

Geanonimiseerde bijlage bij Kamerstuk 31789, nr. 33 ✓

NEELIE KROES

LID VAN DE EUROPESE COMMISSIE

Brussels, 2 October 2009
D(2009)380

Dear Jansen,

It has been two years since the Commission took a positive conditional decision in the Fortis/ABN AMRO merger. The condition for the completion of the merger is the sale of a series of assets, which I refer to for convenience as HBU. Before the divestment is completed, Fortis and ABN are not allowed to start integration. I believe that it is important for the employees of ABN, HBU and Fortis, for the stability of the Dutch banking market and for the wider public that a solution is found rapidly. Discussions started a long time ago with Deutsche Bank and they are continuing.

Yesterday, I learnt that important progress has been made in your negotiations with Deutsche Bank about the acquisition of HBU and that very constructive proposals have been put forward in relation to the few outstanding issues, so that the perspective of an agreement which is satisfactory to both sides is within sight.

The Commission has always been supportive of the Dutch government in that context, and has prolonged the divestment periods several times in accordance with its requests. We have nonetheless heard from your services that the Dutch State may consider asking for a further prolongation of many weeks, in order to examine the possibility of alternatives to a sale of HBU to Deutsche Bank - alternative purchasers and alternative solutions for the purpose of complying with the commitments entered into for the Fortis/ABN AMRO merger decision - and that it may consider it necessary to present various options to the Dutch Parliament. For that reason, I feel it is important to bring to your attention a number of elements that may assist you in making your decision whether to rapidly reach agreement with Deutsche Bank.

First, your services informed the Commission that _____ has expressed an interest in acquiring HBU. However, as you will recall, the purchaser requirements in the commitments are quite clear in that, *inter alia*, the purchaser has to have the financial resources, proven expertise and incentive to maintain and develop the business to be divested as a viable and competitive force. The purchaser has also to be able to serve internationally active corporate customers through in-house product capabilities, and has to provide for brand recognition in or outside the Netherlands. Given the characteristics of _____, it is very unlikely that the Commission would consider that it could meet these requirements and be approved as a suitable buyer of HBU. Besides, from the experience of the negotiations with Deutsche Bank, trying to start alternative discussions at this stage in the process could prove very complex and uncertain and could substantially delay any solution.

Second, we have understood that the Dutch State is willing to explore the possibility of selling the respective Fortis entities, i.e. Fortis Commercial Banking and Fortis Commercial Finance, to _____. This would correspond to an alternative remedy offer, different from the one

Bijlage 4 (geanonimiseerd uit 31789, nr. 23)

contained in the Commission's decision. Accepting a divestment of Fortis Commercial Banking and Fortis Commercial Finance as an alternative remedy would require a new decision of the Commission. There is no guarantee that a market test would consider the alternative remedy as suitable.

Moreover, on the basis of the documents sent to my services this week, we understand that a large amount of sensitive commercial information, which would not be available to competitors, seems to have been exchanged between Fortis Netherlands and ABN AMRO in the framework of the integration planning exercise. Without prejudice to our final position on the legality of such sharing of information, this in any event makes it doubtful whether an alternative remedy consisting of Fortis Commercial and Fortis Finance could be considered suitable either by the Commission or by the market for the purposes of establishing a strong competitor in the relevant market segments.

Besides, a sale of Fortis entities to _____ would currently seem to run into a number of difficulties, in particular when compared with the prospect of a sale to an interested and suitable purchaser for HBU as foreseen under the current remedy, which could in addition be implemented within a short time-frame. A divestment of part of Fortis Bank Netherlands to _____ would raise very significant uncertainties, in particular given the conditions set out in the Commission decisions approving the state aid to _____. As you will be aware, the Commission considered that the sale of _____ was a very important measure in order to limit the distortion of competition created by the state aid granted to _____. For the Commission to be in a position to authorise _____ to acquire parts of Fortis Bank Netherlands, it is likely that alternative commitments would have to be obtained from the bank, which have not been explored to date and make the prospect of a rapid solution on the basis of this alternative remedy rather hypothetical.

Third, and by contrast to the foregoing examples, let me remind you that the Commission had in September 2008 approved Deutsche Bank as a suitable buyer in a decision submitted to you and that it received merger control clearance in case M.5296 *Deutsche Bank/ABN AMRO Assets*. There is no reason why the Commission would not approve Deutsche Bank again if you would be able to rapidly find an agreement with this bank on the sale of HBU. The offer of Deutsche Bank appears within reach and could be negatively affected if it were subject to long delays.

The Management of NewBank and the Monitoring Trustee have both made clear that any further extension of the deadline for implementation of the remedy must be limited to the very minimum necessary to bring clarity to customers and staff, in order not to fatally undermine the viability of this entity which was originally set up only to function for a limited transitional period. I fully share this concern.

Under these circumstances, it seems vital to rapidly reach a solution in the current negotiations on the essential terms of the sale of HBU, which could be followed by a further extension of the remedy deadline for the minimum period necessary to conclude a formal sale agreement.

Y. regards
Meele