EUROPEAN COMMISSION

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Subject: **State aid SA.30962 (MC 6/2010) - Belgium**

Monitoring of the implementation of the decision of 20 May 2010 on the aid to Ethias – Prolongation of divestment deadline Ethias Banque

Sir,

I Procedure

(1) By decision of 20 May 2010 (hereinafter "the Ethias Decision"), the Commission approved restructuring aid to Ethias in the form of a capital injection of EUR 1.5 billion[1], based on the restructuring plan submitted by Belgian authorities which met the requirements of the Communication from the Commission on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (hereinafter "the Restructuring Communication").[2]

(2) Recital 71 of the Ethias Decision records that Ethias commits to divest or procure the divestment of its subsidiary Ethias Banque SA. Recital 72 of the Ethias Decision sets the deadline for that divestment as follows:

"For the purpose of the above deadline, this commitment will be considered fulfilled if the binding and final agreement (i.e. an agreement that can not be terminated unilaterally by Ethias without payment of a penalty) for the sale of 100% of Ethias' participation in Ethias Banque SA has been concluded by 31 December 2010. In any

1 OJ C 195, 19.08.2009, p. 9.

2 OJ C 252, 18.09.2010, p. 5.

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event the final and irreversible transfer of ownership rights must occur within 6 months from the binding agreement."

(3) According to section 2.5 of Annex I to the Ethias Decision, the Commission shall be informed prior to the sale of Ethias Banque, in order to verify whether the proposed buyer fulfils Purchaser Requirements defined in section 2.5 of that Annex. Those criteria include the buyer's independence, proven expertise and financial resources to maintain and develop Ethias Banque. Furthermore, the buyer should be reasonably expected to obtain all necessary regulatory approvals.

(4) On 9 July 2010 Ethias informed the Commission by electronic mail of its intention to sign a Sales and Purchase Agreement with Optima Financial Planners NV (hereinafter "Optima") in respect of Ethias Banque. The Commission requested additional information from Ethias by electronic mail of 14 July 2010. Ethias replied by electronic mail of 16 July 2010. By electronic mail of 27 July 2010 Ethias informed the Commission that it had signed a Sales and Purchase Agreement (hereinafter "SPA" or "initial SPA") on 23 July 2010 with Optima, the SPA being conditional on the agreement of the Commission and of the Belgian regulator, at the time the CBFA (Commission Bancaire, Financière et des Assurances, hereinafter "CBFA"). By electronic mail of 5 August 2010 and addressed to Optima the Commission asked for additional information on the purchase in order to verify whether the Purchaser Requirements were met. Optima provided the additional information to the Commission by electronic mail of 11 August 2010.

(5) By letter of 13 August 2010 the Commission informed the Belgian authorities that the Commission services considered that Optima fulfils the Purchaser Requirements defined in section 2.5 of Annex I to the Ethias Decision.

(6) By electronic mail of 17 December 2010 the Monitoring Trustee of Ethias informed the Commission that the approval of the sale of Ethias Banque to Optima had not yet been obtained from the CBFA. The Monitoring Trustee expressed its opinion that the sales transaction could be closed in January 2011 if regulatory approval were obtained.

(7) By electronic mail of 22 February 2011 the Monitoring Trustee informed the Commission that the CBFA had refused to approve the sale of Ethias Banque to Optima. The Monitoring Trustee also transmitted to the Commission the refusal letter of 15 February 2011 from the CBFA to Ethias. The letter did not explain the reasons for the refusal to grant authorisation.

(8) By electronic mail of 19 July 2011 the Belgian authorities requested a prolongation of the deadline for the final and irreversible transfer of the ownership rights in respect of Ethias Banque, to run for three months starting from the approval of the regulator.

(9) The Commission requested additional information by electronic mail of 25 July 2011 to which Ethias replied by electronic mail of 28 July 2011.

(10) The Belgian authorities informed the Commission that for reasons of urgency they exceptionally accept that this Decision is adopted in the English language.

