EN

Case No COMP/M.6812 - SFPI/ DEXIA

Only the English text is available and authentic.

REGULATION (EC) No 139/2004

MERGER PROCEDURE

Article 7(3)

Date: 17/12/2012

EUROPEAN COMMISSION

Brussels, 17/12/2012
C(2012) 9836

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 7(3) derogation decision

To the notifying party:

Dear Madam, Dear Sir,

Subject : **Case No COMP/M.6812- SFPI/ DEXIA**
Commission decision pursuant to Article 7(3) of Council Regulation Nº 139/2004[1] - Request for derogation

1. We refer to your application for a derogation from the suspension obligation provided for in Article 7(1) of Council Regulation (EC) No 139/2004 ("the Merger Regulation") with regard to the proposed acquisition by Société Fédérale de Participations et d'Investissement / Federale Participatie-en Investeringsmaatschappij ("SFPI/FPIM") of sole control over Dexia SA/NV ("Dexia"), submitted pursuant to Article 7(3) of the Merger Regulation on 12 December 2012.

I. THE PARTIES AND THE TRANSACTION

2. SFPI/FPIM is an investment company fully owned by the Belgian State. The investment portfolio of SFPI/FPIM consists of stakes in public and private enterprises of strategic interest to the Belgian State. SFPI/FPIM has three core activities: participation in public and private enterprises, investment in enterprises with an important social value in one of the priority sectors selected by SFPI/FPIM, and contribution to policies of the Belgian federal government and implementation of projects on its behalf.

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1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

3. Dexia is a financial institution with its registered seat in Belgium, which offers financial services in several countries, mainly in France through Dexia Credit Local ("DCL"), and in Europe, through a number of subsidiaries. Dexia focuses its activities in public finance, including project finance. It has no significant presence in retail banking and its activities in Belgium are minimal, since almost all of the Belgian activities previously exercised under the Dexia brand have already been divested to the SPFI, which has rebranded these assets under the commercial name Belfius Banque et Assurances ("Belfius"). Dexia is a limited liability company under Belgian law with its shares listed on Euronext Brussels and Paris as well as on the Luxembourg Stock Exchange.

Background

4. The Dexia group[2] has faced severe financial challenges since the financial crisis that started around 2008. The financial crisis (and consequently, the effects on Dexia) deepened in 2011 following the worsening of the sovereign debt crisis and, more generally, the decline of the macroeconomic environment. In that context, and in order to avoid a rapid deterioration of Dexia's liquidity situation and the snowball effect of a systemic risk, the Belgian, French and Luxembourg States supported the Dexia group and its restructuring plan by granting a guarantee on certain funding raised by Dexia and DCL.

5. On October 2011, the Dexia group began to set in motion profound changes to its structure. This involves, in particular, the sale of all its strategic operational entities, including Dexia Banque Belgique ("DBB", now Belfius), which was sold to the SFPI/FPIM, Dexia Banque Internationale à Luxembourg (now Banque Internationale à Luxembourg, "BIL") and Deniz Bank (its Turkish subsidiary). The sale of Belfius to the Belgian State was cleared from a merger control perspective by decision of the Belgian competition authority on 2 December 2011.

6. As a consequence, in accordance with undertakings given in the context of the approval of the temporary guarantee by the Commission and in order to obtain a definitive approval of the guarantee, on 21 and 22 March 2012 the Belgian, French and Luxembourg States filed an orderly resolution plan for the Dexia group with the Commission (the "Orderly Resolution Plan"). This plan included the Dexia group's strategy, a business plan and a presentation of the future outlook of the group, taking into account in particular the sale of the operational entities.

7. During the third quarter of 2012, the Belgian, French and Luxembourg States and the Commission actively continued discussions with a view to submitting a Revised Orderly Resolution Plan for Dexia in keeping with State Aid rules. These discussions, combined with the evolution of the market conditions, led to amendments to a number of the principles and assumptions underlying the business plan upon which the Orderly Resolution Plan had been based.

8. On 7 November 2012, Dexia's board of directors (the "Board") acknowledged that, following the losses incurred predominantly as a result of the impairment on Dexia's

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[2] Dexia SA/NV is the parent company of Dexia group which is an European banking group which in 2011, carried out its activities principally in Belgium, Luxembourg, France and Turkey in the fields of retail and commercial banking, public and wholesale banking, asset management and investor services.

stake in DCL, Dexia's net assets had been reduced to EUR -2.685 billion. Given that this amount was lower than one of the thresholds set out in Article 633 of the Belgian Company Code ("BCC"), the Board was obliged to convene an extraordinary general meeting of the shareholders in order for them to vote on the continuation of Dexia's activities or, alternatively, its dissolution. This general meeting of the shareholders is scheduled to take place on 21 December 2012.

