Fusies en Overnames in het Nederlandse Bankwezen, een instrument voor de NMa", NEI Kenniscentrum voor Marktwerking en Mededinging, juli 2000, page 76.

9 Case No COMP/M.3894 Unicredito/HVB, para. 29.

30. In previous Commission decisions[10], factoring was distinguished from credit insurance and it was left open whether the market could be subdivided. The market investigation has confirmed that factoring services should be distinguished from credit insurance services.

31. The Notifying Party submits that factoring constitutes the relevant product market and that it is not appropriate to further sub-divide the market in view of supply-side considerations. The NEI report also concludes that factoring can be regarded as a separate relevant product market.[11]

32. For the purposes of the present case, the Commission agrees with the Notifying Party that the relevant product market is that of factoring. It can be left open however whether the market should be further sub-divided since the transaction, as modified by the commitments entered into by the Notifying Party, will not raise serious doubts as to the compatibility with the common market in any alternative product market definition.

3) Banking products for private individuals (retail)

33. Like commercial banking services, retail banking products are linked extensively due to the fact that they are distributed through the same branch offices, telephone and internet banking facilities. For some products, market power arises primarily at the distribution level, rather than the product generation level, and there exists a degree of supply-side substitutability between the various products for banks that already operate an established branch network and customer base. Relative to the commercial banking segment, retail banking products tend to be more standardised and less complex, facilitating the introduction of new products into existing distribution channels.

34. Fortis submits that the market for retail banking should be considered as one single relevant product market particularly with respect to the products linked to the current account. Yet, only […] % of Fortis' customers hold more than one banking product from Fortis. Fortis argues that from the demand side retail customers generally seek a "retail banking package" and that virtually all consumers demand a personal current account which is generally offered in combination with payment services, savings accounts and consumer credits. Fortis further submits that there is a high degree of supply-side substitutability between the various retail products.

35. The Commission's market investigation has found some evidence that supply-side substitutability may lead to relevant product markets comprising more than one retail product. This is true in particular for products linked closely to personal current accounts. All universal retail banks offer PCAs, savings accounts, mortgages and mass-marketed investment products (such as funds, deposits and securities). Furthermore, even recent niche entrants in the Dutch markets have started to diversify their activities and have started offering products in addition to the core product they entered the market with.

36. Whereas there appears to be general supply-side substitutability at the distribution level within mass-marketed retail banking products, this does not appear to be the case between these and private banking products. As indicated by the market investigation, private

---

10 Case n° COMP/M.1661 Crédit Lyonnais/Allianz-Euler/JV, para. 10, Case No COMP/M.3894 Unicredito/HVB, para. 42 and Case No COMP/M.4155 BNP Paribas/BNL, para. 15.

11 "Fusies en Overnames in het Nederlandse Bankwezen, een instrument voor de NMa", NEI Kenniscentrum voor Marktwerking en Mededinging, juli 2000, page 78. See also approved minutes with factoring operators.

banking presents certain distinct characteristics, mainly more personalised service provided by senior level staff, i.e. there appears to be a difference between the product offered and the way it is distributed.

37. In addition, some products, including in particular mortgages, and mutual funds, appear to require more specific assets at the *product generation* level, which significantly limits supply-side substitutability.

38. There is also no demand-side substitutability between the different product groups because product characteristics differ widely. For example, both savings accounts and investment products enable customers to earn a return on invested funds, but pricing, risk profiles and other conditions differ widely.

39. Although Fortis proposes a wider definition of the retail market as a whole, it also provided figures for individual product segments, in accordance with previous Commission decisions, for personal current accounts (PCAs), savings accounts, consumer loans and mortgages. Fortis departed from the Commission's earlier consideration of the sub-segment "distribution of mutual funds" and proposed instead a mixed category of "capital management" for private individuals, including in these categories two product segments, where supply-side substitutability at the product generation and/or distribution level is not so apparent, i.e. mutual funds and private banking. For this reason and in accordance with previous decisions[12] these two categories will be analysed separately in this Decision.

40. However, it can be left open in this case whether individual retail banking products represent separate relevant product markets or whether wider markets applies because the notified transaction does not raise serious doubts in the retail banking sector under either market definition.

41. Consequently, the competitive assessment of the notified transaction will be conducted both under a relevant product market comprising all retail banking products and also on the basis of the following individual product markets:

- Personal current accounts,
- Savings accounts,
- Consumer loans,
- Mortgages,
- Distribution of mutual funds, and
- Private banking services.

4) Payment cards

42. Two main payment card related activities of banks can be distinguished apart from card processing: first, the issuing of cards to individuals and companies and, secondly,

[12] Case No COMP/M.3894 – Unicredito/HVB and Case No COMP/M. 2567 Nordbanken/Postgirot.

"acquiring" of merchants (including hotels, airlines and other businesses accepting cards) for card payment acceptance.

43. The parties' payment card activities only overlap in the Netherlands where both Fortis and ABN AMRO are active in the field of credit and debit card issuing and in the field of (national) debit card acquiring. Neither Fortis nor ABN AMRO is directly active in the business of credit card acquiring and payment card processing.

44. The main international – credit and debit - card acquirer is PaySquare, a subsidiary of the payment processor Interpay and joint venture of Dutch banks. According to the Notifying Party, Fortis and ABN AMRO hold non-controlling shares in PaySquare (together over […] %). In addition, Fortis, via its subsidiary ICS, holds a non-controlling share of […] % in the second largest acquirer EMS, which is controlled by First Data ([…] %). Other acquirers, for example, are B+S, Citibank and the Belgian BCC.

45. The major payment card processing company is Equens in which Fortis and ABN AMRO also hold non-controlling shares (together over […] %). Equens, which was created through a merger between Interpay and the German payment processor TAI, accounts for over [*80 – 90*] % of the Dutch issuing and acquiring processing activities.

46. According to the parties and competitors, the planned merger does not imply changes to the current payment networks and will not imply new majorities or blocking majorities.

47. For the above reasons, the further analysis will focus on card issuing and (national) debit card acquiring.

a. Payment card issuing

48. Within the activity of payment card issuing, the Commission in previous merger decisions[13] discussed the possibility to distinguish between different types of cards, leaving the exact market definition open:

- cards issued to households and cards issued to commercial customers (the latter possibly further subdivided into SME's and large corporate customers) and/or
- international[14] and national cards and/or
- debit and credit cards and/or
- selective and general cards.

49. Fortis submits that the division of card issuing by customer type (i.e. households, SME's and large corporate customers) is not valid for the Netherlands. Firstly, banks in the Netherlands, if at all, only distinguish between cards issued to households and those issued to commercial or corporate customers. Secondly, according to the Notifying Party,

---

13 Case No COMP/M. 2567 Unicredito/HVB, para. 13, Case No COMP/M. 2567 Nordbanken/Postgirot, para. 15 and following, Case No COMP/M. 3740 Barclays Bank/Föreningssparbanken/JV, para. 13.

14 Cards which belong to an international network and/or carry an international acceptance trademark such as MasterCard/maestro, Visa/electron, American express or Diners and can be used at POS and ATMs internationally.

the latter is very small compared to the issuing of cards to households which accounts for more than [*90 – 100*] % of the whole card issuing business. Thirdly, Fortis points out that the parties, while being quite active in the field of card issuing to households, they are less so in the field of card issuing to companies.

50. Furthermore, the Notifying Party submits that a distinction between international and national payment cards would not reflect properly the practice in the Netherlands since payment cards that can be exclusively used in the Netherlands do not exist. In that context Fortis explains that even though debit cards are not everywhere accepted at the cross-border retail level, they can be used with ATMs accepting the Cirrus/Maestro brand which are abundant in most EEA countries.

51. Finally, Fortis argues that there is also no need to further divide the payment card issuing market in selective and general payment cards as Fortis and ABN AMRO are not active in the field of selective payment cards. However, the parties, primarily Fortis, issue 'co-branded loyalty' credit cards, i.e. credit cards that bear the logo of a partner – e.g. department stores and other retail chains, car producers or airlines providing for the distribution and marketing – and, in some cases, of the financial institution carrying out the financial processing.

52. According to Fortis, the business of issuing co-branded loyalty credit cards does not constitute a separate market within the overall market for payment or credit cards issuing because, first, there is a high degree of supply side substitutability with no specific expertise required for both partners and financial institutions to enter that market. Secondly, from the viewpoint of the demand side, co-branded loyalty cards compete to a large degree with 'regular' credit cards. Although the co-branded loyalty credit cards offer additional advantages when paying at the partners' premises, they function as regular credit cards when paying elsewhere. In the opinion of the Notifying Party, these types of credit cards are, therefore, highly substitutable with regular credit cards.

53. The Commission takes the view that the distinction between payment cards - or certain types of payment cards - issued to households and cards issued to commercial customers can be justified to analyse effects of the envisaged merger on the markets for banking products for corporate customers and for retail products. For instance, the number of cards issued to each of the customer groups can serve as one of the indicators to measure the parties' market position on each of these markets. Regarding the parties' position on the markets for payment cards issuing as such, however, a distinction between cards for households and cards for corporate customers may not always be appropriate.

54. In the Netherlands the number of cards issued to corporate customers is small ([*0-5*] % for debit cards and [*5 – 10*] % for credit cards)) compared with the overall issuing market. Moreover, according to the Commission's information, the shares Fortis and ABN AMRO achieve with respect to the overall number of issued debit cards and with respect to the number of debit cards issued to corporate customers are the same. The combined shares achieved with credit cards issued to corporate customers are even significantly smaller compared to the overall number of issued credit cards. Consequently, a distinction between cards issued to households and cards issued to corporate customers does not appear to be appropriate for the purpose of this decision.

55. As to the question of whether the issuing of international and national cards and/or of debit and credit cards constitute separate markets, the Commission takes the view that the

characteristics of the card issuing business in the Netherlands supports the distinction between the issuing of (international) credit cards[15] and the issuing of (national double-branded with international) debit cards because, first, there are no national credit cards in the Netherlands and, secondly, the vast majority of the debit cards issued in the Netherlands are dual branded for use with both the national debit scheme PIN and the international debit scheme Maestro.

56. Furthermore, and for the purpose of this decision, it does not seem to be appropriate to distinguish between selective and general payment cards. However, with respect to the issuing of 'co-branded loyalty' and 'regular' credit cards a distinction may be justified in view of the different features and the complementary use by customers despite demand side substitutability.[16]

57. This leaves the (international) credit card issuing and (national double-branded with international) debit card issuing as potential relevant markets for the purpose of this decision. Whether the issuing of credit cards and of debit cards to corporate customers and to households and whether the issuing of 'co-branded loyalty' and 'regular' credit cards constitute separate relevant markets can be left open because the notified operation does not lead to serious doubts whichever of the possible product market definitions is adopted.

b. Debit card acquiring

58. Regarding the card acquiring activities, i.e. the acquiring of merchants for card payment acceptance, Fortis and ABN AMRO are both directly active only in the field of the acquiring of national debit cards.

59. Following the intervention of the NMa and the subsequent restructuring of the joint venture Interpay, which had carried out virtually all payment card acquiring activities in the Netherlands until 2004, the activity of credit cards and international debit cards acquiring is carried out by PaySquare, a subsidiary of Interpay, EMS and other acquirers (see above). Only (national) debit cards acquiring is left to the individual banks.

60. For the purpose of this decision, the relevant product market is the market for (national) debit cards acquiring.

5) Leasing

61. According to Fortis, leasing comprises the leasing of all kinds of assets such as industrial and agricultural machines, computers, coffee machines, real estate and transportation vehicles. However, Fortis considers that operational car leasing should be distinguished from other types of leasing. Under operational car leases, the risks of ownership are retained by the lessor and the duration does not cover the major part of the asset's economic life. Ownership is not automatically transferred to the lessee at the end of the lease term. Financial leasing is generally for a longer period and fully repays the asset cost resulting in the transfer of ownership of the product to the lessee at the end of the lease.

---

15 The term "credit cards" includes so-called 'deferred debit' or 'charge' cards.

16 See also the Commission's Sector Inquiry into Retail Banking, Interim report I on Payment cards, page 122: http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/financial_services/interim_report_1.pdf.

62. As regards other types of assets, Fortis considers that there is a high degree of supply-side substitutability between the various types of leasing products and therefore, no further subdivision between general operation leases and general financial leases should be made. Fortis' views are in line with the Commission's past decisions practice.[17]

63. For the purpose of the current decision it is, however, not necessary to conclude on the relevant market definition since no competition concerns arise irrespective of product market definition.

6) Financial market services

64. According to Fortis, financial market services are provided to institutional investors, corporate clients and professional traders who lack direct access to financial markets or otherwise value the intermediary services provided by a bank. Strictly speaking, this class of services consists of an offer of transactions to clients which may or may not require the bank in its turn to carry out transactions on financial markets, since in certain instances it may be able to internalize the transaction, that is, cross it on their own books with an opposite transaction of another client. Banks also intervene extensively on financial markets for their own purposes.

65. Financial market services comprise services such as trading in securities, bonds and derivatives as well as foreign exchange and money market instruments. In previous cases, the Commission has left open the question whether each of these services constitute a separate product market.[18] The Notifying Party submits that theses market segments form part of an overall market for financial market services.

66. For the purpose of the current decision it is, however, not necessary to conclude on the relevant market definition since no competition concerns arise irrespective of product market definition.

7) Asset management

67. Asset management concerns the provision of investment advice and often also the implementation of this advice. Asset management services include the creation, establishment and marketing of retail pooled funds and the provision of portfolio management services to pension funds, institutions, international organisations and private investors. In previous cases, the Commission left open the question whether these individual products constitute separate product markets.[19]

68. Fortis submits that there is one single (European) market for asset management which would include the above-mentioned services but would exclude asset management services for private individuals. Fortis argues that banks in the Netherlands normally provide these services through their retail banking business and therefore, asset management services for private individuals should be considered under retail banking. Indeed, Fortis provides asset management services for private individual through its retail banking business whereas the other asset management services are provided by its

17 See Case COMP/M. Case No COMP/M.2970 – GE/ABB Structured Finance, para. 15 and Case No COMP/M.3090 – Volkswagen / Offset / Crescent / LeasePlan /JV, paras. 10 and 13.

18 See Case No COMP/M. 3894 Unicredito/HVB, paras. 30-31.

19 See Case No COMP/M. 3894 Unicredito/HVB paras. 35-36 and Case No COMP/M. 1453 –AXA/GRE paras. 7 and 8.

subsidiary Fortis Investments Management S.A./N.V. This is in line with previous Commission decisions where asset management excluded the provision of portfolio management services to individuals.[20]

69. The Commission has further considered the market for custody services within the asset management segment. Custody services are services comprising of the settlement, safekeeping, and reporting of customers' marketable securities. In previous decisions, the Commission has left open the question whether custody services could be further subdivided into (i) global custody services to investment institutions and (ii) domestic custody services, and within this segment (a) institutional custody services and (b) retail custody services.[21] Fortis submits that the parties' activities only overlap in retail custody services and that it does not consider this sub-segment to constitute a separate product market. The market investigation is inconclusive in this respect.

70. For the purpose of the present decision it is, however, not necessary to conclude on the relevant product market definitions in the asset management sector since no competition concerns arise in any of the possible alternative definitions.

8) Insurance sector

71. In its previous decisions, the Commission has distinguished between three large categories of insurances: life insurance, non-life insurance and reinsurance[22]. It has been further suggested that life and non-life insurance can be divided into as many product markets as there are different kinds of risks covered, given that their characteristics, premiums and purposes are distinct and that there is typically no substitutability from the consumers perspective between different risks insured. From a supply-side perspective, however, the conditions for insurance of different risk types are rather similar and large insurance companies offer insurance to cover several risk types.

72. With respect to life insurance, the Commission has traditionally distinguished between group life insurance products and individual life insurance[23]. As regards non-life insurance, Fortis proposes to distinguish between the following markets (i) accident & health insurance; (ii) motor insurance; (iii) fire insurance; (iv) transport insurance and (v) other insurance. According to Fortis, this segmentation represents the division adopted by the NMa in previous insurance cases[24]. Furthermore, the Commission followed this segmentation in its previous Case No COMP/M.2225 Fortis/ASR.

73. The Commission has in the past also analysed the distribution of insurance products but has left the product market definition open. In Case No COMP/M. 4284 – Axa/Winterthur the market investigation confirmed that the relevant market for either non-life or life insurance distribution would comprise all outward (i.e. third party or non-owned) distribution channels, such as brokers, agents and other intermediaries. The sales force and office network of insurance companies themselves, pursuant to which insurance

---

20 See Case No COMP/M. 3894 Unicredito/HVB paras. 9 and 35 and Case No COMP/M. 1453 –AXA/GRE paras. 7 and 8.

21 See Case No COMP/M. 1979 – CDC/Banco Urquijo/JV, para. 10.

22 See Case No COMP/M.4284 - AXA/Winterthur, para. 7.

23 Case No COMP/M.4284 - AXA/Winterthur, paras. 11 and 12.

24 Case no. 5074 Achmea-Rabobank.

providers directly sell products to end-customers, would not come within this definition as they form an inherent part of the insurance companies' normal business.[25]

74. For the purpose of the present decision it is, however, not necessary to conclude on the relevant product market definitions in the insurance sector since no competition concerns arise in any of the possible alternative definitions.

B. RELEVANT GEOGRAPHIC MARKETS

1) Banking products for corporate customers

75. The Commission Notice on the definition of the relevant market for the purposes of Community competition law states that "the relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products and services, in which the conditions of competition are sufficiently homogeneous, and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas".[26]

76. With regard to corporate banking, the Commission has in previous decisions taken the view that certain product segments will continue to be required and supplied at national level.[27] The Commission considered that the competitive conditions in the different Member States are still different, despite the increasing trend towards internationalisation and due to the importance of a network of branches.[28]

77. For some corporate customers with a turnover of up to 250 million Euro proximity of a branch (or a "business centre"[29]) of their bank matters. However, for other corporate customers proximity is less important. About […] % of Fortis' corporate customers that are registered as SME's with the Chamber of Commerce do not bank at the geographically closest Fortis business centre. The fact that corporate customers do not necessarily need a "branch" in their direct vicinity was confirmed by the Commission's market investigation. The vast majority of the respondents would stay with their bank if a branch were closed. Only a minor number of respondents to the Commission's questionnaire that was sent during the investigation would switch to a bank within the vicinity. Visits to the bank branch are also quite infrequent.

78. It remains that, for corporate customers with a turnover of below 250 million Euro, having a local presence allows the bank not only to give customers ready access to their "account managers" (who in any case often visit customers on their premises), but also to obtain local market intelligence about potential customers, in particular with regard to "soft" factors such as management quality and other risk factors. The local situation is very important for example to estimate risks in relation to credit facilities, as the knowledge of the day to day business within the client can provide very useful information for the bank.

25 See Case No COMP/M.4284 - AXA/Winterthur, para. 15.

26 OJ C 372, 9.12.1997, para. 8.

27 Case No COMP/M.1029 – Merita/Nordbanken para. 12; Case No COMP/M.2567 Nordbanken/Postgirot para. 37; Case No COMP/M.2578 – Banco Santander Central Hispano/AKB para. 10 and Case No COMP/M.3894 – Unicredito/HVB para. 41.

28 Case No COMP/M.2225- Fortis/ASR, para. 12.

29 It is recalled that Fortis serves corporate customers with a turnover of up to 250 million Euro through local business centres.

79. In general, proximity is more important for small corporate customers and the importance of proximity tends to decrease for larger corporate customers. Smaller corporate customers may need to visit the local branch more regularly. For example, some corporate customers need to visit the branch for managing their petty cash. Also, the willingness of small commercial customers to travel far for certain banking products may be lower than the willingness to travel further of larger corporate customers. From the demand side perspective the relevant geographic market may therefore well be local or at least narrower in scope than national. However, there is no indication that the assessment would lead to a substantially different outcome if the Commission focused on narrower geographic markets. It appears that the four big banks cover the whole of the Netherlands in much the same way and that competitors focussing on specific regions within the Netherlands play at best a marginal role.

80. In view of the above the Commission considers that for the purpose of this decision the market for banking products for commercial clients is national in scope.

81. For LCC's (with a turnover of above 250 million Euro), the Commission has in its previous decisions left it open whether the market is national or wider in scope. Given the minimal overlap in the large corporate market (the relevant assets being transferred to RBS), the exact market definition can be left open in this area.

2) Factoring

82. The Commission has previously considered the geographic market definition for factoring to be national in scope[30]. In particular, the Commission considered the parties' arguments in Case No COMP/M.2577 GE Capital/Heller Financial according to which factoring has traditionally been provided on a national basis. Moreover, it was argued that since factoring services are generally provided to SME's, relatively few factoring customers are of sufficient size to warrant cross-border consumption of factoring services.

83. The Notifying Party considers however that factoring may be wider than national since factoring is becoming more and more pan-European or even global in scope. The results of the market investigation show however that the geographic market definition for factoring is still national in scope. Since factoring is a complex product customers have a strong need for personal contacts with the local branch office.[31]In particular, each national market has its own specificities regarding for instance distribution channels.[32] The NEI report concluded on the geographical scope of the factoring market that factoring would be mainly provided by the main bank of the commercial client.[33]

84. For the purposes of the present case, the factoring market is considered to be national in scope.

---

30 Case No COMP/M.3894 Unicredito/HVB, para. 42 and Case No COMP/M.4155 BNP Paribas/BNL, para. 23.

31 "Fusies en Overnames in het Nederlandse Bankwezen, een instrument voor de NMa", NEI Kenniscentrum voor Marktwerking en Mededinging, juli 2000, page 44.

