



22.4.2010

## NOTICE TO MEMBERS

**Subject: Petition 0589/2009 by Jean-Philippe Ducart (Belgian), on behalf of Test Achats asbl, with 1 signature, on the violation of the right to the protection of private property of the shareholders of FORTIS Bank**

### 1. Summary of petition

The petitioners put forward the case that the Belgian government violated the right to the protection of private property in the case of the purchase of the assets of FORTIS Holding and subsequently the sale of its shares to BNP Paribas. They claim that in both cases - purchase by the Belgian government of assets, sale of same assets to BNP Paribas - that the assets of the bank were undervalued and that the government acted by force, without consultation or agreement from the shareholders' meeting. A shareholders meeting on 28 April 2008 finally agreed to the sale of FORTIS Bank.

Test Achats asbl argues that the FORTIS shareholders' right to private property ownership has been irretrievably violated by the action of the Belgian government insofar as the majority of the assets of the company they hold shares in have been sold at below their actual value so as to preclude any ulterior appreciation of shares.

### 2. Admissibility

Declared admissible on 9 September 2009. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 26 October 2009.

The petitioner clearly objects to the sale of Fortis assets and to the process which led up to it, which is a matter of national concern.

The Commission did examine the purchase of Fortis assets by the Belgian and Dutch States which took place between 28 September 2008 and 5 October 2008, because such a purchase may contain an element of State aid to the seller, in particular if the State pays a purchase price exceeding what a normal investor would have paid for the assets concerned in similar circumstances. Relevant legislation, notably EC Treaty articles 87 and 88 and Council Regulation N° 659/1999 obliges the Commission to look into such aid whether they are notified or not notified. The measures at stake were notified by the Belgian and Dutch authorities.

The Commission decided on these State measures by decision of 3 December 2008 and 12 May 2009<sup>1</sup>. In particular, the Commission established, in the decision of 3 December 2008, that the price paid by the Belgian authorities to buy the 49.9% of Fortis Bank S.A. on 28 September was significantly above the price proposed by potential buyers at the same date. For this reason the capital injection subscribed by the Belgian authorities represented an aid based on article 87 (1) of EC Treaty. The Commission also concluded that the terms of the purchase of Fortis Bank Nederland on 3 October 2008 and of the second half of the capital of Fortis Bank S.A on 5 October 2008 also constituted State aid to the seller. However, the Commission took into account in the abovementioned decision that Fortis Bank was the largest deposit bank in the Belgian market. Consequently, the default of such a financial institution would have caused a serious disturbance for the Belgian economy, especially in the context of the global financial crisis. For this reason, the Commission came to the conclusion that the State aids granted by the Belgian and Dutch authorities were compatible with State aid rules.

The decision of 3 December 2008 has not been appealed in the two months following its publication, which is the deadline laid down in Article 230 of the EC Treaty.

## Conclusions

The Commission's opinion on this case, insofar as Community law is concerned, is definitive and closed. It does not concur with the petitioner's view that the assets of Fortis were undersold.

## 4. Further Commission reply, received on 22 April 2010.

Further to the Commission's comments of October 2009, the Commission examined the purchase of Fortis Bank by the Belgian State which took place in two steps: (i) the capital injection of 28 September 2008 which gave the State a 49.9% stake in the bank, and (ii) the purchase of the remaining 50.1% from Fortis holding on 5 October 2008. The Commission assessed these two transactions because they may contain an element of state aid both to the bank and also to the seller, in particular if the State pays a purchase price exceeding what a normal investor would have paid for the assets concerned in similar circumstances. Relevant legislation, notably articles 107 and 108 of TFEU and Council Regulation N° 659/1999, obliges the Commission to look into such aid whether it is notified or not notified. The

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<sup>1</sup> The decisions as published can be found in the following links:

[http://ec.europa.eu/community\\_law/state\\_aids/comp-2009/n255-09.pdf](http://ec.europa.eu/community_law/state_aids/comp-2009/n255-09.pdf)

[http://ec.europa.eu/competition/state\\_aid/register/ii/doc/NN-42-2008-WLWL-fr-03.12.2008.pdf](http://ec.europa.eu/competition/state_aid/register/ii/doc/NN-42-2008-WLWL-fr-03.12.2008.pdf)

measures at stake were notified by the Belgian authorities. The Commission decided on these State measures by decision of 3 December 2008 and 12 May 2009<sup>1</sup>. In particular, the Commission established in point 35 of the decision of 3 December 2008 that the price paid by the Belgian authorities to acquire 49.9% of Fortis Bank S.A. (by way of a capital increase) on 28 September was significantly above the price proposed by all the other financial institutions at the same date. For this reason, in paragraph 38 of the same decision, the Commission concluded that the capital injection subscribed by the Belgian authorities represented an aid based on article 107 (1) of TFEU. As regards the acquisition by the State of the remaining 50.1% of the capital of Fortis Bank on 5 October 2008, the Commission concluded in point 66 of the decision of 3 December 2008 that it also constituted aid. As regard the sale of 75% of the capital of Fortis Bank to BNP Paribas on 5 October, the Commission observed in point 59 of the same decision that among the many investors contacted in the previous days, BNP Paribas was the only investor which was still showing an effective interest in acquiring a controlling stake in Fortis Bank at that date, and that the price paid by BNP Paribas was the market price at that date.

The above shows that the Commission has already carefully scrutinised the transactions at stake and found that Fortis holding – and therefore shareholders of Fortis holding – did not receive a price below market price. Conversely, the Commission has concluded that the intervention of Belgium allowed Fortis holding and its shareholders to obtain, for the sale of Fortis Bank, a price above market price. These conclusions do not concur with the petitioners' claim that the protection of the private property has been violated in this case.

## Conclusions

The Commission's opinion on this case, insofar as Community law is concerned, is definitive and closed. It does not concur with the petitioner's view that the assets of Fortis were undersold.

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<sup>1</sup> These decisions were published in OJ C 80, 3.04.2009, p. 7 and OJ C 178, 31.07.2009, p. 2.