PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

STATE AID — BELGIUM
State aid MC 11/09 — Extension of the target date of certain divestments by KBC
(Articles 107 to 109 of the Treaty on the Functioning of the European Union)
(Text with EEA relevance)
(2011/C 346/06)

The Commission notified Belgium by letter of 16 December 2010 of its sui generis decision regarding the aid MC 11/09.

TEXT OF LETTER

1. PROCEDURE

(1) By Decision of 18 November 2009, the Commission approved the restructuring plan of KBC submitted after it had received a capital injection of EUR 7 billion of capital (CT1 securities) and additional aid of approximately EUR 260 million resulting from an impaired asset relief measure covering a portfolio of Collateralised Debt Obligations with a notional value of EUR 20 billion (hereinafter referred to as the “KBC Decision”) (1).

(2) According to indents (i), (iv) and (v) of recital 80 of the KBC Decision, the Belgian authorities and KBC have provided the commitment that KBC will divest […] (*), Centea and Fidea before the target date of 31 December 2010.

(3) Recital 89 of the KBC Decision provides that:

“Where appropriate and on the basis of a sufficiently reasoned request from the Belgian authorities and KBC and taking into consideration the views of the monitoring trustee, the Commission may:

(i) extend the target dates for implementation of the divestments:

(a) as regards the divestments to be implemented […], the target date may be extended […], […], and subsequently by […], […]

(b) as regards the divestment to be implemented […], the target date may be extended by […], […];

Such extension may be granted in particular when the divestments will not be implemented by these dates through no fault of KBC.

KBC will not be obliged to sell a Divestment Business […], except where […], in which case KBC shall not be obliged to sell the relevant Divestment Business at a price […].

(ii) dispense with, amend or replace one or more of the measures, requirements or conditions set out in this Decision.”

(4) Recital 90 of the KBC Decision provides that any request for an extension of the target date for the divestments by the Belgian authorities should be send two months prior to the target date set out in recital 80 of the KBC Decision.

(5) On 29 October 2010, the Belgian authorities submitted to the Commission a request to extend the target date for the divestments of Centea, Fidea and […] (hereinafter “the extension request”).

(*) Confidential information, where possible figures have been replaced by ranges in [brackets].

Pursuant to the submission by the Belgian authorities, the Commission requested the monitoring trustee for KBC to provide his opinion on the extension request on 3 November 2010. The Commission received the monitoring trustee's opinion on 17 November 2010.

The Commission requested further information regarding the extension request on 15, 18 and 24 November 2010 and received the information on 17, 19 and 24 November 2010.

The Belgian authorities informed the Commission that for reasons of urgency they exceptionally accept that this decision is adopted in the English language.

II. FACTS

1. Description of KBC and the commitments

The KBC Group NV (hereinafter “KBC”) is the holding company of KBC Bank, KBC Insurance and KBL European Private Bankers (hereinafter “KBL EPB”). KBC is an integrated bancassurance group, catering mainly for retail customers, small- and medium-sized enterprises (hereinafter “SMEs”) and private banking clientele. KBC is one of the main financial institutions in Belgium. Besides its activities in Belgium, central and eastern Europe, KBC is present in Russia, Romania, Serbia, several western European countries including Ireland, and to a lesser extent in the US and Southeast Asia. At the end of 2009, KBC had a total balance sheet of EUR 324,2 billion. A more detailed description of KBC has been included in recitals 11 to 15 of the KBC Decision.

In order inter alia to restore its long-term viability KBC has received the aid measures specified in point 1. Those measures were approved by the Commission in the KBC Decision subject to several commitments made by the Belgian authorities and KBC. Those commitments included that KBC will divest a number of businesses by certain target dates (recital 80) including Centea, Fidea and [...] before 31 December 2010 and that KBC will abide by certain behavioural safeguards (recitals 63 to 77 of the KBC Decision).

2. Description of the divestments and the divestment process

Centea and Fidea

Centea and Fidea represent KBC’s secondary distribution channel for retail banking and insurance products in Belgium. Centea (agent-based banking business) provides retail banking products and has a market share of around [...] % in mortgages and [...] % in retail deposits in Belgium (as at 31 December 2008). It has a network of 712 branches in Belgium and has its own front-office function. Centea's back-office services (including IT) are provided by KBC. Centea's total balance sheet at the end of 2008 totalled EUR 9,5 billion.

