

***Case No COMP/M.5384 -
BNP PARIBAS / FORTIS***

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Article 6(2) NON-
OPPOSITION
Date: 03/12/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 03.12.2008

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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
ARTICLE 6(1)(b) DECISION IN
CONJUNCTION WITH
ARTICLE 6(2)

To the notifying party:

Dear Sir/Madam,

**Subject: Case No COMP/M.5384 – BNP Paribas / Fortis
Notification of 29 October 2008 pursuant to Article 4 of Council
Regulation No 139/2004¹**

INTRODUCTION

1. On October 29, 2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the "EC Merger Regulation" or "ECMR"), by which BNP Paribas S.A. ("BNP Paribas", France) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of Fortis Bank S.A./N.V. ("Fortis Bank Belgium"), Fortis Bank Luxembourg S.A. ("Fortis Banque Luxembourg") and Fortis Insurance Belgium S.A./N.V. ("Fortis Insurance Belgium"), collectively the "Fortis Entities", by way of exchange and purchase of shares.

I. THE PARTIES

2. BNP Paribas is a banking group listed on Euronext Paris, with international operations in a large number of countries across Europe, North and South America, Africa, the Middle East, and Asia. BNP Paribas has three core banking businesses: retail banking,

¹ OJ L 24, 29.1.2004 p. 1.

asset management and services (comprising asset management, private banking, securities, investments and brokerage online for individuals, insurance, real estate), and corporate and investment banking.

3. The Fortis Entities provide banking services to individual, business and institutional customers in various countries, mainly in Belgium and Luxembourg. They do not operate in the Netherlands. The Fortis Entities' core banking businesses are: retail banking, private banking, asset management, and merchant banking. The Fortis Entities are also active in the insurance sector in Belgium.

II. THE OPERATION

4. The notified concentration consists in the acquisition by BNP Paribas of sole control of:
 - (i) Fortis Bank Belgium, by means of the purchase of 74.94% of the issued share capital from the Kingdom of Belgium;
 - (ii) Fortis Banque Luxembourg, through Fortis Bank Belgium which would hold 50.1% of the issued share capital prior to closing; in addition, BNP would acquire 16.57% of the issued share capital from the Grand-Duchy of Luxembourg;
 - (iii) Fortis Insurance Belgium, by means of the purchase of 100% of the issued share capital from Fortis Insurance N.V.

III. CONCENTRATION

5. Following the proposed transaction, BNP Paribas will exercise sole control over the Fortis Entities. Therefore, the transaction qualifies as a concentration within the meaning of Article 3 (1) b of the EC Merger Regulation.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover² of more than EUR 5 billion (BNP Paribas: €92,376 million, Fortis Entities: €100,961.9 million). Each of them has a Community-wide turnover in excess of EUR 250 million (BNP Paribas: €[...] million, Fortis Entities: [...] 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 pursuant to Article 1(2) of the ECMR.

V. RELEVANT MARKETS

7. The proposed concentration concerns the provision of banking and insurance services to individuals, businesses and institutional customers.

Relevant product markets

8. The Parties' activities overlap in retail and corporate banking, payment card issuing, consumer credit, asset management, financial leasing, financial market services, investment banking and insurance services.

Retail banking

9. Retail banking generally comprises all banking services to private individuals and very small enterprises. In previous decisions relating to the retail banking sector³, the Commission has left open whether individual retail banking products represent separate relevant product markets or whether several retail banking products may form part of a single relevant product market. The competitive assessment in these decisions was, accordingly, carried out based on indicators relevant to retail banking as a whole (more specifically current account relationships and branches) and also on the basis of the following possible relevant product markets considered separately: personal current accounts, savings accounts, consumer loans, mortgages and distribution of mutual funds.
10. The notified concentration does not raise serious doubts as to its compatibility with the common market on an overall retail banking market or on any of these segments. Therefore, the precise market definitions can be left open for the purpose of this Decision.

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). The turnover of the Fortis Entities does not take into account the 2007 turnover achieved by the asset management operations of ABN AMRO, which are, however, included in the scope of the transaction.

³ COMP/M.4844, Fortis/ABN AMRO Assets

Corporate banking

11. Corporate banking generally comprises banking services to large corporate customers ("LCC") and smaller commercial clients such as small and medium-sized enterprises ("SMEs"). In previous Commission decisions⁴, distinct product markets for large corporate customers on the one hand and SMEs on the other hand have been found, although the Commission has observed that there is no obvious single parameter by which companies can be designated as SMEs or LCCs and which would be applicable to all market players.
12. The Commission has also pointed out that there are several indications that, within corporate banking, distinct relevant product markets for (i) domestic payment services, (ii) foreign payment services, (iii) cash management services, (iv) loans and (v) savings could be identified⁵.
13. The notified concentration only results in a limited overlap in corporate banking to SMEs in France, which does not give rise to an affected market in the sense of the Implementing Regulation⁶. Therefore it is not necessary, for the purposes of the present Decision, to conclude on the precise market definition since serious doubts do not arise as to the compatibility of the transaction with the common market on any alternative market definition.

Payment cards

14. The Commission has, in the past, distinguished two main payment card-related activities apart from card processing: first, the issuing of cards to individuals and companies, and secondly the "acquiring" of merchants (including hotels, airlines and other businesses accepting cards) for card payment acceptance⁷.
15. In the present case, the Parties only overlap in the relevant geographic markets, namely Belgium and Luxembourg, in the area of card issuing. The remainder of the analysis is therefore limited to the issuing markets.
16. Within the activity of payment card issuing, the Commission has, in previous decisions⁸ discussed the possibility of distinguishing between different types of cards, in particular between personal and corporate cards; between international and national cards; between debit and credit/charge cards⁹; and between selective and general cards. It has

4 COMP/M.3894, Unicredito/HVB; COMP/M.2567, Nordbanken/Postgirot; COMP/M.4844, Fortis/ABN AMRO Assets

5 COMP/M.4844, Fortis/ABN AMRO Assets, recital 26.

6 Commission Regulation (EC) N° 802/2004 of 7 April 2004 implementing Council Regulation (EC) N° 139/2004 on the control of concentrations between undertakings, Annex I, Form CO, Section 6, III (OJ L133, 30.4.2004, p.1).

7 COMP/M.5241, American Express/Fortis/Alpha Card

8 COMP/M. 3894 Unicredito/HVB; No COMP/M. 2567 Nordbanken/Postgirot; COMP/M. 3740 Barclays Bank/Föreningssparbanken/JV; COMP/M.4844, Fortis/ABN AMRO Assets; COMP/M.5241, American Express/Fortis/Alpha Card

also looked at payment cards on a card brand basis. However, it has left the exact market definition open¹⁰.

17. In the present case, the market investigation has determined that there is a need to distinguish at least between debit and credit/charge cards and between selective and general cards. In this case no particular issues arise on a brand basis and so this can be left open. It can also be left open whether personal and corporate cards belong to the same or to separate relevant markets. Finally, the distinction between international and national cards is not relevant in this case because of the context of migration of Belgian and Luxembourg payment systems to a common standard, as a result of which almost all general-purpose cards now carry the Maestro logo and functionality, allowing their international use.
18. A payment card is an instrument which forms part of a payment scheme and is issued to a natural or legal person allowing for the completion of payment transactions in establishments affiliated to the payment scheme in question, without the use of cash, both at the point of sale – using an enabled terminal – and remotely via telephone, mail or internet. Payment cards may on occasion bundle the payment facility with additional services to the benefit of the end user, corporate subscriber, or the counterparty to the payment transaction.
19. The services offered by payment cards to final users and which are therefore relevant to the definition of the relevant issuing market(s) are of the following kinds¹¹:
 - a) **Debit cards** are linked to a customer's bank account. Payments made with debit cards are immediately, or with a short delay of at most a few days, debited on a gross basis from the customer's account. In the event that such debits result in an overdrawn account, the conditions for overdrafts on current accounts apply.
 - b) **Charge cards**, also known as "deferred debit cards", are required to be settled on a net basis in full at the statement due date and do not offer credit. Statements are issued periodically, typically on a monthly basis.
 - c) **Credit cards** in the strict sense¹², also referred to as "revolving credit cards", require the customer only to settle a fraction of the outstanding balance figuring

⁹ Previous merger decisions have generally referred simply to "credit cards" without explicitly distinguishing between true credit cards and charge cards (see definitions below). In the present Decision, we use the term "credit/charge cards" to avoid ambiguity, except where referring separately to one or other category.

¹⁰ In its antitrust decision of 17 October 2007 in the case COMP/38606 Groupement des Cartes Bancaires, the Commission similarly left open whether the market at stake in that case was limited to CB cards, or should be extended to include American Express and Diner's Club, or indeed to private label cards, since the concerns in that case arose regardless of the exact market definition.

¹¹ This description excludes electronic wallet services, such as the Belgian Proton and Luxembourg Minicash services, which are carried on debit cards. Compare also the glossary incorporated into the Commission's Decision of 19 December 2007 in Cases COMP/34.579 MasterCard, COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards.

¹² Colloquially, both charge and credit cards are referred to in Belgium as "credit cards", as they share similar properties on the retailer side and offer payment facilities on the same international payment networks such as Visa, Mastercard, American Express and Diner's Club.

on periodic statements of account. The remaining part of the outstanding balance may be carried over to the next statement period, in which case interest charges become due¹³. The customer disposes of a credit facility up to a prearranged ceiling which is replenished as repayments are made on the outstanding amount.

- d) **Hybrid store cards** offer particular conditions or services when used in the sponsoring store or collection of stores, and carry a proprietary logo, but can still be used in other establishments, whether nationally or internationally, for which purpose they are cobranded with national or international payment scheme logos¹⁴. In the present case, all cards in this category are understood to be revolving credit cards¹⁵.
 - e) **"Selective" or (pure) store cards** are accepted for payment in all commercial outlets of a given brand or selection of brands, within a geographic scope which is typically national but may in certain cases be broader. Outside of this proprietary context, such cards are not accepted. In the present case, the market investigation has shown that most such cards carry a revolving credit facility, but certain store cards are deferred debit cards.
20. All of these cards except pure store cards may also allow the withdrawal of cash at an ATM facility which, in addition to being treated for credit purposes as any other point of sale transaction, may also give rise to additional charges.
21. **Corporate cards** are issued to the employees of companies for use on company business, whereas **personal cards** are issued to private individuals for their personal use. Hybrid store cards and revolving credit cards are rarely issued to corporate customers, on the one hand by virtue of their nature and, on the other, by virtue of the fact that the credit terms available on such cards are typically, with, in this case, limited exceptions, unattractive to corporate customers.
22. Credit and charge cards can also be broken down between "universal" cards and "special purpose cards", where the latter category consists of pure store cards only, whereas the "universal" category consists of both hybrid store cards and cards which do not have any association with particular store brands. Universal cards are characterized by much wider acceptance for payments at a range of commercial outlets. Such cards carry the brands of payment networks such as Visa, Mastercard, American Express and Diner's Club which ensure their wide acceptance across a range of outlets.

