

***Case No IV/M.1172 -
FORTIS AG /
GENERALE BANK***

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

Article 6(1)(b) NON-OPPOSITION
Date: 24/06/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.06.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No IV/M. 1172 FORTIS AG/GENERALE BANK

Notification of 18 May 1998 pursuant to Article 4 of Council Regulation N/ 4064/89.

1. On 18 May 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which Fortis AG S.A/N.V. and Fortis Amev N.V. (the Fortis group) acquires control of the whole of Generale Bank N.V Générale de Banque S.A (G-Bank) by way of purchase of shares from the Group Generale Maatschappij van Belgie N.V. - Société Générale de Belgique S.A. (SGB). In a second stage Fortis AG S.A. will launch a public bid on the rest of G-Bank shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE OPERATION AND THE PARTIES

3. Fortis is a Belgian-Dutch insurance and banking group. Fortis was formed by the merger between Compagnie Financière et de Réassurance du Groupe AG (now called Fortis AG) and N.V. AMEV (now called Fortis AMEV) in 1990 (see Case IV/M.018 AG/AMEV - 21.11.1990). The main activity of Fortis is insurance and banking. Its operations are principally based in Belgium and the Netherlands, with a presence in other Member States. G-Bank is the largest Belgian bank, it operates mainly in Belgium and the Netherlands and to a lesser extent in other Member states and outside the European Union. The range of its activities includes also life and non-life insurance.

4. On May 17, 1998 the Boards of Directors of Fortis AG and SGB approved an agreement pursuant to which SGB unconditionally and irrevocably committed itself to make a contribution in kind into the capital of Fortis AG of all G-Bank shares on its possession. In addition, Mutuelle Solvay, Union Financière Boël also committed to make a contribution, together with the 29.7% of SGB; these contributions represent a 32.8% of G-Bank's total share capital. This will confer control to Fortis. In a second stage, Fortis AG will launch a public take-over bid for all the G-Bank shares not already in its possession in the form of a public offer of exchange of shares.
5. The integration of G-Bank and Fortis will result in the creation of an internationally oriented banking group by combining the assets of G-Bank group with those of ASLK-CGER Bank in Belgium (itself a result of the earlier integration of ASLK-CGER Bank, NMKN-SNCI and Metropolitan Bank), as well as those of MeesPierson and VSB Bank in the Netherlands.
6. The exchange of shares described above will create control by SGB (SGB has presently around 20% of Fortis AG), within the meaning of the Merger Regulation, of the Belgian side of Fortis (Fortis AG), given the participation of other shareholders in Fortis AG General meeting. This triggers a second notification (Case No.IV/M.1194 - SGB/FORTIS AG).

II. COMMUNITY DIMENSION

7. The Fortis group and G-Bank have a combined aggregate world-wide turnover in excess of ECU 5,000 million (Fortis, ECU 17,561.4 million; and G-Bank, ECU 9,733.5 million). Each of them has a Community-wide turnover in excess of ECU 250 million (Fortis, ECU 14,464.1 million; and G-Bank, ECU 9,260.1 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

III. CONCENTRATION

8. The companies which make up Fortis are all direct or indirect subsidiaries of Fortis AG and Fortis Amev, each currently holding, directly or indirectly, 50% of the shares. Both parent companies hold equal voting rights in the group's top holding companies. As a result of the acquisition of G-Bank shares by Fortis AG, the participating interest of Fortis AG in the new Fortis group will exceed that of Fortis AMEV. However, the long-standing equilibrium between the Belgian and Dutch parents of the Fortis group will be maintained through appropriate arrangements which will ensure that Fortis AG and Fortis AMEV will have equal voting rights in all management and decision-making bodies of the group's top holdings (Heads of Agreement 1998 dated 17th May 1998).
9. The completion of the concentration will be followed by a legal restructuring of the Fortis group with the aim of regrouping the Fortis operating companies on a functional rather than on a geographical basis. All banking assets world-wide will be combined to build a single Fortis banking group around Generale Bank, which will be the parent of the new Fortis banking group. All insurance assets world-wide, except for ASLK-CGER Insurance (which will remain a subsidiary of ASLK-CGER Bank), will be

aggregated under a newly created Dutch holding company. Unity of management of the two functional sub-groups will be ensured and this restructuring will not constitute concentrations within the meaning of Article 3 of the Merger Regulation.