32 See replies to market investigation and minutes of factoring operators.

33 "Fusies en Overnames in het Nederlandse Bankwezen, een instrument voor de NMa", NEI Kenniscentrum voor Marktwerking en Mededinging, juli 2000, page 77.

3) Retail banking for private individuals

85. The Notifying Party submits that in its previous decisions, the Commission has considered that with regard to *retail banking* services the relevant geographic market is national in scope due to the different competitive conditions between individual Member States. This has been confirmed by the market investigation. Like in the market for commercial clients, retail banking products are distributed primarily via networks of branch offices. It appears, despite increasing internet penetration, that branch offices continue to play a crucial role in establishing customer relationships and for advising customers on more complex products. All of the major competitors in the Dutch retail banking market rely on branch offices and no internet-only supplier has achieved market shares of one percent or more.

86. As set out in the section on commercial banking products above, all of the main banks in the Netherlands operate branch networks throughout the country, which leads the Commission to conclude that the relevant market is national in scope.

4) Payment cards

87. Fortis has provided data based on geographic markets of a national dimension, i.e. the Netherlands. This is in line with previous merger decisions where the Commission indicated that the markets for payment card issuing and payment card acquiring are likely to be still national in scope even if there may be scope for the widening of the markets in the near future.[34]

5) Leasing

88. In line with the Commission's previous practice, Fortis considers that the markets for leasing services are at least national in scope[35]. However, it submits that market conditions in a number of countries (e.g. Germany and the Netherlands) have become increasingly similar in recent years and, that the market therefore is becoming more and more pan-European in scope. The results of the market investigation are not conclusive on whether leasing services should be considered as wider than national in scope.

89. However, for the purpose of the proposed transaction, the exact geographic market definition can be left open, since on any possible geographic market definition, the concentration does not raise competition concerns.

6) Financial market services

90. As regards financial market services the Commission has considered that they are international in scope, but some of them have been analysed from a national perspective[36]. Fortis submits that the market for financial market services normally has an international dimension. It is not necessary to conclude on the exact scope of the geographic market as no competition concerns arise under any possible market definition.

---

34 Case No COMP/M. 2567 Nordbanken/Postgirot para. 37; Case No COMP/M. 3740 Barclays Bank/Föreningssparbanken/JV para. 16 (assuming national markets).

35 See Case No COMP/M.4199 – De Lage Landen / Athlon, para. 19.

36 See Case No COMP/M. 3894 Unicredito/HVB para. 42.

7) Asset management

91. Asset management has been previously considered to be either national or international in scope. Fortis submits that the market for asset management (excluding asset management services to private investors) is at least European in scope on the basis of supply-side considerations. Although the market investigation provided some support for Fortis' views that the market is wider than national, it is not necessary to conclude on the exact scope of the geographic market as no competition concerns arise under any possible market definition.

8) Insurance sector

92. The Commission in its previous decisions has defined the markets for life and non-life insurance as being mainly national in scope as a result of national distribution channels, the established market structures, fiscal constraints and differing regulatory systems.[37] This has been confirmed by the market investigation. For the purpose of this decision the Commission considers the geographic market for life and non-life insurances as national in scope.

VI. COMPETITIVE ASSESSMENT

93. The most substantial horizontal overlap between Fortis and ABN AMRO Assets arises in the supply of financial services to private individuals and commercial clients in the Netherlands.

1) Banking markets for corporate customers

<u>(a) Banking markets for commercial clients in the Netherlands</u>

94. Based on the market investigation and the Commission's financial services sector enquiry, these markets can be characterised as relationships markets in the sense that customers have an ongoing relationship with one or more banks through which products are purchased. Current accounts and, to a lesser extent, loans form the most important "gateways" through which a customer relationship is established and future sales are made. The customer relationship provides the bank with important information about a customer's potential profitability, such as income, wealth and risk profile. There is generally asymmetric information about these competitive parameters between a customer's incumbent bank and competitors. The asymmetric information makes it more difficult (and thus costly) for banks to attract customers from competitors. Simply setting a lower price to attract customers may result in an adverse selection where incumbents retain (through appropriate incentives) the most profitable customers (e.g. SME's with a low bankruptcy risk, heavy users of profitable products, etc.) and where the new entrant collects the less profitable business. The asymmetric information problem, together with customers' general inertia (reluctance to go through the trouble of switching banks), leads to relatively low customer turnover and only modest shifts of market shares over time. Fortis itself describes the notified transaction as a "once in a lifetime opportunity" to acquire market share quickly, rather than competing it away from competitors over time.

95. In setting their prices and conditions, competing banks, thus, face a trade-off between competing aggressively to grow more quickly and extracting revenue from their existing

37 See Case No COMP/M.4284 - AXA/Winterthur, para. 17.

customer base. The latter incentive increases as a bank's market share (existing customer base) rises. Concentration levels are thus likely to be correlated, at least to some degree, with market power.

a. Merging firms have high combined market shares

96. The market for banking products for commercial clients is already highly concentrated. Four banks, Rabobank, ABN AMRO, ING Bank / Postbank and Fortis Bank together control approximately [*90 – 100*] % of the Dutch commercial banking market, when measured by main banking relationship. Through the proposed transaction, Fortis' market share will increase from [*5 – 10*] % to [*40 – 50*] % for banking for commercial clients measured by main banking relation[38] and up to [*40 – 50*] % and higher for a number of specific commercial banking products. For a number of customer segments the market shares would also be higher, especially in the segment of corporate customers with a turnover of 10 to 20 million Euro and in the segment 20 to 50 million Euro. The transaction would combine the first and fourth largest banks for corporate customers in the Netherlands. Fringe firms do not exert significant competitive pressure; The Commissions market investigation showed that at present the smaller banks such as Friesland Bank, SNS, van Lanschot and GE Artesia are not regarded as a viable alternative from the perspective of the customers.[39] Notably for corporate customers with a turnover of more than 50 million Euro, these small banks play an insignificant role.[40]

97. The market share data for commercial banking products provided in the notification is based largely on market surveys. According to Fortis, the following market shares arise in an overall market for SME banking measured by main banking relationship. Similar market share estimates are contained in a 2004 study by the Netherlands Economics Institute (NEI) for the Dutch NMa. The Commission has not found any significantly diverging estimates during the market investigation. Fortis' internal documents – in which Fortis' market share is estimated at [*5 – 10*] % - indicate that also the bank's management has a very similar view of the prevailing market structure.

Table 1: Market shares according to the Notifying Party

%	Main banking relation	Deposits / savings	Loans with fixed term	Documentary credits	Domestic payments	International payments
ABNAMRO	[*30 – 40*]	[*20 – 30*]	[*20 – 30*]	[*30 – 40*]	[*20 – 30*]	[*30 – 40*]
Fortis	[*5 – 10*]	[*5 – 10*]	[*0 – 5*]	[*5 – 10*]	[*5 – 10*]	[*5 – 10*]
Combined	**[*40 – 50*]**	**[*30 – 40*]**	**[*30 – 40*]**	**[*40 – 50*]**	**[*30 – 40*]**	**[*30 – 40*]**
Rabobank	[*20 – 30*]	[*20 – 30*]	[*30 – 40*]	[*20 – 30*]	[*20 – 30*]	[*20 – 30*]
ING	[*20 – 30*]	[*30 – 40*]	[*10 – 20*]	[*20 – 30*]	[*30 – 40*]	[*20 – 30*]
Others	[*5 – 10*]	[*10 – 20*]	[*10 – 20*]	[*10 – 20*]	[*5 – 10*]	[*10 – 20*]

Source: Form CO

38 The concept of main banking relation is used in the market studies cited by Fortis in the Form CO. It is based on the share of customers surveyed who consider a bank as their primary banking relationship from which they source most of their financial services. It could thus be interpreted as a measure of overall strength across the range of commercial banking products supplied to a given customer base. It reflects the fact that there is significant supply-side substitutability for standard banking products among major banks. Market power for these products, consequently, arises primarily at the distribution level.

39 Questionnaire to commercial clients Fortis, question 15.

40 Submission of Vallstein, an independent banking advisor, E-mail of 4 September 2007

Table 2: Market shares according to the Dutch Competition Authority (NMa)

%	Loans and current account	International payment services
ABNAMRO	[*30 – 40*]	[*30 – 40*]
Fortis	[*5 – 10*]	[*5 – 10*]
Combined	**[*40 – 50*]**	**[*40 – 50*]**
Rabobank	[*20 – 30*]	[*20 – 30*]
ING	[*20 – 30*]	[*20 – 30*]
Others	[*0 – 5*]	[*0 – 5*]

Source: ECORYS-NEI, NMA 2004

Table 3: HHI main banking relationship

	Main banking relationship	Loans and current accounts
HHI-pre merger	[*2500 – 2700*]	[*2500 – 2700*]
HHI post-merger	[*2900 – 3100*]	[*3200 – 3400*]
Delta	[*400 – 500*]	[*600 – 800*]

Source: Commission on the basis of Form CO

98. On the market for commercial clients, ABN AMRO is currently the largest provider of financial services in the Netherlands and Fortis is the fourth largest. Given the economic characteristics of the banking market set out above (such as high barriers to entry, information asymmetry), the high combined market share ([*40 – 50*] %- [*40 – 50*] %) and the substantial increase in the concentration level (HHI) raise serious doubts that effective competition may be significantly impeded. Similar combined market shares arise in individual products supplied to commercial clients, where the combined entity would become the largest operator post merger.

99. The parties' strong position underlines their pre-eminence in banking for commercial clients. Their high market shares in relatively sophisticated banking services for commercial clients may also be indicative of Fortis and ABN AMRO's capabilities to serve similar customer groups, e.g. commercial clients with international activities. This was confirmed by the Commission's market investigation, which indicates that especially ING, ABN AMRO and Fortis are well placed to serve Dutch commercial clients with international activities through their in-house operations.

100. It appears, moreover, that commercial clients must sometimes source financial services from several banks simultaneously. This applies in particular to loans above a certain size. The reduction in the number of potential suppliers from four to three may thus place some commercial clients in a position where they have little or no choice of suppliers. Commercial clients generally rely on local branch-based banks for their most important financial services (such as loans and payments). Current accounts for commercial clients are often strongly linked with services related to credit facilities.

Therefore the local dimension for credit facilities[41] for commercial clients leads to a more local dimension also for payment services for commercial clients.

b. Significance of concentration levels

101. As shown above, the accretion in market shares and concentration levels resulting from the merger would be significantly above the safe harbours provided by the Commission's Horizontal Merger Guidelines. At the same time, the economic characteristics of the banking market make it likely that high concentration levels are indicative of market power.

102. This is because, in banking, customers have an ongoing relationship with one or more banks through which products are purchased. Consequently, banks' pricing incentives change as market shares increase and banks balance the benefits of pricing low to gain market share against pricing less aggressively to extract more profits from the existing customer base. Due to the substantial switching barriers (e.g. administrative burden, contractual lock-in, and asymmetric information problems) market shares move only slowly over time, particularly for the large players.

103. In view of the above, one would expect that Fortis, as the smallest of the main banks, has an incentive to act as an active competitor in the market aiming to expand its market share (rather than maximising returns from the existing customer base). Because of the specific characteristics of the commercial banking market (asymmetric information about potential customers' risk profile), such market share expansion can progress only slowly and one would expect Fortis to employ (also) non-price strategies in attracting customers. The market investigation, Fortis' internal documents and market studies indicate that this has indeed been the case. As will be outlined in more detail below, unlike in the retail banking market where Fortis's brand image is weak, Fortis is generally considered by commercial clients as more likely to compete aggressively on price than the other banks (see below section c).

104. Based on the economic characteristics of the commercial banking market, the substantial increase in the already high concentration level already raises serious concerns that competition may be significantly impeded. The serious doubts are confirmed and further reinforced by the following evidence about Fortis' competitive role and market positioning collected during the Commission's preliminary market investigation. Although this evidence is necessarily less conclusive at this stage than after an in-depth investigation, it provides additional and consistent indications of the transaction's potential negative effect on consumers.

c. Merger eliminates an important competitive force

105. Currently there are four large banks in the Netherlands ABN AMRO, ING Rabobank and, with some distance from the big three, Fortis. Having a small(er) customer base, by nature Fortis has had the incentive to break into existing customer relations and compete on price and non-price parameters in order to increase its customer base. Fortis established

---

41 In the assessment of credit facilities the local bank (director) often plays an important role, as a result of which SME's become relatively dependent because of the knowledge of the local bank as to the financial position of the SME. Monitor Financial Sector year 2003, NMa and "Ook de consumenten kredietmarkt wordt gekarakteriseerd door een hechte relatie tussen bank en cliënt". L. A. Toolsema, on competition and banking, 2003, chapter 3.

itself as a bank for commercial clients.[42] It was subsequently aiming to increase its market shares in products for commercial clients.[43] Fortis was successful in increasing slowly but steadily its market share[44] in the relevant market for commercial banking for commercial clients. Although Fortis has in the perception of many consumers just entered the market, Fortis is expected to win organically more market share in the next few years.[45]

106. Fortis' internal documents show that expanding to gain market share in order to have a larger base for cross selling products is one of the strategies of Fortis to improve profits.[46] ABN AMRO states that Fortis is "aggressive" and a "price fighter" in submitted documents meant to dispute the serious doubts of the Commission. A presentation by the Fortis Deputy CEO and COO dating from September 2006 illustrates that Fortis holds "a challenger position" also in SME banking.[47] This is confirmed by the report "Dutch Banking, the fight has started" of Rabo Securities, where it is stated that "Fortis is an active and somewhat aggressive runner up in the Dutch SME sector ([*5 – 10*] % market share)" According to that report Fortis has adopted the strategy to choose and challenge certain market segments.

107. Fortis measures performance levels per business unit in great detail and in many ways directly takes corrective action when necessary. Customer levels of satisfaction with Fortis in the Netherlands are reported to be high. Fortis was capable to contest the position of the three big universal banks, because it has a large office network that is spread throughout the whole of the Netherlands and because it is a large internationally present bank. The fact that Fortis is a well established universal bank with a good reputation adds to the competitiveness of Fortis.[48]

108. Also in the eyes of the commercial customers, Fortis is prepared to compete on price more than its competitors, according to the annual "Award for Commercial bank of the Year", an award organised by the Vallstein, an independent banking advisor, together with the newspaper Financieel Dagblad and the Erasmus University of Rotterdam, based on a survey of 5,000 SME's in 2006 that nominated Fortis as the commercial bank of the year.[49] The table below exhibits the replies of the responses of customers to the question whether "the bank is always prepared to compete on price". From the table it follows that 66% of customers surveyed considered that Fortis was always prepared to compete on price against 36% to 45% for the other three banks. More importantly 20% to 30% thought that the assertion "the bank is always prepared to compete on price" was not true for ING, Rabobank and ABN AMRO (compared to 0% for Fortis). [50]

42 Third Brand Tracking report by Motivaction, March 2003, page 2 from internal documents Fortis.
43 Commercial Business Plan 2004 – 2006 P.6, Internal documents Fortis.
44 Fortis' reply of 30 August 2007 to the Commission's request for information.
45 See approved minutes of the meeting with Raad Nederlandse Detailhandel and "Dutch Banking, the fight has started", Rabo Securities, Form CO Annex binder 3 /16.
46 Commercial Business Plan 2004 – 2006 P.6, Internal documents Fortis.
47 http://www.fortis.com/shareholders/media/pdf/20060908ubsconferenceonbenelux.pdf.
48 See approved minutes of the meeting with Dutch Retail Association.
49 Cf. Fortis press release, Form CO. The survey takes into account the response of corporate customers on (1.) quality and service, (2.) quality of relationship management, (3.) scope and suitability of products and services, (4.) tariffs and registry and (5.) credit facilities. The response on the survey is according to the Erasmus University of Rotterdam sufficient to present a statistical representative image of the four main banks in the Netherlands.
50 Form CO Annex binder 4-32, the commercial bank of the year award Q T1.

Table 4: "The bank is always prepared to compete on price"
Question T1 Commercial bank of the year award 2006, Vallstein

2006	The bank is always prepared to compete on price				
%	**Very false**	**False**	**Neutral**	**True**	**Very True**
Fortis	0	0	35	52	14
Rabo	4	16	36	27	18
ING	4	15	36	42	4
ABN AMRO	4	26	36	30	6

Source: Form CO

109. Post merger this competitive force would be removed as the incentives of the merged entity would change to become those of market leader rather than of a market challenger to those of a market leader. The new likely strategy would rather be to leverage the Dutch market leadership on the international network and exploiting value added skills on the existing customer base, rather than to gain more customers through an aggressive market strategy.[51]

d. Merging firms are close competitors

110. Products may be differentiated within a relevant market such that some products are closer substitutes than others. The higher the degree of substitutability between the merging firms' products, the more pronounced any anticompetitive effects from a horizontal merger are likely to be. Therefore, the Commission has investigated how close competitors ABN AMRO and Fortis' relative market positioning in the field of banking products for commercial clients in the Netherlands. Both ABN AMRO and Fortis seem well placed to serve clients with foreign operations. This is reflected in the "greater than average share of these two banks for SME customers who say that they are internationally active".[52] ING is also well placed to serve clients with foreign operations, although, according to some, ING is not particularly focussed on commercial clientsin the Netherlands.

111. Many respondents to the Commission's market investigation considered Fortis and ABN AMRO to be close competitors, notably because of their similar product offering and similar target segments. It appears that ABN AMRO, Fortis and ING are particularly strong in foreign transactions for Dutch commercial customers (foreign payments, documentary facilities and foreign credit facilities). Many respondents to the Commission's questionnaire to commercial clients indicated that ABN AMRO, Fortis as well as ING's strength lies in their international reach (and to a lesser extent for ABN AMRO, in its focus on larger companies). By contrast, Rabobank's most cited strength lies in its local presence; the lack of international reach is its most quoted weakness.

112. These indications are confirmed by the fact that larger customers often require more internationally oriented banking products than smaller customers. For that reason, ABN AMRO and Fortis' positions are stronger with respect to larger commercial clients with a turnover of more than 20 million Euro, Rabobank on the other hand is relatively strong with respect to customers with a turnover below 10 million Euro.

---

51 See also presentation by the Fortis CEO of 15th June 2007 at the Goldman Sachs European Financials Conference, Available at: http://www.fortis.com/shareholders/media/pdf/20070615_goldman_sachs.pdf.

52 Answer to question 8.5 section 8C Form CO.

113. Although the profile and brand image of the ABNAMRO and Fortis as well as their national coverage (ABN AMRO has an extensive network of 78 Advieskantoren and 5 CC Departments, whereas Fortis has 23 Business Centres), remain different, Fortis thus appears to be a close competitor of ABN AMRO, specifically for customers that require international products and services.

e. Customers have limited possibilities of switching

114. Customers that have difficulties in switching to other suppliers, because there would be few suppliers left after the proposed transaction or because of high switching cost, may be particularly vulnerable to price increases. Commercial clientsdo not appear to switch frequently.[53] Therefore the Commission investigated to what extent switching is possible in the Netherlands for commercial clients.

115. For some products such as payment and cash handling, switching may be difficult and expensive, which results in high barriers to switch for commercial clients.[54] Switching can take up to six months. For some products such as loans and mortgages switching may be particularly difficult; having a loan from a bank appears to have lock in effects for borrowers in the Netherlands as is described in the OECD review of the Dutch banking sector 2007.[55]

116. For products for internationally oriented commercial clients there are few alternatives. After the transaction for international oriented products customers would have the choice between Fortis and ING. Rabobank has a strong local presence but does not have an extensive international network with “in-house” international cash management capability, so that for customers with international operations it does not represent an equivalent alternative. During the market investigation, a number of customers thus explicitly expressed concerns over the lack of choice post-merger for internationally oriented banking products for commercial clients in the Netherlands.

117. More generally, commercial clients' choice for the main banking relation would also be limited to Fortis, ING and Rabobank after the merger. In response to the Commission questionnaire, only a few respondents considered that GE Artesia, SNS or Friesland were credible alternative suppliers of commercial banking services. *SNS* has a focus on the Eastern part of the Netherlands and serves predominantly retail customers. Although SNS recently developed a standard package for commercial clients, it does not have extensive corporate customer product capabilities and is thus not perceived as a viable alternative for many commercial clients. As to *Friesland bank,* it is, due to its limited number of branches concentrated in the North of the Netherlands, first and foremost a regional bank. *GE Artesia* was reported to be mainly active as a small player in the niche market for director / shareholders of commercial clients, a segment closer to private banking rather than commercial banking. Finally *van Lanschot's* specific focus is family owned companies with a relatively low risk profile, which it considers itself as a niche market. It follows that these smaller banks are not close competitors of the 4 larger established banks as they do not have the same scale and capabilities. They have a more limited back office and more limited capabilities to process (international) payments for commercial clients.