Fidea (agent-based insurance business) is active in both the life insurance market, where it has a market share of around [...] %, and non-life insurance (health, car and home insurance), where it has a market share of around [...] % (as at 31 December 2008). It distributes its products through a network of 4,981 brokers (of which 715 are Centea’s agents); its front- and back-office services are mainly provided by KBC. Fidea’s total balance sheet as at 31 December 2008 amounted to around EUR 3 billion.

For both Centea and Fidea, the Belgian authorities and KBC submit that the complexity of the carve-out process was such that it delayed the start of the sales process and as a result they will be unable to complete it before the target date of 31 December 2010.

KBC, Centea and Fidea are highly integrated with each other, with many centralised products, processes and IT functions. Support functions, such as legal, tax, audit, compliance, etc., were also shared. In all, KBC found that it provided 163 and 193 services to Centea and Fidea respectively. Of those services, KBC mapped those which could be dealt with independently by Centea and Fidea upon closing of the sale (60 and 100 respectively) and those which would require transitional agreements with the buyer(s). The identification, mapping and resolution processes were very complex and time-consuming.

The Belgian authorities have submitted that the proper execution of those divestments requires the completion of a complex process of disentanglement, i.e. the separation of Centea and Fidea from KBC into distinct and separately salable entities. That disentanglement exercise is a precondition for a divestment and needed to be completed prior to launching the sale process of Centea and Fidea.

In that context, the Belgian authorities and KBC point out that a properly executed disentanglement process is required by recital 81 of the KBC Decision, which states that the businesses’ value must be preserved by KBC while carrying out the divestment process, and with recital 83 of the KBC Decision, according to which KBC shall preserve notably the marketability of the businesses and shall minimise any risk of loss of their competitive potential. Finally, a fully documented disentanglement is fundamental for a proper execution of the transitional arrangements, as set out in recital 82 of the KBC Decision, and for guaranteeing proper business continuity for both entities after the divestment as required by the relevant supervisory authorities.

According to the submission, KBC considers that it has committed significant resources to those divestments. It has been a priority of the organisation, with full participation from top management. In addition to substantial internal resources, it has also engaged external advisors to help the process.
(18) Despite these efforts, the Belgian authorities and KBC state that the complexity of the carve-out meant that it was only completed end-October 2010 instead of mid-June 2010, as was originally envisaged. In their view, it was essential to complete the disentanglement prior to properly launching the sales process in order to provide clarity to potential buyers and allow the proper execution of the necessary transitional arrangements.

(19) KBC has recently sent out investment memoranda to potential buyers of […] and Fidea. According to the timeline submitted by the Belgian authorities, KBC expects to receive expressions of interest in […] and hopes to close the sales process of both Centea and Fidea by […]. The Belgian authorities therefore request the Commission to extend the target date for the divestment of these businesses […].

(20) KBC owns two businesses in […]: it owns […] % of the shares of […] and […] % of the shares in […] (hereinafter together referred to as […]). […] is located in […] and employs […] people. It is active in corporate banking (†) for local small-, medium-sized and large companies. It furthermore provides private banking services to private individuals. The results for 2009 show that its total net income amounted to EUR […] million (of which EUR […] million net interest income) and that […] generated a profit after tax of EUR […] million. The figures for the first half of 2010 show that its total net income amounted to EUR […] million and that it generated a profit of EUR […] million.

(21) […] is located in […] and employs around […] people. It offers […]. It also offers […] […]. In 2009 its total net interest income amounted to EUR […] million, generating a profit of EUR […] million. The results until the end of September 2010 show a net interest income of EUR […] million, generating a profit of EUR […] million.

(22) KBC […]. The Belgian authorities and KBC claim that market conditions […] as well as new […] regulations, […] meant that […]. KBC therefore decided […] in a parallel process […].

(23) […], KBC has started to prepare for the divestment of both businesses. It has established dedicated teams to disentangle […] and prepare it for sale. KBC has also engaged an investment advisor. It plans to send out the information memorandum for both businesses […], with a view to closing the sale […].

