EN

Case No COMP/M.6244 -
BNP PARIBAS/ FORTIS
COMMERCIAL
FINANCE HOLDING

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 05/09/2011

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EUROPEAN COMMISSION

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying parties:

Dear Sir/Madam,

Subject: **Case No COMP/M.6244 – BNP Paribas/ Fortis Commercial Finance Holding**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1. On 4 August 2011, the European Commission received notification of a proposed concentration pursuant to Article 4, and following a referral pursuant to Article 4(5), of the Merger Regulation by which the undertaking BNP Paribas (France) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of the whole of the undertaking Fortis Commercial Finance Holding N.V. ("FCF", the Netherlands) by way of a purchase of shares. (BNP Paribas and FCF are designated hereinafter as the "parties to the proposed transaction" or simply the "Parties".)

I. THE PARTIES

2. The envisaged transaction concerns the acquisition of sole control by BNP Paribas Group, through its subsidiary Fortis Bank S.A./N.V. ('Fortis Bank'), over FCF.

[1] OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

3. BNP Paribas is active in retail banking, asset management and services, corporate and investment banking and has operations in Europe, North and South America, Africa, the Middle East and Asia.

4. FCF provides factoring services including direct financing of debt portfolio, credit risk coverage, collection of payment from debtors and provision of administrative services related to the handling of invoicing of debtors. It holds 14 fully-owned subsidiaries active in the factoring business mostly in Europe. Moreover, FCF has a majority shareholding in two joint ventures also providing factoring services.

5. Prior to October 2008, FCF was a part of Fortis Bank (Nederland) N.V. ('Fortis Nederland') which in turn was a part of the former Fortis Bank group. On 3 October 2008, the State of the Netherlands took control of Fortis Nederland. Fortis Nederland was subsequently merged with the ABN AMRO Group on 1 July 2010. As a result, ABN AMRO holds 100% of FCF, the ultimate majority shareholder in which is the Dutch State.

II. THE OPERATION

6. On 10 June 2011, Fortis Bank and FCF entered into a share purchase agreement pursuant to which Fortis Bank will acquire 100% of FCF with the result that FCF will become a wholly-owned subsidiary of Fortis Bank. FCF's Dutch subsidiary will, however, be carved out and its shares will be transferred to the current owner, namely the ABN AMRO Group.

III. CONCENTRATION

7. It follows that the notified transaction constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

IV. EU DIMENSION

8. On 14 June 2011, the parties to the proposed merger informed the Commission, by means of a reasoned submission, that the concentration is capable of being reviewed under the national competition laws of at least three Member States, and requested therefore that it should be examined by the Commission.

9. The Commission transmitted this submission to all Member States on 15 June 2011. The Member States competent to examine the concentration did not within 15 working days express their disagreement to the request for referral.

10. The case is therefore deemed to have an EU dimension pursuant to Article 4(5) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

11. The notifying party submits that the transaction will not significantly impede effective competition within the meaning of Article 3(2) of Council Regulation 139/2004 in any relevant market within the EEA because (i) in horizontal overlaps the increments are not higher than 5%, and (ii) no vertical concerns can be identified.

12. According to the submissions from the acquiring party, BNP Paribas, next to its banking portfolio, also provides factoring services and credit insurance distribution services in a number of countries through its subsidiaries, namely in France, Luxembourg, Belgium, Italy, Spain, Portugal and (outside the EEA) in Turkey.

13. As mentioned above, FCF provides factoring services through its 14 wholly-owned subsidiaries, mostly in the EEA but also in Turkey and Hong Kong. Also, it acts as a distributor (broker) for credit risk insurance.

PRODUCT MARKET DEFINITION

14. The notifying party submits that the parties' activities overlap horizontally in factoring and in credit insurance distribution. Each of these possible market definitions are discussed below.