53 OECD Working Party No2 on Competition and Regulation, document DAF/COMP/WP2(2007)4/REV2.

54 NMa Financial Monitor 2004 Chapter 5.

55 OECD Working Party No2 on Competition and Regulation, document DAF/COMP/WP2(2007)4/REV2 page 29.

f. High entry barriers

118. Due to the sunk costs involved in setting up a branch network and because of the asymmetric information problems inherent to the market, barriers-to-entry are particularly high in SME banking. For example, progressive entry via online banking is generally not possible for potential competitors. The OECD 2007 review of competition in the Dutch retail banking sector confirms the assessment that SME's are particularly dependent on local services and identifies this market as a potential area of concern (due to the absence of significant entry).[56]

119. A number of additional barriers to entry in the Dutch market for current accounts for commercial clients could be identified. The NMa has concluded in its Monitor Financial Markets 2003 that it is almost impossible to enter with only one or a few products. For many commercial clients a bank should be able to offer a complete package of products. Especially as regards current accounts, domestic payment services, foreign payment services and documentary credits, an integrated 'solution' is necessary on the demand side. The necessity for an integrated product offering thus constitutes a high barrier to entry.[57]

120. When entering the Dutch market, reputation and brand are also important issues for customers when they consider switching to an entrant or foreign banks. Without having a strong reputation in the Netherlands customers are reluctant to switch, which makes entering the market for foreign or less established banks difficult.[58]

121. Moreover, knowledge of the local market conditions is very important. Asymmetries in information of proprietary information about customers (knowledge on payment behaviour, risk profiles) remain a significant barrier to entry[59] as established banks keep such valuable proprietary information about their customers.[60] Therefore, a network of local offices with a good coverage of the Netherlands is still necessary for successfully entering the Netherlands, in particular with regard to banking services for commercial clients. Due to the sunk costs involved in setting up a branch network and because of the asymmetric information problems inherent to the market, barriers-to-entry are thus particularly high.

122. In conclusion, the threat of a potential entry or expansion in the near future therefore appears to be very limited.

---

56 OECD Working Party No2 on Competition and Regulation, document DAF/COMP/WP2(2007)4/REV2.

57 CPB, Tight oligopolies, februari 2003, blz. 92-93.

58 J. Gual, Deregulation, integration and market structure in European banking, IESE, Barcelona, 1999; CPB, Competition and stability in banking, december 2001, paragraaf 5.3; CPB, Tight oligopolies, februari 2003; MDW werkgroep overstapkosten.

59 G. Dell'Ariccia, Asymmetric information and market structure of the banking industry, IMF Working Paper, June 1998.

60 OECD Working Party No2 on Competition and Regulation, document DAF/COMP/WP2(2007)4/REV2, page 27.

g. Limited buyer power

123. The Commission's investigation yielded no indication of buyer power of commercial clients vis-à-vis their banks. Some, mainly smaller, commercial clients are even dependent on their bank for obtaining a loan, which is not in all instances straight forward for those customers.[61] But also larger commercial clients would have difficulties to leverage buyer power on their banks or potential banks as, for example, in consumer retail sectors (who are large users of payment services) commercial clients do not have knowledge about the cost that are involved in payment services, because the banks cross subsidize the cost of the payment system with the interest they earn. Therefore, the position of retailer customers when negotiating contracts is difficult. Retailer customers, even if they are large organisations, can not exercise any buyer power over the large banks, according to the Commission's preliminary investigation.

h. Conclusion for non-coordinated effects on the market for commercial clients in the Netherlands

124. The Dutch market for banking products for commercial clients is highly concentrated and characterized by high barriers to entry. The merger will combine the largest bank, ABN AMRO, with the fourth largest bank, Fortis, on this market. Both banks target similar customer profiles and are close competitors. Fortis is at present aggressive in order to broaden its customer base but is likely to have different incentives post-merger as it would then have gained a wide customer base. The merger will thus remove the competitive constraint that Fortis was exerting on the market, specifically vis-à-vis ABN AMRO. The weakening of competitive pressure resulting from the elimination of Fortis as an independent player on a highly concentrated market is therefore likely to lead to higher prices despite the remaining presence of two sizeable competitors (ING and Rabobank). In such circumstances, competition is likely to be weakened between the remaining players (i.e. the merging firms and competitors are likely to have an incentive to raise prices in a non-coordinated manner).[62] Moreover, the competitive force of the fringe is extremely limited and entry is highly unlikely, thus favouring the emergence of non-coordinated effects.

125. Therefore, the Commission concludes that commercial clients (in particular customers for whom ING, Fortis and ABN AMRO were the most likely alternatives) are likely to be confronted with higher prices and less competitive choices as a result of the merger, as reflected in the responses to the Commission's questionnaires.

126. For all these reasons, the Commission, hence, considers that the transaction raises serious doubts in the market for banking services supplied to commercial clients.

---

61 OECD Working Party No2 on Competition and Regulation, document DAF/COMP/WP2(2007)4/REV2.

62 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/3), OJ C31, 5.2.2004, p. 5, para. 24-25.

i. Coordinated effects

127. A merger in a concentrated market may also significantly impede effective competition by way of coordinated effects, namely if it increases the likelihood that firms are able to coordinate their behaviour.[63]

128. The corporate banking markets analysed can be characterised as highly concentrated both in terms of HHI levels and based on the small number of major competitors. Although corporate banking involves a large number of products with varying degrees of product differentiation, co-ordination could in principle be facilitated by the resulting multi-market contact and the high frequency of interaction. Conceivable tacit co-ordination mechanisms include pricing as well as more subtle mechanisms, for example a tacit allocation of certain customer groups among banks (e.g., by not competing aggressively outside historical areas of expertise).

129. However, the commitment entered into by the Notifying Party in order to address the serious doubts of non-coordinated effects arising from the transaction, also addresses any possible concern of co-ordinated effects because it allows maintaining a market structure similar to that prevailing before the transaction. It is therefore not necessary to conclude on the transaction's potential co-ordinated effects.

(b) Banking markets for LCC's (turnover above 250 million Euro) in the Netherlands

130. The overlap in activities between Fortis and ABN AMRO Assets in the market for LCC's is rather limited as shown in the table below. The only affected market is the market for documentary credits. It should be noted that ABN AMRO’s corporate clients will be divided between RBS and Fortis. The agreement is that RBS will acquire ABN AMRO's business unit Global Clients comprising [...] multinational companies. ABN AMRO's business unit Netherlands will be divided between Fortis and RBS as follows: RBS will receive the largest corporate clients of that business unit worth [...] million Euro of net profit. Estimates by Fortis indicate that the corporate clients worth […] million Euro of net profit relate to approximately […] large corporate customers.

Table 5: Market shares in banking services to LCC's post merger

%	Fortis pre-merger	Fortis post-merger
Main banking relation	[*5 – 10*] %	[*5 – 10*] %
Deposits	[*0 – 5*] %	[*5 – 10*] %
Loans (bilateral credits)	[*5 – 10*] %	[*10 – 20*] %
Syndicated loans	[*5 – 10*] %	[*10 – 20*] %
Documentary credits	[*10 – 20*] %	[*10 – 20*] %
Domestic payments	[*5 – 10*] %	[*10 – 20*] %
International payments	[*5 – 10*] %	[*5 – 10*] %

Source: Form CO

131. In view of the parties modest position in the market for banking services to LCC's in the Netherlands and presence of well-know international banks such as RBS (post-merger), ING, Rabobank, Citigroup or BNP Paribas the notified transaction is unlikely to significantly impede effective competition in this market.

63 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, para 40.

2) Factoring

132. According to the Notifying Party, the parties' activities overlap in factoring services in France, Germany, the UK and the Netherlands. The only affected market by the proposed concentration is the Dutch market. In the Netherlands, ABN AMRO offers factoring services via its subsidiary IFN Finance B.V. whereas Fortis' factoring subsidiary is Fortis Commercial Finance Holding N.V. The Dutch factoring services market is an extremely concentrated market as shown in the table below.

Table 6: Market shares factoring

2006	Factoring
ABNAMRO	[*20 – 30*] %
Fortis	[*30 – 40*] %
Combined	**[*50 – 60*]%**
De Lage Landen/Rabobank	[*10 – 20*] %
ING Commercial Finance	[*20 – 30*] %
Others	[*0 – 5*] %

Source: Fortis' estimates

Table 7: HHI factoring

2006	Factoring
HHI-pre merger	[*2600 – 2800*]
HHI post-merger	[*4300 – 4500*]
Delta	[*1500 – 1700*]

Source: Commission on the base of Fortis' estimates

133. The merger will combine the largest bank, Fortis, with the third largest bank, ABN AMRO, on this market. The proposed concentration will thus create by far the largest competitor with a combined market share of [*50 – 60*] %, the remaining competitors being the factoring subsidiaries of the two other major Dutch banks (ING and Rabobank). If factoring services to commercial clients are considered, the proposed concentration will also create by far the largest competitor with a combined market share of [*50 – 60*] %. The already high concentration level (HHI) will increase by [*1500 – 1700*] to [*4300 – 4500*].

134. The notified transaction will eliminate direct competition between two of the main competitors in the Dutch factoring market. Given the significant barriers-to-entry and expansion faced by competitors (see below), the transaction's non co-ordinated effects are likely to enable Fortis/ ABN AMRO to raise prices to customers. The transaction will make it more attractive for Fortis, relative to the pre-merger situation, to maximise returns from its existing customer base, as opposed to growing its market share.

135. The market investigation has indicated that with the adoption of Basel II[64], commercial clients seek alternatives to the traditional ways of financing since lending may

[64] The Basel Committee on Banking Supervision published the Basel II framework agreement in 2004 that aims to make the international financial system safer by having the riskiness of banks' loan portfolios to be reflected in the capital charges they need to set aside against unexpected losses. The agreement sets out the details for adopting more risk-sensitive minimum capital requirements for banking organisations. It is implemented in the European Union through he Capital Requirements Directive (comprising Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC of the European Parliament and of the

become more restrictive. In this context, factoring appears as an advantageous solution. The market investigation has further indicated that barriers to entry and expansion are high in the Dutch market. In this market, factoring services are primarily distributed via the banks' branch networks and therefore, any new entrant without such a network cannot significantly expand its activities. Another important barrier to entry results from the necessary sunk investment in upstream processing facilities any new entrant would need to make. The specific assets necessary to compete in the factoring market appear to be significantly more substantial than in other areas of commercial banking, where the same (or similar) assets can be used to supply a range of products (such as different types of loans processed by the same credit department). Moreover, it appears that customers are often unwilling to switch their factoring provider (normally their bank) given the importance of the banking relationship and/or the existence of banking package deals combining short term credit facilities (factoring) with longer term credit facilities[65]. Hence, there are substantial barriers to entry to the Dutch factoring market. This is demonstrated, on the one hand, by the fact that all of the four main competitors belong to established banking groups and, on the other hand, by the fact that only one new competitor has entered in recent years. The entrant, Coface, despite belonging to the internationally-active credit insurance company to Natixis, has been able to gain only [*0-5*] % market share.

136. The foregoing characteristics of the factoring market in the Netherlands (high concentration, barriers to entry and expansion and lack of customer switching) and the merged entity's market share of [*50 – 60*] %- [*50 – 60*] % lead to the conclusion that there are serious doubts that the proposed merger would significantly impede effective competition in the Dutch factoring market.

3) Banking products for private individuals (retail banking)

a. Overall retail market and PCAs

137. Like the commercial banking sector, the Dutch retail banking market is highly concentrated already pre-merger, albeit to a slightly lesser degree. According to the market share estimates provided by Fortis, the structure of the overall Dutch retail banking market in 2006 is as follows.

Table 8: Market shares retail banking (2006)

%	Main banking relation	Number of branches
ABNAMRO	[*10 – 20*]	[*10 – 20*]
Fortis	[*0 – 5*]	[*0 – 5*]
Combined	**[*20 – 30*]**	**[*20 – 30*]**
Rabobank	[*30 – 40*]	[*30 – 40*]
ING	[*40 – 50*]	[*30 – 40*]
SNS	[*0 – 5*]	[*0 – 5*]
Friesland	-	[*0 – 5*]
Others	[*0 – 5*]	-

Source: TOF study 2006

Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast), OJ L177 of 30.06.2006).

65 See reply of Article 11 letter and minutes of discussions with factoring operators.

Table 9: HHI main banking relationship and branches

	Main banking relationship
HHI-pre merger	[*3000 – 3200*]
HHI post-merger	[*3200 – 3400*]
Delta	[*100 – 200*]

Source: Commission on the basis of Form CO

138. Notwithstanding that the Dutch market for retail banking is already highly concentrated (as also indicated by the pre-merger HHI level) the transaction would only add a small increment to the concentration level due to the relatively modest position Fortis occupies in this market. The merger involves the third and the fourth bank in the Netherlands (with Fortis being a distant 4th in terms of market position). The merged entity would remain the third largest player in the Netherlands after ING/Postbank and Rabobank. In particular, the increase in HHI remains near the safe harbour – 150 - provided by the Horizontal Merger Guidelines. Apart from the three market leaders (ING/ Postbank, Rabobank and Fortis/ABN AMRO), there would remain one additional competitor, SNS Bank, with a market share and branch network comparable to Fortis pre-merger. The market shares measured by the number of ATMs (which constitute an important barrier to entry) are very similar to the relative size of the branch networks and market shares in retail banking.

139. A very similar market structure arises when looking at the market segment for personal current accounts. The change brought about by the merger is not significant (the increase in HHI remains within the safe harbour – 150 - provided by the Horizontal Merger Guidelines). The market structure is largely the same if measured by the value of the positive balances of PCAs or by the number of PCAs.

Table 10: Market shares personal current accounts (2006)

%	Personal current account by value	Personal current account by number
ABNAMRO	[*10 – 20*]	[*10 – 20*]
Fortis	[*0 – 5*]	[*0 – 5*]
Combined	**[*20 – 30*]**	**[*10 – 20*]**
Rabobank	[*30 – 40*]	[*30 – 40*]
ING	[*40 – 50*]	[*40 – 50*]
SNS	[*0 – 5*]	[*0 – 5*]

Source: Form CO (TOF study 2006)

Table 11: HHI Personal current account by value and Personal current account by number

	Personal current account by value	Personal current account by number
HHI-pre merger	[*3100-3300*]	[*3100-3300*]
HHI post-merger	[*3200-3400*]	[*3200-3400*]
Delta	[*120-140*]	[*120-140*]

Source: Commission on the basis of Form CO (TOF study 2006)

140. Due to the small market shares of Fortis in the overall retail market as well as in PCAs, there is in addition only a small increment arising from the transaction. Here the small market share of Fortis can be taken as a fair representation of its role as it is neither a recent entrant nor an important innovator. Its market shares have not changed significantly over the past three years. Furthermore, the results of the market investigation

do not indicate any consistent pattern of customer switching from the major banks to Fortis.[66]

141. Some competitors mentioned the weak brand positioning of Fortis and indicated that Fortis was a relatively small retail bank in the Netherlands. The Notifying Party itself submits that it suffers from a negative perception from non-customers, which may be stemming from its entry strategy of acquiring the Verenigde Spaarbanken (VSB), a traditional savings bank focused on the lower end of the market.

142. Finally, the market investigation did not show Fortis and ABN AMRO to be closer substitutes in the overall retail market to each other than to any other universal bank[67]. In this context ABN AMRO has a reputation of catering to mass affluent clients whereas Fortis, apparently due to its VSB heritage, has a larger proportion of clients towards the lower end of the market and a corresponding image. According to the Notifying Party the brand and customer base of ABN AMRO are the two main aspects of the rationale underlying the transaction in retail banking.

b. Savings accounts

143. The concentration level in the savings accounts segment is lower than in the PCA segment and in the overall retail banking market. In this market, an active competitive fringe represents [*10 – 20*] % of the market. The merged party in this market would have a combined market share of [*20 – 30*] %, yet due to the more modest position of Fortis ([*5 – 10*] %), the change in concentration levels would not be significant (the increase in HHI is close to the safe harbour – 150 - provided by the Horizontal Merger Guidelines). In addition to the main banks, the new entity would continue to compete with a number of smaller competitors such as SNS or Aegon (an established insurance company).

Table 12: Market shares savings accounts (2006)

%	Saving accounts by value	Saving accounts by number of accounts
ABNAMRO	[*10 – 20*]	[*10 – 20*]
Fortis	[*5 – 10*]	[*5 – 10*]
Combined	**[*20 – 30*]**	**[*20 – 30*]**
Rabobank	[*20 – 30*]	[*20 – 30*]
ING	[*30 – 40*]	[*20 – 30*]
Aegon	[*5 – 10*]	[*5 – 10*]
SNS	[*0 – 5*]	[*0 – 5*]
Others	[*10 – 20*]	[*10 – 20*]

Source: Form CO TOF study 2006 and CBS

Table 13: HHI Saving accounts by value by value and Saving accounts by number of accounts

	Saving accounts by value	Saving accounts by number of accounts
HHI-pre merger	[*1900 – 2100*]	[*1700 – 1900*]
HHI post-merger	[*2100 – 2300*]	[*1900 – 2100*]
Delta	[*170 – 190*]	[*210 – 230*]

Source: Commission on the basis of Form CO (TOF study 2006 and CBS)

66 See replies to question 33 of the Questionnaire to competitors.
67 See replies to question 14 of the Questionnaire to competitors.

144. Fortis does not appear to be a particularly aggressive player in this market. It is not, for example, mentioned on the list compiled for the 2005 Rabobank report of the 14 savings accounts offering the highest interest rates. Savings accounts provided by universal banks such as SNS, ING and Postbank were on the list as well as the biggest fringe players, DSB and Sparbeleeg and a number of smaller fringe players.

c. Consumer loans

145. The concentration level is the lowest in the consumer/personal loans segment, where the three large banks post-merger would represent less than [*50 – 60*] % of the market. The increase in the moderate concentration level is close to the corresponding safe harbour (250) as indicated in the Horizontal Merger Guidelines. In this segment a fringe player, DSB, has built up a market share comparable to Fortis, doubling its market share within the course of a year in 2006. Due to the recent sales of ABN AMRO's consumer loan companies (Interbank and DMC Groep) to Société Générale, there is now a new sizeable player present in the market.

Table 14: Market shares loans by value (2006)

%	Loans by value
ABNAMRO	[*5 – 10*]
Fortis	[*10 – 20*]
Combined	**[*20 – 30*]**
Rabobank	[*10 – 20*]
ING	[*10 – 20*]
Interbank DMC	[*10 – 20*]
DSB	[*5 – 10*]
SNS	[*0 – 5*]
Others	[*20 – 30*]

Source: Form CO (TOF 2006 and CBS)

Table 15: HHI loans by value

	Loans by value
HHI-pre merger	[*900 – 1100*]
HHI post-merger	[*1200 – 1400*]
Delta	[*250 – 270*]

Source Commission based on Form CO (TOF 2006 and CBS)

146. Entry in this segment is further facilitated by alternative distribution channels. It is particularly noteworthy that, according to Fortis, its consumer finance entity (Alfam/Defam) achieves […] % of its sales in this segment outside the Fortis branch network, i.e. through intermediaries, insurance companies and big car dealers for example.

d. Mortgages

147. In the mortgages segment**,** Fortis/ABN AMRO would have a combined post-merger market share of [*20 – 30*] %, roughly the same as Rabobank and comparable to that of ING/Postbank. Fortis/ABN AMRO will continue to face strong competition not only from the three remaining universal banks, but also from other players, which currently hold almost [*20 – 30*] % of the market. The market is moderately concentrated presently, the increase in concentration levels, though above the corresponding safe harbour, would not be high.

Table 16: Market shares mortgages by value (2006)

%	Mortgages by value
ABNAMRO	[*10 – 20*]
Fortis	[*5 – 10*]
Combined	**[*20 – 30*]**
Rabobank	[*20 – 30*]
ING	[*10 – 20*]
SNS	[*5 – 10*]
Others	[*20 – 30*]

Source: Form CO (Kadaster and TOF 2006)

Table 17: HHI loans

	Mortgages by value
HHI-pre merger	[*1100 – 1300*]
HHI post-merger	[*1400 – 1600*]
Delta	[*290 – 310*]

Source: Commission on the basis of Form CO (Kadaster and TOF 2006)

148. According to the Notifying Party between the period of January 2003 and May 2007 the interest margin for mortgages […]. According to the 2005 Rabobank report a "price war" has started at the beginning of 2005. The Dutch Consumers' Association (Consumentenbond) confirmed that "the most intense competition [in retail banking] is on market for mortgages"[68]. Consumentenbond does not foresee a negative impact of the planned merger on the mortgage market.

149. The presence of specialised mortgage intermediaries (such as De Hypotheker B.V., Hypotheek Visie Centrale B.V. and Hypotheekshop B.V.) facilitates entry in these markets. These intermediaries operate through branch offices as well as through the Internet. According to the 2005 Rabobank report, the share of intermediaries within the distribution of new mortgages increased to 60% in 2004. The TOF 2006 report also confirms that intermediaries have the largest market share in distribution. Intermediaries have consistently increased their market shares overtaking banks just after 2000, while banks have seen a decline in recent years.

150. There are a number of examples of recent entry by foreign players in the mortgages segment such as Bank of Scotland, GMAC and Argenta, who rely on intermediaries for their distribution. Consumentenbond estimates the market share of these new entrants to be 10%.

151. The Notifying Party submits that there is additional competitive pressure stemming from established insurance companies and pension funds, such as Aegon, for example, which have been selling retail banking products, including mortgages, for a number for years.

152. The market investigation shows that between 2002 and 2006 Fortis has lost some small market shares in mortgages. Fortis launched a major marketing campaign in 2006 to recoup its market shares and it appears to have done so successfully. Some competitors indicated that Fortis has used aggressive pricing, offering also substantial rebates on mortgages with the purchase of other products.