¹³ For certain cards, interest is due from the transaction date itself.

¹⁴ For the purposes of this Decision, the term "store cards" is used for convenience. However, it should be understood that such cards relate to a number of types of business and not only to retail stores.

¹⁵ Certain Belgian cards make use of the Maestro network which is typically used for debit purposes, but are linked to a revolving credit facility. These cards are considered revolving credit cards for the purposes of this decision.

Exclusion of debit cards from the relevant market

23. The Parties do not overlap in the issuing of debit cards, but do overlap in the issuing of credit/charge cards (i.e. deferred debit cards and revolving credit cards). The market investigation has shown that debit cards do not form part of the relevant market in this case, for the following reasons.
24. Whilst both debit cards and credit/charge cards offer payment facilities to businesses and end consumers, the market investigation has shown that these two categories of cards are clearly distinct from each other and that the debit card segment, at least for the countries affected by the proposed transaction, does not form part of any market affected by the transaction. This is also due *inter alia* to the following properties of debit cards:
- Debit cards are linked to a bank account, whereas for credit/charge cards this is not necessarily (and frequently is not) the case.
 - Debit cards are in general still only used nationally, even if in Belgium and Luxembourg they already carry international functionality under the Maestro scheme, and their use abroad is expected to become broader within the eurozone in the future¹⁶.
 - Because they are significantly cheaper for retailers, debit cards are much more widely accepted than credit/charge cards. As a result, payment by credit/charge card is an alternative only in a subset of outlets. Moreover, many of the outlets which do accept credit/charge cards do not accept debit cards. This is typically the case, for instance, for many restaurants and hotels. It follows that the pattern of acceptance of debit and credit/charge cards at point of sale is, in many instances, complementary.
 - In most instances, debit cards cannot be used for so-called "card not present" transactions (for example purchases by telephone, mail order or internet)
 - Debit cards are usable only if the user has funds on his/her current account (or an overdraft arrangement)
 - The value of individual payment transactions which can be made by debit cards is normally significantly lower than that which can be made by credit/charge cards.
 - Debit cards can be used for cash withdrawals, normally without a fee, at least at terminals belonging to the issuing bank and frequently on a market-wide basis (which is the case in Belgium). There is also no fee payable for many withdrawals in euro at ATMs throughout the eurozone. Where a fee is payable, it is usually much lower than the corresponding fee for withdrawals using credit/charge cards, including for operations in non-euro currencies.
 - Operations with debit cards are accounted for in the customer's overall current account statement, whereas credit/charge cards offer specific statements per card, a facility which is relevant for corporate users wishing to track expenses on a given account.

¹⁶ The Commission has not excluded, however, that debit cards issued to Luxembourg residents may be more frequently used abroad than is the case for Belgium.

- In Belgium and Luxembourg, debit cards also carry a pre-paid electronic wallet function called Proton/Minicash respectively, which is used for micropayments, typically in commercial outlets which do not accept the debit card functionality (or credit cards) for payment, as well as in automated point of sale payments such as parking meters and vending machines.
 - From the standpoint of banks, debit cards have much more limited fraud risks associated with them and do not involve the extension of credit, which makes them cheaper to offer and accessible to a wider range of cardholders¹⁷.
25. In view of these properties of debit cards, they are not substitutable for credit/charge cards for most consumers in most instances and can be excluded from the relevant market(s) pertaining to credit/charge cards.
26. For the purposes of the present Decision it is not necessary to decide whether debit cards constitute a relevant market by themselves or are part of a wider retail banking market given their close relationship to current accounts, since, as already indicated, the Parties do not overlap in this area.

Distinction between universal and special purpose cards

27. The market investigation has also confirmed that a distinction has to be made within the area of credit/charge cards, as regards the payment function of these cards¹⁸, between universal cards, on the one hand, and special purpose cards, on the other.
28. There is, certainly, a degree of substitutability between the two types of cards at the outlets served by the special purpose cards, since universal cards can often be used to pay at the same outlets. However, special purpose cards often have specific advantages which do not apply to universal cards, for example in terms of discounts or loyalty programs. It is, indeed, these very advantages which represent the interest for a customer to hold a special purpose card in the first place. A customer who holds such a card is therefore likely *a priori* to use it in preference to universal cards at the outlets which the card serves, at least if the circumstances which motivated holding it in the first place have not changed. In any case, such cards cannot be used outside the individual outlets concerned.
29. The Parties do not overlap in the area of special purpose cards, since all of the cards issued by BNP Paribas in Belgium in cooperation with stores are cobranded with Mastercard and therefore enter into the hybrid store card category set out above, which is a subcategory of universal cards.
30. Although both pure store cards and hybrid store cards are generally obtained by the holder from the store or other business concerned, the market investigation has clearly shown that it would be incorrect to view at least revolving credit store cards – whether universal or special-purpose – primarily as a service provided by the stores themselves to their customers. In any case, the store itself cannot distribute such cards directly, since a specific credit license is required (in addition to many other specialized assets).

¹⁷ Even charge cards also involve the provision of credit in an accounting sense for the period until the statement due date.

¹⁸ For the credit function, which needs to be considered separately, see below.

31. Rather, stores enter into agreements with credit providers, such as the Parties, to distribute cards and are remunerated by receiving a share of the profits made on the credit sold through the card. In the case of hybrid store cards, it also may be the case that a part of the interchange fee payable by the acquirer to the issuer is rebated to the store¹⁹. Such cards are therefore a revenue center, not a cost center, for stores as well as for the credit provider.
32. In certain cases, the credit provider does provide additional services to the commercial partner, such as participating in promotional activities, which may then be billed separately or considered part of the overall package. It appears, however, that the value of such services is low compared to the purely financial part of the relationship and that, moreover, these services are not necessarily unique and therefore may be substitutable with promotions offered in other ways. The Commission has therefore concluded that, in the circumstances of the present case, such services are neither germane to the relevant market definition nor require consideration as a market by themselves.
33. It follows that hybrid store cards, being universal credit/charge cards, participate fully in the market for universal credit/charge cards and should only be considered distinct as regards their distribution channel, namely stores. The customization of the product appears merely to be a commercial arrangement with the distributing store²⁰.
34. As regards the distinction within universal credit/charge cards between deferred debit and revolving credit cards, this appears not to be relevant as regards the payment function of the card, since both types of card offer similar payment services. The difference arises only in respect of the credit function, and, as such, revolving credit cards may be additionally viewed as giving rise to an "installed base" for the sale of consumer credit, a market considered further below.
35. Many universal revolving credit cards, i.e. cards which offer the possibility to draw credit on the card, are, in fact, used by consumers who do not make use of the credit function at all, or who do so only rarely. Consumers may wish to hold such a card because the cardholder fee is lower than that for a deferred debit card, or waived entirely. Some such cards offer cashback for transactions. Hybrid store cards may also offer other advantages linked to the commercial partner in question.
36. As such, an analysis of the revolving credit segment as distinct from deferred debit cards appears not to be justified as regards the payment function of the card.
37. It follows that overlaps arise between the Parties in respect of card payment-related services in this case only on the market for universal credit/charge cards.

Personal versus corporate cards

38. As regards a possible split within this market between personal cards and corporate cards, it is readily apparent that these two types of card serve distinct segments of demand, carry different commercial conditions and that corporate cards also offer certain additional services to the corporate customer as a whole. As a result, they are not substitutable from the demand side. It has not, however, in the framework of the present

¹⁹ This issue does not arise for pure store cards because the issuer and acquirer for such cards is either the same or, in any case, not subject to the need for multilateral clearing arrangements.

²⁰ [...]

procedure, been possible to establish whether these two segments form a single market by virtue of supply-side substitutability.

39. In any case, for the purposes of the present decision it is unnecessary to decide on whether this market should be further subdivided between personal cards and corporate cards, since the transaction, as modified by the commitments entered into by the Notifying Parties, will not raise serious doubts as to its compatibility with the common market regardless of whether or not these segments are considered to be distinct relevant markets.

Conclusion

40. It may therefore be concluded that the relevant market in this case is the market for universal credit/charge cards (considering both deferred debit and revolving credit cards together).

Card-based consumer credit

41. From the standpoint of the credit provider, the revenues from the business of issuing revolving credit cards are principally derived from interest payable on amounts borrowed using the card. Secondly, universal revolving credit cards, as any credit/charge card, generate revenue for the issuer via the interchange fee arrangements with the acquirer applicable under the scheme in question, although, in the case of hybrid store cards, this interchange fee may be partly rebated to the store itself.
42. Issued revolving credit cards therefore constitute an "installed base", allowing the issuer to sell credit to the holder via the card. As the credit line has already been authorized and credit checks performed, credit obtained in this way requires no further paperwork and thus is very easy for the customer to access.
43. In the notification, the Notifying Party argued that card-based consumer credit was part of a broader market including personal loans, which include both loans sold directly via banks and finance at the point of sale. However, this view has not been supported by the market investigation. Personal loans are priced differently and contracted in relation to substantial individual purchases. In the case of loans afforded at the point of sale, they are often cofinanced by the retailer so that their apparent cost is lower still, and not infrequently may even be interest-free. The repayments associated with such loans are regular and occur over a period which is agreed in advance. By contrast, revolving credit, notwithstanding interest rates which are nominally significantly higher, is attractive to consumers because of its flexibility: borrowing requires no paperwork once the card is obtained, and repayments are possible on a fully flexible basis.
44. Revolving credit thus serves a distinct purpose in allowing customers to borrow in order to finance short-term gaps in cash flow²¹, regardless of the purchasing need or

²¹ In the event that such gaps persist for a longer period, the customer may be able to refinance the borrowing at a lower rate via a personal loan allowing him or her to repay the credit card debt immediately.

opportunity²². As such, it has all the characteristics of a distinct market from the demand side.

