

Case No COMP/M.6812 - SFPI/ DEXIA

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**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION

Date: 21/02/2013

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Brussels, 21.02.2013
C(2013) 1107

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.6812 - SFPI/ DEXIA
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 18 January 2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² by which the Société Fédérale de Participations et d'Investissement / Federale Participatie- en Investeringsmaatschappij ("SFPI/FPIM") acquires sole control over Dexia SA/NV ("Dexia").³ SFPI/FPIM and Dexia are designated hereinafter as the "Parties" and SFPI/FPIM as the "Notifying Party".

(1) THE PARTIES

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

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

² OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

³ Publication in the Official Journal of the European Union No C 28, 30/01/2013, p. 13.

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.

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"), as well as elsewhere in Europe through a number of subsidiaries. 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. Dexia focuses its activities on public finance, including project finance. As a result of the financial crisis, and its ensuing financial difficulties which resulted in the need for significant State support, Dexia has been selling off all of its strategic operational entities since October 2011. This included a sale of its subsidiary Dexia Banque Belgique (DBB) which has been divested to the SFPI/FPIM who subsequently rebranded these assets under the commercial name Belfius Banque et Assurances ("Belfius"). As a result, Dexia has no longer significant presence in retail banking and more generally, its activities in Belgium are minimal.

(2) THE OPERATION AND THE PROCEDURE

4. The Dexia group has faced severe financial challenges since the financial crisis that started around 2008. After failed restructuring attempts and due to a deteriorating financial situation of Dexia early 2012 the Belgian, French and Luxembourg States decided to prepare an orderly resolution plan for the Dexia group (the "Orderly Resolution Plan"). On 7 November 2012, Dexia's board of directors (the "Board") acknowledged that, following the losses incurred predominantly as a result of the impairment of Dexia's 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, 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. At this extraordinary general meeting held on 21 December 2012, the shareholders approved the Board's proposal for a continuation of Dexia's activities along with the recapitalization of Dexia through a capital increase reserved to the Belgian and French States.
5. On 12 December 2012, pursuant to Article 7(3) of the Merger Regulation the Notifying Party applied for a derogation from the suspension obligation provided for in Article 7(1) of the Merger Regulation with regard to the proposed acquisition by "SFPI/FPIM" of sole control over Dexia. By decision of 17 December 2012⁴ the Commission concluded that whilst the suspension obligation could seriously affect the financial situation of the Dexia group along with the wider financial community, no threat to competition caused by the operation could be identified. The Commission, thus, considered that a derogation from the standstill obligation did not appear to have adverse effects on one or more of the parties or on any third party and granted the derogation from the suspension obligation.
6. As a result, on 31 December 2012, following the Extraordinary General Meeting of 21 December 2012 and the Commission's Article 7(3) Decision of 17 December 2012, a capital increase of Dexia took place for a total amount of EUR 5.5 billion. The Belgian

4 See Commission Decision C(2012) 9836.

State, acting through SFPI/FPIM, subscribed to the capital increase for an amount of EUR 2.915 billion while the French State subscribed to the capital increase for an amount of EUR 2.585 billion. This capital increase was intended to allow Dexia to continue the implementation of its orderly resolution, in accordance with the terms of the Revised Orderly Resolution Plan approved by the Commission on 28 December 2012 in the context of the State aid proceedings⁵, as well as to allow for the run off of assets until their maturity.

7. Prior to the capital increase, Dexia's capital was divided between various shareholders ("the existing shareholders") with no single shareholder having control over Dexia within the meaning of the Merger Regulation⁶. The recapitalization has resulted in the dilution of the shares of other shareholders and in the Belgian State, through SFPI/FPIM, holding a 50.02% share in Dexia and France holding a 44.4% share, with the remainder (5.58%) being held by the previous shareholders (excluding the Belgian and French States).
8. In accordance with the Orderly Resolution Plan⁷ and the agreement between the two States, the French State, participating in the recapitalization with an amount of EUR 2.585 billion and acquiring a stake of 44.40% does not control, directly or indirectly, Dexia. Indeed, the shareholding of the Belgian State entitles SFPI/FPIM to appoint five out of nine members of the Board. All decisions, including strategic decisions such as the internal re-organization of the bank, are taken by a simple majority. As a result, all strategic decisions may be adopted by SFPI/FPIM alone and the French State has no veto rights over these decisions. The French State possesses normal minority shareholding protection rights, but it has no veto rights over important strategic business decisions.
9. It follows that the recapitalization of Dexia results in the Belgian State, through SFPI/FPIM, acquiring sole control over Dexia.