Factoring

15. The Commission in its previous decisions has defined factoring services to constitute a separate relevant product market. In its decisional practice, the Commission defined factoring as *'a financial service by which a commercial client pledges its debtors to a factoring company that will collect the money. Factoring comprises the purchase of all kinds of receivables from businesses, thereby providing customers with added liquidity. In this respect, it includes the ongoing purchase of short-term trade accounts receivable by a factoring company as well as the individual well-directed purchase of a customer's receivables for particular refinancing purposes*'[2].

16. Alongside this widely accepted definition, the Commission in its decisional practice has examined a couple of further approaches to factoring: (i) considering factoring to be a composite of several interlinked services, and (ii) discussing various types of factoring to potentially constitute separate relevant product markets.[3] However, in all previous cases the exact market definitions were left open regarding any possible further segmentation of factoring services.

17. In support of the former approach, the notifying party submits that factoring is a composite service normally consisting of (i) financing, (ii) debt management, and (iii) credit insurance services. This approach follows the one adopted in the *GE Capital/Heller* case where the Commission stated: '*Factoring is a form of lending against receivables. At its most basic it involves a business ('the client') contracting to assign some or all of the invoices for sales made to its customers to a factoring company. In return the factoring company provides one or more of the following: (i) a pre-payment or advance on the value of the invoices; (ii) invoice collection and sales ledger management services; and (iii) credit insurance protecting the client against a customer's inability to pay an invoice within a period of time*.'[4] The financing component (pre-payment or advance on the value of the invoices) was considered in the light of any other working capital finance including bank credit lines, venture capital

[2] *Fortis/ABNAMRO*, COMP/M.4844, para. 28. See also *Deutsche Bank/ABNAMRO*, COMP/M.5296, para. 13; *Santander/Alliance & Leicester*, COMP/M.5293, para. 12; *Unicredito /HVB*, COMP/M.3894, para. 29; *GE Capital/Heller*, COMP/M.2577, paras. 9-11.

[3] As for example in *Unicredito/HVB*, COMP/M.3894.

[4] *GE Capital/Heller*, COMP/2577, para. 10. Precise market definitions were left open in this case.

and other[5]. The Commission in the case in question considered possible separate relevant markets for each of the components mentioned above.

18. In its subsequent cases, the Commission has also looked at whether types of factoring could possibly form separate relevant product markets, such as making a distinction between factoring provided to small and medium-sized enterprises and large corporate customers[6]. The notifying party to the present concentration submits that they provide various types of factoring such as (i) non-recourse factoring, (ii) recourse factoring, (iii) invoice discounting, (iv) discounting of bills of exchange, (v) reverse factoring, (vi) maturity factoring, (vii) floor-planning, (viii) inventory finance and (ix) debt management services. The Commission has reviewed each of the possible sub-segmentations outlined above.

19. Moreover, the notifying party argues that both from the demand and the supply side, factoring constitutes a separate market, the segmentation of which is not appropriate. Regarding the supply side, it is argued that various types of factoring can be provided with the same pool of expertise and, therefore, factoring companies can offer any of the type of factoring outlined above. From the demand side it is argued that usually all of the components (financing, debt management, credit insurance) are needed in order to offer a meaningful end service.

20. However, the precise market definitions can be left open in this case as serious doubts do not arise as to the compatibility of the notified transaction with the internal market, regardless of the exact market definition adopted.

Credit insurance distribution

21. The notifying party has indicated that both entities are offering third party credit insurance and, thus, are active in credit risk insurance distribution. Previously the Commission has dealt with credit risk insurance[7] and distribution of insurance products[8]. However, as serious doubts do not arise as to the compatibility of the notified transaction with the internal market in this case irrespective of the market definition chosen, the precise market definition can be left open.

GEOGRAPHIC MARKET DEFINITION

22. In its previous decisions, the Commission defined factoring services to be national in scope[9]. The notifying party to this concentration does not contest this view, which is also consistent with the results of the market investigation in the present case.