45. As regards the supply side, the provision of card-based finance clearly requires many assets which are specific to that business, in addition to some assets, such as credit scoring, which may be common to other types of consumer finance. There is therefore no prospect that, in the short term, substitution would effectively occur from one market to the other.
46. Having established that revolving credit is distinct from personal lending, it is necessary further to consider whether overdraft facilities on a current account, which also constitute a form of revolving credit, might be substitutable with card-based credit.
47. The market investigation has shown that market participants consider these forms of credit as substitutable only to a limited extent and conceive of the two segments as different markets.
48. The most obvious difference between card-based finance and facilities on personal accounts is related to the need for the customer to have a current account relationship with a bank in order to obtain an overdraft facility. In addition to this, the regulatory framework applicable to overdrafts is quite different from that applying to card-based credit²³, although it varies by Member State.
49. As the Parties' activities overlap to the greatest extent in Belgium, it is necessary to analyze more specifically the situation on this market.
50. Article 3 of the Belgian Law of 12 June 1991 pertaining to consumer credit foresees that credit agreements under which the consumer is obliged to repay the credit within no more than three months and which do not constitute the opening of a credit line or which are for an amount less than 1250 euros are excluded from the scope of the law. These definitions figure in the statistics maintained by the National Bank of Belgium on consumer credit, which, as a result, similarly exclude any such facility.
51. As a result, banks in Belgium typically offer two types of overdraft facility linked to a current account: so-called *facilités de caisse* which are for less than 1250 euros and must be repaid within three months (i.e. the current account may not remain overdrawn for three months in a row) and formal openings of credit lines for higher amounts and without this restriction.
52. Under the same Belgian Law, ceilings are imposed on the interest rate which can be charged on a credit opening. These ceilings are 2-3% higher for credit cards than for credit openings linked to a current account, in function of the amount of the credit line. Moreover, the cost of financing a facility linked to a current account is also reduced by virtue of the fact that all credits made by third parties to the account result in a decrease in the amount outstanding, without any intervention being necessary on the part of the borrower. By way of contrast, the amount outstanding on card accounts is only reduced when the borrower explicitly makes a repayment.

²² Even if revolving credit is more expensive than a personal loan, it may allow a customer to take advantage of a promotional opportunity or a specific purchase opportunity, the value of which to that customer more than offsets the costs of the financing.

²³ Cf. Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers

53. To the extent, therefore, that a given consumer is in a position to use a debit card to make a purchase which then results on a negative balance on his or her personal account, regardless of whether this is connected to a *facilité de caisse* or a formal credit opening, and to the extent that the rates practised on both types of borrowing are situated in fact at or close to the ceilings established by law, which, at least for general purpose cards, is empirically observed²⁴, it is reasonable to assume that this consumer will have a rational preference for the use of the facility connected to the current account.
54. It should also be recalled, as already outlined, that the use of a credit/charge card as a means of payment, including the use of store-related cards, has a number of characteristics which distinguish it from a debit card and may result in a consumer favouring such a card for particular types of transaction. Its use in a context giving rise to a credit situation would then result in a credit linked to the card.
55. It follows that the demand for the use of credit linked to a revolving credit card must be seen as distinct from the demand for other types of revolving credit, at least in Belgium and under the current market and regulatory conditions, for at least three reasons: the cost of the credit, its availability at the moment of the purchase decision, and considerations relating to the payment itself. For the purposes of the present decision, and given the complexities that a more detailed assessment of substitutability would entail, it is therefore necessary to adopt a *pro forma* approach to the market definition and assume that the choice of a given type of credit is largely a function of the purchase situation and other exogenous explanatory variables, and that therefore these two types of credit belong to separate relevant markets.
56. Lastly, as regards this market, the market investigation has not allowed the Commission to determine whether or not it would be appropriate to distinguish between credit offered on universal cards and credits offered on private label store cards. However, this question can be left open for the purposes of the present Decision, since, on either alternative, serious doubts arise as to the compatibility of the notified transaction with the common market in Belgium.
57. Accordingly, the relevant market in this case is the market for card-based consumer credit. As will be argued further below, this market has a national dimension.

Asset management

58. Asset management concerns the provision of investment advice and often also the implementation of this advice with delegated powers from the client. Asset management services include the creation, establishment and marketing of retail pooled funds (mutual funds, unit trusts, investment trusts and open-ended investment companies) and the provision of portfolio management services to pension funds, institutions, international organisations and private investors.
59. In previous decisions, the Commission has left open the question whether these individual products constitute separate product markets, but pointed out that asset

²⁴ At the date of the decision, the ceiling for card-based credit for an amount between 1250 and 5000€ was 17% (AEIR). Cetelem Mastercard, Citibank and KBC Pinto were all priced at or very close to this ceiling.

management excluded the provision of portfolio management services to individuals (so-called private banking)²⁵.

60. The Commission has further considered the market for custody services within the asset management segment and has left open the question of whether custody services could be further subdivided into (i) global custody services to investment institutions and (ii) domestic custody services, and within this segment (a) institutional custody services and (b) retail custody services²⁶. In spite of limited overlaps among the Parties' activities in asset management, the notified concentration does not result in affected markets in any of the alternative possible market definitions considered, therefore, precise market definitions can be left open in this case.

Leasing

61. Leasing comprises the leasing of a wide range of assets such as industrial and agricultural machines, computers, real estate and transportation vehicles.
62. The Commission considered in one previous decision whether²⁷ car fleet leasing should be distinguished from other types of leasing but finally left this open. It also considered that car fleet and management services on the one hand and car finance leasing products on the other hand could constitute two separate markets²⁸. BNP Paribas is active in the field of contract car hire. The Notifying Party submits that contract car hire and car finance leasing are two distinct businesses and that should a distinct market for car finance leasing be identified, contract car hire solutions should not be considered as part of this market. The market investigation, however, tended to suggest that BNP was considered as a competitor of companies active in car leasing as such and hence that this distinction may not be competitively relevant. The question can, in any case, be left open since the concentration does not raise serious doubts as to its compatibility with the common market on any of the alternative possible market definitions considered.
63. The Parties' activities also overlap in small ticket vendor leasing. According to the Notifying Party, "small ticket" refers to office equipment, in particular items such as computers, printers, copiers and telecommunications material. "Small ticket vendor leasing", as opposed to direct leasing, refers to the refinancing of office equipment leasing providers (typically the original equipment manufacturer or its authorized distributor) through the transfer of their leasing contracts to banks or other leasing providers.
64. The Notifying Party considers that the small ticket vendor leasing business does not constitute a relevant product segment, since, from the demand-side, a leasing provider can equally refinance its activity through (i) credit lines offered by banks; or (ii) transfers of leasing contracts to banks or other providers equally active in direct leasing, such as De Lage Landen or ING Lease. For the case at hand this question can be left

²⁵ COMP M. 4844 Fortis/ABN AMRO Assets; COMP/M. 3894 Unicredito/HVB; COMP/M. 1453 AXA/GRE

²⁶ COMP/M.1979, CDC/Banco Urquijo/JV; COMP M.4844 Fortis/ABN AMRO Assets.

²⁷ COMP M. 4844 Fortis/ABN AMRO Assets

²⁸ COMP M.4199 De Lage Landen/Athlon; COMP M. 3029 Société Générale/AIHL Europe; COMP M. 3090 Volkswagen/Offset/Crescent/Lease Plan/JV.

open, as the notified transaction would not lead to serious doubts as to its compatibility with the common market, even if a relevant segment for small ticket vendor leasing was identified.

65. The Commission has considered in past decisions²⁹ another possible distinction between operational leases and financial leases. Under operational leases, the risks of ownership are retained by the lessor and the duration does not cover the major part of the asset's economic life (ownership is not automatically transferred to the lessee at the end of the lease term), whereas financial leasing is generally for a longer period and fully repays the asset cost resulting in the transfer of ownership of the product to the lessee at the end of the lease. Whether operational and financial leasing constitute separate relevant product markets can be left open for the purpose of the current transaction, since the concentration does not raise serious doubts on any of the alternative market definitions considered.

Financial market services

66. Financial market services comprise services such as trading (on an agent or riskless principal basis) in securities, bonds and derivatives as well as foreign exchange trading, money market operations (*i.e.* trading in treasury bills and commercial paper from banks and companies) and other asset classes.
67. In previous cases, the Commission has left open the question whether each of these services might constitute a separate product market³⁰. This question may remain open in this case as the notified concentration does not result in affected markets in this area, regardless of the alternative market definition considered.

Investment banking

68. Investment banking includes services such as advice on the financial aspects of mergers and acquisitions, initial public offerings and arranging new issues of stocks and bonds, excluding the underwriting of such operations. The Commission has analyzed in previous decisions the market for investment banking as a whole, while identifying the following possible market segments: (i) M&A advice, (ii) IPO advice, and (iii) services related to arranging new issues of stocks and bonds³¹. In the present case, the market definition can again be left open, since the notified concentration does not lead to serious doubts as to its compatibility with the common market, regardless of the alternative market definitions considered.

Insurance

69. In its previous decisions, the Commission has distinguished between three broad categories of insurance, namely life insurance, non-life insurance and reinsurance³². It has been further noted that, from the demand side, life and non-life insurance can be divided into as many individual product markets as there are different kinds of risks

²⁹ COMP M. 4844 Fortis/ABN AMRO Assets

³⁰ COMP M. 3894, Unicredito/HVB

³¹ COMP/M. 3894, Unicredito/HVB

³² COMP/M.4284, AXA/Winterthur

covered, given that their characteristics, premiums and purposes are distinct and that there is typically no substitutability from the consumers' perspective between different risks insured. However, supply side considerations may lead to broader product markets in respect of certain kinds of risk.

70. With respect to life insurance, the only activity resulting in affected markets in this case, the Commission has traditionally distinguished between group life insurance products and individual life insurance, as well as between predominantly risk-based products, on the one hand, and products oriented towards savings and pension provision, on the other. It has also looked at the relevance of distribution channels, in particular of the banking channel³³. In the present case, however, the precise market definition can be left open since the overlap among the Parties' activities is marginal on all segments considered.

Relevant geographic markets

Retail banking

71. In its previous decisions, the Commission has considered that, with regard to retail banking services, the relevant geographic market is national in scope due to the different competitive conditions within individual Member States and the importance of a network of branches³⁴. This approach may also be followed in the present case.

