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Case No IV/M.342 - FORTIS / CGER

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REGULATION (EEC) No 4064/89 MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.11.1993

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

To the notifying parties

Dear Sirs,

Re: **Case Nº IV/M. 342 - Fortis/CGER**

Notification of 11.10.1993 pursuant to Council regulation (EEC) Nº 4064/89

I. THE OPERATION AND THE PARTIES

1. On 11 October 1993, the Commission received the notification of an operation by which the Group Fortis (Fortis), controlled by AG and AMEV, will acquire 49.9% of ASLK-CGER Bank and ASLK-CGER Insurance from ASLK Holding N.V./CGER Holding S.A. (Holding) a "Holding bancaire d'intérêt public", wholly owned by the Belgian State. Holding will retain 49.9% of ASLK/CGER Insurance. 0.2% of ASLK/CGER Insurance will be held in autocontrol. 0.1% of ASLK/CGER Bank will held in autocontrol (shares in autocontrol have no voting rights) and the remaining 0.1% of ASLK/CGER Bank will be held by ASLK/CGER Insurance. The present operation is to be placed within the context of a privatisation programme of the Belgian State.

2. Fortis have a right to purchase a further 0.1% in both undertakings between 1 January 1995 and 31 December 1998 and Holding have a right to require Fortis to purchase a further 9.8% between 1 January 1995 and 31 December 1999. If these options are exercised, the representation of Holding in the board of directors of ASLK/CGER Bank and ASLK/CGER Insurance and voting mechanisms will remain unchanged.

3. The main activity of Fortis is insurance, it also has operations in banking and other financial services. Its operations are principally based in Belgium and in the Netherlands, with a presence in some other Member States. Fortis was formed by the merger between Compagnie Financière et de Réassurance du Groupe AG (AG) and N.V. AMEV (AMEV) in 1990 (see Case IV/M.O18 AG/AMEV -21.11.1990).

4. Holding wholly owns ASLK/CGER Bank and ASLK/CGER Insurance. Holding's principal activities through these companies are insurance, banking and financial services. Holding also holds 100% shareholdings in the Caisse Nationale de Crédit Professionel (CNCP) and the Institut National de Crédit Agricole (INCA), two small public interest aimed credit institutions whose partial sale is being negotiated at the present.

II. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5,000 million ECU. Fortis, Holding and ASLK/CGER Insurance have a Community turnover in excess of 250 million ECU but do not both 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.

III. CONCENTRATION

6. According to the agreements between the notifying parties, as reflected in the proposed articles of association of the new entities to be set up, the business conduct is to be carried out in a spirit of partnership. Both parties have equal shareholdings and they both have equal numbers of directors on the boards of both ASLK/CGER Bank and ASLK/CGER Insurance. These elements all would point to joint control of both by Fortis and Holding. However, the decision making mechanisms of the boards of the two entities are very different and are therefore considered separately.[...][1]

Voting mechanisms

ASLK/CGER Insurance

7. In the case of ASLK/CGER Insurance, decisions are taken by simple majority. Where deadlock is reached matters are referred to the Concertation Committee described in paragraph 9 below. Only if the Concertation Committee is deadlocked, is the Fortis casting vote used.

ASLK/CGER Bank

8. So far as ASLK/CGER Bank is concerned, the board of ASLK/CGER Bank (the Conseil d'administration - which defines the general policy of the bank) is composed of [...][2] representatives from each of Fortis and Holding (with one of

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[1] [Business secret]. As a result, a casting vote is conferred on Fortis in the case of ASLK/CGER Insurance and one of the Fortis representatives has a double vote in the case of ASLK/CGER Bank.

[2] [Business secret]. It concerns the number of members of the board.

the Fortis representatives having a double vote) . The board proposes appointments to the [...][2] places on the Comité de direction (which is responsible for day to day management) who become members of the board. Their appointment is subject to the approval of the Belgian Banking and Financial Commission. A qualified majority is required for decisions of strategic importance. [...] [3] .

9. The shareholders agreement together with the proposed articles of association defines the relationship, which is to be built around the concept of partnership, between both shareholders in terms of management of the two companies. The preponderant voting rights conferred to Fortis have to be read in conjunction with Article 3.3 of the Shareholders Agreement which provides that when a dispute arises between the two groups of Board Members regarding a Board matter [...][3], it is submitted to a Concertation Committee. If the Committee is unable to resolve the dispute, the matter is then referred to the Board which then takes the decision using, if necessary, the casting vote.