68 See approved minutes of meeting with Consumentenbond on 7 August 2007.

153. The market investigation has not, on the other hand, provided consistent indications pointing to any central role Fortis may have played in the mortgage "price war". Only two out of eight respondents to the Commission's questionnaire indicated that the leading banks reacted to the Fortis campaign specifically by launching their own campaign. However, not one competitor – including those allegedly reacting to the Fortis campaign - submitted in response to concrete questions *on their own reactions* that they themselves reacted to this campaign specifically by launching their own campaign. Neither does Consumentenbond see Fortis as being a particularly significant driver of competition in the mortgage market. According to Consumentenbond the most active competitors in the mortgage market are Rabobank, ING/Postbank and ABN AMRO and also some specialised banks and Fortis does not have a particular reputation as a mortgage supplier[69].

154. In conclusion, based on the i) moderate market shares of the merged entity, ii) the competitive pressure stemming from the remaining three universal banks, intermediaries, foreign banks and other significant Dutch financial institutions as evidenced by the recent price war and iii) the lack of consistent indications of a central role Fortis plays in this price war, it can be concluded that the notified transaction will not significantly impede effective competition in the market for mortgages in the Netherlands.

e. Distribution of mutual funds

155. Table 18 shows the market shares arising on the tentative market of the distribution of mutual funds.

Table 18: Market shares Distribution of mutual funds by value and by number of clients (2006)

%	Distribution of mutual funds by value	Distribution of mutual funds by number of clients
ABNAMRO	[*20 – 30*]	[*10 – 20*]
Fortis	[*0 – 5*]	[*0 – 5*]
Combined	**[*30 – 40*]**	**[*20 – 30*]**
Rabobank	[*30 – 40*]	[*30 – 40*]
ING	[*10 – 20*]	[*20 – 30*]
Others	[*10 – 20*]	[*20 – 30*]

Source: TOF 2006

Table 19: HHI Distribution of mutual funds by value and by number of clients

	Distribution of mutual funds by value	Distribution of mutual funds by number of clients
HHI-pre merger	[*2100 – 2300*]	[*1800 – 2000*]
HHI post-merger	[*2300 – 2500*]	[*2000 – 2200*]
Delta	[*230 – 250*]	[*150 – 170*]

Source: Commission on the basis of TOF 2006

156. As it can be seen, Fortis has a modest market share in the distribution of mutual funds in the Netherlands, hence the increment brought on by the transaction would be small, especially when measured on the basis of the number of retail clients. The merged entity would have approximately the same market share as Rabobank measured by the value of

69 See approved minutes of meeting with Consumentenbond on 7 August 2007.

investments but significantly less when measured by the number of clients. When measured by the number of clients, the merged entity would be in second place at the same level as ING/Postbank with [*20 – 30*] %. Notwithstanding that the market share of ING/Postbank is lower, it is described in the mutual fund analysis of the 2005 Rabobank report as "one with considerable innovation, size and fast reaction speed and marketing power", who will "possibly gain some market share in mutual funds" (a segment where Rabobank foresees an 8-10% long term growth).

157. Furthermore, according to the Notifying Party there are legal obligations on all retail banks to operate an open architecture, i.e. provide third party access for brokerage products and investment funds[70]. This reduces the barriers to entry for these services while also limiting the potential of projecting market power at the distribution level to the upstream product generation level. At the product generation level, the market for mutual funds is considerably less concentrated with a large number of international fund managers also active in the Netherlands (see section 6) below on asset management).

70 Para 421 of the Form CO.

f. Private banking

Table 20: Market shares private banking by value (2004)

%	Private banking
ABNAMRO	[*10 – 20*]
Fortis	[*10 – 20*]
Combined	**[*30 – 40*]**
Rabobank	[*10 – 20*]
ING	[*10 – 20*]
van Lanschot (inc. Kempen[71])	[*5 – 10*]
KBL Group (Theodoor Gilissen, Stroeve)	[*5 – 10*]
BNP Paribas (Nachenius Tjeenk)	[*0 – 5*]
Dresdner Bank	[*0 – 5*]
Others	[*20 – 30*]

Source: 2005 Rabobank report

Table 21: HHI Private banking by value

%	Private banking by value
HHI-pre merger	[*900 –1100*]
HHI post-merger	[*1500 – 1700*]
Delta	[*560 – 580*]

Source: Commission on the basis of 2005 Rabobank report

158. In private banking, the merger would combine two significant players and create the largest player in the market in the Netherlands (see Table 20 above)[72]. On the other hand, the market itself will post-merger be only modestly concentrated and almost half of the market would still be supplied by competitors outside the leading banks. These include van Lanschot, which is a bank specialised in private banking in the Netherlands and some international players such as KBL, BNP Paribas and Dresdner Bank.

g. Conclusion on non-coordinated effect

159. Measured by main banking relationship and number of branches as well as in the segment of PCAs Fortis/ABN AMRO would be only the third largest player ([*20 – 30*] % - [*20 – 30*] %), with market shares roughly half of the market shares of the leading bank ING/Postbank ([*40 – 50*] % %) and roughly [*5 – 10*] % less than the second largest retail bank, Rabobank ([*30 – 40*] % - [*30 – 40*] %). There remains one additional universal bank in the market, SNS, with market shares comparable to Fortis pre-merger. Furthermore, the accretion of market shares here is modest due to the small market shares of Fortis. In savings accounts the situation with regards to the parties' market shares is very similar. In other product sub-segments, combined market shares do not exceed 25% (savings account, consumer loans, mortgages) and/or there remains sufficient competition stemming from other universal banks and an active fringe to prevent significant impediment of competition.

---

71 Recently acquired by van Lanschot.

72 Fortis and ABN AMRO also overlap in private banking in Belgium and Luxembourg. However, Fortis' estimates the parties' combined market share in private banking in these markets to be below [*10 – 20*] %.

h. Assessment of co-ordinated effects

160. A merger in a concentrated market may also significantly impede effective competition by way of coordinated effects, namely if it increases the likelihood that firms are able to coordinate their behaviour.[73]

161. The retail banking markets analysed can be characterised as highly concentrated both in terms of HHI levels and based on the small number of major competitors. Although retail banking involves a large number of products with varying degrees of product differentiation, co-ordination could in principle be facilitated by the resulting multi-market contact and the high frequency of interaction. Conceivable tacit co-ordination mechanisms include pricing as well as more subtle mechanisms, for example a tacit allocation of certain customer groups among banks (e.g., by not competing aggressively outside historical areas of expertise). The market investigation seems further to indicate that the retail banking market is sufficiently transparent to reach terms of co-ordination. Competitors indicate that prices are easy to monitor at least for certain products and that competitors tend to monitor other operators' prices.

162. However, despite this apparent market transparency, the results of the market investigation indicate that the proposed operation is unlikely to give raise to coordinated effects. Based on its market investigation, the Commission has no indications that the main banks are already at present co-ordinating their competitive behaviour. There are also no indications that Fortis has played a decisive role in preventing co-ordination, relative to other smaller competitors. In particular, non-coordinating banks would be likely to undermine attempts by a merged Fortis ABN AMRO Assets to coordinate tacitly with the other leading banks, ING and Rabobank. Moreover, in each of the markets considered above, there will remain at least four significant competitors post-merger. Both market shares and cost structures[74] do not appear to be symmetric. Hence, there are no indications that the removal of Fortis as a competitor would enable the remaining competitors to begin to tacitly co-ordinate their competitive behaviour.

163. Finally, it should be noted that, notwithstanding the high concentration levels of the overall Dutch retail market, several market reports indicate that the Dutch retail banking market is at present competitive, with average price levels among the lowest in Europe.[75]

164. Based on the above market characteristics, the notified transaction does not raise serious doubts with regard to co-ordinated effects.

4) Leasing

165. Both Fortis and ABN AMRO have leasing activities in the Netherlands via, respectively, Fortis Lease Nederland N.V. and Amstel Lease Maatschappij N.V. According to Fortis, neither party is active in operational car leasing. As regards financial car lease services, Fortis submits that the main activity for both Fortis and Amstel Lease in car leasing is the (re)financing of car dealers and car leasing companies. The parties'

---

73 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/3), OJ C31, 5.2.2004, p. 5, para. 40.

74 In particular, the five main banks' cost-income ratios differ substantially, according to market reports submitted with the notification.

75 See e.g. OECD Working Party No2 on Competition and Regulation, document DAF/COMP/WP2(2007)4/REV2.

combined market share in the Dutch car leasing market is around [*5 – 10*] % (each of the parties [*0 – 5*] %) based on Fortis' information.[76]

166. Fortis estimates the parties' combined market share in the overall leasing products and services market in the Netherlands to be [*20 – 30*] % (Fortis [*10 – 20*] % and ABN AMRO [*10 – 20*] %). The parties' main competitors are Rabobank/De Lage Landen ([*30 – 40*] %) and ING Lease ([*10 – 20*] %). Fringe players, with a [*20 – 30*] % market share, include a number of international companies and banks such as GE Artesia, IBM Finance, Leaseco Nederland (BNP Paribas) and Société Générale Equipment finance. The concentration therefore will create a number two player on the Dutch market. However the market will remain highly competitive with a number of strong players like Rabobank the number one and ING.

167. Furthermore, the recent entry of large international banks and companies as providers of leasing services (e.g. GE, BNP, IBM, Société Générale) indicates that market entry is relatively easy. The results of the market investigation indicate that barriers to entry are perceived to be low and that foreign companies have recently entered the Dutch market (e.g. the German leasing companies Grenke Finance and Universal Leasing Benelux).

168. Moreover, the presence of fringe players and the low barriers to entry the market renders any co-ordinated effects unlikely in the leasing market.

169. It follows from the above that he notified transaction is unlikely to significantly impede effective competition in the leasing market.

5) Financial market services

170. Both ABN AMRO and Fortis provide financial market services within the EEA. According to Fortis, its financial market transactions are carried out for Fortis' clients all around the world in dealing rooms in Brussels, Amsterdam, Luxembourg, London and Paris. Its main dealing room is in Brussels. ABN AMRO has dealing rooms in Amsterdam, London, Chicago, Tokyo and Sydney. Its main dealing rooms are in Amsterdam and London.

171. According to the notification, Fortis will acquire the Amsterdam dealing room whereas another member of the Consortium (RBS) will acquire the remaining dealing rooms. Therefore, ABN AMRO financial market activities will be divided between Fortis and RBS. Moreover, it should be recalled that ABN AMRO's wholesale customers of its Business Unit Netherlands will be primarily transferred to RBS (see paragraph 130 above). Therefore, with regard to large corporate customers, the overlap between Fortis and ANB AMRO in the present market will be very limited. The main overlaps will occur with respect to financial market services to SME's.

172. Fortis submits that the parties' combined market share in financial market services or any sub-segment therefore would be below 5% at EEA-level. Fortis' post-merger market shares in the Netherlands are indicated in the table below:

76 Fortis estimates the Dutch car lease market to be approximately [*0 – 10*] billion Euro in value for passenger cars and delivery vans. The value of Fortis' car lease activities is approximately [*50 – 100*] million Euro and Fortis estimates Amstel Lease to be similar in size.

Table 22: Market shares Financial market services 2006 The Netherlands

%	Pre-merger		Post-merger	
	ABN AMRO	Fortis	Fortis	RBS
Trading in equities, bonds and derivatives (SME and LLC)			< [*10 – 20*]	
Derivative activities (SME and LCC)	[*20 – 30*]	[*5 – 10*]	[*10 – 20*]	[*10 – 20*]
Forex (SME and LCC)	[*20 – 30*]	[*5 – 10*]	[*20 – 30*]	[*10 – 20*]
Money markets (SME and LCC)	[*20 – 30*]	[*5 – 10*]	[*20 – 30*]	[*10 – 20*]

Source: Fortis' estimates.

173. According to Fortis' estimates, Fortis' market share post-transaction will be below 25% in any sub-segment of the financial market services in the Netherlands. In view of the relatively low market share and the presence of a large number of competitors (ING, Rabobank, Citigroup, Société Générale, BNP Paribas), it can be concluded that the proposed concentration does not raise serious doubts as to the compatibility with the common market with respect to financial market services.

6) Asset management

174. Fortis' internal documents show that the proposed operation will lead to the creation of the top 12 European asset manager (with [*200 – 400*] billion Euro of assets under management). Main competitors include Barclays ([*1300 – 1500*] billion Euro), Allianz ([*600 – 800*] billion Euro), AXA (*600 – 800* billion Euro) and ING ([*300 – 500*] billion Euro)[77]. Fortis' and ABN AMRO's activities in asset management overlap mainly in the Benelux, the Nordic countries, the UK and France. Additionally, Fortis submits that Fortis and ABN AMRO have limited asset management activities in Germany, Spain and Italy where they have a combined market share well below 15%.

175. According to Fortis' estimates, the parties' combined market share in asset management will be below 15% on an EEA-wide basis. Fortis further submits market share estimates for the Netherlands, the Benelux countries, the Nordic countries, the UK and France. In each of these markets, the parties' combined market share is below 15%[78].

176. On the market for portfolio management advice services to institutional investors the parties' combined market share will not exceed 15% in the markets mentioned in the previous paragraphs.

177. As regards custody services, Fortis' and ABN AMRO's activities only overlap in the sub-segment for domestic retail custody services to individual clients owning securities.[79] This service is closely linked to capital management and private banking services offered by banks. As discussed in paragraphs 155 and following above, the proposed concentration is unlikely to significantly impede effective competition in the distribution of mutual funds in the Netherlands. In particular, there are other operators outside the Dutch leading banks offering private banking services to customers in the Netherlands.

77 "Fortis+ABN AMRO – Creating the clear leader in Benelux financial services with a sound platform for sustained international growth" (Jean-Paul Votron, CEO) – 290 May 2007 – page 19.

78 Fortis provided estimates on the basis of assets under management for mutual funds, unit trusts, investment trusts and open-ended investment companies.

79 Fortis indicates that ABN AMRO sold its domestic custody business to Citigroup in 2004. It provides international custody services via the company ABN AMRO Mellon Global Securities Services B.V., a JV with Mellon Bank N.A. On 5 July 2007 Mellon Bank agreed to purchase ABN AMRO's 50% stake.

This is the more so for asset management related services. In the Benelux, the Nordic countries, the UK and France the parties' combined market shares would not exceed 15%.

178. It follows from the above that the notified transaction is unlikely to significantly impede effective competition in the asset management market services within the EEA.

7) Insurance

179. The parties have overlapping activities in the insurance sector in the Netherlands where Fortis is one of the top 5 players. ABN AMRO however is a small player. In particular, ABN AMRO is active thorough ABN AMRO Verzekeringen B.V., a full function joint-venture with Delta Lloyd, established in 2003[80]. Fortis is active via its subsidiary Fortis ASR.

180. Fortis has provided the estimates below for the insurance segments where the parties are active in the Netherlands. Only the markets for life individual insurance and non-life accident & health insurance are affected markets. ABN AMRO is not active in reinsurance.

Table 23: Market shares Insurance 2006 The Netherlands

Segments	Fortis	ABN AMRO	Combined
Overall life insurance	[*10 – 20*] %	[*0 – 5*] %	[*10 – 20*] %
Life individual insurance	[*10 – 20*] %	[*0 – 5*] %	[*10 – 20*] %
Life group insurance	[*5 – 10*] %	[*0 – 5*] %	[*5 – 10*] %
Overall non-life insurance	[*10 – 20*] %	[*0 – 5*] %	[*10 – 20*] %
Accident & Health	[*10 – 20*] %	< [*0 – 5*] %	< [*20 – 30*] %
Motor	[*5-10*] %	[*0 – 5*] %	[*10 – 20*] %
Fire	[*5 – 10*]%	[*0 – 5*] %	[*10 – 20*] %
Transport	[*0 – 5*] %	[*0 – 5*] %	[*0 – 5*] %
Other	[*0 – 5*] %	[*0 – 5*] %	[*5 – 10*]%

Source: The 2006 statistical overview reports of all insurers, filed with De Nederlandsche Bank/PVK

181. The table above shows the relatively modest accretion in the market shares created by the proposed operation. Moreover, the Dutch insurance market is characterised by the presence of well-established competitors such as ING, Eureko/Achmea, AEGON, and Aviva/Delta Lloyd and an extensive intermediaries channel which facilitates product distribution. This has been confirmed by the market investigation.

182. The notified transaction therefore is unlikely to significantly impede effective competition in the life and non-life insurance sectors or in any of its segments in the Netherlands.

8) Payment cards

a. Payment card issuing

183. The high concentration level of the Dutch banking markets is reflected in the equally highly concentrated payment card markets, due to the fact that many of these cards are linked to current accounts. Fortis estimates that the merging parties would achieve a combined market share of [*30 – 40*] % followed by ING with about [*20 – 30*] %,

80 See Case No. COMP/M.3066 – Delta Lloyd/ABN AMRO/JV, decision of 30.04.2003.

Rabobank with roughly [*20 – 30*] % and smaller issuers accounting together for estimated an [*10 – 20*] % cumulative market share in an overall market for payment card issuing.[81]

Table 24: Payment card issuing

%	Payment card issuing
ABNAMRO	[*10 – 20*]
Fortis	[*10 – 20*]
Combined	**[*30 – 40*]**
Rabobank	[*20 – 30*]
ING	[*20 – 30*]
LaSer	[*0 – 5*]
SNS	[*0 – 5*]
AMEX	[*0 – 5*]
Others	[*0 – 5*]

Source: Forti's estimates

184. All of the main retail banks are also active in payment cards, which they market through their established distribution networks. Some cards are sold in conjunction with personal current accounts. Some additional competitors, e.g. LaSer and American Express also use alternative distribution channels, such as co-branding agreements with organisations such as automobile clubs, automobile brands, airlines, etc.

185. Based on separate markets for debit card issuing and credit card issuing, respectively, Fortis estimates the prevailing market structure as follows:

Table 25 Debit and credit card issuing

%	Debit cards	All credit cards	Regular credit cards
ABNAMRO	[*20 – 30*]	[*10 – 20*]	[*10 – 20*]
Fortis	[*5 – 10*]	[*30 – 40*]	[*10 – 20*]
Combined	**[*30 – 40*]**	**[*40 – 50*]**	[*20 – 30*]
Rabobank	[*20 – 30*]	[*10 – 20*]	[*20 – 30*]
ING	[*30 – 40*]	[*20 – 30*]	[*40 – 50*]
Laser	-	[*10 – 20*]	[*0 – 5*]
SNS	[*0 – 5*]	[*0 – 5*]	[*0 – 5*]
AMEX	-	[*0 – 5*]	[*0 – 5*]
Others	[*0 – 5*]	[*0 – 5*]	[*0 – 5*]

Source: Fortis' estimates

186. Competitors' estimates broadly confirm the main card issuers' relative market positions, albeit with some variations. In general, competitors tend to estimate their own market shares as higher and competitors' shares as lower than their peers. However, the market investigation confirms that the parties' combined market share amounts to approximately [*20 – 30*] % in debit cards. Alternative market share estimates for credit cards were generally less consistent, possibly because market shares for co-branded cards were not consistently allocated to the issuing bank (as opposed to the co-branding partner).

187. To better assess the effects of co-branded cards, Fortis was asked to also submit separate share estimates for the issuing of 'regular' credit cards (see table 24) and for the

81 Fortis' estimates of own shares are based on Currence figures for the market total (number of cards issued in the Netherlands in 2006) and Fortis' data on issued cards; competitors' shares are estimated on the basis of the Interpay & Retail Banking Report of 2004 (and extrapolation to reconcile with Currence market total of 2006).

co-branded loyalty credit cards market. Fortis estimates its own share inco-branded loyalty cards at [*60 – 70*] % while it estimates a maximum of [*0 – 5*] % for ABN AMRO. The other significant player according to Fortis' estimates is Laser (a subsidiary of the French LaSer, a joint venture of the Groupe Galleries Lafayette and Cetelem, a subsidiary of BNP Paribas) with estimated [*30 – 40*] % while ING and Rabobank presently do not supply co-branded cards. The high share of Fortis is mainly explained by its co-operation with partners such as the warehouse store Bijenkorf (BijCard) and BMW. By contrast, ABN AMRO's only activity in this area is the co-operation with the football club Ajax and the bank is not considered an active player in this field. Hence, the parties' high combined market share for the overall issuing of credit cards results to a significant degree from Fortis' strong position in co-branded cards. Excluding co-branded cards, the combined market share in credit card issuing falls to [*20 – 30*] % (Fortis [*10 – 20*] %, ABN AMRO [*10 - 20*] %), with ING remaining the market leader at [*40 – 50*] %.

188. Co-branding has enabled in particular LaSer and American Express to obtain significant market shares in credit card issuing without relying on banks' retail distribution networks. The nature of competition in the co-branded sector differs from the retail market because co-branding agreements are negotiated with commercial distributors/merchants covering a large number of cards. There appear to be no capacity constraints that would limit the main card suppliers' ability to conclude co-branding agreements. Post merger, there will remain four credible suppliers of co-branded cards based on the VISA or Mastercard system, in addition to American Express.

189. Even if an overall market for the issuing of credit cards is defined, Fortis/ ABN AMRO's combined market share by itself is thus not indicative of substantially increased market power because it is based to a substantial degree on co-branding. Apart from the retail banks, who issue debit cards and credit cards through their established distribution networks, two additional competitors (LaSer and American Express) are active through co-branding and other independent distribution channels. If a separate market for co-branded loyalty cards is defined, the impact is negligible due to the extremely small share of ABN AMRO.

190. For the above reasons the merger does not give rise to competition concerns in terms of non-coordinated effects on the market for the issuing of credit cards. Moreover, due to the characteristic of co-branding cards, retail and other non-bank partners would have sufficient means to switch to competing issuers if, in the post-merger situation, the new entity were to raise processing fees for its co-branding partners.

b. Debit cards acquiring

191. As explained above, only the acquiring of national debit cards is carried out by individual banks following the re-organisation of Interpay.