Corporate banking

72. With regard to corporate banking, the Commission has, in the past, always considered that the relevant geographic market for services to SMEs is national in scope³⁵. Although the Commission has recognized that corporate banking products offered to large corporate clients (LCCs) have a tendency to have a more international dimension, the Commission has ultimately left open whether the market for corporate banking to LCCs is national or wider in scope³⁶. This approach may also be followed in the present case.

Payment cards

73. In previous decisions, the Commission indicated that the market for payment cards issuing is still national in scope even though it admitted that there may be scope for the widening of the market in the future³⁷. The market investigation in the present case has confirmed that the markets in which the Parties' activities overlap are all national in scope.

³³ COMP/M.5075 Vienna Insurance Group/Erste Bank Versicherungssparte

³⁴ COMP/M.4844, Fortis/ABN AMRO Assets; COMP/M.2578, Banco Santander Central Hispano/AKB.

³⁵ COMP/M.4844, Fortis/ABN AMRO Assets; COMP/M.3894, Unicredito/HVB; COMP/M.2578, Banco Santander Central Hispano/AKB

³⁶ COMP/M.4844, Fortis/ABN AMRO Assets

³⁷ COMP/M.3740, Barclays Bank/Föreningssparbanken/JV and COMP/M.2567 Nordbanken/Postgirot

Card-based consumer credit

74. This market is linked to the installed base of cards and therefore is national in scope. The national scope of the market also follows from the effect of national regulation on the provision of credit to private individuals and households and the national scope of credit registers.

Asset management

75. Asset management has previously been looked at on the basis of either a national or international/EEA scope³⁸. The market investigation in recent cases³⁹ has provided some support for the view of the notifying Parties that the market is wider than national, but the Commission did not deem it necessary to conclude on the exact scope of the geographic market as no competition concerns arose under any possible market definition. This question may also be left open in the present case, since on a national scope of the relevant market the overlaps in the Parties' activities are minimal, whereas on a wider scope their combined market share remains below 15%.

Leasing

76. According to the Commission's previous practice, the markets for leasing services are at least national in scope⁴⁰. In recent cases, the exact geographic market definition was left open, since on any possible geographic market definition the concentration did not raise competition concerns⁴¹. In the present case, the market has been considered on a national basis, but this can ultimately be left open as the transaction does not lead to serious doubts as to its compatibility with the common market, regardless of the geographic market considered.

Financial market services

77. As regards financial market services, the Commission has considered that most of the market segments are international in scope but some of them have been analyzed from a national perspective⁴². This question may also be left open in the present case

Investment banking

78. As regards investment banking, the Commission has considered that most of the market segments are international in scope⁴³, but some of them have been analyzed from a national perspective⁴⁴. This question may, once again, also be left open in the present case.

38 COMP/M. 3894, Unicredito/HVB; COMP/M.1453, AXA/GRE; IV/M.1043, BAT/Zurich.

37 COMP/ M.4844, Fortis/ABN AMRO Assets

40 COMP/M.4199, De Lage Landen / Athlon

41 COMP/ M.4844, Fortis/ABN AMRO Asset

42 COMP/M.4844, Fortis/ABN AMRO Assets

43 COMP/M.2225, Fortis/ASR; COMP/M.1172, Fortis AG/Generale Bank.

44 COMP/M.4155, BNP Paribas/BNL

Life insurance

79. The Commission in its previous decisions has defined the markets for life insurance as being national in scope as a result of national distribution channels, the established market structures, fiscal constraints and differing regulatory systems⁴⁵. The market investigation in the present case has not suggested that any other view would be appropriate in this instance.

VI. COMPETITIVE ASSESSMENT

Horizontal effects

80. BNP Paribas mainly operates in France and Italy while Fortis Entities mainly operate in Belgium and Luxembourg. The Parties' activities do, however, result in overlaps in a number of markets.

81. Of these overlaps, the following do not give rise to affected markets given that the Parties' combined market shares do not exceed 15%⁴⁶: personal current accounts and saving accounts in France; personal loans in Belgium, Germany and Poland (except for card-based credit in Belgium); mortgages in France and Germany; private banking in Belgium, Italy, France Luxembourg, Spain and the United Kingdom; payment card issuing in France; corporate banking to SMEs in France; corporate banking to large corporate customers in the EEA; asset management in France, Italy, Luxembourg and Spain, or an EU/EEA-wide market; financial market services; investment banking; and leasing in Germany, Hungary, Italy, Poland, Portugal, Spain and the United Kingdom.

82. The overlaps that result in affected markets are the following: leasing in France; leasing in Belgium; retail banking and, more specifically, mortgages in Belgium; life insurance in Belgium; universal credit/charge card issuing in Belgium; and card-based consumer credit in Belgium.

French leasing market

83. In the overall French leasing market the Parties' will have a combined market share of 20% (BNP Paribas [10-20]% and Fortis Entities, [0-5]%). In France, the Fortis Entities are not active in car related activities (car fleet, car finance lease, contract car hire) or in operational leasing. The Parties' activities only overlap in financial leasing⁴⁷ where

45 COMP/M.5075 Vienna Insurance Group/Erste Bank Versicherungssparte; COMP/M.4844, Fortis/ABN AMRO Assets; COMP/M.4284, AXA/Winterthur

46 Market shares quoted in this decision are based on the parties' estimates unless stated otherwise.

47 In this decision "financial leasing", when used in connection to the French market, has the meaning of "crédit-bail" that extensively corresponds to the concept of financial leasing used in the decision in case M. COMP/M.4844, Fortis/ABN AMRO Assets. The *crédit bailleur* or lessor puts an asset at the disposal of the *crédit preneur* or lessee in consideration for a (rent) payment over a defined period of time. The duration covers the major part of the asset's economic life. At the end of the lease term, the lessee may call the option initially agreed upon to purchase the asset at the said residual value (less than the market value). In such situations, the leased equipment is considered as an asset in the lessee's balance sheet and the lessee writes off the cost of the equipment. The lessor holds a claim on the lessee.

their combined market share in 2007 based on new commitments was [10-20]% (BNP Paribas [10-20]% and Fortis Entities [5-10]%). The increment in the new entity's market share is [5-10]% and it will remain in competition with Société Générale ([10-20]%), Crédit Agricole ([10-20]%), Crédit Mutuel-CIC ([10-20]%), Natixis ([10-20]%) and others (28%). The resulting entity will therefore face competition from significant competitors and it will hold market shares below 25%⁴⁸. These are all indications that the notified concentration is unlikely to lead to competition concerns.

84. It may therefore be concluded that serious doubts do not arise as to the compatibility of the notified transaction with the common market in respect of the French leasing market.

Belgian leasing market

85. In the overall Belgian leasing market, the Fortis Entities' market share in 2007 based on new commitments, was [20-30]%, whilst the market share of BNP Paribas on the same basis was [0-5]%. ING, KBC and Dexia are the main competitors of the Parties in this market with [20-30]%, [10-20]% and [10-20]% market shares respectively. There are also a number of smaller players accounting for the remaining 23% of the market.

86. ING, KBC and Dexia all have large retail banking networks, which according to the Notifying Party is the main channel for the provision of leasing solutions, along with brokers and direct sales by suppliers of leasable assets. According to the Notifying Party there is no brand loyalty in this market. The market investigation has confirmed that all of the general leasing companies are considered as similar competitors by leasing customers although they may have individual strengths in different areas.

87. BNP Paribas only provides contract car hire solutions through its subsidiary Arval that in 2006 accounted for around [5-10]% of the total number of cars under contract car hire in Belgium. As stated above, in the view of the Notifying Party, contract car hire is a separate market from car leasing since car lease and contract car hire correspond to financing and long term renting solutions respectively.

88. If contract car hire was considered as a separate market, there would be no overlap in this segment. However, even if contract car hire and financial car leasing solutions were part of the same market, Forties Entities' market share (in terms of new commitments) in this hypothetical market would be around [5-10]% and BNP Paribas' around [5-10]%. Therefore the concentration does not raise serious doubts as to its compatibility with the common market on any of the alternative market configurations that could be considered.

89. The activities of the Fortis Entities and BNP Paribas overlap in financial leasing⁴⁹. In terms of new commitments, Fortis Entities' market share in 2007 was [20-30]% and

⁴⁸ ECMR, recital 32; Horizontal Guidelines, p. 18.

⁴⁹ In this decision, statistics relating to "financial leasing", when used in connection to the Belgian market, refer to "leasing on balance", which corresponds in all essentials to the concept of financial leasing used in the decision in case M. COMP/M.4844, Fortis/ABN AMRO Assets. Leasing on balance means that the residual value at which the lessee may buy the asset at the end of the lease term is less than 15% of the initial value of the asset. In such situations, the leased equipment is considered as an asset in the lessee's balance sheet and the lessee writes off the cost of the equipment. The lessor holds a claim on the lessee.

BNP Paribas' [5-10]%. The new entity will therefore have a market share of [20-30]% and will face strong competition from ING ([10-20]%), KBC ([10-20]%) Dexia ([10-20]%) and other (23%). In operational leasing, the overlap between the Parties' activities is of marginal importance ([0-5]%) and leads to combined market shares of less than 25%.

90. It also came to light during the market investigation that BNP is a strong player in the field of small ticket vendor leasing. However, according to the Parties' estimations, BNP Paribas market share in this segment in 2007 would be between [10-20]% and [20-30]% and Fortis Entities' between [0-5]% and [5-10]%. Therefore the new entity's market share would remain below the 25% threshold that acts as an indication that a concentration is not liable to seriously impede effective competition⁵⁰.
91. It may therefore be concluded that serious doubts do not arise as to the compatibility of the notified transaction with the common market in respect of the Belgian leasing market or any segments of it.