II Facts

1. Description of Ethias Banque

(11) Ethias Banque is a bank providing loans and deposits services to Ethias customers. The total balance sheet of Ethias Banque at the end of 2010 amounted to EUR 1 521 million, of which EUR 968 million was in the form of loans to customers. Ethias Banque has been loss-making in the past but it returned to profit in 2009, with a net result of EUR 3.4 million due largely to non-recurring events. In 2010 Ethias Banque recorded a profit of EUR 47 000.

2. Description of the sales process

(12) Two consecutive sales processes have been launched by Ethias in respect of Ethias Banque. The first process was launched in 2009 and resulted in one binding offer which was not satisfactory in terms of price. Subsequently a second sale process was launched in January 2010, resulting in May 2010 in two offers received from Optima and from […][*]. According to Ethias the offer by […] was not binding and did not fulfil the commitments recorded in the Ethias Decision because […] was interested in acquiring only 70% of Ethias Banque immediately, with the remaining 30% to be bought three years later, subject to the realization of several condition precedents.

(13) A SPA was signed by Ethias and Optima on 23 July 2010. The initial SPA included, as a condition precedent to the closing, the consent to the sale of the CBFA. Optima filed an application with the CBFA for authorisation which was finally refused by that authority in February 2011.

(14) In July 2011, Ethias and Optima entered into an amended share sale and purchase agreement (the “modified SPA”) which has tried to address the concerns expressed by the CBFA. Optima accordingly filed a new application for regulatory approval on 27 July 2011 with the Banque Nationale de Belgique (BNB)[3].

3. Opinion of the monitoring trustee

(15) In relation to the selection of Optima as the purchaser for Ethias Banque, the Monitoring Trustee considers that Ethias has made reasonable and repeated efforts to ensure an open and public procedure for the sale of Ethias Banque. The tender procedure resulted in a sole comprehensive binding offer, namely the offer received from Optima. The Monitoring Trustee has not been able to identify any other steps Ethias could have been expected to take to improve and accelerate the procedure.

(16) Optima is not authorised as a credit institution by the BNB. According to the Monitoring Trustee, both the CBFA and the BNB have questioned the capacity and experience of Optima to adequately manage Ethias Banque following the sale. According to a note dated 30 June 2011 addressed to Ethias’ board of directors and

* Parts of this text have been omitted to ensure that confidential information is not disclosed. Those parts are indicated by three full stops enclosed in square brackets and marked with one asterisk.

3 BNB replaced the CBFA in its regulatory functions.

provided to the Monitoring Trustee, the concerns expressed by the BNB specifically refer to: (i) liquidity, for instance in the event that clients decide to change bank following the sale; (ii) solvency, in particular the impact of market developments on the Greek assets held by Ethias Banque; (iii) governance and shareholding; and (iv) the terms of payment of the sale price.

(17) According to the Monitoring Trustee, on the basis of information provided by Ethias, Optima and Ethias have sought to address those concerns in the modified SPA in the following terms:

(i) Liquidity: Ethias will (temporarily and as required) take over the mortgage and investment credit portfolios related to the "collectivités" at their nominal value. Assumption by Ethias of those portfolios will provide Ethias Banque/Optima with immediate liquidity of EUR […] million.

(ii) Solvency: Ethias will deposit EUR […] million with Ethias Banque in order to guarantee obligations arising out of the Greek assets;

(iii) Governance and shareholding: the CBFA and the BNB were concerned about Optima's capacity to manage a credit institution. The Monitoring Trustee has consulted external sources which indicate that Optima has strengthened its management team; and

(iv) Terms of payment of the price: they now provide for a fixed sum payable in full at closing.

(18) The Monitoring Trustee considers that those amended terms represent an effort by Ethias and Optima to specifically address the BNB's concerns.

(19) In respect of potential alternative buyers for Ethias Banque, the Monitoring Trustee expressed the considerations set out in recitals 20 to 24 below.