192. Fortis submitted the following market share estimates for the business of debit card acquiring:

Table 26: Debit card acquiring

%	Debit card acquiring
ABNAMRO	[*20 – 30*]
Fortis	[*0 – 5*]
Combined	**[*20 – 30*]**
Rabobank	[*40 – 50*]
ING	[*20 – 30*]
SNS	[*0 – 5*]
Others	[*0 – 5*]

Source Fortis' estimates

193. Competitors' and ABN AMRO submitted slightly different estimates of their own market shares according to which ING would be in the lead. In any event, the post-merger market position of Fortis/ABN AMRO does not give rise to concerns in terms of non-coordinated effects.

194. In should be noted in this context that the Dutch acquiring market has been reshaped following the intervention of the Dutch competition authority NMa and (national) debit card acquiring transferred from the joint venture Interpay to the individual banks. Apparently, Merchant Services Charges (MSC) were reduced following this disintegration.[82]

c. Coordinated effects

195. A merger in a concentrated market may also significantly impede effective competition by way of coordinated effects, namely if it increases the likelihood that firms are able to coordinate their behaviour.

196. The markets for payment card issuing and acquiring by the banks can be characterised as highly concentrated. In addition, the competitors are linked by various joint ventures. There are multi-market contacts among most of the suppliers (universal banks) and high frequency of interaction. However, tacit co-ordination in payment cards can be complicated by the relatively complex pricing.

197. Regarding debit cards, for instance, pricing is relatively difficult to observe – despite certain transparent elements - because debit cards are closely linked to current accounts and other retail banking services that are offered in various packages. This packaging reduces price transparencies as reports and studies in the field of retail banking show.[83]

198. As to credit cards, several price elements such as annual cardholder or merchant fees are relatively transparent. However, pricing may also include sophisticated systems of rebates and other conditions which results in product differentiation (e.g. credit lines, air miles, bundled insurance services etc.). Tacit co-ordination, however, may function not only via price alignment but may also include more subtle mechanisms, for example a tacit allocation of certain customer or merchant groups among banks (e.g., by not competing aggressively outside historical areas of expertise). Markets may thus be to some extent transparent, at least from the suppliers' perspective, to enable competitors to tacitly co-ordinate their competitive behaviour.

[82] Payment Cards, Western Europe 2006, Retail Banking Research ('RBR'), Netherlands, page 34.
[83] See, for instance, the Report on the Retail Banking Sector Inquiry, p.52, 67-68 (http://ec.europa.eu/comm/competition/antitrust/others/sector_inquiries/financial_services/sec_2007_106.pdf).

199. However, the results of the market investigation indicate that the proposed operation is unlikely to give rise to coordinated effects in the market for payment cards. Based on its market investigation, the Commission has no indications that the main banks are already at present tacitly co-ordinating their competitive behaviour beyond the areas covered by the networks and joint ventures. There are also no indications that Fortis has played a decisive role in preventing co-ordination, relative to other smaller competitors.

200. Regarding the issuing of credit cards in particular, non-coordinating suppliers would be likely to undermine attempts by a merged Fortis/ ABN AMRO to co-ordinate tacitly with the other leading banks, ING and Rabobank. For instance, LaSer with its credit card product, would seem to be well placed to expand through its separate distribution channel. Moreover, market shares and cost structures appear to be asymmetric between the three main banks and LaSer, complicating any co-ordination attempts between the main competitors who will remain post-merger. This conclusion is re-enforced via presence of Amex, another competitor at the upstream (network) level issuing its own credit cards. Hence, there are no indications that the removal of Fortis as a competitor would enable the remaining competitors to begin to tacitly co-ordinate their competitive behaviour.

201. Two smaller competitors submitted that the cost for participating in payment networks may rise and that the merger could accelerate the general consolidation trend in the European market for infrastructures and processors endangering the critical mass for domestic infrastructures and processors.

202. However, other competitors as well as Consumentenbond do not see causality between the merger and possible changes of payment infrastructures or networks. The competitors also do not foresee that the merger will have a negative impact on the initiative by Dutch and other European banks to set up a new international debit card system that could compete with the existing ones in the near future.

203. Based on the above market characteristics, the notified transaction does not raise serious doubts of co-ordinated effects in the market for payment cards.

VII. COMMITMENTS

A. DESCRIPTION OF THE PROPOSED COMMITMENTS

204. The commitments offered by Fortis include the divestiture of certain assets currently owned by ABN AMRO in the Netherlands:

1) Proposed Commitments

205. On 12 September 2007, Fortis submitted an initial proposal which included the divestiture of the following assets (together hereinafter referred to as "HBU Divestment Business")

- Hollandsche Bank Unie N.V. (hereinafter "HBU"): an independent, separately licensed commercial bank, servicing corporate customers up to 1 billion Euro turnover. HBU is located in Rotterdam.

- 2 Corporate Client Departments (hereinafter, "CCDs") which are commercial banking offices serving corporate customers between 50 million Euro and 1 billion Euro turnover.

- 13 Advieskantoren, which are commercial banking offices serving SME's up to 50 million Euro turnover in the larger cities.

- All customers and all personnel of these entities (HBU, the 2 CCDs and the 13 Advieskantoren), except for the customers with a turnover between 250 million Euro and 1 billion Euro and the ([…]) account managers with these customers in their portfolio.

- Factoring contracts between the customers of the Divestment Business and IFN Finance N.V. or any other ABN AMRO Group entity.

- Service Level Agreements for IT, specific back office functions and specific skills.

- […] Full Time Equivalent ("FTE") extra central personnel in management, specific skills, mid office and back office functions to ensure that the enlarged HBU will be able to operate as a viable, stand-alone commercial bank with 16 branches.

2) Improvements to the proposed Commitments

206. Following the market test, the commitments proposal was improved on 2 October 2007, *inter alia*:

- The divestiture of the customers with a turnover between 250 million Euro and 1 billion Euro and the account managers with these customers in their portfolio is included.

- The divestiture of ABN AMRO's Dutch factoring subsidiary (IFN Finance B.V.) is included (hereinafter, "IFN Divestment Business").

- Specific mechanisms in order to retain (key) personnel are added.

- The divestiture of […] FTE extra central personnel is included as an option for the buyer.

207. Finally, it should be indicated that Fortis has committed not to acquire control over ABN AMRO's Business Unit Netherlands and Business Unit Private Clients prior to the closing of the sale of HBU Divestment Business and IFN Divestment Business (together hereinafter referred to as "the Divestment Businesses").

B. ASSESSMENT OF THE PROPOSED COMMITMENTS

1) Complexity of the proposed concentration

208. The Consortium's proposed operation is a complex transaction involving two stages: (i) a transitory phase where the Consortium's lead member RBS will control ABN AMRO (via the company RFS Holdings) as of the completion of the bid and (ii) a second phase where the break-up of ABN AMRO assets among the Consortium members will take place, permitting Fortis to acquire control over the assets mentioned in paragraph 6 above.

209. When assessing the suitability of the commitments proposed by Fortis, the Commission took into account the specificity and the complexity of the operation

launched by the Consortium, which, to date, was unprecedented in the European banking industry and which is an important feature of the present case[84]. One important specificity of this operation is that, before the effective break-up of ABN AMRO between the Consortium members, ABN AMRO will be legally controlled by RBS (via RFS Holdings) during a transition period, pursuant to the requirements and conditions of the declarations of no objection ("VVGB's") of the Dutch Minister of Finance, on advice of the Dutch National Bank (De Nederlandsche Bank, "DNB"), to the Consortium's operation. These requirements intend to ensure a smooth process in the break-up of ABN AMRO Group and a sufficient continuity in the management ABN AMRO. In view of Fortis' lack of control over the Divested Business at the time of the effective date, Fortis has submitted a commitments text whereby any obligations to be fulfilled by ABN AMRO are to be interpreted as obligations of Fortis to procure that these obligations are fulfilled by ABN AMRO once RFS Holdings has taken control over ABN AMRO.

210. With a view to ensure the effectiveness of the proposed commitment and to avoid uncertainties in this respect, the Commission has, in the first place, requested the Consortium members to provide explanations as to how the divestiture of the Divestment Businesses would be ensured. All the Consortium members have indicated that the Consortium and Shareholders' Agreement ("CSA") envisages appropriate mechanisms to comply with Fortis' proposed Commitments insofar (i) the CSA provides for the obligation of any Consortium member to divest part of its respective assets in order to obtain (anti-trust) clearance, and (ii) the Consortium members are under the obligation to co-operate in order to implement the terms of the CSA and consequently, to implementation any conditions imposed by an anti-trust authority. Moreover, RBS and Santander have stated their full support to Fortis' proposal and their commitment to cooperate with Fortis in order to give effect to the sale of the Divestment Businesses.[85]

211. The foregoing already provides some level of certainty as to the obligation and the incentive of the other Consortium members to ensure the effective implementation of the Commitments.

212. However, in order to ensure the requisite degree of legal certainty as to the effectiveness of the divestiture, the proposed remedy contains *inter alia* a commitment by Fortis not to acquire control of Business Unit Netherlands (and Business Unit Private Clients) before the Divested Businesses are sold to a suitable purchaser(s).

2) Suitability for removing the serious doubts

a. Commercial banking in the Netherlands

213. The HBU Divestment Business accounts for […] million Euro in gross income, 16 branch offices, […] commercial clients with a turnover between 2.5 million Euro and 250 million Euro (in addition to a number of smaller SME's with a turnover of less than 2.5 million Euro and of LCC with a turnover between 250 million Euro and 1 billion Euro) and a total number of […] FTE. Moreover, the assets value of the HBU Divestment Business is estimated at […] billion Euro (total outstandings excluding real estate). Therefore, the scale of the HBU Divestment Business is nearly twice the size of Fortis

---

84 Moreover, the Commission took into consideration the fact that a longer period of unbundling and reintegration of the various ABN AMRO assets may negatively affect customers.

85 See replies of 20 September 2007 of RBS, Santander and Fortis to the Commission's request for information.

Commercial Banking. Indeed, Fortis Commercial Banking division has a total gross income of […] million Euro, its client base is […] and has personnel of […] FTE, whereas its assets are worth […] billion (total outstandings excluding real estate). The proposed commitment also eliminates the parties' overlap, not only in view of the HBU Divestment Business' above-mentioned figures, but also in terms of market shares since the HBU Divestment Business market shares would be comprised between [*5 – 10*] % to [*10 – 20*] % range depending on the products and thus exceeds Fortis current position.

Table 27: Market shares HBU Divestment Business

Product market	Market shares
Main banking relation	[*10 – 20*] %
Deposits	[*5 – 10*] %
Loans	[*5 – 10*] %
Documentary credits	[*5 – 10*] %
Domestic payments	[*10 – 20*] %
International payments	[*5 – 10*] %

Source: Fortis' estimates

214. Moreover, the fact that HBU Divestment Business largely exceeds Fortis Commercial Banking operations in the Netherlands is an important factor when assessing the implementation risk that the present highly complex carve-out may have. In this regard, the Commission considers that the scale of the proposed divestment, in conjunction with the additional measures included in the commitments (described in section 3) below), are sufficient to address the Commission's concerns regarding the implementation risk of the proposed carve-out.

215. The Commission has tested whether the proposed commitments are sufficient in scale and (geographic) scope to remove the serious doubts in commercial banking in the Dutch market.[86]

216. The Commission's market test of the Commitment generally confirmed that the Divestment Business would be large enough to effectively compete with the merged entity on the Dutch market for corporate customers. Two respondents to the market test questionnaire were of the opinion that a "monoline" business model, i.e. the HBU Divestment Business serving only corporate customers would not be viable. According to those respondents retail activities, in particular deposits, provide the bank in the same region with relatively 'cheap' funding. The HBU Divestment Business would lack this funding and would thus have a competitive disadvantage as to its competitors ING, Rabobank and Fortis and would not be viable. However, other respondents to the market test questionnaire indicated that a monoline approach was well envisageable depending on the strategy of the purchaser.[87]

217. As regards the geographic scope of the proposed commitments, as indicated above, Fortis has committed to divest ABN AMRO branch offices in 16 locations in the Netherlands. Fortis Commercial Banking currently provides services via 23 Business

86 The Commission initially targeted 40 (mostly European) banks as addresses of the market test. All banks were requested to sign a confidentiality form before the market test with the proposed commitments was sent to them. A total of 29 banks signed the form. A total of 21 banks reacted to the market test.

87 In the United States for example in Citizens / Mellon Bank 2001, Citizens / State Street 1999 and JP Morgan Chase / Bank of New York (2006) banking activities for commercial clients were split of and integrated successfully. In any event, it is worth noting that retail customers and LCC's will not be carved out from the Divestment Business.

Centres in 19 cities. With regard to geographical spread of the HBU Divestment Business the market test of the Commission resulted in a mixed feedback. Some respondents were of the opinion that 16 offices in various regions of the Netherlands was a not sufficiently fine network of branch offices to serve corporate customers in the Netherlands. However, other respondents stressed that for the type of customers that the HBU Divestment Business would be targeting a refined network of branch offices would not be necessary, as long as the HBU Divestment Business would have a branch in all the economical relevant regions of the Netherlands. The market test confirmed that the HBU Divestment Business would cover the main economic regions. The market test confirmed that the region with the best market potential in terms of existing and future customers for corporate banking products in the Netherlands is in the Randstad region, i.e. the four large cities of Rotterdam, Utrecht, The Hague and Amsterdam. The HBU Divestment Business is spread evenly throughout the Netherlands and has branch offices in all main relevant cities and regions.

218. However, some respondents to the market test have also indicated that in order to effectively compete in the Dutch market, it is important to be part of an international network. The Commission considers the purchaser requirements ensure that this concern is appropriately addressed. In particular, the submitted commitment requires the purchaser to "be able to serve internationally active corporate customers through in-house product capabilities comparable to Fortis at the time of the adoption of the Decision including being well represented through branch offices or subsidiaries in major world and European financial centres".

b. Factoring

219. The remedies package initially submitted by Fortis included the transfer of the factoring contracts between the customers of the HBU Divestment Business and IFN Finance N.V. or any other ABN AMRO Group entity. However, these contracts would only eliminate an [*5 – 10*] % market share overlap according to Fortis' estimates (out of the total [*50 – 60*] % overlap). Moreover, since the HBU Divestment Business will lack upstream product capabilities (the divested customers are offered factoring services via ABN AMRO subsidiary IFN Finance, a separate legal entity), it would still rely on the merged entity in order to provide factoring services.

220. The Commission has market tested to what extent the HBU Divestment Business can compete effectively in the Dutch factoring market, removing the competition concerns raised by the proposed concentration. The market test has confirmed that back office operations are critical in order to provide factoring services to customers. Therefore, the HBU Divestment Business alone would not be able to effectively compete in the factoring market.

221. In view of the above concerns, Fortis has improved its proposal and has committed to divest ABN AMRO's Dutch factoring subsidiary, IFN Finance B.V. The proposed commitment will therefore remove all competition concerns raised by the proposed operation in the Dutch factoring market and, therefore, it is deemed sufficient to remove the serious doubts raised in the factoring market in the Netherlands.

3) Viability

a. Scope of HBU Divestment Business is sufficient

222. Since the HBU Divestment Business at present is not a stand-alone legal entity, but form part of ABN AMRO's integrated corporate banking business that will be split up between the Consortium members, the divested business has necessarily to be "carved out" of the remaining business. In such "carve-out" operations, it is of utmost importance for the viability of the transferred business that all main elements are identified and transferred to the acquirer[88] that is, in this case, all elements which are necessary for successfully selling "corporate banking products" to corporate customers in the Netherlands. This is particularly important in this case, because attrition of customers is highly likely if the HBU Divestment Business is not capable of providing at least the same service levels and product offerings as it was doing as an integrated part of ABN AMRO.

223. In particular with regard to the disentangling of ABN AMRO by the Consortium members the commitments must ensure that the viability of the HBU Divestment Business is not put into question by unresolved separation issues related to the "carve-out", since an "incomplete" divestiture might significantly affect the viability of the transferred business which will be in competition with Fortis after the transaction. This is in particular important with respect to the customer base that is divested to the HBU Divestment Business.

224. Although some respondents to the questionnaire with regard to the market test of the commitment proposal did not confirm that customers can be transferred by the instrument of "juridische splitsing" without consent, respondents also indicated to the Commission that getting approval of customers to transfer their loans and deposit often can be done by sending a simple notice. Fortis also commits to offer bank account number portability to all customers of the HBU Divestment Business. Fortis commits itself to a non-solicitation obligation in respect of all HBU Divestment Business customers for a term of […] years from the date of the settlement of the Consortium's offer. Moreover Fortis commits to procure that ABN AMRO does not internally or externally transfer customers in the period starting on the date of the settlement of the offer until closing of the sale of the HBU Divestment business.

225. The market test of the commitment proposal has also shown that customers often follow the account managers of the bank. The successful transfer of the staff is essential to decrease the risk for customer attrition. The commitment proposal provides for effective provisions to ensure the retention of key personnel for the HBU Divestment Business. The commitment proposal provides for incentive schemes for retention of the key personnel and for non solicitation clauses. It was also pointed out to the Commission that the attrition rate depends on the name and standing of the purchaser of the HBU Divestment Business. Therefore the Commission considers that the purchaser requirements further add to the assurances of the viability of the divestiture business.

226. The market test explicitly confirmed that certain product capabilities are essential for the HBU Divestment Business in order to be a viable actor on the Dutch market for corporate banking products. In particular the HBU Divestment Business would need to be

---

88 See in this context also DG Competition's Merger Remedies Study of October 2006, p. 73 et seq. (http://ec.europa.eu/comm/competition/mergers/studies_reports/remedies_study.pdf).

able to provide domestic payment services, foreign payment services, current accounts, cash management services, factoring, loans and credits including the guarantee or collateral in the loan/credit granting process, documentary credits and deposits and savings accounts. Respondents were of the opinion that furthermore, for corporate customers in the Netherlands the HBU Divestment Business would need to be able to provide FX/MM services (i.e. the hedging of forex and interest rate risks for SME and corporate customers.), trade finance. The services that are important for the viability of the HBU Divestment Business appear thus to be also including the international services, such as trade finance, documentary credits, hedging etc.

227. In order to provide those services the HBU Divestment Business should not only have sufficient relationship or account managers and supporting commercial staff in the front offices of the HBU Divestment Business, but also sufficient supporting staff in mid- and back-office functions. Fortis has submitted that the Advieskantoren and CCDs that form part of the HBU Divestment Business are almost fully self supportive. According to the Commission's findings the Advieskantoren and CCDs depend for many functions on back office functions that the Advieskantoren and CCDs share with ABN AMRO Business Unit Netherlands and ABN AMRO's Business Unit Global Clients. Such functions include sector expertise, syndication of loan facilities, trade and documentary credit services, product selling specialists (notably finance / leveraged finance, M&A, Corporate Finance, cash and transaction services, risk and insurance management and factoring specialist, sufficient treasury specialists and treasury desk officers), product development, FX / MM services, legal advice, call center functionality and internet offering and content. It was also pointed out to the Commission that staff of the HBU Divestment Business would in any case to a certain extent need to rely on the expertise that is available within the purchaser for certain product functionalities. The market test indicated that the current staffs of the Advieskantoren most likely are not currently servicing the needs of larger corporate customers, that they could be trained to also provide banking products for larger corporate customers.

228. The market test indicated that only a few back office functions can be outsourced, such as facility management, IT support, administrative part of non-customer related functions. But the HBU Divestment Business appears to depend also for more primary functions on ABN AMRO. Therefore, the purchaser would need to bring those capabilities and Fortis may need to expand the central personnel of the HBU Divestment Business at the request of the buyer. The HBU Divestment Business would still rely during the transition at least on the support of ABN AMRO for IT operations, electronic banking, product development and payment operations. Given that ABN AMRO will be a direct competitor of the HBU Divestment Business, such upstream integration appears problematic, unless the purchaser can migrate the upstream operations to its own infrastructure after a transitional period. The Commission considers that the purchaser requirements further add to the assurances of the viability of the divestiture business.

229. In order to ensure this full product functionality Fortis proposes to expand the office of HBU with […] FTE extra central personnel. However, according to the Schedule attached to the proposed commitment this expansion of extra central personnel provides mainly for risk and credit management, credit administration, audit control human resources and some legal and treasury functions. The market test has confirmed that this would not be sufficient to ensure that the HBU Divestment Business is capable to provide all the services needed for a viable business. Consequently, Fortis has committed - at the request of the purchaser - to amend the central personnel that are to be divested with the HBU

Divestment Business. In view of the above as regards the scope of the business, the Commission considers that the commitments encompass all elements necessary to successfully enter the corporate banking business in the Netherlands, provided that the purchaser of the HBU Divestment Business has sufficient (back office) capabilities and/or in-house network solutions for offering internationally oriented products. The purchaser requirement therefore provides for strict purchaser requirements which would prevent Fortis from divesting the HBU Divestment Business to any buyer unless, inter alia, together with the HBU Divestment Business, it provides for a level of brand recognition in or outside the Netherlands comparable to the brand recognition of Fortis at the time of the adoption of the Decision and it is able to serve internationally active corporate customers through in-house product capabilities comparable to Fortis at the time of the adoption of the Decision including being well represented through branch offices or subsidiaries in major world and European financial centres.

b. Convincing solutions for carve out problems are provided

230. The Commission has to verify not only whether the scope of the divested business is complete, but also whether convincing solutions for potential "carve-out"-problems are provided. In this case, it was in particular necessary to verify whether it can be expected that the relevant customers will stay with the HBU Divestment Business and whether separation problems might impede the retention of customer relationships forming the *ongoing business.*

231. As explained in paragraphs 208 and 209 above, the Consortium operation is an exceptionally complex transaction involving two stages: a transitory phase where the Consortium lead member RBS will control ABN AMRO (via the company RFS Holdings) as of the completion of the bid and a second phase where the split-off of ABN AMRO assets among the Consortium members will take place, permitting Fortis to acquire control over its respective assets. The Dutch Minister of Finance has issued VVGBs for the Consortium bid. The Minister issued separate VVGBs for Santander, Fortis Netherlands, Fortis, RBS and RFS Holdings B.V. As from the day that the bid is successful the Consortium members will use 45 days for Due Diligence and 90 days for dividing the assets. Should the Consortium members not agree to the division of assets, an independent accountant will be appointed and finally if there is still no agreement the consortium members shall refer to arbitration with the International Chamber of Commerce. On the advice of the Dutch Central Bank the Minister has attached conditions to the VGGBs.