Control

10. The two different board structures and voting mechanisms of ASLK/CGER Insurance and ASLK/CGER Bank lead to different conclusions over control.

11. In the case of ASLK/CGER Insurance, because of the casting vote conferred on Fortis in the event of deadlock, Holding will not have the means to oppose the majority voting powers of Fortis and therefore, Fortis alone will ultimately have the possibility of exercising a decisive influence on the affairs of the company.

12. [...][3] This conclusion is based solely on the criterion of the possibility of exercising a decisive influence laid down in Article 3(3) of Regulation 4064/89 and has no bearing on the concept of control under national legislation or in the understanding of the parties.

Joint venture performing on a lasting basis all the functions of an autonomous economic entity.

13. ASLK/CGER Bank will act on the Belgian market as an independent and autonomous economic entity. Every means will be given to it to develop its business and its commercial policy independently and for an unlimited time.

Absence of coordination of competitive behaviour

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[3] [Business secret]. In the case of ASLK/CGER Bank, the board structure and voting mechanisms of the board are different, as a result of which Fortis and Holding have joint control of ASLK/CGER Bank. The existence of joint control in the bank is based on the possibility for Holding to block a Fortis proposal, taking into account the votes of the Comité de Direction.

14. Holding will also remain active in the financial services sector in Belgium through Caisse Nationale de Crédit Professionel (CNCP) and Institut National de Crédit Agricole (INCA). The aim of CNCP is to finance and to assist privately owned institutions specializing in credit to small and medium sized companies. INCA manages agricultural funds set up by the State and acts as a clearing basis and fund manager for privately owned agricultural banks, which collect funds and grant loans to their own clients through their own networks. INCA itself has no network. The Royal Decree of 29 September provides that 50% of the shares in those two companies will be transferred to private credit institutions. Both undertakings have no direct presence in the fields of activities of ASLK/CGER Bank. As a result, there is no risk of coordination between these public credit institutions and ASLK/CGER Bank.

15. Also, the Belgian State is still present in the banking sector through the "Office Central de Crédit Hypotécaire" (OCCH), a mortgage institute, which the Belgian State intends to dispose of and which in the meantime is managed by the "Crédit Communal", a bank owned by the "Communes" and the "Provinces". Given this and without prejudicing the decision as to whether ASLK/CGER Bank and OCCH are part of a single decision-making authority there is no risk of co-ordination between the OCCH and ASLK/CGER Bank.

16. Fortis will be present in the Belgian financial markets through the ASLK/CGER Bank, in which it will play a determinant role, and to a very limited extent through its wholly owned subsidiary Metropolitan Bank. Metropolitan Bank accounts for a small share of the Belgian retail banking market (of the order of [...][4]). There is insignificant competition between Metropolitan Bank and ASLK/CGER Bank.

17. As a result, it is considered that the present operation does not have as its object or effect the co-ordination of the competitive behaviour of undertakings which remain independent.

18. Thus, the notified operation constitutes a concentration within the meaning of Article 3(1)b of the Regulation.

IV. COMPATIBILITY WITH THE COMMON MARKET

RELEVANT PRODUCT AND GEOGRAPHICAL MARKETS

BANKING

19. The banking sector can be divided into three broad subsectors: retail banking, corporate banking and financial markets.

20. Retail banking can be further divided into a number of individual product groups. These product groups include current accounts, savings accounts, bonds, pension

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[4] [Business secret]. Less than 5%.

funds, short term and long term loans, mortgages and SICAVs (sociétés d'investissement à capital variable).

21. Each banking product is distinct, but the degree of substitutability between different products is difficult to appreciate. There is no substitutability between certain banking product groups but the divisions between other are far less clear. Banks do not generally offer only one type of account or loan so there is a strong linkage between the different product groups within the retail banking sector.

22. Corporate banking includes domestic corporate banking, banking for the public sector and international credits to public companies. Financial markets includes activities related to government funds and money markets.

23. From the geographical point of view, although a growing internationalisation of the sector can be observed, the activities of the retail banking sector will for a certain period still be national in scope.