(24) The Belgian authorities and KBC argue that the sales perspectives […]. KBC has sought expert advice from […] who confirmed that the current sales price KBC could expect for both businesses would be around […]. That estimate is based on comparable transactions […]. Given that information, KBC did not consider it possible to sell […] and thus did not launch the sale process.

(25) The Belgian authorities therefore request that, since prevailing market conditions were such that it was not possible for KBC to complete a sale of […], KBC should be granted an extension […] to execute the divestment.

3. Opinion of the monitoring trustee

(26) As provided for in recital 89 of the KBC Decision, the Commission requested the monitoring trustee for his opinion. The monitoring trustee has provided the following opinion.

Centea and Fidea

(27) The monitoring trustee has indicated that he was kept fully informed throughout the sale preparation process for Centea and Fidea. He agrees with the assessment of the Belgian authorities and has indicated that it is important that the process of disentanglement is well documented and clearly presented prior to launching the marketing process. He stated that the scale of the task required more time than envisaged originally, which has delayed the start of the sale process itself. In his opinion, however, “KBC has made its best effort to conduct this disentanglement preparation as quickly as reasonably possible taking into account the large number and the complexity of the tasks to be performed”.

(28) With regard to the sales process, the monitoring trustee has outlined in his opinion that KBC conducted a presounding phase with selected potential bidders, […], it has sent the information memoranda to parties that expressed an interest in Centea and/or Fidea. The key next step is the receipt of indicative offers […]. KBC anticipates agreeing a sale and signing a sale purchase agreement […]. In the monitoring trustee’s opinion KBC has contacted the widest possible range of potential purchasers for Centea/Fidea, the material prepared for the bidders is well documented and the new divestment target date is workable.

[…]

The monitoring trustee concurs with the assessment of KBC […]. The monitoring trustee has supplied the Commission with a summary of the market information provided by KBC’s investment advisors. They all confirm that […]. […] In the view of the monitoring trustee, any sale of […].

(29) As regards the current status of the divestment process, the monitoring trustee considers that KBC has taken the necessary measures to ensure an efficient divestment process of […]. The monitoring trustee furthermore considers that the projected sale completion date of […]. However, […], the monitoring trustee considers that an improvement in market conditions is necessary […].

(†) […]
4. Position of the Belgian authorities

(30) The Belgian authorities point out that the KBC Decision foresees a possible extension of the divestment target dates subject to Commission approval.

(31) They furthermore consider that for the divestment of Centea and Fidea, the delay to the start of the sales process has been caused by the complex disentanglement that had to precede the sales process. KBC has furthermore taken all reasonable efforts to ensure that the divestment of Centea and Fidea is carried out as soon as possible. According to the Belgian authorities it is therefore justified that the target date for the divestments is extended by one year.

(32) Regarding […], the Belgian authorities point out that the KBC […] Furthermore, market conditions […]. As KBC is not obliged […] and given the reasonable efforts undertaken by KBC to divest […], an extension of the target date for the divestment is justified.

(33) The Belgian authorities furthermore argue that the extension of the target dates is consistent with the KBC Decision and the restructuring plan submitted for KBC by the Belgian authorities. It would also not interfere with the intended purpose of the measures as described in the KBC Decision.

(34) The Belgian authorities underline that KBC will continue to fulfil its obligations towards the divestment businesses in terms of managing them as distinct and separately saleable entities in their best interest while preserving their economic viability, marketability and competitiveness.

III. ASSESSMENT

(35) Regarding the legal basis for the present decision, it should be noted that the question of authorising an extension of the target date for the divestments of Centea, Fidea and […] arises in the context of the implementation of the KBC Decision. As a result of the commitments made by the Belgian authorities and KBC, the KBC Decision allows an extension of these target dates if authorised by the Commission. This decision will thus specify the implementation of the KBC Decision.

(36) The present monitoring decision is a decision sui generis. Although it is not foreseen in Regulation (EC) No 659/1999, recital 89 of the Decision of 18 November 2009 lays down an authorisation procedure under which the Member State may request the Commission to extend a target date for any of the divestments to be undertaken by KBC as part of the commitments given by the Belgian authorities. Since the Belgian authorities have submitted such a request, the Commission must assess whether the extension of the target dates for the divestment of Centea, Fidea and […] can be permitted.