Belgian retail banking and mortgages

92. In Belgian retail banking, the transaction has a limited impact. Fortis Entities retail network in Belgium comprises 1,064 branches offering a full range of financial services from current/savings accounts to consumer/mortgage loans to individuals, professionals and small business, and, as such, Fortis is the largest Belgian retail bank. BNP Paribas, however, does not have a branch network in Belgium and only operates in specific segments, of which consumer lending and mortgages are the most relevant in the context of the current transaction. Therefore the assessment of this transaction need only be considered in relation to these two segments.
93. As regards the segment of consumer loans, this, if it were considered a relevant product market, would not give rise to an affected market since, according to the Parties' estimates, in 2007 Fortis Entities' market share for consumer loans in terms of loans outstanding was [10-20]% and BNP Paribas' market share was only [0-5]%. ING is the market leader in this segment with a market share of [20-30]%, with Dexia and KBC having [10-20]% and [5-10]%, respectively and with a number of other smaller competitors accounting for the remaining 42.6% of the market. All of the Parties' main competitors equally have developed branch networks. Moreover, the figures given by the Notifying Party included revolving credit, and would be lower if this were excluded, as the market investigation has shown should be the case. Therefore, the transaction does not lead to serious doubts as to its compatibility with the common market on the segment of consumer lending.
94. In the field of mortgages, which is the only affected segment (i.e. with a combined market share above 15%), the Forties Entities distribute mortgage products through Fortis' retail banking network and third-party distributors, while BNP Paribas operates only through brokers. According to the Notifying Party, the Fortis Entities' market share in 2007 in outstanding loans was of [20-30]%. BNP Paribas' market share was only [0-5]%. As a result, the combined market share of the Parties will be still below 25% and the increment in the new entity's market share is marginal. The new entity will remain in competition with KBC, ING and Dexia, each having a market share of 10 to 15%, as well as with a number of smaller competitors accounting for as much as 35.3% of the

⁵⁰ ECMR, recital 32; Horizontal Guidelines, p. 18.

market. Therefore, the concentration does not lead to serious doubts as to its compatibility with the common market on the Belgian mortgage market.

Belgian life insurance market

95. On the overall Belgian market for life insurance, the new entity's market share (in market premiums, excluding 1st pillar insurance) will increase marginally from [20-30]% to [20-30]% and the new entity will remain in competition with five significant operators: AXA ([10-20]%), Ethias ([10-20]%), Dexia ([10-20]%), KBC ([5-10]%), ING ([5-10]%). In the group life insurance segment of this market Fortis Entities' market share in 2007 was [20-30]% and the transaction will result in a market share increment of [0-5]%. The resulting entity will compete with AXA, which is a large player with a market share of [10-20]%, and with up to 4 companies (PV KBC, Dexia and Allianz) with market shares between 5% and 10%.
96. In the segment of individual insurance in Belgium, the combined market share of the Parties reaches [30-40]%, however, the market share increment resulting from the transaction is marginal ([0-5]%). In addition, the resulting entity will compete with AXA, KBC, Dexia (each with a market share of approximately [10-20]%), Ethias ([10-20]%) and ING ([5-10]%). Therefore, the combined market shares of the Parties remain limited in all cases, the increment in the new entity's market share is marginal (less than 0.5% in all the possible market configurations) and it will be confronted in all segments with strong competitors.
97. Therefore, the concentration does not lead to serious doubts as to its compatibility with the common market on the Belgian life insurance market.

Issuing of universal credit/charge cards

Belgium

98. The Parties are present in the Belgian market for universal credit/charge cards both directly and through a number of joint ventures.
99. Forties Entities are present directly; via Alpha Credit, a 100% owned subsidiary of Fortis Belgium; via Alpha Card, a full-function joint venture with American Express⁵¹; and via Finalia, a joint venture between Alpha Credit and Finaref, which is a subsidiary of the French bank Crédit Agricole.
100. BNP Paribas is present through its subsidiary BNP Paribas Personal Finance Belgium (PFB), formerly known as Cetelem Belgium, which issues cards under the Mastercard label and Aurora brand, and distributes such cards to consumers both directly and in cooperation with a number of commercial partners. It is also present through Fimaser, a Belgian joint venture with the retail chain Carrefour; Fidexis, a 100% owned subsidiary of PFB; and, by virtue of its stake in and the processing arrangements for, KBC Pinto Systems, a joint venture with the Belgian bank KBC.
101. All of the activities in which BNP Paribas has a stake rely on Cetelem Services EEIG ("EEIG") for certain support needs, whereas other support is provided directly by BNP Paribas through subsidiaries unrelated to PFB. EEIG is a European Economic

⁵¹ See case No COMP/M.5241 American Express/Fortis/Alpha Card

Interest Grouping in which PFB itself, Fimaser, KBC Pinto Systems, and UCB Hypotheken n.v. (also a subsidiary of BNP Paribas) are members.

102. Notwithstanding that BNP Paribas holds a 40% minority stake in Fimaser and KBC Pinto Systems, examination of the arrangements in question shows that it very likely exercises *de facto* control over these undertakings, not only by virtue of significant shareholdings and veto rights, but also based on operational considerations. As regards Fortis, joint control over its Alpha Card subsidiary has already been established in the Commission's earlier decision approving this venture, whereas joint control over Finalia can be presumed. The Commission has concluded, therefore, that the links between BNP Paribas and all of these ventures, as well as between Fortis all of the ventures in which it has a stake, are such that, absent modifications to the transaction, it was likely that all of these entities would act on the market with a high degree of commercial coordination.
103. The analysis of market shares therefore needs to be based on the shares of all of these entities on the relevant market. In what follows, the share of all of the entities in which BNP has a stake are attributed to it, and of all the entities in which Fortis has a stake are similarly attributed to it.
104. Based on the definition of the relevant market given earlier, the share of the Parties by number of cards post-merger would be [40-50]% (Fortis: [20-30]%; BNP: [10-20]%). The share would be somewhat higher, around [40-50]%, if the consumer segment of the market were considered alone. This market is, moreover, a concentrated one, dominated by the four large Belgian banks: in addition to Fortis, which has [1.0-1.5] million cards, KBC and Dexia have around [350-650] thousand cards, and ING has [300-500] thousand, whilst Citibank, which is active in direct marketing, has [200-400] thousand⁵². BNP Paribas has [500 thousand-1 million] before the transaction, and is therefore easily the number two player. The combined total of [1.5-2.5] million represents the clear market leader and around four times its nearest competitor.
105. In addition to this significant addition of market shares, as a result of which the combined entity would already be easily the largest on the market by number of cards post-merger, it is also necessary to consider the distribution structure of the market and the specific position of Fortis as the largest retail as well as corporate bank in Belgium. Both of these factors are likely to lead to a further growth in market share as a result of the merger which, while difficult to quantify *ex-ante*, is likely to be material.
106. In terms of distribution, Fortis is focused on its retail client base but, through Alpha Credit, Alpha Card and Finalia, also has a significant interest in the store distribution channel⁵³. BNP Paribas does the vast majority of its business through distribution and promotion arrangements with stores, and represents, on the Notifying Party's figures, significantly over half of all such distribution in Belgium.

⁵² Source: RBR report cited, plus Parties' figures. Comfort card, issued by Santander Personal Finance, is a private label card and therefore not considered here.

⁵³ Finalia is active only in pure store cards, but as it is only responsible for 1% of Fortis cards in any case, its influence on the analysis is not material. Alpha Credit distributes both store cards and revolving credit cards for Fortis (the latter cards use the Maestro functionality). Note that we use the term "store" here in a broad sense to indicate all consumer-oriented businesses, as indicated above, regardless of their possession or otherwise of an established retail outlet structure and regardless of whether the cards are distributed directly through that structure.

107. It can therefore be reasonably concluded, as suggested by certain respondents in the market investigation, that the transaction as originally proposed would be likely to allow BNP Paribas to further strengthen its already considerable position on the store distribution channel by means of leveraging the commercial arrangements which Fortis already has by virtue of its strong position on the Belgian corporate banking market. Competition on this channel would be further reduced by the assimilation of Alpha Credit and the other Fortis affiliates.
108. As a result, the only competitors which would remain on this channel post-merger with an offer of universal cobranded cards would be Citibank and International Card Services n.v. The latter is a subsidiary of Fortis Bank Nederland which has now been acquired by the Dutch State but which retains significant operational links to Fortis Belgium, as a result of which its fully independent behaviour in the short term cannot be concluded with certainty. Two further competitors, Santander Personal Finance and Cofidis do not presently offer universal credit/charge cards cobranded with stores, but only private label cards (pure store cards as defined above).
109. The market investigation has established that BNP Paribas and Fortis have to be considered close competitors, and probably each other's closest competitor, on the store distribution channel.
110. There is therefore a significant risk not only that the overall market share would further grow post-merger, but also that the store distribution channel for universal cards would be substantially foreclosed to competition.
111. Since there is almost no cross-selling by banks of cards issued by other banks⁵⁴, the bank channel is largely captive to own current account customers and therefore inaccessible to new entrants. Given the infrequent nature of decisions by private individuals to switch banking provider and the tendency for several retail banking services, including payment cards, to be marketed by banks, or at least perceived by consumers, as a bundle, commercial conditions in this captive part of the market are likely anyway to be less constrained by the presence of other banking providers than commercial conditions afforded by independent channels.
112. It follows that competition for the contested part of the market primarily takes the form either of promotion through the store channel or of direct promotion to consumers in isolation from current accounts, of which the only significant example of the latter in Belgium at the current time appears to be Citibank. The store channel must, therefore, be viewed as having a particular significance in the overall market and, especially, for new business.
113. As a result, it can be concluded that the transaction leads to serious doubts as to its compatibility with the common market on the Belgian market for universal credit/charge cards owing to the high combined market share, the fact that this share is much higher than the closest competitors, and that the Parties are each other's closest competitor on the store channel.

⁵⁴ With the exception of certain arrangements of marginal importance to the overall market, such as [...].

Luxembourg

114. In Luxembourg, BNP Paribas has a significant business in revolving credit cards, representing around [60-70]% of the segment, which is a purely consumer segment. However, Fortis Banque Luxembourg is not active on this segment, or, if active, then only to a very limited extent which is statistically negligible. In addition, a very small number of cards issued by Alpha Credit are issued to Luxembourg residents, but these cards represent well below 1% of the segment.
115. Fortis cards in Luxembourg are exclusively (or almost exclusively) deferred debit cards, and represent, on the Parties' figures, [20-30]% of both the consumer and corporate segments⁵⁵. BNP Paribas has a minor presence on the deferred debit segment.
116. The combined market share of the Parties on the market for universal credit/charge cards therefore represents [30-40]% on the consumer segment (Fortis: [20-30]%; BNP: [10-20]%) and around [30-40]% on the total market, given that BNP is not active in the corporate segment.
117. It can also be observed that the Parties' activities on the card market are essentially complementary in Luxembourg, with Fortis active in the deferred debit segment and BNP Paribas in the revolving credit segment.
118. As in the case of Belgium, although to a somewhat lesser extent⁵⁶, the transaction would give rise to a certain ability for BNP to cross-sell its revolving credit products through relevant Fortis commercial clients. This is likely to lead to a certain growth in the market and in the combined share of the Parties in the future, although this cannot be estimated with any precision.
119. It follows that serious doubts as to the compatibility of the notified transaction with the common market on the market for issuing universal credit/charge cards in Luxembourg cannot be excluded.

