



Jersey Competition Regulatory Authority ('JCRA')

Decision M132/07

Proposed Acquisition

by

RFS Holding B.V.

of

ABN AMRO Holding N.V.

The Notified Transaction

1. On 15 August 2007, the JCRA received an application for approval under Articles 20 and 21 of the Competition (Jersey) Law 2005 (the 'Law') concerning a proposed acquisition of ABN AMRO Holding N.V. ('ABN') by RFS Holding B.V. ('RFS'). RFS is a newly incorporated company jointly owned by The Royal Bank of Scotland Group plc ('RBS'), Fortis N.V./Fortis S.A./N.V. ('Fortis'), and Banco Santander Central Hispano, S.A. ('Santander'). Collectively, the three shareholders of RFS are referred to as the 'Consortium'. The Consortium intends to acquire the whole of ABN's issued ordinary share capital through a public offer.
2. Because the proposed acquisition is proceeding via a public offer, the Merger Application Form (the 'Application') was submitted on behalf of RFS only, and not jointly by RFS and ABN. The Consortium did, however, provide information on the activities of ABN in the Application, which the JCRA subsequently confirmed through its investigation.
3. The JCRA published a notice of its receipt of the Application on its website and in the Jersey Gazette, both on 17 August 2007, inviting comments by 31 August 2007. In addition, the JCRA contacted relevant customers, competitors, and trade associations concerning the proposed acquisition. The JCRA also had direct communication with the potentially acquired party, ABN, and discussed the matter with the Jersey Financial Services Commission ('JFSC'). During this process, no party expressed concerns to the JCRA regarding the proposed acquisition's potential effects on competition in Jersey.

The Parties

(a) *RFS*

4. RFS is a newly incorporated company located in the Netherlands, jointly owned by RBS, Fortis and Santander. It was incorporated as a vehicle to acquire the whole of the issued share capital of ABN.

(b) *RBS*

5. RBS is incorporated in Scotland and has its headquarters in London. According to the Application, RBS is a leading provider of banking services and integrated financial solutions, active in Europe, North America, Latin America, and Asia. It has a worldwide staff of around 135,000 and a market capitalisation of £59.8 billion.
6. Through its subsidiary, The Royal Bank of Scotland International Limited ('RBSI'), RBS provides a full range of banking services in Jersey. These include retail, commercial and corporate services, as well as private banking services. In addition, another RBS subsidiary, Coutts Offshore Europe Limited ('Coutts'), offers in Jersey private banking and trust services to individuals that have minimum assets of £500,000 to invest. RBS's total turnover in Jersey for 2006 was nearly [•].*

(c) *Fortis*

7. The parent companies of the Fortis group are incorporated in Belgium and the Netherlands. According to the Application, Fortis is an international financial services provider engaged in banking and insurance. Fortis is mainly active in Europe, the US, and Asia. It has a worldwide staff of nearly 60,000 and a market capitalisation of €39 billion.
8. Fortis currently owns and operates an insurance company in Jersey, called Fortis Insurance Limited UK, which has a category A permit (for insurance companies which are regulated elsewhere) and is registered as a provider of general insurance advice. In 2006, its turnover for the entire Channel Islands was [•].*

(d) *Santander*

9. Santander is incorporated and headquartered in Spain. According to the Application, Santander is a leading provider of banking and financial services,

* Figures confidential.

with operations in Europe and Latin America. It has a worldwide staff of nearly 130,000 and a market capitalisation of approximately €70 billion.

10. Santander provides retail banking services in Jersey for international customers through its subsidiary, Abbey National. Its total turnover in Jersey for 2006 was [•].*

(e) *ABN*

11. ABN is incorporated and headquartered in the Netherlands. According to the Application, ABN is the holding company of a major international banking group, with more than 4,500 branches in 53 countries with a staff of more than 105,000.
12. The JCRA understands that through its Jersey branch, ABN conducts mainly private banking activities.