232. The conditions imposed by the Minister of Finance stipulate that the banks shall ensure sufficient continuity within the Management Board and the Supervisory Board of ABN AMRO Holding and ABN AMRO Bank and shall ensure the preservation of knowledge of the organisation of the ABN AMRO Group as well as the availability of specific expertise so that these bodies can properly perform their legal and statutory tasks. Within the Consortium, RBS is primarily responsible for the effective functioning of the ABN AMRO Group during the transition phase to the moment when the components to be acquired are transferred to the individual members of the Consortium. The ABN AMRO Group shall be consolidated in the financial statements and supervisory returns of RBS. RBS is responsible for compliance with the financial supervisory regulations applicable to the ABN AMRO Group in all relevant jurisdictions. Within two months of the entry into force of the Declarations of No Objection, the Banks shall ensure that ABN AMRO draws up a robust and detailed Transitional Plan. The Transitional Plan and any material changes

to it shall be submitted to DNB for approval. The Banks shall not make any fundamental changes to the current set-up of the organisation, the division of tasks and responsibilities, the committee structure and the reporting lines of the ABN AMRO Group before the Banks have obtained a degree of control with which the Banks may be deemed capable of effective execution of the proposed transition; and the above transition plan has been approved by DNB, unless DNB has agreed to such a change in advance. DNB approval must be obtained for the Transitional Plan and for *each separation* before implementation.

233. As regards the timing for the divestiture periods, it should be pointed out that Fortis has committed not to acquire control over ABN AMRO's Business Unit Netherlands and Business Unit Private Clients prior to the closing of the sale of HBU Divestment Business and IFN Divestment Business. Therefore, Fortis not only has strong incentives to proceed with the divestiture within the shortest possible timeframe, but also the commitment prevents Fortis from directly intervening in the divestment business in a manner which could endanger its viability as a stand-alone competitor and ensures that the purchaser will obtain a complete and viable business in due time.

234. It has been pointed out to the Commission during the market testing of the commitment proposal that HBU is proven to be difficult to disentangle. It was pointed out to the Commission that ABN AMRO already had investigated the disentanglement of HBU prior to the commitment proposal, but stopped pursuing this disentanglement because it would be too complicated a process. The Commission has found indeed that ABN AMRO stopped putting resources into unbundling the IT and other operational platforms of HBU and ABN AMRO, because at that time it was too resource intensive. It was not seen as a priority by ABN AMRO at the time. However now, with the current divestiture process Fortis has expressed vis-à-vis the Consortium members that it will take all action necessary to divest the HBU Divestment Business. Moreover, the other Consortium members (i.e. RBS and Santander) have formally indicated to the Commission and expressed between themselves that they will take all such action or procure that such action is taken as is reasonable in order to implement the terms of the CSA or any transaction matter or thing which is contemplated in the CSA, including implementing the divestiture of the HBU Divestment Business.[89] The Commission therefore considers that HBU will be disentangled within the time frame set.

235. It should also be noted that Fortis commits to appoint a *Monitoring Trustee* in order to resolve potential conflicts between the seller and the purchaser, for example, on how to separate the HBU Divestment Business from the businesses remaining with the merged entity. Given the importance of the trustee function in this case, in particular with a view to the separation of and overseeing the "carve-out" process of the HBU Divestment Business, Fortis commits to start the procedure for approval of a Monitoring Trustee on the effective date. Thereby, sufficient safeguards are established to find workable solutions for any disputes arising during this process which could call into question the viability of the transferred business.

236. Having reviewed the commitments and their schedules on the HBU Divestment Business, the Commission has come to the conclusion that these commitments are sufficient to ensure that the purchaser will obtain a complete and viable business and that its commercial success is not hampered by problems caused by conflicts with the seller on the scope or the separation of the transferred assets. The provisions in the commitments

[89] Clause 20.10 "Further Assurances" of the CSA.

proposal provide the Commission with a reasonable certainty that any problems related to the "carve-out" will be resolved and that the HBU Divestment Business will be transferred as a viable business to the purchaser.

c. Viability of IFN Finance as a stand-alone entity

237. As indicated in paragraphs 206 above, Fortis has committed to divest the Dutch factoring company of the ABN AMRO Group in order to remove the competition concerns generated by the proposed concentration in the factoring market in the Netherlands. IFN Finance B.V. belongs to the IFN Group of companies. The IFN Group is also active in the factoring market in Germany, France and the UK, via three separate subsidiaries.

238. According to the information provided by Fortis, confirmed by ABN AMRO, IFN Finance operates as a stand-alone entity, with own resources (including IT systems and platforms and personnel) and management in order to provide factoring services.[90]

239. In light of the foregoing, the Commission considers that the IFN Divestment Business includes all the functions necessary to provide factoring services on a stand-alone basis.

4) Conclusion on the commitments

240. The Commission therefore considers the commitments suitable for remedying the serious doubts on the compatibility of the concentration with the Common Market and the EEA, which have been established in the previous sections of this Decision.

C. CONDITIONS AND OBLIGATIONS

241. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

242. The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 8(5) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

243. In accordance with the basic distinction described above, the decision in this case is conditioned on the full compliance with Sections B and D of the Commitments submitted by the Notifying Party on 2 October 2007.

244. The remaining requirements set out in the other Sections of the Commitments submitted by the Notifying Party on 2 October 2007 are considered to constitute obligations.

---

90 See reply of ABN AMRO of 28 September 2007 to Commission's request for information.

VIII. CONCLUSION

245. The Commission has concluded that the remedies submitted by the Notifying Party are sufficient to remove the serious doubts raised by the concentration. Accordingly, subject to the full compliance with the commitments submitted by the Notifying Party, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) and Article 6(2) of Council Regulation (EC) No 139/2004.

246. The detailed text of the commitments is annexed to this decision. The full text of the annexed commitments forms an integral part to this decision.

For the Commission
[signed] Neelie KROES
Member of the Commission

By hand and by fax: 00 32 2 296 4301
European Commission
DG Competition
Rue Joseph II 70 Jozef-II straat, 1/255
B-1000 BRUSSELS

Case M.4844 – Fortis / ABN AMRO Assets
COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004 (the "***Merger Regulation***"), Fortis SA/NV and Fortis N.V. ("***Fortis***") hereby provide the following Commitments (the "***Commitments***") in order to enable the European Commission (the "***Commission***") to declare the acquisition by Fortis of control of parts of ABN AMRO Holding N.V. (ABN AMRO Holding N.V. hereafter referred to as ***"ABN AMRO"***, the parts of ABN AMRO to be acquired by Fortis to be referred to as "***ABN AMRO Assets***" and Fortis and ABN AMRO Assets collectively to be referred to as the "***Parties***") by way of a joint public bid of Fortis, Royal Bank of Scotland plc ("***RBS***") and Banco Santander Central Hispano, S.A. ("***Santander***") (collectively the "***Consortium***") for the whole of the ordinary issued share capital of ABN AMRO, announced on 20 July 2007, and the subsequent division of the assets between the Consortium members, compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the "***Decision***"). The Commitments shall take effect upon the date of adoption of the Decision. This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Jurisdictional Notice under Council Regulation (EEC) No 139/2004 on the control of concentrations between undertakings.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Control: the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Jurisdictional Notice under Council Regulation (EEC) No 139/2004 on the control of concentrations between undertakings.

Corporate Customers: commercial customers with a turnover up to EUR 250 million that are procuring financial services for business purposes.

Divestment Business: the business or businesses as defined in Section B and Schedule 1 that Fortis commits to procure to divest (the "***HBU Divestment Business***") and the business or businesses as defined in Section B and Schedule 2 that Fortis commits to procure to divest (the "***IFN Divestment Business***").

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Fortis and who has received from Fortis the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] from the Effective Date.

HBU Divestment Business: the business or businesses as defined in Section B and Schedule 1 that Fortis commits to procure to divest.

Hold Separate Manager(s): the person appointed by ABN AMRO for the HBU Divestment Business and the person appointed by ABN AMRO for the IFN Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

IFN Divestment Business: the business or businesses as defined in Section B and Schedule 2 that Fortis commits to procure to divest.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business as described in Schedule 1 and 2 and to be further defined in accordance with the procedure described in paragraph 7(d).

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Fortis, and who has the duty to monitor Fortis' compliance with the conditions and obligations attached to the Decision.

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel described in Schedule 1 and 2 and to be further defined in accordance with the procedure described in paragraph 7(d).

Purchaser: the entity or the two entities approved by the Commission as acquirer(s) of the HBU Divestment Business and/or the IFN Divestment Business in accordance with the criteria set out in Section D.

Settlement of the Consortium's offer: The payment of cash and issuance of New RBS Ordinary Shares as consideration for the ABN AMRO Ordinary Shares exchanged into the Offer as further defined in the Offer Memorandum issued by RFS Holdings B.V. on 20 July 2007.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

Fortis: Fortis SA/NV, incorporated under the laws of Belgium, with its registered office at Rue Royale/Koningsstraat 20, Brussels, and registered with the Company Register at Brussels under number 0.451.406.524, and Fortis N.V., incorporated under the laws of the Netherlands, with its registered office at Archimedeslaan 6, Utrecht, and registered with the Commercial Register at Utrecht under number 300.721.450.000.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Fortis commits to procure the divestiture by ABN AMRO of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a

purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraphs 24 and 26. Insofar as these Commitments contain obligations to be fulfilled by ABN AMRO, the relevant provisions are to be interpreted exclusively as obligations of Fortis to procure that these obligations will be fulfilled by ABN AMRO once RFS Holdings B.V. has taken control of ABN AMRO.

2. To carry out the divestiture, Fortis commits to procure that ABN AMRO finds a purchaser and enters into (a) final binding sale and purchase agreement(s) for the sale of the Divestment Business within the First Divestiture Period. If ABN AMRO has not entered into such an agreement at the end of the First Divestiture Period, Fortis shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 35 in the Trustee Divestiture Period.

3. Fortis shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, ABN AMRO has entered into (a) final binding sale and purchase agreement(s), if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraphs 24 and 26 and if the closing of the sale of the Divestment Business takes place within a period not exceeding [...] after the approval of the purchaser and the terms of sale by the Commission.

4. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of [...] after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

5. Subject to the following conditions, Fortis further commits not to acquire control over ABN AMRO Assets prior to the closing of the sale of the Divestment Business, for the avoidance of doubt:
   (a) Fortis will be allowed to exercise the governance rights in relation to RFS Holdings B.V. and ABN AMRO as accorded to Fortis under the Consortium and Shareholders' Agreement concluded between Fortis, RBS and Santander on 28 May 2007 (the "***CSA***") and under the Supplemental Consortium and Shareholders' Agreement concluded between Fortis, RBS and Santander on 17 September 2007 (the "***Supplemental CSA***") and as agreed between the Consortium and the Dutch Central Bank (*De Nederlandse Bank – "**DNB**"*).
   (b) Fortis will also be allowed to participate in the preparation of the break-up of ABN AMRO between the Consortium members as provided for in the CSA and the Supplemental CSA and as agreed between the Consortium and DNB.
   (c) Fortis will be allowed to acquire control of ABN AMRO's Business Unit Asset Management prior to the closing of the sale of the Divestment Business.
   (d) Fortis will not be allowed to acquire control over ABN AMRO's Business Unit Netherlands and ABN AMRO's Business Unit Private Clients prior to the closing of the sale of the Divestment Business.

Structure and definition of the Divestment Business

6. The Divestment Business consists of two main businesses: First, Fortis commits to procure to divest the assets of Hollandse Bank Unie B.V. ("***HBU***"), a subsidiary of ABN AMRO with a separate brand name and a full banking license and 13 'advieskantoren' (advisor branches) as well as 2 Corporate Client Departments of ABN AMRO which will be split-off into HBU together with the current personnel

of HBU, which is at present legally employed by ABN AMRO (the "***HBU Divestment Business***"). The present legal and functional structure of the HBU Divestment Business as operated to date is described in **Schedule 1**. Second, Fortis commits to procure to divest the assets of IFN Finance B.V., a subsidiary of ABN AMRO (the "***IFN Divestment Business***"). The present legal and functional structure of the IFN Divestment Business as operated to date is described in **Schedule 2**.

7. The Divestment Business, described in more detail in Schedule 1 and 2, includes
   (a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
   (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
   (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as "***Assets***");
   (d) the Personnel; in this respect, Fortis commits to procure that ABN AMRO shall submit a list with the names and functions of the Personnel and the Key Personnel of the Divestment Business as described in Schedule 1 and 2 to the Monitoring Trustee within two weeks after the settlement of the Consortium's offer. Fortis further commits to procure that, within two weeks after the settlement of the Consortium's offer, ABN AMRO shall submit a written report to the Monitoring Trustee in which ABN AMRO informs the Monitoring Trustee of all changes in the personnel of the Divestment Business which were effected by ABN AMRO in the period from 26 September 2007 until the date of the submission of the report to the Monitoring Trustee. Within one month after having received the list and the report from ABN AMRO, the Monitoring Trustee will determine the definite lists of Personnel and Key Personnel for each of the HBU Divestment Business and the IFN Divestment Business separately. The Monitoring Trustee may decide to include in the lists of Personnel and Key Personnel any members of the personnel that ABN AMRO may have transferred out of the Divestment Business into other parts of its business during the period covered by the report, if it is required to include this personnel in the Divestment Business for the Divestment Business to be fully competitive and viable.
   (e) the extra personnel necessary to enable the HBU Divestment Business to operate as a viable, stand-alone entity, as described in Schedule 1. Fortis commits to procure that ABN AMRO shall submit a list with names and functions of possible extra personnel to the Monitoring Trustee within one month after the settlement of the Consortium's offer. The purchaser of the HBU Divestment Business will be granted the right to select any personnel from this list to be transferred as part of the HBU Divestment Business.
   (f) the necessary funding to operate the Divestment Business, including but not limited to a sufficient level of Tier I and Tier II capital in accordance with DNB standards; and
   (g) the benefit, for a transitional period of up to [...] after Closing or, alternatively, any longer period as may reasonably be necessary in order for the Divestment Business to be fully competitive and viable and on terms and conditions equivalent to those at present afforded to the Divestment Business, but, in any event, on terms and conditions that allow the Divestment Business to compete effectively as long as the Divestment Business remains dependent on ABN AMRO and/or Fortis, of all current arrangements under which ABN AMRO or Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

8. From the Effective Date until Closing, ABN AMRO shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular ABN AMRO undertakes:
   (a) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
   (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
   (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business; the Key Personnel shall be entitled to any such benefits to be granted to it by ABN AMRO under the relevant incentive schemes, unless it exercises any rights it may have under the applicable collective labour agreements to return to ABN AMRO within a period of two years following the Closing.

Hold-separate obligations of Parties

9. Subject to applicable law including banking supervision rules applying to ABN AMRO as a whole, Fortis commits to procure that ABN AMRO, from the Effective Date until Closing, keeps the Divestment Business separate from the businesses it is retaining and ensures that Key Personnel of the Divestment Business – including the Hold Separate Manager(s) – have no involvement in any business retained and vice versa. ABN AMRO shall also ensure that the Personnel does not report to any individual outside the Divestment Business.

10. Until Closing, ABN AMRO shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties, subject to applicable law including banking supervision rules applying to ABN AMRO as a whole. ABN AMRO shall appoint a Hold Separate Manager for each of the HBU Divestment Business and the IFN Divestment Business who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Managers shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties.

Ring-fencing

11. Fortis shall procure that ABN AMRO shall implement all necessary measures to ensure that the Consortium does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. ABN AMRO may obtain information relating to the Divestment Business which

is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to ABN AMRO is required to ensure compliance with applicable law, including banking supervision rules applying to ABN AMRO as a whole.

Non-solicitation clauses

12. Fortis shall undertake all reasonable steps to encourage all Key Personnel to remain with the Divestment Business.

13. Fortis undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business from the Effective Date until [...] after Closing. Fortis further undertakes, subject to customary limitations, to procure that ABN AMRO or Affiliated Undertakings do not solicit the Key Personnel transferred with the Divestment Business from the date of the settlement of the Consortium's offer until [...] after Closing.

14. Fortis commits to procure that ABN AMRO, subject to customary limitations, does not internally or externally transfer Key Personnel from the date of the settlement of the Consortium's offer until closing of the sale of the HBU Divestment Business.

15. Fortis commits to procure that ABN AMRO, subject to customary limitations, does not solicit and procures that Affiliated Undertakings do not solicit, customers to be transferred to the Divestment Business from the date of the settlement of the Consortium's offer until [...].

16. Fortis undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, all the customers transferred with the HBU Divestment Business from the date of the settlement of the Consortium's offer until [...] after Closing.

Due Diligence

17. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, ABN AMRO shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
    (a) provide to potential purchasers sufficient information as regards the Divestment Business;
    (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

18. ABN AMRO shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission’s request).

19. The Parties shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

20. The HBU Divestment Business and the IFN Divestment Business may be sold to the same purchaser or to two different purchasers, provided that the purchaser(s) meet(s) the purchaser requirements set out in paragraphs 22 and/or 23 below (the ***"Purchaser Requirements"***).

21. The purchaser of the HBU Divestment Business will be granted a right of first refusal to purchase the IFN Divestment Business, provided that it meets the IFN Purchaser Requirements as defined in paragraph 23.

22. In order to ensure the immediate restoration of effective competition, the Purchaser of the HBU Divestment Business, in order to be approved by the Commission, must:
   (a) be independent of and unconnected to the Parties;
   (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
   (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business;
   (d) together with the Divestment Business, provide for a level of brand recognition in or outside the Netherlands comparable to the brand recognition of Fortis at the time of the adoption of the Decision;
   (e) be able to serve internationally active corporate customers through in-house product capabilities comparable to Fortis at the time of the adoption of the Decision including being well represented through branch offices or subsidiaries in major world and European financial centres. (the before-mentioned criteria for the purchaser hereafter the "***HBU Purchaser Requirements***").

23. In order to ensure the immediate restoration of effective competition, the Purchaser of the IFN Divestment Business, in order to be approved by the Commission, must:
   (a) be independent of and unconnected to the Parties;
   (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
   (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the "***IFN Purchaser Requirements***").

24. The final binding sale and purchase agreement(s) shall be conditional on the Commission's approval.

25. As part of the sale and purchase agreement(s) to be concluded between ABN AMRO and the purchaser of the HBU Divestment Business, a provision to the following effect will be included for the benefit of the Purchaser:

> *"In case ABN AMRO (or Fortis as its legal successor for this matter) decides, within a period of one year following the approval of the Purchaser and the terms of the sale by the Commission, to vacate any of the premises where any of the advieskantoren retained by the Parties after Closing are currently located, ABN AMRO will grant the Purchaser the*

option to, depending on the ownership situation, purchase, lease or, to the extent permissible, sublease the relevant property prior to selling, leasing or subleasing the same to a third party. Pursuant to this option right ABN AMRO will be obliged to first negotiate in good faith the terms of such a transaction with the Purchaser. In case ABN AMRO and the Purchaser do not reach an agreement, ABN AMRO will be precluded from selling, leasing or subleasing the relevant property within one year after the end of the negotiations against a consideration which is lower than the highest consideration offered by the Purchaser plus a reasonable percentage customary for these type of transactions."

26. When ABN AMRO has reached an agreement with a purchaser, Fortis shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Fortis must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

27. Fortis shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If ABN AMRO has not entered into (a) binding sale and purchase agreement(s) one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by ABN AMRO at that time or thereafter, Fortis shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestment Period.