(3) THE CONCENTRATION

10. Similarly to cases where control is acquired by private undertakings, in situations where private companies are recapitalized by the State it has to be first established, on a case-by-case basis, whether a transaction gives rise to the acquisition of control and therefore constitutes a concentration within the meaning of Article 3 of the Merger Regulation, and if so, whether such concentration meets the turnover thresholds set out in Article 5 of the Merger Regulation.
11. The Commission has previously assessed under the Merger Regulation a number of recapitalizations of banks by States resulting in acquisition by the State concerned of control over the bank in question, notably in the case of the recapitalization of the German

5 See Commission Decision C (2012) 9962 final of 28 December 2012, not yet published.

6 Before the capital increase, the shares of Dexia were held as follow: Caisse des Dépôts et Consignations (17.61%); Holding Communal (14.26%); Arco Group (10.19%); Belgian State via SFPI/FPIM (5.73%); French State (5.73%); Ethias Group (5.04%); CNP Assurances (2.96%); Flemish Region via the Vlaams Toekomstfonds (2.87%); Walloon Region (2.01%); Brussels Region (0.86%); Employees (0.57%); Other institutional and individual shareholders – free float (32.17%).

7 Annex 1 to the Principes Essentiels d'Accord en vue du Plan de Résolution Définitif de Dexia, dated 8 November 2012.

bank Hypo Real Estate (HRE) by the German Federal State via the Financial Market Stabilisation Fund SoFFin⁸, as well as in the case of the recapitalization by Austria of the bank Hypo Group Alpe Adria⁹.

12. In order to establish the Commission's jurisdiction in cases when private undertakings are recapitalized by the State, a two-step approach is followed. In a first step, it is analysed whether there is acquisition of control over the target conferring to the acquiring party the possibility of exercising decisive influence over it. If it is concluded that the transaction would give rise to the acquisition of control and the loss of independent power of decision, then, in a second step, in order to establish the undertakings to be taken into account for the purpose of the calculation of the turnover, it is analysed at which level of the state entity the independent power of decision would lie.
13. Consequently, in order to establish whether or not the acquisition of by the Belgian State via SFPI/FPIM constitutes a concentration notifiable under the Merger Regulation the Commission first needs to establish whether SFPI/FPIM (or an entity above it) will have the possibility to exercise decisive influence over Dexia or whether Dexia will, post-transaction, constitute an economic unit that retains an independent power of decision. If the latter is not clearly the case, it will be considered that the transaction gives rise to an acquisition of control over Dexia and therefore, as a second step, it needs to be established which is the ultimate acquiring entity (SFPI/FPIM or an entity ultimately controlling SFPI/FPIM if the latter cannot be considered having an independent power of decision) in order to determine which undertakings need to be considered for the purpose of calculating relevant turnover.

Assessment of independent power of decision of Dexia post-transaction

14. SFPI/FPIM has acquired a controlling stake in Dexia and there is no holding arrangement, special provisions or other safeguards in place that would ensure that Dexia retains an independent power of decision post-transaction. Indeed, there are no provisions that would indicate that post-transaction the strategy, business plan and budget of Dexia would be decided autonomously, neither are there any provisions that would result in future separate management of SFPI/FPIM. Consequently, it cannot be excluded that, post-transaction, Dexia will be subject to coordination of its commercial conduct with other entities controlled by the Belgian State or by SFPI/FPIM such as in particular Belfius.
15. As a result, in the case at hand, it cannot be considered that Dexia, post-transaction would remain an economic unit with an independent power of decision. It is therefore concluded for the purpose of the present decision that SFPI/FPIM acquired control over Dexia in the sense of Article 3 of the Merger Regulation.