Card-based consumer credit

120. The Parties' activities in this market overlap only in Belgium, since, according to the Notifying Party, Fortis is not active, and, if present at all, then only to a very limited extent, in the corresponding market in Luxembourg. The remainder of this section therefore only discusses Belgium.
121. Reliable data on the number of revolving credit cards in circulation were not available to the Commission and could only be estimated by the Parties. Although such data (as for the cards market as a whole) is contained in the report *Payment Cards Western Europe 2008* by Retail Banking Research Ltd., which has been useful to the Commission in its assessment, the Notifying Party presented convincing evidence, partly also confirmed by the market investigation, that these figures contained certain inaccuracies.

⁵⁵ Excluding, as for Belgium, fuel cards.

⁵⁶ The Commission has not been able to establish the exact position of Fortis on the retail and corporate banking markets in Luxembourg but using the number of differed debit cards, none of which are store cards, as a very rough proxy, it would represent around [20-30]% of the market. BNP Paribas has no significant presence in Luxembourg on these segments.

122. The Notifying Party estimated the combined market share post-merger by number of revolving credit cards to be around [40-50]% (BNP: [30-40]%; Fortis: [10-20]%). The Commission considers that this estimate is likely, if anything, to understate the Parties' position, since even plugging the figures provided by the Notifying Party for its own and Fortis' business into the RBR analysis, and adjusting the market size accordingly, gives a combined share of [60-70]% (BNP: [40-50]%; Fortis: [10-20]%).
123. More significantly, it is very likely that the Parties' share by number of cards – or at least the part due to BNP which represents the main element of it – understates the share as a function of cards which are actually used by holders to draw credit. This is because revolving credit cards may be attractive to consumers for other reasons such as lower cardholder fees and promotions such as cashback, and such consumers may never, or only rarely, make use of the credit facility. Cards offered through stores, however, are often offered in connection with a specific credit transaction, in which the credit motivation is present from the outset. Moreover, as previously argued, although such credit is relatively expensive, it cannot be assumed that other benefits to the cardholder – such as the opportunity to make a purchase at favourable terms which he or she would not otherwise be able to make – do not outweigh this cost.
124. The Notifying Party has also argued that this market should not be measured in terms of the number of cards in circulation, since many cards may be infrequently used, but rather in terms of the value of credit drawn on the card, which represents the sales of credit made. In principle, the Commission accepts that this might be a more appropriate indicator. However, a reliable assessment on this basis has proven to be difficult to make. This is principally because the available statistics do not make a distinction between credit lines opened in connection with a credit card, and lines opened in connection with a current account.
125. The Notifying Party has estimated that the Parties' combined share in the value of outstanding loans on credit cards at the end of 2007 would have been of the order of [20-30]% (Fortis: [10-20]%; BNP: [10-20]%), based on an outstanding amount of [500-750] million euros. However, this estimate appears to the Commission to be subject to considerable uncertainty due to the pro-forma nature of the method used to estimate the outstanding amounts on card-based credit for competitors, and hence the total market size. The Commission has therefore concluded that this figure is unlikely to be more reliable than a figure based on number of cards.
126. In any case, even if the Commission were to accept a rough estimate of this order of magnitude, in order to determine competitive interaction it is also required to consider, in this regard, the particular nature of the Parties' business model and of the contracting of credit in relation to store cards and hybrid store cards, which is (i) linked to purchases at the sponsoring stores and the distribution of the cards themselves through the corresponding commercial relationship which the store has with its customer whilst (ii) also offers the convenience of a universal card which offers credit to cover purchases, as well as the pure payment functionality, in a much wider range of outlets. In this respect, it is clear that the Parties represent close competitors to each other, and probably are each other's closest competitor in what is, as already noted, a highly concentrated market segment and, absent any remedy, could become even more concentrated in the future.
127. Finally, it also needs to be borne in mind that the number of cards issued constitutes an installed base, and that this number could, through the notified transaction, increase further. The combination of the client relationships of Fortis and BNP and of the installed base of cards therefore gives rise to opportunities to sell credit which may in

this case be better measured by the number of cards in circulation than alternative measures.

128. It should be noted that the figures above relate to the market for card-based credit as a whole, including both universal and store cards, as these were the only figures available to the Commission. However, if the market were defined as credit on universal cards, it is very likely that the market share of the Parties would be even higher, since this category represents all of BNP Paribas business and around two-thirds of the business of the Fortis entities by number of cards, whilst in the private label category Santander's Comfort Card has a significant installed base of [200-400] thousand cards⁵⁷, equivalent to that of Fortis overall.
129. It follows from the above that the transaction also leads to serious doubts as to its compatibility with the common market on the Belgian market for card-based consumer credit.

Vertical and conglomerate effects

130. No vertical effects have been identified. As for conglomerate effects, it should be noted that BNP Paribas and Fortis Entities' combined product offer will not be significantly different from BNP Paribas' current portfolio or from the portfolio of any other large European bank. The proposed concentration essentially consists in broadening the geographic scope of the Parties' existing product portfolios.
131. AXA's independence as a competitor to the resulting entity was questioned by one respondent during the market investigation in view of the existence of certain structural links between AXA and the merging Parties: cross-shareholdings between BNP Paribas and AXA⁵⁸, agreements [...], common participation in joint ventures⁵⁹ and certain, albeit limited, cooperation arrangements [...].
132. Taking into account the limited nature of the links identified and the existence of a significant number of market players in the markets affected by the notified concentration, which makes it unlikely that the Parties face a bilateral incentive to coordinate their behaviour, these links appear not to be of such a nature as to reduce the level of competition in the market.

⁵⁷ Source: RBR report already cited.

⁵⁸ BNP Paribas has a 6,1% stake in AXA and AXA holds 5,9% of the shares of BNP Paribas.

⁵⁹ BNP Paribas and AXA jointly control Natio Assurance (home and motor products), an undertaking only active in France where it achieves a market share of only [0-5]% of the market. BNP Paribas and AXA hold respectively 33,5% and 11,7% in Services Epargne Entreprise (back office services for the management of employees savings in France) that has a turnover of 60 million Euro. AXA and Fortis Entities hold a minority stake in Fortima (secured infrastructure services to brokers) along with other insurance companies. Fortima's turnover is of marginal importance.

State Aid issues

133. In the context of the proposed merger, a number of State measures that might benefit the Parties to the transaction have been adopted. In keeping with the case-law of the Court, the Commission has to consider the impact of these measures on the financial strength and future market position of the Parties to the notified concentration and their consequences for the maintenance of effective competition in the Common market post-transaction⁶⁰.
134. On 29 September 2008, Fortis Bank Belgium received a capital injection by the Belgian State of € 4.7 billion in exchange for 49.9% of its shares. An Emergency Liquidity Assistance ("ELA") was also put in place by the Belgian Central Bank in favour of Fortis Bank Belgium on the same date. On 5 October, Belgium purchased almost all of the remaining 50.1% stake in Fortis Bank Belgium from Fortis SA at a price of a further €4.7 billion and accepted to take a 24% stake in a special vehicle created to harbour distressed assets of Fortis Bank Belgium.
135. On 29 September 2008, Luxembourg injected € 2.5 billion into Fortis Bank Luxembourg in exchange for 49.9% of the shares.
136. On 21 October 2008, BNP Paribas announced the intention of the French government to inject €2.55 billion in the framework of a recapitalisation scheme put in place by France in the context of the financial crisis. This transaction should not take place until the Commission takes a final position on the compatibility of this scheme.
137. In the context of the current transaction, Belgium intends to sell 74.94% of the issued share capital of Fortis Bank Belgium to BNP Paribas for a consideration of the equivalent of €8.25 billion in new shares of BNP Paribas, which represents pro rata a premium of 17% over the price paid in September. Luxembourg will sell a stake of 16% in Fortis Bank Luxembourg to BNP Paribas for a consideration of the equivalent of around €800 million also paid in new shares of BNP Paribas.
138. As any credit institution active in France, BNP Paribas is eligible for refinancing scheme put in place by France that was approved by the Commission on 30 October 2008 by decision in state aid case N 548/2008. Under this scheme, BNP Paribas has access to a liquidity facility guaranteed against collaterals within certain limits and subject to conditions.
139. By decision of 20 November 2008 in state aid case N 574/2008 (not yet published), the Commission authorised state guarantees in favour of Fortis Bank Belgium subject to conditions. In addition, all of the state measures implemented between 29 September and 5 October have now been authorized by the Commission.
140. It must in any case be recalled that under Regulation 139/2004, state aid is considered in the assessment merely in order to verify that the state measures in question are not such, in combination with other elements of the market situation, as to confer on the merged entity a market position which would result in a significant impediment to effective competition.

⁶⁰ Judgement of the CFI of 31 January 2001, RJB Mining/Commission, T-156/98, ECR p. II-337, points 114-125.

141. As the State measures which might benefit the resulting entities post-transaction as mentioned above have been approved by the Commission in the meantime as compatible with the common market and can only be adopted in the framework set by the approval decision, it follows that the Commission has concluded that such state measures will not lead to any significant distortion of competition.
142. In the context of the merger assessment, the market investigation has confirmed that market participants do not, in general, believe that the merged entity will be in a privileged position to compete in the market as a result of state assistance. The Commission also sees no circumstances specific to the merger whereby such compatible aid would alter its competition analysis under the ECMR as set out above. This Decision is entirely without prejudice to the Commission's assessments in the State aid field.

Conclusions

143. It follows from the above that the transaction leads to serious doubts as to its compatibility with the common market on the Belgian markets for universal credit/charge cards and card-based consumer credit. It cannot be excluded that it would also lead to serious doubts on the Luxembourg market for universal credit/charge cards.