COMPETITIVE ASSESSMENT

23. According to the information submitted by the parties, the transaction would have only a limited impact on the market in the 6 Member States outlined above (France, Luxembourg, Belgium, Italy, Spain and Portugal) and would not raise competition

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5 *GE Capital/Heller*, para. 9. Also see *Fortis/ABN AMRO*, COMP/M.4844, para. 29.

6 *Unicredito/HVB*, COMP/M.3894, paras. 18-28.

7 More particularly it considered credit insurance to form a separate credit insurance market *Fortis/ABN AMRO*, COMP/M.4844, para. 30, *Natexis Banques Populaires/Coface*, COMP/M.2805, para. 11. See also *Gerling/NCM*, COMP/M.2602, para. 41.

8 *Marsh & McLennan/Sedgwick*, COMP/M.1307, para. 8 et seq.

9 *Fortis/ABN AMRO*, COMP/M.4844, para. 84, *Natexis Banques Populaires / Coface*, COMP/M.2805, para. 13.

concerns. If the market is defined as comprising only factoring as a whole, the combined entity would reach the highest market shares in Belgium ([40-50%]) and Italy ([10-20%]). However, in both cases the increment in market share due to the transaction would be less than [0-5%].

24. The parties also submit that they are active in France and Luxembourg where they respectively have [10-20%] and [90-100%] combined market share. In regard to Luxembourg it should be noted that according to the notifying party BNP Paribas is not active there at all in factoring and, therefore, there is no increment in market share attributable to the proposed transaction. In addition, the notifying party argues that, due to its small size and other characteristics, the Luxembourg market should be regarded as constrained by competing offers available in the neighbouring geographical markets. In regard to France the combined market share remains modest.

25. Regarding a possible sub-segmentation of the factoring market into financing, debt management and credit insurance services, the parties' market shares seem in all cases to be moderate. In the case of working capital finance it would lead to an increase in BNP Paribas's turnover of less than [0-5%] in any of the geographical markets. With respect to debt management services, the parties submit that their market shares would be lower than those for factoring as a whole. As regards credit insurance, the parties submit that their market shares again would be lower than 10% percent under any market definition.

26. The notifying party has confirmed that even if various types of factoring are considered to constitute separate relevant product markets, their market shares will not be above [20-30%] for non-recourse or recourse factoring. In relation to the other types of products, the notifying party submits that there are no overlaps except for maturity factoring in Italy and discounting of bills of exchange in Belgium. BNP Paribas estimates that due to its limited presence in those markets, their market share remains *de minimis*.

27. In regard to credit insurance distribution in Belgium, the notifying party submits that both BNP Paribas and FCF have less than [0-5%] of such market[10].

28. According to the Parties, although BNP Paribas entered the Belgian factoring market on a small scale in 2010 providing services […] in the absence of its own Belgian factoring subsidiary following the break-up of Fortis in 2008, the operation essentially represents the reintegration of the Belgian factoring activity which was lost at that time, […]. Accordingly there would be no material reduction in competition.

29. The market investigation carried out by the Commission in the present case confirmed that, as argued by the Parties, the notified transaction would not lead to any material impact on the competitive structure of the markets in question and that there would remain a sufficient number of strong competitors in all national markets and all segments, with the vast majority of customers expressing no concerns and some considering that the operation would in fact result in a better factoring offer in the Belgian market, whilst leading to no relevant reduction in competition on the French, Italian or other markets.

10 BNP generated gross-written premiums of […] and FCF – […].

STATE AID ISSUES

30. On 7 July 2011, the Commission services wrote to BNP Paribas indicating that the acquisition of FCF would not be contrary to the conditions attached to Commission decision C(2009) 3907 of 12 May 2009 concerning the compatibility of State Aid received by Fortis (N255/2009 & N274/2009). The present decision is adopted, however, without prejudice to applicable State Aid rules.

VI. CONCLUSION

31. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(Signed)

Joaquín ALMUNIA

Vice-President