Assessment of undertakings to be taken into account for the purpose of calculation of turnover

16. To establish which undertakings, amongst all those controlled by the State, should be considered for the establishment of jurisdiction under the EC Merger Regulation, recital

8 See Case No COMP/M.5508 – SOFFIN/ Hypo Real Estate, OJ C 147 of 27.06.2009, p. 8.

9 See Case No COMP/M.5861 - REPUBLIC OF AUSTRIA/ HYPO GROUP ALPE ADRIA

22 sets out that "*[I]n the public sector, calculation of the turnover of an undertaking concerned in a concentration needs, therefore, to take account of undertakings making up an economic unit with independent power of decision, irrespective of the way in which their capital is held or of the rules of administrative supervision applicable to them*".

17. Therefore, the Commission needs to identify the ultimate acquiring entity and analyse whether there are other undertakings controlled (directly or indirectly, solely or jointly) by this entity which should be taken into account for the purpose of the calculation of turnover in the sense of article 5 of the Merger Regulation. This is because other undertakings controlled by the same ultimate acquiring entity within the meaning of the Merger Regulation may be subject to coordination with Dexia in the sense that they jointly constitute one centre of decision-making and will therefore need to be considered for the purpose of calculating relevant turnover.
18. In the public sector, as regards the allocation of turnover for State-owned undertakings, separate entities may be identified as autonomous entities having independent decision-making powers, not subject to coordination of their commercial behaviour or strategies with other State-owned holdings¹⁰. Such separate entities should be treated as independent and their turnover is not added together for the purposes of the application of Article 5 of the EC Merger Regulation¹¹.
19. Thus, in the case of the acquisition of an undertaking by a State, or by a State-owned undertaking, in order to calculate the turnover for the purposes of Article 1 of the Merger Regulation with regard to the buyer, account must be taken only of the turnover of those State-owned undertakings which are under the same independent power of commercial decision-making¹².
20. In the case at hand, since SFPI/FPIM already controls at least one undertaking, namely Belfius, regarding which there are no special holding arrangements in place that would ensure independent power of decision, SFPI/FPIM will be considered as the economic unit which is the starting point for the assessment. The Commission needs to assess whether SFPI/FPIM constitutes an economic unit with independent power of decision or whether decisions are made at a higher level than SFPI/FPIM, namely by the Belgian State itself in which case the turnover of other undertakings than those controlled by SFPI/FPIM would need to be added for the purpose of calculating the turnover to be taken into account to establish jurisdiction in this case.
21. However, given that, for the purpose of establishing the EU dimension of this transaction it is sufficient to include the turnover of SFPI/FPIM (which includes Belfius), the question of who is the ultimate controlling entity above SFPI/FPIM can be left open for the purpose of the present case.

10 Recitals 192 and 193 of the Jurisdictional Notice, OJ C 95 of 16.04.2008, p.1.

11 Jurisdictional Notice, recital 194, OJ C 95 of 16.04.2008, p.1.

12 Jurisdictional Notice, recital 194, OJ C 95 of 16.04.2008, p.1.

(4) EU DIMENSION

22. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million¹³ (SFPI/FPIM: EUR [...]; Dexia: EUR [...]). Each of them has a EU-wide turnover in excess of EUR 250 million (SFPI/FPIM: EUR [...]; Dexia : [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
23. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

(5) COMPETITIVE ASSESSMENT

A. Relevant product and geographic markets

24. SFPI/FPIM, through its controlling stake in Belfius, is mainly active in Belgium, primarily in retail and corporate banking, and to a more limited extent, in public finance and insurance. As submitted by the Notifying Party, neither SFPI/FPIM nor the Belgian state holds any controlling interests in any other financial institution or in any vertically related businesses.
25. Dexia's main activities relate to financial services for the public sector (e.g. the offering of credit to local activities and project finance) and asset management. Therefore, the proposed transaction gives rise to a very limited horizontal overlap in the area of public finance in Belgium and to a vertical overlap between the distribution and the management of investment products in the asset management market in Belgium.

Public finance

26. In the past, the Commission considered that financial services to public authorities are a separate product market given that both the customers and the market conditions differ from those existing for corporate banking¹⁴. In previous decisions, the Commission has considered that a distinction should be made between the different products (e.g. project finance) as well as the different types of public authorities (local, regional, national, federal etc.)¹⁵. In particular, credit to local authorities has been considered a product in its own right, given that customers and conditions of loans differ from normal bank loans¹⁶.
27. While the bulk of Dexia's remaining activity is indeed in this product market, it is envisaged that the majority of its subsidiaries will be wound down or divested in the very near future. In fact, in line with its orderly resolution plan, Dexia has a cap on the total new

13 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p.1).