9. The Board has proposed to the shareholders to continue Dexia's activities and has proposed a recapitalisation of Dexia through a capital increase reserved to the Belgian and French States – in compliance with the minimum price rule set forth in Article 598 of the BCC – to restore Dexia's net assets.

Current operation

10. According to SFPI/FPIM, this capital increase will amount to a total of EUR 5.5 billion[3] in order to (i) restore Dexia's net assets to a level above half the share capital, (ii) satisfy all its contractual obligations vis-à-vis DCL and its subsidiaries and (iii) enable it to proceed with a capital increase in DCL for an amount of EUR 2 billion. The latter two transactions are considered by SFPI/FPIM as imperative in order to allow DCL to continue to comply with its net stand-alone asset ratios.

11. The capital increase is intended also to allow Dexia to continue the implementation of the orderly resolution of Dexia, in accordance with the terms of the Revised Orderly Resolution Plan submitted to the Commission on 10 December 2012, as well as to allow for the run off of assets until their maturity.

12. The Belgian and French States expect that the share capital increase will take place on 31 December 2012 at the latest. This operation is conditional upon obtaining (i) all legislative authorisations required for the subscription of the shares by both the Belgian State (acting through SFPI/FPIM) and the French State, and (ii) the authorisation by the European Commission pursuant to EU State aid rules.

13. As a result of the capital increase, Belgium's stake in Dexia will increase to 50.02% and France's stake will increase to 44.40%[4].

14. According to SFPI/FPIM, the 50.02% share in Dexia acquired by the Belgian State via SPFI/FPIM will give the Belgian State sole control over Dexia. As the preference shares to be subscribed to by the Belgian and French States will entitle them to the same voting rights as the existing shares, five out of nine members of the Board will be appointed by the Belgian State. As Dexia's decisions (including strategic decisions) will be taken by a simple majority, the Parties argue that post recapitalisation Dexia will be solely controlled by SFPI/FPIMin the sense of the Merger Regulation.

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[3] The Belgian State (acting directly through SFPI/FPIM, pursuant to a delegated mission) will subscribe to the capital increase for an amount of EUR 2.915 billion. The French State will subscribe to the capital increase for an amount of EUR 2.585 billion.

[4] Currently, the stakes of Belgian and French States are both of 5.73% of the Dexia's capital. No existing shareholders have a controlling stake. The proposed share capital increase would reduce the stake of existing shareholders (excluding the Belgian and French States) from 100% to 5.58%,

II. EU DIMENSION

15. According to the information furnished by SFPI, the undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million. Each of them has an EU-wide turnover in excess of EUR 250 million, and they do not both achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State, since Dexia achieves well in excess of two-thirds of its turnover in France. The proposed Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

16. For the avoidance of doubt, it should be specified that the relevant turnover thresholds are considered to be met based exclusively on the turnover of Dexia and Belfius as reported by SFPI/FPIM. This decision is therefore without prejudice to the question of whether or not the SFPI enjoys an independent power of decision relative to the Belgian State in the sense of recital 22 of the EUMR, as well as of the question as to whether or not all of the undertakings in which the SFPI holds a controlling stake are part of a single economic unit in the sense of that recital[5].

III. THE APPLICATION FOR DEROGATION

17. SFPI/FPIM submits that it is essential that the recapitalisation of Dexia occurs by 31 December 2012. The reason for this urgency is that Dexia will need the funds to recapitalise DCL, whose net assets will otherwise be insufficient at the end of the financial year ending 31 December 2012. Such insufficiency could lead to the downgrading of DCL's rating and trigger certain (cross-) default provisions in its finance documentation, which would in turn lead to DCL's bankruptcy. DCL's bankruptcy would in turn trigger calls under the States' guarantees and result in major shocks for the European financial system and the States.

18. According to SFPI/FPIM, its request is justified, among other reasons, in view of the following considerations:

    (i) <u>The destruction of the value of remaining assets</u>. The liquidation of Dexia would be value destructive. A liquidator appointed at the general meeting and confirmed by the commercial court of Brussels, would pay off Dexia's debts and sell all remaining assets. Given the nature and illiquidity of such assets (primarily, but not exclusively, Dexia's stake in DCL), such sales would only be possible with substantial price reductions under the current market conditions. Furthermore, the liquidation would lead to a negative result meaning that no distributions could be made to the shareholders.