10. As stated above Fortis will have sole control over G-Bank at the completion of the transaction. The operation therefore constitutes a concentration within the meaning of article 3(1)b of the Council Regulation 4064/89, of 21 December 1989.

IV. COMPETITIVE ASSESSMENT

A. Relevant product market(s)

BANKING

11. The Commission has consistently held that the services typically supplied by a universal bank may be divided into the following areas: retail banking, corporate banking and financial market services.¹ In particular, the distinction between retail and corporate banking is relevant for the purposes of assessing market conditions (see Case M.1029 MERITA/NORDBANKEN).²
12. By retail banking is meant banking services to households which consist, for example, of deposits, lending, credit cards and funds and other forms of asset management. By corporate banking is meant banking services to corporate clients which consist, for example, of deposits, lending, international payments, letters of credit and advice concerning mergers and acquisitions. With respect to financial markets the following activities may constitute distinct service markets: trading in equities, bonds, and derivatives, foreign exchange and money markets (i.e. treasury bills and commercial paper from banks and companies).
13. For the purpose of the present case it is, however, not necessary to define conclusively the relevant product markets because, even on the narrowest market definition, the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

INSURANCE

14. In the insurance sector a distinction is made between both life and non-life insurance and reinsurance. Reinsurance is a separate market because of its purpose of spreading risks between insurers. Life and non-life insurance can be divided into as many product markets as there are different kinds of risks covered. Their characteristics, premiums and purposes are distinct and there is typically no substitutability for the consumer between the different risks insured (see case IV/M. 812 - Allianz/Vereinte or case IV/M.862 - Axa/UAP). For the purpose of the present case it is, however, not necessary

¹ See, for example, Case IV/M.342 - Fortis/CGER and Case IV/M.873 - Bank Austria/Creditanstalt.

² Case IV/M.873 - Bank Austria/Creditanstalt.

to define conclusively the relevant product markets as, even on the narrowest market definition, the concentration does not create or strengthen a dominant position.

B. Relevant geographic markets

BANKING

15. The notifying party states that the relevant geographic markets are either national or international in scope depending on the specific banking sector. Retail banking and corporate banking are in most cases considered to be national in scope. The situation may, however, change in the future as a result of single currency and of new technologies. Investment banking and the financial markets have normally an international dimension.
16. The Commission has stated in previous cases³ that with regard to retail banking the relevant geographic market is to be considered national in scope due to the competitive conditions which in individual Member States are still different despite the increasing trend towards internationalisation, and due also to the importance of a network of branches. There are, however, indications that the present situation may change in the longer term with the introduction of the single currency and new technologies, e.g. internet and telephone banking.
17. With regard to corporate banking the Commission has generally taken the view that certain product segments will continue to be required and supplied at national level.⁴ However, some sectors of corporate banking seem to have a more international dimension. The Commission's investigation shows that the relevant geographic market appears to be national for small and medium-sized corporate clients and international for large corporate clients. Furthermore, for financial markets the relevant geographic market appears to be international in scope.
18. However, whether the markets are considered to be national or international need not be finally decided in the present case because, on the basis of the assessment set out below, even on the narrowest market definition, the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

INSURANCE

19. The markets for life and non-life insurance are national as a result of national distribution channels, the established market structures, fiscal constraints and differing regulatory systems (see case M. 759 - Sun Alliance/Royal Insurance). The markets for reinsurance are world wide in view of the need to pool risks on an international basis and the conduct of reinsurance business (see case M. 862 - Axa/UAP).

