

***Case No COMP/M.2825 -
FORTIS AG SA /
BERNHEIM-COMOFI
SA***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 09/07/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09/07/2002

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sir/Madam,

**Subject: Case No COMP/M.2825 – FORTIS AG SA/BERNHEIM-COMOFI SA
Notification of 11/06/2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 11.06.2002, the Commission received a notification of a proposed concentration by which the Belgian undertaking Fortis AG SA (“Fortis AG”) acquire control of the whole of the Belgian undertaking Bernheim-Comofi SA (“Bernheim-Comofi”) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Fortis AG is an insurance company focusing on life and non-life insurance activities. It also develops activities in the sector of real estate through the division Fortis Real Estate. Fortis AG belongs to the Belgian-Dutch Group Fortis, an international financial service provider active in the fields of insurance, banking and investment management.
4. Bernheim-Comofi, the target company in the transaction, is primarily active in the real estate sector in Belgium. Particularly, it is present in the fields of real estate rental and real estate development. In addition, through the subsidiary Interparking, it also owns and/or manages public payable parking spaces in Belgium, Germany, Italy, France, the Netherlands, Spain and Austria. Finally, Bernheim-Comofi has more limited activities in

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

the property management sector. The company Bernheim-Comofi is controlled by the undertaking Security Capital European Realty, based in Luxembourg.

II. THE OPERATION

5. The operation consists in the acquisition by Fortis AG from Security Capital European Realty, the seller, of all the issued shares in Bernheim-Comofi. By means of this transaction, Fortis AG acquires sole control over Bernheim-Comofi. The operation constitutes therefore a concentration within the meaning of Article 3(1)b of the Merger Regulation.

III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (Fortis Group: Euro 46,310 million in 2001; Bernheim-Comofi: Euro 252 million in 2001). Each of them have a Community-wide turnover in excess of EUR 250 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.

IV. COMPETITIVE ASSESSMENT

Relevant product and geographic markets

Real Estate

7. The parties submit that the relevant product market to be considered in the transaction is the market of real estate, with all its possible segmentations. It is further argued that a distinction can be made between the market for commercial use and the market for residential use. If account is taken of the different possibilities of commercial exploitation of real estate, an alternative segmentation is proposed distinguishing real estate rental, real estate development (construction of new buildings or the renovation of existing buildings) and real estate management.
8. As noted on the Decision M.2110 – Deutsche Bank/SEI/JV,³ the real estate market might be subdivided into two smaller markets: properties for commercial use (offices, shops and industrial properties) and properties for commercial residential use (housing).
9. As regards the geographic market definition, the same Decision considers that it is at its largest national in scope, but it can be possibly be segmented into local geographic areas. In this particular case, the product and geographic market definition can be left open since even in the narrowest possible option, the operation will not have any appreciable competitive impact.

Car parking

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). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

³ OJ C 324, 15.11.2000

10. The parties submit that the relevant product market for the present transaction is the market for the operation of paid public parking facilities. Free parking spaces, residential parking or private or company parking is excluded. It is further argued that the sole ownership of a car parking is not sufficient for the owner to be considered as active in this market. The parties argue that the companies entrusted with the daily operation of the facilities conducts the business and take the initiative as to the pricing policy. Consequently, the parties are of the opinion that the market should be defined in terms of car parking operators.
11. The geographic scope for the market for payable parking is likely to be local. This is based on the consumers wish to park close the area of destination. The consumer seeks parking in the neighbourhood of the destination, in order to facilitate the transport. This will often limit the scope for parking to the local area, i.e. city or municipality.
12. The Commission has dealt previously with the car park sector in M.1155 – Cendant Corporation/NPC⁴ and left open the scope of the product and geographic market. In the present case, the precise product and geographic market definition can also be left open since on the narrowest definition, the transaction will not give rise to competition concerns.

Assessment

Real estate development

13. The parties are not active in the same national markets. Bernheim-Comofi is active in Belgium in the development of real estate for commercial use, whereas Fortis is marginally active in the real estate development for commercial and residential use in The Netherlands but not in Belgium. In both cases, market shares remain below 5%. In the Belgian market, Bernheim-Comofi's share is approximately [0-10%] in the commercial segment. In the Dutch market, Fortis has shares of [0-10%] for commercial use and [0-10%] for residential use.

Real estate rental

14. In Belgium, both parties are active on the real estate rental market for commercial purposes and have minor activities in residential buildings. There is no overlap in activities in the Netherlands as only Fortis is active. In the Belgian market, the parties combined market remain low after the completion of the transaction since it would be below 1% on the segment for rental of residential housing and [0-10%] on properties for commercial use. Even based on the narrowest geographic definition, i.e. on a city by city basis, the market shares remain moderate. In Brussels, the combined share on the market for rental of residential housing would be below 1 % and it would amount to [0-10%] in the segment of rental of commercial properties.

Real estate management

15. In the field of real estate management Bernheim-Comofi has activities mainly focused on the Brussels market for offices whereas Fortis is only marginally active in this sector. Bernheim-Comofi's market share is around [0-10%] of the market and Fortis' activities

⁴ OJ C 154, 19.05.1998

only concern one non-office building. The rest of Fortis activities concern the management for internal use. In consequence, even based on a local definition of the market, the transaction will not give rise to any overlaps or affected markets.

Car parking

16. The only countries where both parties own or manage car parking facilities are Belgium and The Netherlands. Fortis owns two car parks in Belgium, both of them in Brussels, and seven in The Netherlands but does not manage them, as the operating activities are entrusted to third parties. The only area in which the transaction will result in an overlap on a city basis is in Brussels. However, the two Fortis' car parks are in fact operated by Bernheim-Comofi through the subsidiary Interparking.
17. If the market is defined in terms of car parking management and since the two car parks owned by Fortis are already managed by Interparking, the transaction will not modify at all the competitive situation in the market. Interparking's market share of the operation of payable car parks in Brussels is [20-30%], and is not altered by the transaction.
18. The market share to be considered would be substantially lower, around [0-10%], in case the market were to be defined in terms of car parking ownership since at present Interparking only has ownership rights in [...] out of the 24 car parkings it manages in Brussels.

VI. CONCLUSION

19. 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) No 4064/89.

For the Commission

Mario MONTI
Member of the Commission
(signed)