(20) According to the Monitoring Trustee, Ethias doubts whether the BNB would authorise a sale to […]. The Monitoring Trustee agrees with Ethias' conclusion. […] is not present on the Belgian or, indeed, any other EU market, whether through subsidiaries or branches. Therefore, given that the BNB has no knowledge or experience, whether directly or through other EU competent authorities, of […] or, even, any references in […]'s favour, the Monitoring Trustee would expect the authorisation procedure for […] to be burdensome, difficult and with no assurances as to a favourable result. By contrast, Optima is already present on the Belgian market as a registered insurance intermediary.

(21) Ethias has indicated that the sale of Ethias Banque has had extensive media coverage, in leading newspapers both in Belgium and abroad. The Monitoring Trustee confirms that coverage. Therefore, any potential purchaser has had ample opportunity either to participate in one of the bidding procedures or to informally approach Ethias. According to Ethias, there have been only very few informal contacts, which did not lead to concrete results.

(22) In the view of the Monitoring Trustee the negative results in the past of Ethias Banque, together with the significant difficulties in the financial sector for corporate

transactions, render it unlikely that a new sale procedure will result in any new interested parties at all, let alone in an improved offer that would more easily win approval from the BNB. The Monitoring Trustee recalls that even for the Divested Businesses of BelRé and Nateus the financial sector showed only limited interest, despite the fact that they were profitable.

(23) A new sale procedure in order to identify additional potential purchasers not only risks being unfruitful (because of the absence of any alternative interested parties), but would most likely further delay the sale of Ethias Banque since the alternative purchaser would also need to obtain the approval of the BNB.

(24) The Monitoring Trustee is therefore sceptical about any alternative scenario with a potential new purchaser. In the absence of an alternative purchaser, the only scenario other than sale to Optima would be piecemeal disposal of the assets of Ethias Banque and its winding-up and liquidation.

III Position of Belgian authorities and of Ethias

(25) According to Ethias the conclusion of the sale with Optima is the « least bad solution » given that Ethias has little or no other alternative. Ethias has signed a updated SPA with Optima, obliging Optima to submit to the regulator an updated file before 31 July 2011.

(26) According to Ethias, since the regulator's decision not to approve the acquisition of Ethias Banque by Optima, Optima has had frequent contacts with the BNB in order to understand the conditions under which it would receive the regulator's approval. As Ethias understands it, the BNB has communicated clearly and exhaustively its recommendations, and the updated file which has been submitted by Optima takes up all those recommendations and fulfils the regulator's requirements.

(27) Finally according to Ethias sale to another buyer does not seem realistic. Ethias has received only one binding offer, that of Optima, even though the sale process was launched more than two years ago, several candidates were contacted and the information that Ethias was selling Ethias Banque was publicly available and widely reported.

(28) The Belgian authorities support the request for an extension made by Ethias.

IV Assessment

(29) Regarding the legal basis for the present decision, it should be noted that the question of authorising an extension of the target date for the completion of the divestment of Ethias Banque arises in the context of the implementation of the Ethias Decision. The target date can be extended if it is authorised by the Commission and this decision thus specifies the implementation of the Ethias Decision.

(30) The present monitoring decision is a decision *sui generis*. Although it is not foreseen in Regulation (EC) No 659/99, recital 86 of the decision of 20 May 2010 lays down an

authorisation procedure under which the Member State may request the Commission to extend a target date for any of the divestments to be undertaken by Ethias as part of the commitments given by the Belgian authorities. Since the Belgian authorities have submitted such a request, the Commission must assess whether the extension of the target date for the divestment of Ethias Banque can be authorised.

According to the Ethias Decision the sale of Ethias Banque was part of Ethias' strategy to refocus on its core insurance activities. The measure is aimed at restoring the long-term viability of Ethias.

(31) The Commission agrees with the view of Ethias, the Belgian authorities and the Monitoring Trustee that the sale of Ethias Banque to Optima seems to be the only available option for achieving a rapid sale of Ethias Banque and the best alternative from the point of view of the restoration of the long-term viability of Ethias. In particular the Commission considers that a liquidation of Ethias Banque would not be a better means to achieve the objective of the Ethias Decision.