VII. COMMITMENTS

A. Description of the proposed commitments

144. On 26 November 2008, BNP Paribas submitted an initial proposal which included [...]the divestiture of 100% of the shares of BNP Personal Finance Belgium S.A./N.V. (hereinafter, the "PFB Divestiture Commitment"). [...]
145. [...]
146. [...] The Commission has therefore concluded that only the PFB Divestiture Commitment would be appropriate to eliminate competition concerns in line with the Commission's remedy policy⁶¹.
147. The PFB Divestiture Commitment submitted on 26 November 2006 included the following:
- 100% of the shares of BNP Paribas Personal Finance Belgium s.a/n.v.: a company geographically spanning Belgium and Luxembourg that reflects the merger of Cetelem Belgium, Fidexis and UCB Belgium and that reached an outstanding of [...] million euros in 2007. It markets, *inter alia*, consumer personal credits, international revolving credit cards and store/hybrid store cards and credit management services to the commercial partners with whom they cooperate for revolving credit cards
 - 100% of Fidexis: a 100% subsidiary of PFB active in the field of personal loans and linked credits at the point of sale, revolving credit cars for consumers and small companies and credit card management services to the commercial partners with whom

⁶¹ Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, Official Journal C 267, 22.10.2008, p. 1-27

they cooperate for revolving credit cards. Fidexis' reached an outstanding of € [...] million in 2007

- PFB's goodwill and the registered trademarks One and Isis Finance
- The regulator's authorisation to act as credit provider in Belgium and Luxembourg and the MasterCard license
- All contracts entered into by PFB with its suppliers and customers [...]
- all customers, credit and other records of PFB and Fidexis
- PFB's dedicated employees [...]
- PFB key personnel
- the maintenance of all existing arrangements with respect to the IT support functions supplied by BNPP to PFB for a transitional period [...].

2. Improvements to the proposed commitment retained

148. Following the market test, the commitments proposal was improved on 28 November, *inter alia* by incorporating the following provisions:

- the explicit inclusion in the list of PFB's intangible assets of its stake in Cetelem Services EEIG ("EEIG") and its equity interest of 40% in KBC Pinto Systems
- the right of the Purchaser to use the Aurora trademark for a transition period.
- the possibility for the Purchaser to extend [...] upon request the above mentioned arrangements with respect to the IT support functions supplied by BNPP to PFB and EEIG and the guarantee that any such support functions will be provided on terms comparable to those granted to other subsidiaries of BNP Paribas Personal Finance (France).
- the provision of the necessary funding by BNP Paribas to PFB during the whole divestment period plus at least [...] at the option of the purchaser on comparable conditions to those granted to other subsidiaries of BNP Paribas Personal Finance (France) on the drawing date, provided the total amount does not exceed the level of funding induced by the outstanding on the Closing date and the Purchaser presents a risk compatible with market standards in these types of operations.
- BNP Paribas' commitment not to enter, for a period of [...] after Closing, into any new agreement with the stores or car dealers that are currently PFB's clients which would be similar or equivalent to such existing agreements.
- [...].

B. Assessment of the proposed commitments

1. Suitability for removing the serious competition concerns

149. As all the activity carried out in Belgium and Luxembourg by BNP Paribas in universal credit/charge cards, with the exception of the cards issued in cooperation with Carrefour, was channelled through PFB and its subsidiaries, the PFB Divestiture Commitment substantially reduces the addition of market shares, from a combined share of [40-50]% down to a share of [30-40]% in Belgium. Most notably, it would result in a new important player on the market, particularly in the store channel, alongside the continued ability of BNP Paribas to compete in this channel. It would have a concomitant effect in Luxembourg and on the market for card-based consumer credit. As a result it fully addresses the competition concerns identified.
150. Whilst the Commission was unable to conclude definitively on the existence of serious doubts in the market for universal credit/charge cards in Luxembourg, since the entire activity of BNP Paribas on this market is managed by BNP Paribas Personal Finance Belgium, and, in line with the serious doubts evidenced on the Belgian market, the Notifying Party has proposed to divest this entity, thereby in any case eliminating entirely the overlap also on the Luxembourg market.
151. In this regard it must also be noted that PFB is run as an integrated entity covering Belgium and Luxembourg, and that a carve-out of the Luxembourg operations would threaten the viability of the remedy. The Notifying Party has, furthermore, not expressed any wish to carve out what would then be a small fraction (less than 10%) of the operations of that entity.

2. Viability

152. According to the Notifying Party, PFB is currently a viable and competitive business with all the assets and personnel which contribute to its current operation and which are necessary to ensure its viability and competitiveness. From an operational perspective, it is managed and operated separately from other BNP Paribas entities, while only partially sharing some common IT support functions, which will be provided to it for a transitional period.
153. The results of the market test confirm this appraisal, as all of the competitors consulted considered PFB to be a viable business subject to assurances regarding the dependence of PFB on the provision by BNP Paribas of IT support functions and the funding required by the Purchaser in order to finance PFB's existing credit portfolio and to develop its activity. Both concerns have been addressed by means of the above improvements to the proposed commitments.
154. There is a relatively high number of potential purchasers, such as existing competitors in the market or potential new entrants into the Belgian consumer finance market, which include some banks established in Belgium which may be interested to expand into this sector. Therefore, there is a sufficient degree of certainty that the transfer of the divestment business to the purchaser will be implemented within a short time period.

3. Conclusion on the commitments

155. As indicated, BNP Paribas has committed to divest 100% of the shares of PFB, including 100% of PFB's subsidiary Fidexis, its stake in GEIE Cetelem services and its equity interest of 40% in KBC Pinto Systems.
156. According to the information provided by BNP Paribas, confirmed by the market test, PFB operates as a stand-alone entity, with own resources and management in order to provide consumer personal credits, international revolving credit cards and store/hybrid store cards and credit management services to the commercial partners with whom they cooperate for revolving credit cards.
157. In light of the foregoing, the Commission considers that the PFB Divestment Commitment is suitable for remedying the serious doubts on the compatibility of the concentration with the Common Market and the EEA which have been established in the previous sections of this Decision.

C. Conditions and obligations

158. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.
159. The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.
160. In accordance with the basic distinction described above, the decision in this case is conditioned on the full compliance with the conditions set out in paragraphs 1 – 3 of the Commitments submitted by the Notifying Party on 28 November 2008 and with the obligations set out in the other Sections of the Commitments.

VIII. CONCLUSION

161. The Commission has concluded that the remedies submitted by the Notifying Party are sufficient to remove the serious doubts raised by the concentration. Accordingly, subject to the full compliance with the conditions set out in paragraphs 1 – 3 of the Commitments submitted by the Notifying Party on 28 November 2008 and with the obligations set out in the other Sections of the Commitments, 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) and Article 6(2) of Council Regulation (EC) No 139/2004.
162. The detailed text of the commitments is annexed to this decision. The full text of the annexed commitments forms an integral part to this decision.

For the Commission

[signed]
Neelie KROES
Member of the Commission

By hand and by fax: 00 32 2 296 43 01
European Commission – Merger Task Force
DG Competition
Rue Joseph II 70
B-1000 Brussels

Case M. 5384 – BNP Paribas/Fortis

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004 (the “**Merger Regulation**”), BNPP hereby provides the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition of certain Fortis entities (“**Fortis**”) by BNP Paribas compatible with the common market and the EEA Agreement by its decision pursuant to Article 8(2) of the Merger Regulation (the “**Decision**”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

A. DEFINITIONS

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by BNP Paribas S.A., and/or by the ultimate parents of BNP Paribas S.A., whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 139/2004;

BNPP: BNP Paribas S.A., incorporated under the laws of France, with its registered office at 16, boulevard des Italiens, 75009 Paris, France, and registered with the Commercial/Company Registry (*Registre du Commerce et des Sociétés*) at Paris under number 662 042 449; or any company duly registered and directly or indirectly controlled by BNP Paribas S.A.;

Closing: the transfer of the legal title of the Divestment Business to the Purchaser;

Divestment Business: the businesses, as defined in Section B and the Schedule, that BNPP commits to divest;

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by BNPP and who has received from BNPP the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser [...].

Effective Date: the date of adoption of the Decision;

First Divestiture Period: the period of [...] from the Effective Date;

Hold Separate Manager: the person appointed by BNPP for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee;

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule;

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by BNPP, and who has the duty to monitor BNPP's compliance with the conditions and obligations attached to the Decision;

Parties: BNPP and Fortis;

Personnel: all personnel currently employed by the Divestment Business, including Key Personnel, staff seconded to the Divestment Business, shared personnel and the additional personnel listed in the Schedule;

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D;

Trustee(s): the Monitoring Trustee and the Divestiture Trustee;

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

B. THE DIVESTMENT BUSINESS

Commitment to divest

- 1.1 In order to restore effective competition, BNPP commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15.
- 1.2 To carry out the divestiture, BNPP commits to find a Purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period.
- 1.3 If BNPP has not entered into such an agreement at the end of the First Divestiture Period, BNPP shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. BNPP shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, BNPP has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance

with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.

3. In order to maintain the structural effect of the Commitments, BNPP shall, for a period of [...] after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

- 4.1 The Divestment Business consists of 100% of the shares of BNP Paribas Personal Finance Belgium S.A./N.V. with its registered office at Place de Brouckère n°2, 1000 Bruxelles (“**BNPP Personal Finance Belgium**”) [...].
- 4.2 The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes:
 - (a) All tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
 - (b) All licenses, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) All contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as “**Assets**”);
 - (d) The Personnel; and
 - (e) The benefit, for a transitional period of [...] after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all current arrangements under which BNPP or Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser.

C. RELATED COMMITMENTS

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, BNPP shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimize as far as possible any risk of loss of competitive potential of the Divestment Business. In particular BNPP undertakes:
 - (a) Not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the

Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

- (b) To make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
- (c) To take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business.

Hold-separate obligations of BNPP

- 6. BNPP commits, from the Effective Date until Closing, to keep the Divestment Business separate from the business it is retaining and to ensure that Key Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. BNPP shall also ensure that the Personnel does not report to any individual outside the Divestment Business. Moreover, BNPP commits itself to adopt all measures necessary to establish, as quickly as possible after the Decision, and in agreement with the acquirer or at the request of the Commission, a situation of full commercial independence from BNPP for the Divestment Business.
- 7. Until Closing, BNPP shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties. BNPP shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the business retained by the Parties.
- 8. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise BNPP's rights as shareholder in the Divestment Business (except for its rights for dividends that are due before Closing), with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling BNPP's obligations under the Commitments. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of BNPP. Upon request of the Monitoring Trustee, BNPP shall resign as member of the boards or shall cause such members of the boards to resign.

Ring-fencing

- 9. BNPP shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. BNPP may obtain information relating to the Divestment Business which is reasonably necessary for

the divestiture of the Divestment Business, or whose disclosure to BNPP is required by law.