28. The Trustee shall be independent of the Parties, ABN AMRO, RBS and Santander, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Fortis in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by the Parties

29. No later than one week after the Effective Date, Fortis shall submit a list of one or more persons whom Fortis proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Fortis shall submit a list of one or more persons whom Fortis proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 28 and shall include:
    (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

30. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Fortis shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Fortis shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

31. If all the proposed Trustees are rejected, Fortis shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 27 and 30.

Trustee nominated by the Commission

32. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Fortis shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

33. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Fortis, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

34. The Monitoring Trustee shall:
(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
(ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Fortis with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitments;
(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 10 of the Commitments;

(c) (i) in consultation with Fortis and ABN AMRO, determine all necessary measures to ensure that Fortis and ABN AMRO do not after the Effective Date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Fortis or ABN AMRO as the disclosure is reasonably necessary to allow ABN AMRO to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and ABN AMRO or Affiliated Undertakings;

(iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(iv) propose to Fortis and/or ABN AMRO such measures as the Monitoring Trustee considers necessary to ensure Fortis' and ABN AMRO's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;

(vi) provide to the Commission, sending Fortis and ABN AMRO a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Fortis and ABN AMRO a non-confidential copy at the same time, if it concludes on reasonable grounds that Fortis is failing to comply with these Commitments;

(vii) within one week after receipt of the documented proposal referred to in paragraph 26, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

35. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business, i.e. either the HBU Divestment Business or the IFN Divestment Business or both, to one or two purchasers respectively, provided that the Commission has approved both the purchaser(s) and the final binding sale and purchase agreement(s) in accordance with the procedure laid down in paragraph s 24 and 26. The Divestiture Trustee shall include in the sale and purchase agreement(s) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase

agreement(s) such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Fortis and ABN AMRO, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

36. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

III. Duties and obligations of the Parties

37. Fortis and ABN AMRO shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of ABN AMRO's and the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and ABN AMRO and the Divestment Business shall provide the Trustee upon request with copies of any document. Fortis and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

38. ABN AMRO shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. ABN AMRO shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. ABN AMRO shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

39. ABN AMRO shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, ABN AMRO shall cause the documents required for effecting the sale and the Closing to be duly executed.

40. Fortis shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Fortis for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

41. At the expense of Fortis, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Fortis' approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by

the Trustee are reasonable. Should Fortis refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Fortis. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 40 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Fortis during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

42. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
    (a) the Commission may, after hearing the Trustee, require Fortis to replace the Trustee; or
    (b) Fortis, with the prior approval of the Commission, may replace the Trustee.

43. If the Trustee is removed according to paragraph 42, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 27-32.

44. Beside the removal according to paragraph 42, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

45. The Commission may, where appropriate, in response to a request from Fortis or ABN AMRO showing good cause and accompanied by a report from the Monitoring Trustee:
    (i) Grant an extension of the time periods foreseen in the Commitments, or
    (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

    Where Fortis or ABN AMRO seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Fortis or ABN AMRO be entitled to request an extension within the last month of any period.

……………………………………
duly authorised for and on behalf of
Fortis SA/NV and Fortis N.V.

……………………………………
duly authorised for and on behalf of
Fortis SA/NV and Fortis N.V.

<u>Case COMP/M.4844 – Fortis/ABN AMRO Assets</u>

SUMMARY SCHEDULE 1 – HBU Divestment Business

Content HBU Divestment Business:

- Hollandsche Bank Unie N.V.; independent, separately licensed commercial bank, servicing corporate customers up to EUR 1 billion turnover.
- 2 Corporate Client Departments; commercial banking offices serving corporate customers between EUR 50 million – EUR 1 billion turnover
- 13 Advieskantoren; commercial banking offices serving SMEs up to EUR 50 million turnover.
- The package includes all customers and all personnel of these entities (HBU, the 2 CCDs and the 13 Advieskantoren).
- Service Level Agreements for IT, specific back office functions and specific skills.
- At the option of the buyer, up to [...] FTE extra personnel in management, specific skills, mid office and back office functions to ensure the enlarged HBU will be able to operate as a viable, stand-alone commercial bank with 16 branches.

Commercial attractiveness of divestiture

- Separate banking license in place: possibilities for new (foreign) player.
- National branch network – branches evenly spread over Netherlands covering all commercially relevant cities and regions.
- Client base spread evenly: all types of corporate customers up to approximately EUR 1 billion.

Impact

- Gross Income: EUR [...].
- Total number of clients: [...] SMEs with a turnover between EUR 2.5 million and EUR 250 million (commercial banking customers), plus a number of smaller SMEs with a turnover of less than EUR 2.5 million and approximately [...] corporate customers with a turnover of more than EUR 250 million.
- Total number of personnel: up to [...] FTE.

Divestment process

- Put Hold-Separate measures in place, managed through ABN AMRO.
- Split-off Advieskantoren and CCDs including client and personnel into HBU together with the current personnel of HBU, which is at present legally employed by ABN AMRO (no customer / personnel consent required, switching to HBU IT-system is easy due to white labelling systems).
- Beefing up HBU with extra management, mid- and back office functions (incl. retention packages).
- Selling shares in HBU / Selling assets of HBU.
- CCDs and Advieskantoren will continue to work under ABN AMRO brand at least until moment of transfer to HBU but possibly until closing.

SCHEDULE 1

1. *The HBU Divestment Business as operated to date has the following legal and functional structure:*

1. HBU

Short history:

Hollandsche Bank Unie N.V. ("**HBU**") was established in 1914, focusing on international trade (finance) services for trade with South America. Until 1967, it further expanded its activities in international trade in the South while at the same time expanding its national network in commercial banking activities. In 1967, HBU was acquired by ABN. Since 1967 and continuously so after the merger between ABN and AMRO, HBU has been operating as an independent subsidiary with its own board of directors and supervisory board. The management and personnel of HBU are known for what is called the 'Rotterdam spirit': a no-nonsense, down-to-earth and competitive approach towards the market.

Main in-house activities:

Next to a commercial banking portfolio, HBU has a small private/retail banking portfolio as well, focussing for the most part on entrepreneurs, i.e. the owners or directors of its SME clients. HBU's main commercial banking activities include:

- Payments
- Credits
- Bank guarantees
- Treasury
- Trade finance
- Insurance

Current legal and functional structure

As is depicted in Figure 1 below, HBU is a public limited company (*naamloze vennootschap*) and a direct subsidiary of ABN AMRO Holding N.V. It has its own banking license and its own AFM license and operates to a large extent independently of the rest of the ABN AMRO organisation. It has its own board of directors and its own supervisory board.

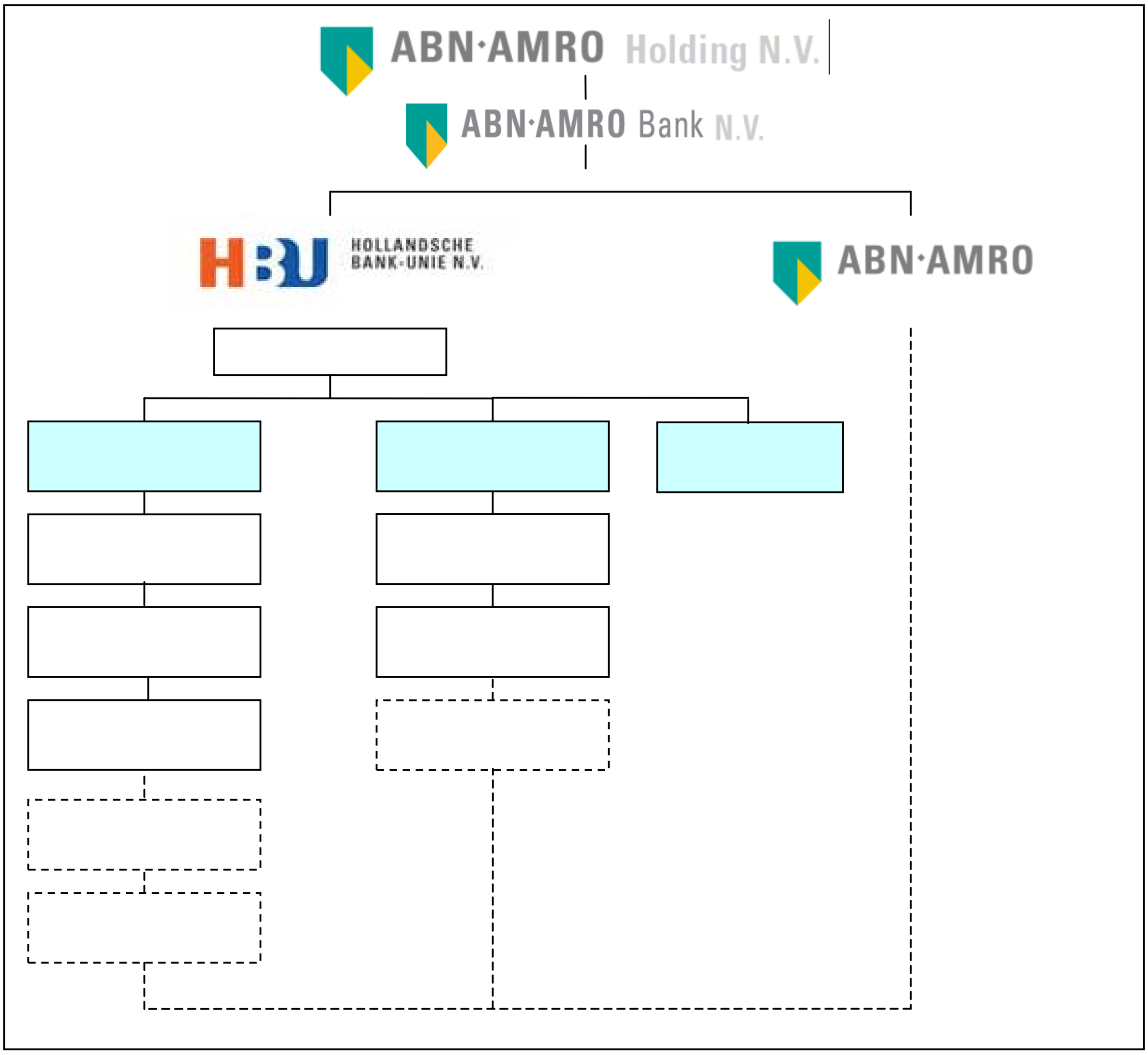
The core of its commercial banking activities (Payments, Credits, Bank Guarantees, Treasury, Trade finance and Insurance) are provided fully in-house, through its own front office personnel (account managers) and supporting staff (e.g. Credit Administration). HBU also has its own HR personnel and a Planning and Accounting department and other general personnel.

For some functions, HBU relies on the ABN AMRO organisation. On the operational side, the most important dependency is the IT-network and operational platforms. The HBU platforms are ABN AMRO white-labelled and run on central ABN AMRO facilities. Also, ABN AMRO takes care of Payroll Services, Facility Management and Marketing for HBU.

On the commercial side, HBU relies on the ABN AMRO network for specialised skills it does not provide in-house, such as leasing, factoring, cash management. Also, HBU's Assets & Liabilities management is done centrally within ABN AMRO.

All these services will continue to be provided during the Divestiture Period, and will be formalised in Service Level Agreements ("**SLAs**"). At the option of the buyer, Fortis commits to maintain these SLAs for [...] following Closing (see further below under question d.). As long as the HBU Divestment Business remains dependent on ABN AMRO and/or Fortis, these services shall be provided at price levels that allow the HBU Divestment Business to compete effectively. It should be noted that, in the banking world, it is common to outsource specialised functions, such as leasing and factoring, but also IT services.

Figure 1 – Current legal and functional structure HBU



2. CCDs and Advieskantoren

With respect to its commercial banking business, the ABN AMRO organisation is structured as follows. Within the Business Unit Netherlands, it has 2 Wholesale Client Units ("**WCUs**") serving corporate customers with a turnover of EUR 1 billion and more. Furthermore, it has 5 regional Corporate Client

Departments ("**CCDs**"), serving corporate customers with a turnover of between EUR 50 million and EUR 1 billion. Next to its commercial banking activities for larger corporate customers, each CCD provides management services and mid- and back office services to a number of Advieskantoren in its region. ABN AMRO has in total 78 Advieskantoren, which serve SME clients with a turnover between EUR 1 million and EUR 50 million.

From both an operational as well as a commercial perspective, the CCDs are almost fully 'self-supportive'. The various personnel functions include:

Front Office

- Account managers + supporting personnel
- Servicedesk
- Cash Management Advisory and Support
- Treasury Advisory
- Insurance Advisory

Support / Staff

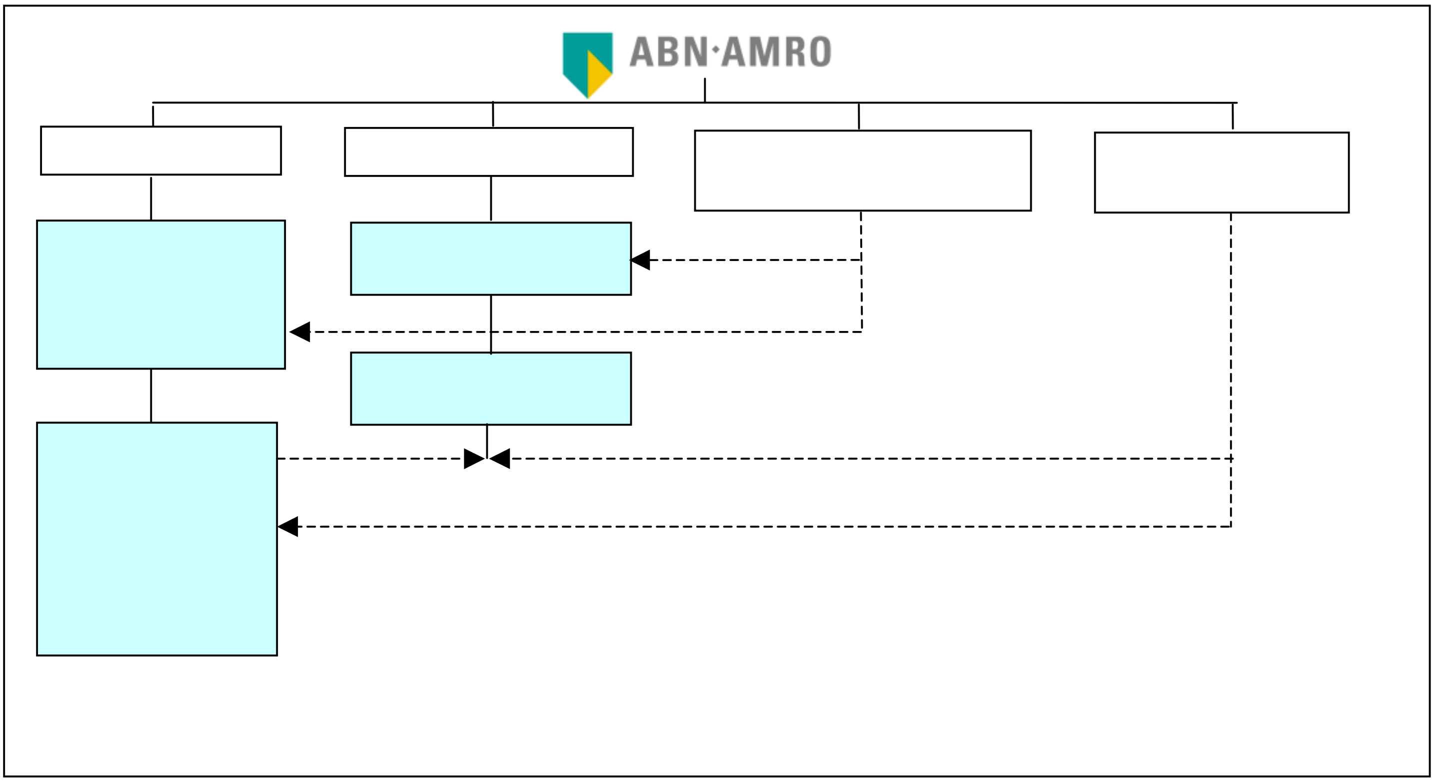
- Management and Management Support
- Management Information Systems & Control
- Marketing & Events
- Documentary Credits
- Credit Administration incl. Collateral Team
- Guarantees

Some functions are not included in the CCDs, such as:

- Marketing (national)
- Human Resources
- Some Back Office functions, such as Payment services (factual processing of payment orders and maintaining customer documentation), Payroll services, IT-platform services and Facility Management

The functions mentioned above are not only employed to support their own commercial banking activities to larger SMEs and corporate customers, but are also shared with the Advieskantoren in their respective regions. As was already indicated in Fortis' first draft remedies proposal to the Commission, the Advieskantoren for the most important part consist of front office personnel (account managers) and some mid-office functions. Furthermore, each Advieskantoor has its own director. Figure 2 below shows the functional structure of CCDs and Advieskantoren within the ABN AMRO organisation.

Figure 2 – Current functional structure CCD / Advieskantoren



2. *Following paragraph 4 of these Commitments, the HBU Divestment Business includes, but is not limited to:*

(a) *the following main tangible assets:*

1. HBU

The HBU Divestment Business includes the headquarters of HBU at the Coolsingel 104 in Rotterdam. This official monument, designed by famous architect Willem Dudok, is located at a prime location in the Rotterdam city centre – next to the regional headquarters of for example Fortis and ABN AMRO. The interior building was fully renovated over the past years. The HBU Divestment Business includes the whole building, as well as the real estate on which the building is located.

Pictures of HBU headquarters at the Coolsingel in Rotterdam

2. CCDs and Advieskantoren

Fortis carefully selected CCDs and Advieskantoren to create a nation-wide, serviceable network with a strong presence in all economically attractive cities and regions in the Netherlands. Fortis does not have any definite information as to the real estate situation with respect to these offices. However, Fortis considers that it is very likely that all offices that are part of the HBU Divestment Business are located on leased premises. Depending on the actual situation, Fortis commits to either transfer the lease or sell the offices of the advieskantoren and CCDs to the buyer – at the option of the buyer.

Reference is made to Annex I to this schedule for an overview of the exact locations of the Advieskantoren, the CCDs and HBU.

Annex II to this schedule provides an overview of:

- the estimated number of customers of each of HBU, the CCDs and the Advieskantoren (distributed among the customer segments of (i) customers with a turnover of less than EUR 2.5 million, (ii) customers with a turnover between EUR 2.5 million and EUR 50 million, (iii) customers with a turnover between EUR 50 million and EUR 250 million and (iv) customers with a turnover of more than EUR 250 million.)
- the estimated gross income of each of HBU, the CCDs and the Advieskantoren (distributed among the customer segments of (i) customers with a turnover of less than EUR 2.5 million, (ii) customers with a

turnover between EUR 2.5 million and EUR 50 million,(iii) customers with a turnover between EUR 50 million and EUR 250 million and (iv) customers with a turnover of more than EUR 250 million).

- the estimated number of personnel of each of HBU, the CCDs and the Advieskantoren.

ASSET VALUE (TOTAL OUTSTANDINGS) OF HBU DIVESTMENT BUSINESS

Fortis estimated the assets value (total outstandings) of the HBU Divestment Business based on a report by the Boston Consultancy Group, which describes the performance of banks world-wide expressed in income ratio per Risk Weighted Assets. Fortis took the average performance of banks in the Netherlands as a starting point and applied this ratio on the Gross Income estimates of the HBU Divestment Business as provided in Annex II. In total, Fortis estimates that the assets (total outstandings) of the HBU Divestment Business amount to an approximate value of [...], excluding real estate. [...].

[...]

(b) *the following main intangible assets:*

1. HBU

The HBU Divestment Business will include the transfer of ownership of the HBU trademark, the HBU logo, the HBU domain name (http://www.hbu.nl/) and all other Intellectual Property Rights owned by HBU or used by HBU in conducting its business.

2. CCDS AND ADVIESKANTOREN

During the Divestiture Period, the CCDs and Advieskantoren labelled for divestment and held separate from the rest of the ABN AMRO organisation, will retain the right to use all Intellectual Property that they were using in conducting their operations prior to the Effective Date. This includes the use of the ABN AMRO brands in communication to customers, both on- and offline. As soon as the Hold Separate Measures are activated and the contracts and personnel are 'split-off' to HBU at once, the CCDs and Advieskantoren may continue to use all ABN AMRO Intellectual Property necessary for them to continue normal operations until a maximum of [...] following Closing.

(c) *the following main licences, permits and authorisations:*

With respect to HBU, the most important license is the banking license, which will be included in the HBU Divestment Business – at the option of the buyer. Furthermore, Fortis commits to procure that ABN AMRO transfers all further necessary licenses, permits and authorisations to the buyer.

(d) *the following main contracts, agreements, leases, commitments and understandings:*

All necessary leases or other main agreements will be transferred – at the option of the buyer.

(e) *the following customer, credit and other records:*

1. HBU

The customers of HBU have been addressed above. The corresponding customer and credit records will be included in the HBU Divestment Business.

2. CCDs and Advieskantoren

The customers of the CCDs and Advieskantoren have been addressed above. The corresponding customer and credit records will be included in the HBU Divestment Business.

3. Measures to ensure customers stay with HBU Divestment Business

To ensure that the customers will stay with the HBU Divestment Business during the Divestiture Period and during a reasonable period following Closing, Fortis commits to procure that ABN AMRO shall:

- During the full length of the Divestiture Period permit the CCDs and Advieskantoren to work under the ABN AMRO brand (i.e. to continue to use the ABN AMRO brand in their communication with customers). In this respect, it is noteworthy that the transfer of the contracts and personnel to HBU will - on the date all necessary approvals are obtained - be undertaken by way of a legal split-off. As all ABN AMRO subsidiaries are using the same IT systems, this "hold-separate" operation is a mere matter of 'flipping the switch'. Although from that date, the customers of the CCDs and Advieskantoren concerned are managerial customers of HBU and will thus be managed by the "beefed-up" HBU organisation, they will continue to be served under the ABN AMRO brand.
- Commit itself to a non-solicitation obligation in respect of all the customers concerned from the settlement of the Consortium's offer until [...] after Closing. This obligation also concerns other advieskantoren or CCDs during the Divestiture Period.
- Offer, in close collaboration with the buyer, bank account number portability to all customers of the HBU Divestment Business. Account numbers are in principle fully transferable. [...]