(32) The Commission notes that Ethias has entered into a SPA with Optima on 23 July 2010 in line with the commitment to conclude a binding and final agreement (i.e. an agreement that could not be terminated unilaterally by Ethias without payment of a penalty) for the sale of 100% of Ethias' participation in Ethias Banque SA by 31 December 2010. The Commission observes that Ethias did not comply with the commitment to divest Ethias Banque inasmuch as a final and irreversible transfer of ownership rights did not occur within six months from the binding agreement.

(33) After signing the SPA, Optima, which as buyer was responsible for obtaining all the necessary regulatory clearances, failed to obtain the permission of the regulator. The Commission notes that the grant of regulatory approval could not be directly or indirectly brought about by Ethias.

(34) By undertaking to close the transaction within six months from the binding agreement Ethias indirectly committed to sign such an agreement only with a buyer who could be reasonable expected to receive regulatory approval within that period.

(35) In its letter of 13 August 2010 the Commission approved Optima as meeting the Purchaser Requirements of the Ethias Decision. Those Purchaser Requirements as set down in section 2.5 of Annex I to the Ethias Decision include the requirement that the buyer should be reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the divestment business. By its letter of 13 August 2010 the Commission therefore expressed its view that the sale of Ethias Banque to Optima had a reasonable chance of approval and that Optima was a credible candidate for the purchase of Ethias Banque. The Commission did not consider that Ethias had signed a SPA with Optima in an attempt to hinder, delay or circumvent the implementation of the commitments to sell Ethias Banque.

(36) The Commission also considers that the extension request is not an attempt to thwart the divestment obligations imposed on Ethias as part of the commitments that were given by the Belgian authorities and Ethias to secure approval of the bank's restructuring plan.

(37) The Commission notes positively that Ethias has already completed two divestments

(BelRé and Nateus) of the three which it gave and has initiated the divestment of Ethias Banque.

(38) The Commission agrees with the view of Ethias, the Belgian authorities and the Monitoring Trustee that the sale of Ethias Banque to Optima seems to be the only available option for Ethias to sell Ethias Banque and that there is no better alternative (e.g. wind-down or relaunch of the sale process) to fulfil the commitment of the Ethias Decision and contribute to the restoration of the long-term viability of Ethias.

(39) Ethias has signed a modified SPA with Optima on the sale of Ethias Banque which has been submitted for approval to the Belgian regulator. The Commission notes that the initial SPA has been modified in order to address the concerns of the Belgian regulator, as confirmed in the opinion of the Monitoring Trustee. Therefore the Commission has no doubts that Ethias has sought to comply with the commitment to divest Ethias Banque. In view of the fact that the SPA has been modified, the Commission does not consider that the renewed attempt to secure a regulatory approval is a disguised attempt to delay the sale and gain time without genuine intention to proceed with the sale.

(40) In respect of the modification of the SPA, the Commission notes that modifications have been made with the objective of securing regulatory approval and are directly related to specific concerns expressed by the regulator, as confirmed by the Monitoring Trustee. Therefore the Commission accepts that those modifications were undertaken in order to ensure the compliance with the commitment to sell Ethias Banque.

(41) The Commission considers that an extension of the deadline for the final transfer of ownership of Ethias Banque does not affect any other divestment committed to in the Ethias Decision. An extension limited to the time necessary to close the transaction after a decision of the regulator on the modified SPA will not confer any additional advantage on Ethias. Therefore the Commission considers that such an extension does not affect the overall assessment of the restructuring plan submitted by Ethias and approved in the Ethias Decision. The extension is therefore in line with the Restructuring Communication.

(42) The Commission finds that the request by the Belgian authorities and Ethias to extend the divestment deadline is sufficiently reasoned. For those reasons, the Commission finds it appropriate to grant an extension of the deadline for completing the divestment of Ethias Banque until three months after the decision of the regulator on the modified bid by Optima to acquire Ethias Banque.

IV. Conclusion

(43) For the reasons set out above, the Commission can agree to the extension of the target date for closing the divestment of Ethias Banque.

V. Decision

The Commission agrees to extend the target date for the completion of the divestment of Ethias Banque until three months after the decision by the national regulator on the proposed buyer.

Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President

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