³ For example, Case IV/M.873 - Bank Austria/Creditanstalt and Case IV/M.319 - BHF/CCF/Charterhouse.

⁴ See, for example, Case IV/M.873 - Bank Austria/Creditanstalt.

C. Assessment

20. The creation of an integrated European area for financial services and the introduction of the euro has sharply accelerated the ongoing consolidation process within the European financial sector. The Belgian banking sector has seen major concentrations over the last months (take-over of BBL by the Dutch ING group, Case No M.1.061 ING/BBL, and the merger of the Flemish institutions Kredietbank, CERA, ABB and Fidelitas to form a major integrated financial services provider). These concentrations are also prompted by the fact that most Belgian banks are significantly smaller in size than their foreign counterparts.

BANKING

21. Strong market overlaps exists only in Belgium where market shares in different segments of banking activity remain always below 35%. There will remain strong competitors in Belgium (CCB, BBL/ING, Kredietbank, Bacob). Furthermore, the European Monetary Union will bring along increasing competition and wider markets. The new entity will hold in Belgium the following position compared with the total of the Belgian banking system: [...]⁵ of its assets, [...]⁶ of its deposits and [...]⁷ of its credits. However Belgium will remain a competitive market. Shares for the new entity main competitors' and for the same aggregates are respectively: BBL 12.1%, 12.8% and 14.4%. KB/CERA 15.5%, 17.4% and 15.9%, CCB 9.8%, 14.5% and 14.8%. Bacob 5.5%, 5.6% and 5% (source Banque Nationale de Belgique).
22. The Commission has examined the network-effect of the merger in all the Belgian provinces and regions. The new entity will have from [...]⁸ of the outlets in Western Flanders up to [...]⁹ of the outlets in Hainaut and Namur /Walloon Brabant. Even if the new entity will have the strongest market network in Belgium, this will not confer on it a dominant position since consumers will have sufficient competitors' banking outlets at hand. Furthermore, the existence of cash-dispensers, electronic banking and telephone banking minimise the effect of any strong position in this respect.
23. In the Netherlands the new entity will hold 5.4% of the total banking assets (Rabobank 25% ING 18% and ABN-AMRO 22%). 7% of the deposits (Rabobank 26% ING 20% and ABN-AMRO 22%). 5.8% of the total credits (Rabobank 28%, ING 20% and ABN-AMRO 21%) (source De Nederlandsche Bank). As a consequence the operation will not create a dominant position on retail banking in Belgium and the Netherlands
24. For corporate banking, the new entity will hold a strong position on corporate loans [...]¹⁰ and current accounts with corporate clients [...]¹¹. The market for corporate

⁵ Deleted business secret, between 20 and 25%.

⁶ Deleted business secret, between 28 and 33%.

⁷ Deleted business secret, between 26 and 33%.

⁸ Deleted business secret, between 24 and 28%.

⁹ Deleted business secret, between 35 and 39%.

¹⁰ Deleted business secret, between 34 and 38%.

clients is very competitive and market shares could be easily eroded by other Belgian and European strong competitors if the new entity would depart from conditions taken as normal by the market. In financial markets the new entity will be small compared with other European, American and Japanese players.

INSURANCE

25. G-Bank is a small player in non-life insurance where overlaps are very limited. G-Bank's contribution to the life insurance activity will bring Fortis up to [...] ¹² market share (life individual) and [...] ¹³ (life group). There will remain strong insurers such as Groupe Royale Belge/AXA (10.3% and 12.5%), ABB (4%), Assubel/AGF (4.2% and 5.5%) and SMAP 32.7% in life-group).

V. CONCLUSION

For the above reasons, 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) of Council Regulation (EEC) N° 4064/89.

For the Commission,

¹¹ Deleted business secret, between 29 and 33%.

¹² Deleted business secret, between 30 and 34%.

¹³ Deleted business secret, between 20 and 24%.