    (ii) <u>Losses for creditors and serious systemic consequences.</u> The liquidation of Dexia would have serious systemic consequences. Such a liquidation would jeopardise the entire Dexia group, in particular DCL. Given that DCL has a receivable of EUR 1.6 billion vis-à-vis Dexia and is the beneficiary of guarantees from Dexia of EUR 1,942 million worth of Greek securities (as of 30 September 2012), the liquidation of Dexia would mean that DCL would need to book an

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[5] This approach is similar to the one taken at recital 25 of the Commission's Decision in Case No COMP/M.5508 - *SOFFIN/ HYPO REAL ESTATE*

impairment on the entire value of its receivable. DCL would then have insufficient net assets. Moreover, a default by the Dexia group would lead, via the cross default and acceleration provisions in the loans of certain entities of the group (mainly DCL), to its entire debt becoming due. Such a default would jeopardise the stability of the whole European financial system. A default by the Dexia group would also severely destabilise the sovereign debt markets, in particular those of the Euro zone.

(iii) The employment consequences. Finally the liquidation of the Dexia group – and the resulting bankruptcy of DCL – would have a severe negative impact in terms of employment. The Dexia group employed approximately 3,600 people in Belgium and France on 30 June 2012.

IV. THE CONDITIONS FOR DEROGATION PURSUANT TO ARTICLE 7(3) OF THE MERGER REGULATION

19. Pursuant to Article 7(1) of the Merger Regulation, a concentration falling under that Regulation shall not be implemented either before its notification or until it has been declared compatible with the common market. Pursuant to Article 7(3) of the Merger Regulation, the Commission may, on the basis of a reasoned request, grant derogation from the obligation imposed by Article 7(1).

20. Derogation from the obligation to suspend concentrations is granted only exceptionally, normally in circumstances where the suspension obligation required under the Merger Regulation would cause serious damage to the undertakings concerned by a concentration, or to a third party.

21. In deciding upon the request, the Commission must take into account, *inter alia*, the effects of the suspension on one or more undertakings concerned by the concentration or on a third party and the threat to competition posed by the concentration.

A. THE TRANSACTION FALLS UNDER THE SUSPENSION OBLIGATION PURSUANT TO ARTICLE 7 (1) OF THE MERGER REGULATION

22. Given that the proposed transaction appears, on the basis of the information provided by the Notifying Party, to constitute a concentration with EU dimension within the meaning of the Merger Regulation, it falls under the suspension obligation laid down in Article 7(1) of the Merger Regulation.

B. THE EFFECTS OF THE SUSPENSION ON THE UNDERTAKINGS CONCERNED AND THIRD PARTIES

23. According to the information provided by SFPI/FPIM, the application of the suspension obligation in accordance with Article 7(1) of the Merger Regulation would mean that Dexia could not be recapitalised in a rapid and adequate manner, which would run counter to the commitments required by the Commission pursuant to the State aid proceedings. If derogation is not granted, the voting rights attached to the preference shares for the Belgian and French States could not be exercised for a period of at least 25 working days and the accompanying operational risks would be very likely to severely damage Dexia, the Dexia group and the wider financial community.

24. The Commission considers that the derogation appears appropriate as otherwise there may be a considerable effect on Dexia, on its creditors and its employees, as well as on the stability of the whole European financial system. A default by the Dexia group would lead, via the cross default and acceleration provisions in the loans of certain entities of the group (mainly DCL), to its entire debt becoming due. On 30 September 2012, this amounted to approximately EUR 386.5 billion and, furthermore, a notional amount of approximately EUR 605 billion in connection with derivatives. Consequently, the Dexia group's unsecured creditors, and primarily those of DCL, would suffer significant losses in respect of the receivables against the group. Indeed, a default by the Dexia group would lead to assets being frozen in the short term and would affect the liquidity of the markets, with possibly a significant risk of spill over to the rest of the Euro zone. This is due to the size of the group's balance sheet, the significance of unsecured amounts outstanding, the volume of derivative agreements entered into by entities of the Dexia group and banking counterparties and the major impact of the sale by the entities of the Dexia group of their bond portfolios on the financial markets following the depreciation of the value of the bonds portfolio on a mark to market basis.

25. A default by the Dexia group would also risk severely destabilising the sovereign debt markets, in particular those of the Euro zone. The Dexia group entities held a sovereign bond portfolio of EUR 20.049 billion as of 30 September 2012. The liquidation of this portfolio would risk destabilising secondary markets, including those of several Euro zone countries (more than 70% of this sovereign bond portfolio is linked to States in the Euro zone). This could have a significant snowball effect on financial markets.

26. Moreover, a default by the Dexia group would lead to a call on the guarantees granted by the Belgian, French and Luxembourg States on 9 October 2008 for funding raised by DCL, DBB and BIL, and on 16 December 2011 for funding issued by Dexia and DCL. The total outstanding amounts guaranteed under the guarantee arrangements of 2008 and 2011 amounted to EUR 73.4 billion on 30 November 2012.