24. The precise delimitation of the relevant product market need not to be further defined in the present case because even on the basis of a narrower definition, the operation does not raise serious doubts as to its compatibility with the common market.

Insurance

25. It is considered that there exist as many product markets as there are insurances for different kinds of risk, since their characteristics, premiums and purposes are quite distinct from the consumer's viewpoint. Consequently they are not to any great extent substitutable for one another. Thus, life insurance and each type of non life insurance seem to constitute separate product markets. Reinsurance constitutes another market because of its purpose of spreading the risks between insurers. Although insurance markets may become more open to intra-community competition in the foreseeable future, geographic markets seem at present to be mostly national in view of differences of national regulatory systems.

COMPETITIVE ASSESSMENT

26. The market where a significant overlap arises from the concentration is Belgium. Outside this member State there is no or only insignificant overlap of activities of the parties to the concentration.

Banking

27. Société Générale de Belgique (SGB), a major player in Belgian financial markets, holds a 19.96% shareholding in, and is represented by three members on the board of AG, which in turn holds a 11.8% stake in SGB. This does not allow SGB the possibility to exercise decisive influence on the business operation of AG or on Fortis. The market shares of SGB are considered to be separate from those of Fortis and ASLK/CGER Bank for the purposes of competitive assessment.

28. The activities of the Belgian banking subsidiary of Fortis, Metropolitan Bank, only overlap to a minor extent with those of ASLK/CGER Bank which has a relatively strong position in Belgian banking markets. The increase of market shares will be well below[...][5] except for the following retail banking product groups: high return saving accounts [...][5], pension funds [...][5] and mortgages[...][5] giving the new entity combined market shares of [...][6], [...][6] and [...][6] respectively.

29. There are a number of strong players well established in the Belgian market who have the ability to compete effectively with the combined entity including: Générale de Banque, Crédit Communal de Belgique, Banque Bruxelles Lambert and Kredietbank. Each of these competitors offers a comparable product range to the combined entity.

30 As a result, it is not expected that the proposed concentration will create or strengthen a dominant position in any of the affected banking markets.

Insurance

31. Fortis, through its 50% stake in Delta Capital, the remaining 50% being held by AGF, holds a 56.5% stake in Assubel-Vie, Assubel-Vie is a Belgian company particularly strong in life insurance in Belgium where it holds a market share of approximately [...][7] for life, sickness and work accident insurance. A further 18% of Assubel-Vie is held by COBEPA. Taking into account the role of COBEPA in the business conduct of Assubel-Vie, this shareholding does not give Fortis the possibility of exercising a decisive influence on Assubel-Vie. Assubel-Vie is considered to be in a competitive relationship with Fortis and, therefore, the market shares held by Assubel-Vie are are not added to those of Fortis for the purposes of competitive assessment.

32. The affected insurance product groups and the combined market shares of the new entity are: life (group) [...][8], life (individual) [...][8], sickness [...][8], fire [...][8], credit [...][9], non-vehicle legal expenses [...][9], accident [...][9], liability [...][9], financial losses [...][9], motor hull [...][9] and vehicle legal expenses [...][9]. The parties are not active in reinsurance.

33. Although the combined entity will have significant economic and financial power and it will achieve rather high market shares, it will remain exposed to the competition of other strong operators. Well established insurers are already present in the Belgian market.

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5 [Business secret]. Less than 5%.

6 [Business secret]. Less than 20%.

7 [Business secret]. Less than 15%.

8 [Business secret]. Between 20% and 30%.

9 [business secret]. Between 10% and 20%.

34. As to potential competition, Belgium is often used by the large European insurers as a test market and it is highly probable that some of them will remain in the Belgian market. It is also possible that others will enter the market in the future.

35. Whilst there are a number of insurance companies who offer a broad product range, few operate in every market. There are also a number of specialist companies in particular product groups. Different product groups address different types of risks - the administration of insurance policies is similar regardless of the product group. Nevertheless from a supply side perspective, any insurance company which is not involved in a particular product group could diversify relatively easily into another group to compete with the combined entity.

36. Thus, it is not expected that the proposed concentration will create or strengthen a dominant position in any of the affected insurance markets.

V. CONCLUSION

37. For all the foregoing reasons, the proposed concentration does not raise serious doubts as to its compatibility with the common market.

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For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6(1) (b) of Council Regulation No. 4064/89.

For the Commission