14 See Cases No COMP/M.873 - Bank Austria / Creditanstalt (OJ C 160, 27.05.1997, p.4) and No COMP/M.5861 – Republik Österreich/Hypo Group Alpe Adria (OJ C 236, 1.09.2010, p.1).

15 See Case No COMP/M.2400 - Dexia / Artesia, recital 20 (OJ C325, 21.11.2001, p.11).

16 Case No COMP/M.2400 - Dexia / Artesia, recital 8 (OJ C325, 21.11.2001, p.11).

production of EUR 600 million for the years 2013 and 2014, and is not allowed any new production afterwards. So as of 2015 it will have no market presence in France and Belgium in terms of flows (new production) and will be scaling down market presence in terms of stock¹⁷.

28. As regards the geographic scope of the market, the Commission has previously found that the market for credit to local authorities is national¹⁸. The Notifying Party agrees with this definition.
29. For the purpose of the current case, it is, however, not necessary to define the exact scope of the product and geographic market as the transaction does not raise serious doubts as to its compatibility with the internal market in the public finance sector, irrespective of the precise market definition.

Asset management

30. Asset management concerns the provision of investment advice and often also the implementation of this advice. Asset management may also include creation and managing of mutual funds which are then marketed on an "off-the-shelf" basis, including to retail customers, and the provision of portfolio management services for institutional investors (pension funds, institutions, international organisations). In the latter case, the definition of the investment strategy will, as a rule, be based on the individual requirements of the customer. In most Member States, mutual funds are constituted under either the law of contract or under trust law and, thus, do not have legal personality. Asset management may also include the provision of custody services related to asset management¹⁹.
31. In previous cases, the Commission considered that one may distinguish a relevant product market for asset management, including the creation and managing of mutual funds for retail clients and the tailor-made funds for corporate and institutional customers, as well as portfolio management for private investors, pension funds and institutions²⁰. The Commission has, however left open the question whether these individual products constitute separate relevant product markets, with the exception of asset management services for private individuals which has been considered to constitute a separate market²¹.
32. As regards the geographic scope of the market, the Notifying Party submits that the relevant market should be regarded as national, as asset management is, in its view, a segment of the retail banking sector. In previous decisions, the Commission has also found that the relevant geographic market for the production of asset management products may

17 In line with its resolution plan, Dexia in principle cannot have any new production. In addition to the exceptionally allowed above mentioned cap of EUR 600 million related to existing clients, there is a limited possibility of new production in Dexia Crediop, an Italian subsidiary of Dexia (EUR 200 million in 2013) and no cap for Dexia Israel.

18 See Case No COMP/M.2400 - Dexia/Artesia, OJ C325, 21.11.2001, p.11, recital 12.

19 See Case No COMP/M.3894 – Unicredito/ HVB, recital 35 (OJ C278, 11.11.2005, p.17).

20 See Case No COMP/M.3894 – Unicredito/ HVB, recital 35 (OJ C278, 11.11.2005, p.17).

21 See Cases No COMP M.4844 ABN AMRO/Fortis, recitals 36 and 39 (OJ C 265, 7.11.2007, p.2) and No COMP/M.3894 – Unicredito/ HVB (OJ C278, 11.11.2005, p.17), recitals 35-36.

be national and is at most EEA wide in scope depending on the specificities of the case at hand. Owing to the importance of national distribution channels, distribution of asset management products to private individuals was considered to inherit the geographic scope of the retail banking market and therefore to be national in scope²².

33. For the purpose of the current case, it is, however, not necessary to define the exact scope of the product and geographic market as the transaction does not raise serious doubts as to its compatibility with the internal market in the asset management sector, irrespective of the precise market definition.

B. Assessment

34. 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 Dexia no longer has any presence in retail or corporate banking in Belgium. The main activities of Dexia relate to financial services to the public sector outside of Belgium, e.g. public bonds and project finance, principally in France, and asset management. Neither SFPI/FPIM nor Dexia has a substantial presence outside Belgium and France. SFPI/FPIM generates [0-5%] of its turnover outside Belgium (in Luxembourg and the Netherlands) and Dexia generates nearly [50-60%] of its turnover in France, with the remainder divided between Austria, Germany, Italy, Spain, Portugal and the UK. There is only one vertical relationship between the Parties in Belgium as regards the asset management activity (between production and distribution).