(f) *the following Personnel and*
(g) *Key Personnel:*

The number of personnel, as well as the name of the managers of each of HBU, the CCDs and the Advieskantoren that are part of the HBU Divestment Business are provided in Annex I to this Schedule.

1. HBU

The personnel base of HBU ([...] FTE in total) is distributed among the various functions as follows:

Commercial Banking Front Office: [...] FTE
Private / Retail Banking Front Office: [...] FTE
Operations and Services: [...] FTE
Management and general staff: [...] FTE

The personnel of HBU is currently not legally employed by HBU, but by ABN AMRO. It will be transferred to HBU by way of a split-off together with the Advieskantoren and CCDs.

2. CCDs and Advieskantoren

The personnel base of the CCDs and Advieskantoren is distributed among the various functions as follows:

CCDs

Commercial Banking Front Office: [...] %
Operations and Services: [...] %
Management and general staff: [...] %

Advieskantoren

Account managers: [...] %
Mid-Office: [...] %
Management: [...] %

3. HR Measures to ensure stand-alone viability

Expand management

As will also be described further below, as part of the divestiture process, the CCDs and Advieskantoren will first be integrated with the organisation of HBU. In order for HBU to be able to manage the substantially increased customer base and number of personnel, first of all the management of HBU will be strengthened with 3 board members, 2 as directors for the two CCDs and 1 as director to oversee the branch network of 13 advieskantoren. This personnel will be taken from within the ABN AMRO organization.

One of the directors of HBU or from the CCDs will be appointed as Hold-Separate Manager for the HBU Divestment Business. This person will have a clear interest in retaining the viability of the divested assets, as that person will be transferred with the divested assets to the buyer. Also, because the Hold Separate Manager is someone from HBU or from one of the CCDs and will thus have no connection with Fortis.

Expand central personnel

Depending on the buyer, the supporting personnel base may have to be expanded as well. The following types of FTE could be necessary to enable HBU to become a viable, stand-alone entity. This personnel would also be appointed from the existing pool of ABN AMRO personnel, in close cooperation with the management of HBU. At the option of the buyer, extra personnel may be included in the HBU Divestiture Business. This extra personnel may consist of, but it is not limited to, the following functions:

Board	[...] FTE
Central Risk Management:	[...] FTE
Central Credit Management:	[...] FTE
Credit Administration:	[...] FTE
Analysis and Decision, Credit Contracting and Support:	[...] FTE
Central Audit:	[...] FTE
Central Performance Control Accounting:	[...] FTE
Human Resources:	[...] FTE
Central Marketing:	[...] FTE

Treasury:	[...] FTE
Legal & Compliance:	[...] FTE
Total:	[...] FTE

Retention Packages

In order to ensure that Key Personnel stays with the HBU Divestment Business, the following HR measures will be taken:

- Management Participation for all directors - Share option package to expanded management: [...].
- Retention packages for at least the management of the CCDs and the Advieskantoren and a selection of other Key Personnel

(h) *the arrangements for the supply with the following products or services by Fortis or Affiliated Undertakings for a transitional period.*

As indicated above, the “beefed-up” HBU organisation does not have all of the functions necessary to function as a viable, stand-alone entity in-house. Therefore, Fortis will procure that ABN AMRO shall commit itself to enter into SLAs with HBU with respect to all necessary functions. It should be noted that, in the banking world, it is common to outsource specialised functions, such as leasing and factoring, but also IT services.

SLA Training & Development

Pursuant to this SLA, HBU personnel will be offered the possibility to continue to make use of the standard Training & Development programs offered by the central ABN AMRO personnel training center.

SLA Payroll Services

Pursuant to this SLA, ABN AMRO will commit itself to provide the necessary HR Payroll Services to all personnel of the HBU Divestment Business.

SLA Facility Management

Pursuant to this SLA, ABN AMRO will commit itself to continue to provide facility management (housekeeping, maintenance, etc.) to the HBU Divestment Business

SLA Information Technology / Operations

Pursuant to this SLA, ABN AMRO will commit itself to maintain the current IT-networks and operational platforms of the HBU Divestment Business.

SLA Cash Services

Pursuant to this SLA, ABN AMRO will commit itself to provide customers of the HBU Divestment Business with the possibility to procure cash services (make deposits etc.) at ABN AMRO offices.

SLA Specialised Skills

As indicated above, the HBU Divestment Business will not dispose of certain special financial skills, such as Cash Management, Leasing and Factoring. Fortis commits itself to procure that ABN AMRO will enter into

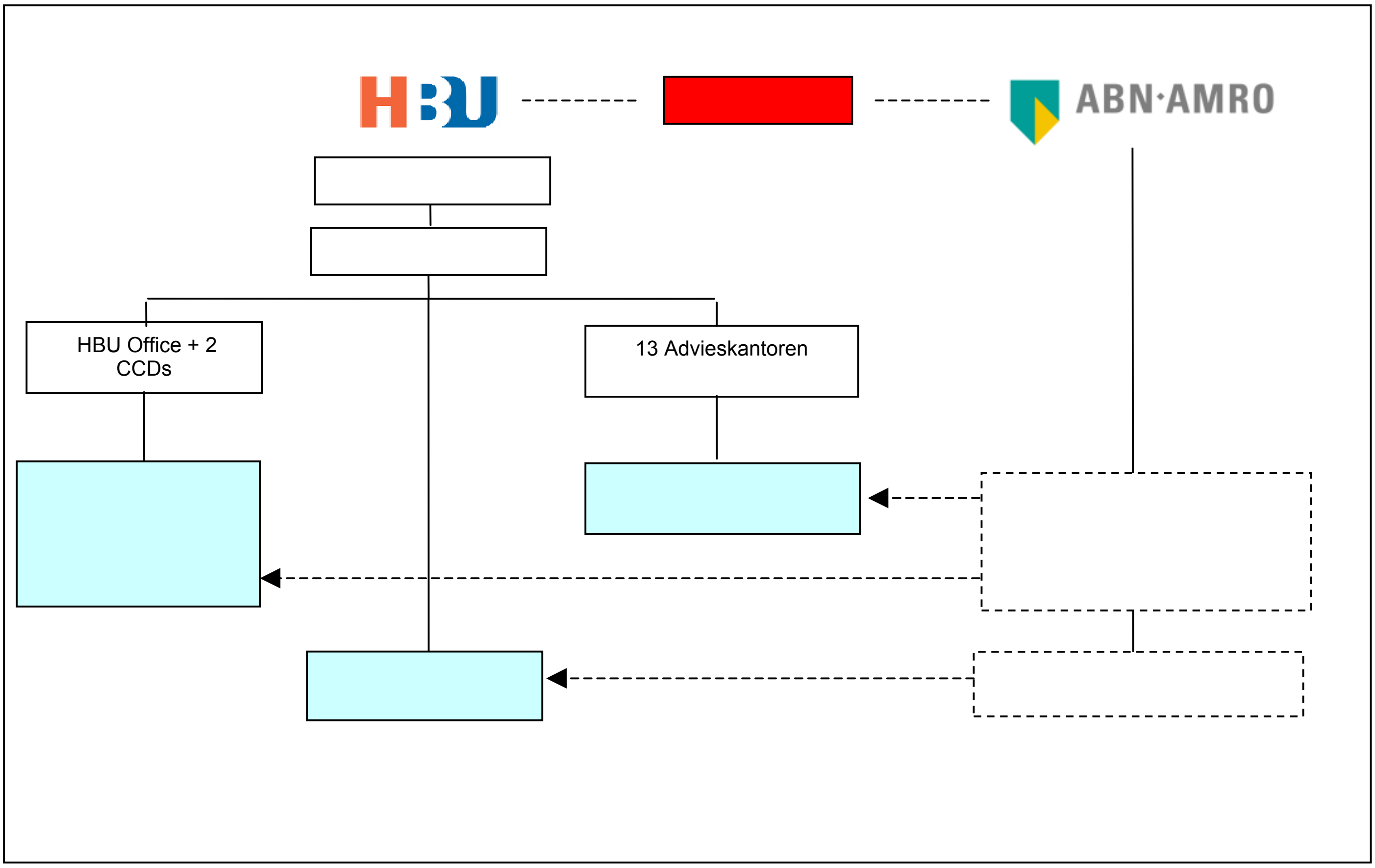
SLAs with respect to every special financial service that current customers of the HBU Divestment Business procure from ABN AMRO and which is not provided by the HBU Divestment Business in-house.

The abovementioned SLAs will be entered into at market conditions, but in any event on terms and conditions that allow the HBU Divestment Business to compete effectively as long as the HBU Divestment Business remains dependent on ABN AMRO and/or Fortis. The SLAs will be put in place for the full length of the Divestiture Period and can be extended to [...] after closing – at the option of the buyer.

Capital / Liquidity

The HBU Divestment Business will be sufficiently capitalised and properly funded to meet capital and liquidity requirements of DNB at the moment of sale. The necessary funding to be provided to the Divestment Business shall include, but will not be limited to a sufficient level of Tier I and Tier II capital in accordance with DNB standards.

SITUATION PRIOR TO DIVESTMENT



CASE COMP/M.4844 – FORTIS/ABN AMRO ASSETS:

ANNEX I TO SCHEDULE 1 TO COMMITMENTS

[Location of the offices which are included in the Divestment Business

- HBU, Rotterdam
- 2 CCDs
- 13 Advieskantoren in the larger cities in the following areas:
    - 4 in the Randstad Area (the densely populated Western part of the Netherlands)
    - 4 in the South of the Netherlands
    - 3 in the East of the Netherlands
    - 2 in the North of the Netherlands

Fortis carefully selected HBU, the CCDs and Advieskantoren to create a nation-wide, serviceable network with a strong presence in all economically attractive cities and regions in the Netherlands.]

[...]

<u>Case COMP/M.4844 – Fortis/ABN AMRO Assets:</u>
SUMMARY – SCHEDULE 2 – IFN DIVESTMENT BUSINESS

Content IFN Divestment Business:

- IFN Finance B.V., an independent, stand-alone and self-supporting company active in factoring in the Netherlands ("IFN");
- Divestment lock, stock and barrel: including all personnel and all customers of IFN;
- All IP rights, including IFN trade mark(s), trade name(s) and internet domain name(s);
- Gross Income: approx. EUR [...];
- Total number of customers: approx. [...];
- Total number of personnel: approx. [...] FTE.

Divestment process:

- Put Hold-Separate Manager into place from date of settlement of the offer;
- ABN AMRO will continue to provide Group Risk Management services and necessary funding during Divestiture Period;
- Sell shares in IFN;
- Timeline: [...] (from the Effective Date) for signing, [...] for closing.

1. The Divestment Business as operated to date has the following legal and functional structure:

IFN, founded in 1962, is a company active in factoring in the Netherlands. It is a fully-owned subsidiary of IFN Group B.V. ("IFN Group"), which in turn is a fully-owned subsidiary of ABN AMRO Bank N.V.

IFN Group has, next to IFN, six other subsidiaries:

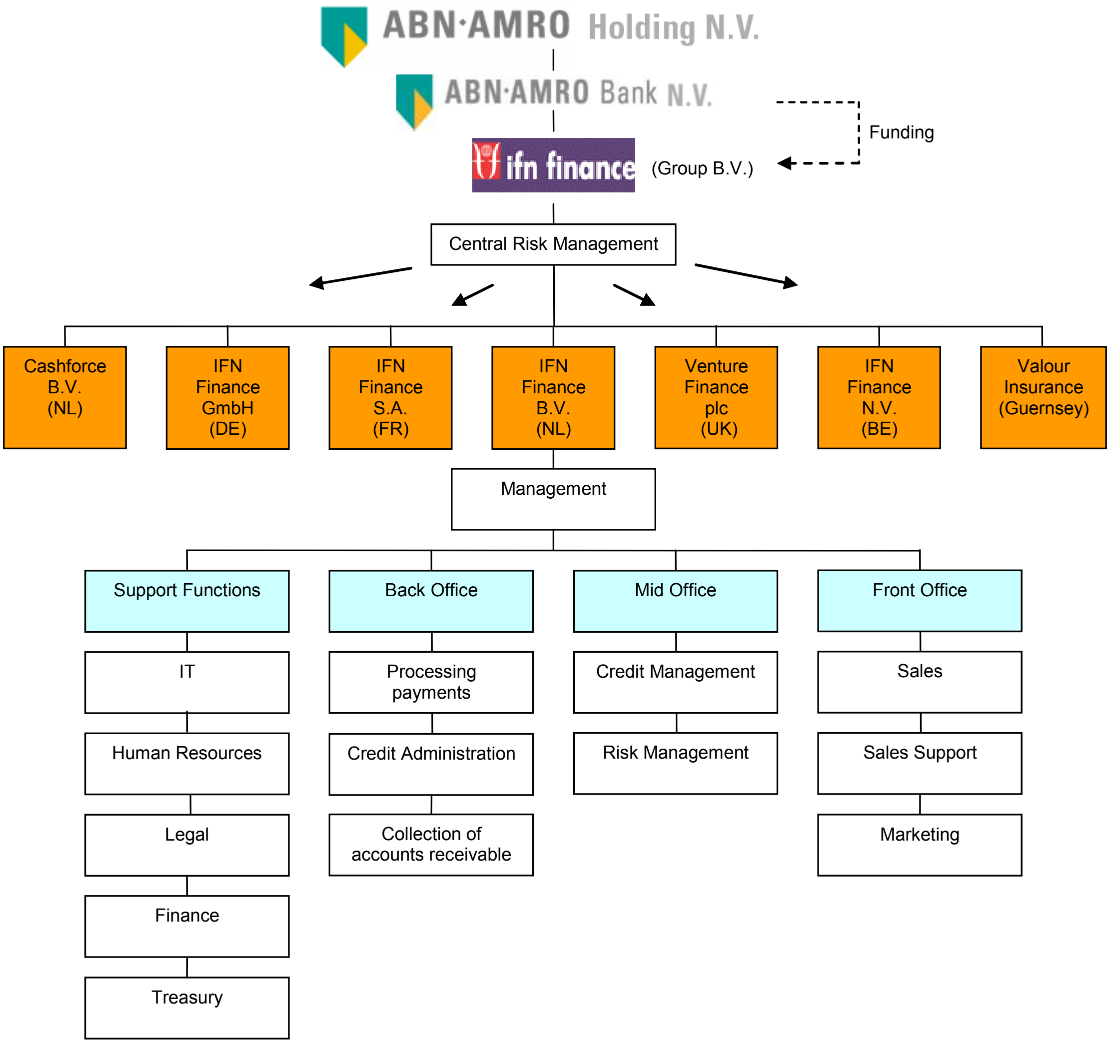
- IFN Finance GmbH is a German subsidiary ("IFN Germany") active in factoring;
- IFN Finance S.A. is a French subsidiary ("IFN France") active in factoring;
- Venture Finance plc. is a UK subsidiary ("IFN UK") active in factoring (which has 5 subsidiaries of its own);
- Valour Insurance Company Limited is a subsidiary in Guernsey, active in insurance brokerage;
- IFN Finance N.V. is a Belgian subsidiary, which currently does not conduct any business;
- Cashforce B.V. is a Dutch subsidiary active in collection of accounts receivable.

IFN Group is a pure holding company. There are only [...] employees on the payroll, a Managing Director, Vice-Chairman and a Risk Management Director - together forming the Management Team - and [...] non-directors. Both the Managing Director and the Risk Management Director are also part of the Management Team of IFN. The Vice-Chairman is also the Chairman of the Management Team of IFN UK. IFN Group relies on funding from ABN AMRO. Apart from its holding function, it only performs a group risk management function.

Apart from the link via IFN Group and the before mentioned employees, there are no managerial links between the subsidiaries. IFN and the other subsidiaries are managed completely independently from each other.

There are also no operational links between IFN and the other subsidiaries. IFN has its own, fully separate IT systems and platforms, including IT support (personnel). IFN Germany and IFN France use the IT systems and platforms of IFN UK.

Figure 1 – legal and organisational structure of IFN



Organisational structure IFN

As indicated above, apart from the central group risk management function, IFN operates as an independent, stand-alone and fully self-supporting business. Its organisation is assumed to be divided into the following divisions:

Front Office

- The front office comprises all personnel with direct customer contacts. This includes the sales team, which main task is to attract customers and sell factoring services. The sales team is divided in subteams assigned to different geographic areas and is supported by second-line sales support personnel. Finally, the front office consists of the marketing division. This personnel actively promotes IFN and the IFN brand in the market.

Mid Office

- The mid office comprises two policy-functions that support the front office activities. The credit management division is responsible for the credit analysis of customers and for determining the credit policies. The risk management division is responsible for the assessment of all risks connected to the company's activities, for determining the risk policies and for enforcing those policies. It operates independently from the abovementioned risk management division at group level.

Back Office

- The back-office first of all takes care of the administrative side of the 'invoice to cash process'. The back-office personnel processes all payments, writes off debts and handles the credit administration. Furthermore, the back office comprises the in-house accounts collection department.

Support Functions

- IFN has all necessary support functions in-house. It has its own IT department and its own IT development and support personnel on the payroll. Furthermore, IFN has a Human Resources department, a finance department, in-house legal advisors and a treasury.

Main activities

Next to the factoring business – i.e. the purchase of invoices / accounts receivable from corporate customers and the subsequent (extrajudicial) collection thereof – IFN is active in the provision of debt management systems and services and also in pure financing (i.e. provision of credit to corporate customers).

2. *Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:*

(a.) the following main tangible assets:

Offices:

IFN is located at the Lichtenauerlaan 150, 3062 ME in Rotterdam, The Netherlands. It is assumed these offices are leased. At the option of the buyer, the lease will be transferred as part of the Divestment Business.

Hardware/software:

IFN runs its own, in-house developed factoring platform, enhanced with peripheral systems that are assumed to be proprietary. An important part of this platform is the database with customer and credit records, which serves as the basis for the credit and risk assessments. The hardware on which the factoring platform runs, is expected to be owned rather than leased. The Divestment Business includes the complete factoring systems, i.e. both hard- and software (including the abovementioned database).

Because the core of IFN's factoring system is built on widely used Microsoft technology, a potential buyer already having its own platform should be able to integrate both platforms easily.

(b.) the following main intangible assets:

The main intangible assets are the intellectual property rights of (all parts of) the abovementioned factoring systems. The transfer of these rights allows the purchaser to further develop the system and to act on any IP infringement by a third party. Furthermore, the intellectual property rights to be transferred as part of the Divestment Business consist of the IFN trade name(s), trade mark(s) and internet domain name(s). The purchaser can use the IFN brand without limitations, as the other IFN Group companies will be merged to the Fortis Commercial Finance brand.

(c.) the following main licences, permits and authorisations:

Like in most other European countries, there are no specific regulatory licences, consents or approvals required for operating a factoring business in the Netherlands.

(d.) the following main contracts, agreements, leases, commitments and understandings:

Besides the lease agreement with respect to its offices, the main agreements that IFN is assumed to have are the agreements with brokers (which distribute the services provided by IFN) and with credit insurer(s). Pursuant to a credit (re-)insurance policy, a factoring company will be partially compensated for accounts receivables which it could not collect itself.

In addition, IFN is assumed to have a number of non-material agreements for e.g. facility management, office supplies etc. As IFN disposes of its own fully staffed IT department, it does not have material contracts with respect to IT support.

Finally, IFN is member of FCI (Factors Chain International) and IFG (International Factors Group). Both are international networks of factoring companies and are present in approximately 70 countries and representing around 250 companies. These networks facilitate and promote cross-border factoring.

Both the material and the non-material contracts (as well as the membership of FCI and IFG) will, at the option of the buyer, be included in the Divestment Business.

(e.) *the following customer, credit and other records:*

It is estimated that IFN has a total of approximately [...] customers, accounting for a total of approximately EUR [...] in gross income.

As was indicated above already, customer and credit records are key in the factoring business. All records that IFN disposes of are included in the Divestment Business.

IFN has a very limited number of customers that procure factoring services from the other IFN Group companies abroad as well. It should be noted that these customers have separate contracts with and separate contact persons at the other IFN Group companies. Therefore, transferring these customers as part of the Divestment Business will pose no difficulties at all.

(f.) *the following Personnel and (g.) the following Key Personnel:*

It is estimated that IFN employs around [...] FTE in total.
The distribution of the personnel over the various functions is likely to be:

- [...]% Front-Office (Sales, Sales Support, Marketing)
- [...]% Mid-Office (Credit & Risk Management)
- [...]% Back-Office (Operations)
- [...]% Support Functions (General Support & Information Technology)

The management of IFN is considered to be Key Personnel.

(h.) *the arrangements for the supply with the following products or services by Fortis or Affiliated Undertakings for a transitional period.*

As indicated above, IFN is to a very large extent a self-supporting company. The only two functions for which it relies on the ABN AMRO network and on its holding company IFN Group, are (i) funding and (ii) group risk management.

ABN AMRO will continue to provide the necessary funding and group risk management services in order for IFN to operate as a viable, competitive entity until Closing.

ANNEX II TO SCHEDULE 1 TO COMMITMENTS **Case COMP/M.4844 – Fortis/ABN AMRO Assets:**

Advieskantoor	Gross Income	Gross Income				Clients				FTE
		SME-2,5	SME 2,5 - 50	SME 50-250	CORP 250+	SME-2,5	SME 2,5 - 50	SME 50-250	CORP 250+	
	[•]									
HBU + CCDs										
	[•]									
Divestment Business										
	[•]									
Total	[•]									