(37) In the case of Centea and Fidea the Commission notes that the divestment of those businesses necessitates a prior carve-out of these businesses from the KBC Group. The Commission observes that carve-outs are by their nature complicated processes. In that context the Commission notes that KBC during the disentanglement process has found that it provides 163 services to Centea and 193 to Fidea.

(38) The Commission takes note of the opinion of the monitoring trustee, who has underlined that the complexity of the disentanglement process is the reason why KBC was unable to complete the sale of Centea and Fidea before the target date of 31 December 2010. The Commission furthermore observes that in the monitoring trustee's opinion, KBC made its best effort to meet the target date and that it committed substantial resources to the task.

(39) The Commission furthermore notes that the delays were also the result (at least partially) of other commitments that needed to be respected by KBC with regard to Centea and Fidea. Pursuant to the commitment in recital 81 of the KBC Decision, KBC has to preserve the value of the divestment businesses. The Commission observes that in order to ensure that Centea and Fidea will have the necessary resources to continue to operate as separate and viable businesses, it is necessary to identify what services provided by KBC Group are required after the sale to a third party.

(40) Furthermore, the commitments undertaken by the Belgian authorities and KBC provide that KBC shall preserve the economic viability, marketability and competitiveness of the divestment businesses (recital 83 of the KBC Decision).

(41) The Commission considers that the extension request of KBC is not an attempt to thwart the divestment obligations imposed on it as part of the commitments that were given by the Belgian authorities and KBC to secure approval of the bank's restructuring plan. KBC has already implemented four other divestments, of which two were completed over two years ahead of schedule.

(42) In addition, the Commission notes that KBC has already started the sale process for Centea and Fidea, as evidenced by sending out the information memorandum to interested parties. The Belgian authorities have indicated that KBC's target date to complete the sale is […]. The Commission notes that the monitoring trustee is of the opinion that this sale date is achievable.

(43) For those reasons, the Commission considers that the failure to implement the divestment of Centea and Fidea by the target date was through no fault of KBC and that it is appropriate to grant KBC extra time to complete the sale in an orderly fashion.

[…]
(44) Recital 89 provides that the Commission can authorise the extension of the target dates for the divestments mentioned in recital 80 of the KBC Decision for two reasons. Firstly, if the divestments cannot be implemented before the target date expires through no fault of KBC and secondly, in the case that KBC was not able to sell the divestment business [...]. In the latter case however, the application of the temporal scope of [...] is limited in time [...]. If a target date is extended beyond that date [...]. An extension of the target date beyond [...] is not possible. Therefore, should KBC not succeed in selling a business before [...], a divestiture trustee will be appointed who can sell the business [...] (recital 91 of the KBC Decision).

(45) The Commission notes that, as part of its sale of [...], KBC has attempted [...].

(46) As for the application of [...], the Commission observes that the Belgian authorities and KBC have provided reports of three investment banks [...]. The monitoring trustee furthermore concurs with the assessment of KBC [...].

(47) The Commission furthermore takes note of the fact that according to both the Belgian authorities and the monitoring trustee the current market circumstances are not conducive for [...]. The current market circumstances are a relevant factor when assessing the extension request.

(48) The Commission notes positively that the monitoring trustee has also indicated that in his opinion KBC has undertaken all reasonable efforts to divest [...] before the target date. The monitoring trustee furthermore considers that [...]. In that context the Commission points out that the Belgian authorities requested an extension of the target date [...] which would leave KBC with sufficient time to complete the sale [...].

(49) In view of the above, the Commission considers that there is sufficient evidence to show that [...]. As point 89 of the Decision states that KBC cannot be obliged to sell [...], the Commission is of the view that it is justified to extend the target date for the divestment [...].

IV. CONCLUSION

(50) For the reasons set out above, the Commission can agree to the extension of the target date for the divestments of Centea, Fidea and [...].

V. DECISION

The Commission agrees to extend the target date for the divestments of Centea, Fidea and [...].