35. In addition, it is noted that, as a bank in run-off, Dexia is either divesting or winding down its subsidiaries and reducing its activities to management of existing portfolios. Indeed, Dexia's asset management subsidiary (DAM) is in the process of being divested. On 12 December 2012, Dexia signed an SPA with GCS Capital for the sale of DAM, which is expected to close in the first months of 2013. Once this sale is complete, Dexia will exit the asset management market completely. Similarly, as concerns Dexia's public finance arm, following the sale of Dexia's French public finance subsidiary (DMA) to the French State, completed on 31 January 2013, Dexia will no longer active in the public finance sector, at the very least in Belgium.

Public finance

36. SFPI/FPIM, through Belfius, is active in the public finance sector only in Belgium with market shares estimated between [50-60%]²³.
37. Dexia is active mainly in France (where it achieved approximately [50-60%] of its total turnover in 2011) with an estimated market share of [10-20%] in terms of new loans at the end of 2011 and [0-5%] as of June 2012. Dexia is also active in Germany, Italy, Portugal, Spain and UK, with market shares below [5-10%] in each of those countries. However,

22 See Case No COMP/M.3894 – Unicredito/ HVB (OJ C278, 11.11.2005, p.17) and Case No COMP/M.5728 -CREDIT AGRICOLE/SOCIETE GENERALE ASSET MANAGEMENT, recital 84 (OJ C 107, 27.04.2010, p.1).

23 Belfius used to be directly active in France through several subsidiaries. Belfius has divested or terminated all of these activities, as a result of which its market share in France has diminished to the point of being negligible (less than 1%).

following the sale of Dexia's French public finance subsidiary (DMA) to the French State which took place on 31 January 2013, Dexia is active in the public finance sector in France only to a very limited extent, having to respect the cap on new production of EUR 600 million to be used in strictly defined cases with relation to existing loans.

38. As regards the Belgian market, the Notifying Party submits that it cannot be entirely excluded at this stage that Dexia (through its subsidiary DCL) may be a party to some very limited public finance projects deals in Belgium. However, due to the very small involvement of Dexia in the Belgian market and the exit of DCL from this market following the sale of DMA²⁴ on 31 January 2013, this overlap is *de minimis*.
39. In light of the above, it can be concluded that the transaction does not raise serious doubts as to its compatibility with the internal market in relation to the public finance market, and this irrespective of the precise product and geographic market definition.

Asset management

40. SFPI/FPIM, through Belfius, is active in the asset management sector only in Belgium, with market shares estimated [0-5%] at both the production and distribution level.
41. Dexia, through its subsidiary Dexia Asset Management (DAM), provides asset management services to retail clients through the bank distribution channels of banking entities formerly part of the Dexia group, including Belfius, as well as to institutional clients, with a market share of [5-10%] in Belgium. However, pursuant to the SPA signed between Dexia and GCS Capital on 12 December 2012, the closing of the DAM transaction is due to take place in the first quarter of 2013, following which Dexia will no longer be active on this market.
42. Belfius still continues to distribute some investment products (e.g. mutual funds and pension funds) that are managed by DAM. The products distributed by Belfius represent a substantial part of the products managed by DAM²⁵. However, with a market share of [0-5%] for Belfius and [5-10%] for Dexia, the vertical relationship between Belfius and DAM is unlikely to give rise to any foreclosure effects.
43. In light of the above, it can be concluded that the transaction does not raise serious doubts as to its compatibility with the internal market in relation to the asset management market, and this irrespective of the precise product and geographic market definition.

24 Following the sale of DMA, DCL will in principle no longer engage in new production. The sole exception allows for a limited amount of production (EUR 600 million in total for 2013 and 2014) intended to enable the restructuring of existing public structured loans.

25 [...] of DAM's total assets under management ("AUM") may be attributed to Belgium. This corresponds to DAM holding a [5-10%] market share in Belgium. Of this [...], [...] is distributed by Belfius. This corresponds to Belfius accounting for approximately [...] of DAM's AUM in Belgium. The distribution of the remaining [...] may be attributed as follows: [...] distributed by DAM itself and [...] distributed by a number of other banks.

(6) CONCLUSION

44. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission
(signed)
Joaquín ALMUNIA
Vice-President*