27. In addition, in the current circumstances and according to the information submitted by SFPI/FPIM, there is a risk that the shareholders present at the meeting on 21 December 2012 will accept the capital increase while refusing the amendments to the governance structure. On the basis of the information submitted by SFPI/FPIM, the current shareholders will, in this meeting, vote on both the capital increase and the accompanying necessary amendments to the governance structure. Should the shareholders present at the meeting on 21 December refuse the amendments to the governance structure, a general meeting of shareholders will need to be convened immediately after the capital increase. At this meeting, the Belgian and French States – by then holding together 94% of the shares – will approve the new governance structure. In these circumstances, the Parties have indicated that the Belgian state would be unwilling to commit to the recapitalization unless it were guaranteed also the ability to adopt the new governance structure (and accordingly appoint Dexia's

board members). In the absence of this ability, the French State, notwithstanding being the smaller shareholder, would be able to exercise its own voting rights, which albeit on a temporary basis, would confer sole control of Dexia.. As such, a derogation from the standstill obligation is an essential precondition for the required recapitalisation.

28. Furthermore, on the basis of the information submitted by SFPI/FPIM, derogation from the stand-still obligation would not have adverse effects on any third party, such as consumers, clients of the Dexia group, other financial institutions (and their clients), creditors and various Member States. Indeed, according to SFPI/FPIM the Transaction would in fact have positive effects for these third parties insofar as the potential negative effects of not granting the derogation (i.e. the destruction of value of remaining assets, losses for creditors with severe negative consequences for the wider financial system and negative consequences for employees within the Dexia group) would be avoided. Therefore, the benefits flowing from the derogation considerably outweigh any potential adverse effects that it may have on any of the Parties or third parties.

29. Against this background, it is possible to conclude that the suspension obligation imposed by Article 7(1) could lead to serious harm to Dexia while no negative effects are likely to arise in relation to third parties from providing a derogation from this obligation.

C. THE THREAT TO COMPETITION POSED BY THE CONCENTRATION

30. On the basis of the information submitted by SFPI/FPIM, it can be concluded that the horizontal overlaps are very limited and that the vertical relationships do not raise, *prima facie*, any issue of foreclosure.

31. The parties’ activities in the banking sector are largely complementary. SFPI/FPIM is active in retail banking in Belgium through its 100% controlling stake in Belfius, whereas the Dexia group no longer has any significant presence in retail or corporate banking in Belgium. Its main activities relate to financial services to the public sector outside of Belgium, e.g. public bonds and project finance, principally in France.

32. The investment portfolio of SFPI/FPIM consists of various stakes in several undertakings deemed of strategic interest to the Belgian State, including in the banking sector in the wake of the financial crisis (controlling stake in Belfius and minority 10% stake in BNP Paribas).

33. In addition, Dexia is a financial institution which will be in run off in accordance with the Revised Orderly Resolution Plan as approved by the Commission. As such, it will have no long-term and viable competitive presence in any of the markets it operates on.

34. The parties' activities only overlap in a very limited way in the market for financial services to the public sector, in both Belgium and France. However, both in Belgium and France, the transaction would only lead to a very minor increment in this segment.

35. As regards potential vertical effects, the transaction is not expected to lead to any substantive issues. Dexia is active in asset management through its subsidiary Dexia

Asset Management ("DAM"), which will be divested before 31 December 2013 in line with the Revised Orderly Resolution Plan. Although Belfius distributes some investment products (e.g. mutual funds and pension funds) that are managed by DAM, Belfius is not itself active in asset management. These activities are so limited, however, that this vertical relationship is not expected to lead to any foreclosure issues.

36. Therefore, on the basis of the information provided by SFPI/FPIM it appears *prima facie* that the transaction is not likely to pose a threat to competition within the EEA.

D. BALANCE OF INTERESTS

37. Based on the above, it appears that whilst the suspension obligation could seriously affect the financial situation of Dexia and the Dexia group along with the wider financial community, no threat to competition caused by the operation can currently be identified, and a derogation from the standstill obligation does not appear to have adverse effects on one or more of the parties or on any third party.

38. Therefore the Commission finds that a derogation from the suspension obligation can be granted in accordance with the application.

39. The present derogation is granted on the basis and explicit understanding that the concentration will be notified to the Commission pursuant to article 4 of the Merger Regulation without delay.

V. CONCLUSION

40. The Commission considers that the reasons given for derogation from the suspension obligations meet the requirements set out in Article 7(3) of the Merger Regulation.

41. On the basis of the above considerations, and in accordance with Article 7(3) of the Merger Regulation, SFPI/FPIM is granted a derogation from the obligations imposed by Article 7 (1) of the Merger Regulation in accordance with its application and until the Commission takes a final decision under the relevant provisions of the Merger Regulation.

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President