Non-solicitation clause/Non-competition clause

10. BNPP undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of [...] after Closing. For a period of [...] after Closing, with respect to any currently existing agreements between BNPP Personal Finance Belgium and any store chain or car dealer (the “**Current Chains and Dealers**”), BNPP undertakes not to enter into, and to procure that Affiliated Undertakings not enter into, any new agreement with any of the Current Chains and Dealers similar or equivalent to such existing agreements (it being understood that Alpha Credit will be entitled to pursue and renew any currently existing agreement with such Current Chains and Dealers).

Due Diligence

11. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, BNPP shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) Provide to potential purchasers sufficient information as regards the Divestment Business;
 - (b) Provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

12. BNPP shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission’s request).
13. BNPP shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

D. THE PURCHASER

14. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
 - (a) Be independent of and unconnected to the Parties;
 - (b) Have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;

- (c) Be entitled to maintain the Master Card license;
- (d) Neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the “**Purchaser Requirements**”).

15. The final sale and purchase agreement shall be conditional on the Commission’s approval.

When BNPP has reached an agreement with a Purchaser, it shall submit a fully documented and reasoned proposal, including copy of the final agreement(s), to the Commission and the Monitoring Trustee. BNPP must be able to demonstrate to the Commission that the Purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the Purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments.

The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed Purchaser.

E. TRUSTEE

I. Appointment Procedure

16. BNPP shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If BNPP has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by BNPP at that time or thereafter, BNPP shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
17. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by BNPP in a way that does not impede the independent and effective fulfillment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by BNPP

18. No later than one week after the Effective Date, BNPP shall submit a list of one or more persons whom BNPP proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 17 and shall include:
 - (a) The full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) The outline of a work plan which describes how the Trustee intends to carry out its assigned tasks.
 - (c) An indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

19. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, BNPP shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, BNPP shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by BNPP

20. If all the proposed Trustees are rejected, BNPP shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 19.

Trustee nominated by the Commission

21. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom BNPP shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

22. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or BNPP, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

23. The Monitoring Trustee shall:

- (i) Propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
- (ii) Oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by BNPP with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) Monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by BNPP, in accordance with paragraphs 5 and 6 of the Commitments;
 - (b) Supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitments;
 - (c) (i) In consultation with BNPP, determine all necessary measures to ensure that BNPP does not, after the Effective Date, obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to BNPP as the disclosure is reasonably necessary to allow BNPP to carry out the divestiture or as the disclosure is required by law;
 - (d) Monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Affiliated Undertakings;
- (iii) Assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) Propose to BNPP such measures as the Monitoring Trustee considers necessary to ensure BNPP' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
- (v) Review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information relating to the Divestment Business and the Personnel, in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;

- (vi) Provide to the Commission, sending BNPP a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business, so that the Commission can assess whether the Divestment Business is held in a manner consistent with the Commitments, and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending BNPP a non-confidential copy at the same time, if it concludes on reasonable grounds that BNPP is failing to comply with these Commitments.
- (vii) Within one week after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- 24. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell [...] the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of BNPP, subject to the Parties' unconditional obligation to divest [...] in the Trustee Divestiture Period.
- 25. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Parties.

III. Duties and obligations of BNPP

- 26. BNPP shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of BNPP's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and BNPP and the Divestment Business shall provide the Trustee upon request with copies of any document. BNPP and the Divestment Business shall make available to the Trustee one or more offices on their premises

and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

27. BNPP shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. BNPP shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. BNPP shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
28. BNPP shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, BNPP shall cause the documents required for effecting the sale and the Closing to be duly executed.
29. BNPP shall indemnify the Trustee and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to BNPP for any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
30. At the expense of BNPP, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to BNPP’ approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should BNPP refuse to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead, after having heard BNPP. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph shall apply mutates mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served BNPP during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

31. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
 - (a) the Commission may, after hearing the Trustee, require BNPP to replace the Trustee; or

- (b) BNPP, with the prior approval of the Commission, may replace the Trustee.
- 32. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.
- 33. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

F. THE REVIEW CLAUSE

- 34. The Commission may, where appropriate, in response to a request from BNPP showing good cause and accompanied by a report from the Monitoring Trustee:
 - (i) Grant an extension of the time periods foreseen in the Commitments, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where BNPP seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall BNPP be entitled to request an extension within the last month of any period.

Paris, on November 28, 2008

.....
Michel Vial, Directeur du développement, Groupe BNP Paribas
Duly authorized for and on behalf of BNPP

SCHEDULE – BNP Paribas Personal Finance Belgium

I. Legal and functional structure of the Divestment Business

The divestment business consists of BNPP Personal Finance Belgium as operated to date and described hereafter.

BNP Paribas Personal Finance Belgium is incorporated under the laws of Belgium, with its registered office at Place de Brouckère 2, 1000 Bruxelles, Belgium, and registered with the Legal Entity Registry at Bruxelles under number 0400.282.277. BNP Paribas Personal Finance Belgium has also an office at Boulevard Adolphe Max 13/17, 1000 Bruxelles, Belgium.

Key facts

- Created in 1996, following the acquisition of part of a portfolio of GIB and combined with UCBEL in 2008.
- More than 500.000 customers (including Fidexis subsidiary).
- Geographically spanning Belgium and Luxembourg.
- Multi-channel distribution strategy via retail networks, brokers, car dealers and via direct channels

Strategy

BNP Paribas Personal Finance will continue building on its leadership position in retail finance by expanding its strong partnership with retailers ([...]) deals as well as numbers of multimarks arrangements. Work will be continued on expanding business with brokers (2006) as well as through our direct B to C channel such as the Internet (2006).

The ongoing quest for maximum efficiency will be maintained with special attention for cost control.

The aim for excellence in credit cycle management is continued with a low risk approach and further boost performance in credit management.

BNP Paribas Personal Finance Belgium SA/NV is organized around four business segments:

Mortgage. BNP Paribas Personal Finance Belgium offers mortgage fixed-term amortizable credits and bullet mortgage (*in fine*), and markets such mortgage loans through brokers.

Consumer loans. BNP Paribas Personal Finance Belgium offers fixed-term credits, and markets consumer personal credits through brokers or dealer networks or through direct marketing.

Revolving credit card issuing. BNP Paribas Personal Finance Belgium offers international revolving credits cards and store/ hybrid store cards.

Credit card management services. BNPP Personal Finance Belgium also offers credit card management services to the commercial partners with whom they cooperate for revolving credit cards.

BNPP Personal Finance Belgium reached an outstanding of [...] euros in 2007 (including Luxemburg activities).

The Divestment Business would also include Fidexis

FIDEXIS (100% subsidiary of BNP Personal Finance Belgium SA/NV) is incorporated under the laws of Belgium, with its registered office at Boulevard du Souverain 191, 1160 Bruxelles, Belgium, and registered with the Legal Entity Registry at Bruxelles under number 0461.066.635. FIDEXIS has no other office.

FIDEXIS is organized around three business segments:

Personal loans. FIDEXIS offers consumer personal loans and linked credits on the point of sale.

Revolving credit card issuing. FIDEXIS offers revolving credit cards, both for consumers and small companies.

Credit card management services. FIDEXIS also offers credit card management services to the commercial partners with whom they cooperate for revolving credit cards.

FIDEXIS reached an outstanding of [...] euros in 2007

II. Scope of the Divestment Business

Following paragraph 4 of these Commitments, the Divestment Business includes, but is not limited to:

- (a) the following main tangible assets:

BNPP Personal Finance Belgium has no major tangible assets.

- (b) the following main intangible assets:

Its stake in GEIE Cetelem Services.

An equity interest of 40% in KBC Pinto Systems

An equity interest of 100% in Fidexis SA

[...]

Registered trademarks include: (i) for BNPP Personal Finance Belgium: Isis Finance, Odysea, Aero and (ii) for Fidexis: Fidexis, Isis, Isis Miles.

(BNPP undertakes to grant the right to use its Aurora trademark for a transition period to be agreed upon with the Purchaser)

- (c) the following main licences, permits and authorisations:

Authorization by the regulator to act as credit provider in Belgium and Luxembourg
MasterCard licence

- (d) the following main contracts, agreements, leases, commitments and understandings:

- All contracts entered into by BNPP Paribas Personal Finance Belgium with suppliers and customers [...]
- (e) the following customer, credit and other records:
- All customers of BNPP Personal Finance Belgium and Fidexis, as well as any information related to the relationship between (i) such customers and (ii) BNPP Personal Finance Belgium and Fidexis (including, but not limited to, credit records, order and invoice history, etc.)
- (f) the following Personnel:
- The employees dedicated to the Divestment Business, [...]
- (g) the following Key Personnel:
- [...]
- (h) the arrangements for the supply with the following products or services by BNPP: [...]

In order to prevent any issues which may arise from the reorganization of these IT support functions and unless otherwise agreed with the Purchaser, BNPP will maintain, on comparable terms to those granted to other subsidiaries of BNPP Personal Finance France, all the current arrangements described above with respect to IT support functions for a transitional period of up to [...]. However, in the event that the Purchaser wishes to maintain any such arrangements for [...], (i) if BNPP Paribas Personal Finance France does not intend to migrate its IT operations to a new IT system, BNPP will be required to maintain such arrangement on comparable terms to those granted to other subsidiaries of BNPP Personal Finance France, and (ii) if BNPP Personal Finance France intends to migrate its IT operations to a new IT system, BNPP will be required to negotiate in good faith a solution convenient to itself and the Purchaser.

BNPP undertakes to provide the necessary funding to the Purchaser subject to the following conditions:

- Such necessary funding is granted on comparable conditions to those granted to other subsidiaries of BNPP Personal Finance France on the drawing date;
- The total amount provided by BNPP shall not exceed the level of funding induced by the outstanding on the Closing date;
- All existing drawings should be reimbursed within [...] after the Closing date;
- BNPP shall (i) provide either these resources directly, (ii) provide the necessary guarantee to the Purchaser, or (iii) procure the funding by any other means convenient to BNPP and the Purchaser.

- The Purchaser should present a risk compatible with market standards in these types of operations, i.e. should have an external rating not below A-. In the event that such external rating is not available, the Purchaser should have an equivalent internal BNPP rating (the model used for internal BNPP ratings has been approved by the French Regulator, and is commonly used to compute the group's Basel 2 equity).
- The funding provided by BNPP shall strictly finance the outstanding generated by the Divestment Business. If the Purchaser were to find another source of funding as securitization or any other substitute, then it must immediately reimburse the total funding provided by BNPP.

III. Assets excluded from the scope of the Divestment Business

N/A