The Structure of the Proposed Acquisition and the Scope of the Application

13. As stated above, the Application concerns the proposed acquisition of ABN through a public offer for its entire issued ordinary share capital. According to the Application, if implemented, the proposed acquisition would proceed in two stages:
- Stage 1 – RFS would acquire the whole of ABN’s issued ordinary share capital and become a subsidiary of RBS.
 - Stage 2 – Pursuant to a Consortium and Shareholders Agreement (‘CSA’), the Consortium would implement a division of the clear majority of ABN’s assets among RBS, Fortis, and Santander. Under the CSA, ABN’s Jersey activities would constitute part of the assets transferred to Fortis.
14. Under Article 2(1)(b) of the Law, a merger or acquisition occurs if ‘a person who controls an undertaking acquires direct or indirect control of another one.’ Because, pursuant to Stage 1 of the proposed acquisition, RBS would gain

* Figure confidential.

- indirect control of ABN through RFS becoming a subsidiary of ABN, the acquisition by RBS of the whole of ABN would be considered as a merger or acquisition under Article 2(1)(b). Accordingly, the Application concerned the potential effects on competition in Jersey arising from a combination of RBS and ABN, and this was the focus of the JCRA's investigation.
15. The subsequent division of ABN's assets among RBS, Fortis, and Santander under Stage 2 also could result in separate acquisitions of control under the Law, by Fortis and Santander, respectively, of components of ABN.¹ These subsequent acquisitions could raise separate approval obligations under Articles 20 and 21 of the Law, if they were to satisfy one or more of the thresholds set forth in the Competition (Mergers and Acquisitions) (Jersey) Order 2005 (the 'Order').

The Requirement for JCRA Approval

16. The Application was submitted on the basis that the combination of ABN and RBS pursuant to Stage 1 would result in the threshold set forth in Article 1(1)(b) of the Order being exceeded in the share of supply of corporate banking services in Jersey. On this basis, pursuant to the Order, the JCRA's approval is required under Article 20(1) of the Law before the proposed acquisition is executed.
17. According to the Consortium, neither of the potential acquisitions involved in Stage 2 of the proposed acquisition – the acquisition of certain specified ABN assets by Santander and Fortis, respectively – would satisfy a threshold set forth in the Order. Based on this representation and the current activities of Fortis and Santander in Jersey, neither of these Stage 2 acquisitions appears to require the JCRA's approval under the Law prior to their execution.

Assessment

18. Under Article 22(4) of the Law, the JCRA must determine if the potential combination of RBS and ABN that would result from Stage 1 of the proposed

¹ Because the Application covers the potential combination of the whole of ABN with the whole of RBS that would result from Stage 1 of the proposed acquisition, it also would cover an acquisition by RBS of less than the whole of ABN, which would result from Stage 2 of the proposed acquisition.

acquisition would substantially lessen competition in Jersey or any part thereof, pursuant to the procedures set forth in the JCRA Merger Guideline (the ‘Guideline’).² As detailed below, the JCRA concludes that this would not be the case.

Defining the Affected Relevant Market(s)

(i) The Relevant Product Market

19. As noted above, both ABN and RBS (through its subsidiaries RBSI and Coutts) are active in Jersey’s banking sector. RBS offers a full range of banking services in Jersey, including retail, commercial and corporate services as well as private banking services. The JCRA understands that ABN also offers private banking services in Jersey, along with intermediary services such as foreign exchange, leveraging and borrowing, done primarily for trust and hedge funds on behalf of their beneficiaries. ABN may also provide limited corporate or commercial banking services in Jersey.
20. According to past decisions taken by the European Commission, the banking sector may be divided into three broad sub-sectors: retail banking, corporate banking, and financial services (which may possibly be further divided into individual product groups).³
21. With respect to the proposed acquisition, the JCRA concludes that the market definition may be left open, because regardless of how the market is defined, the combination of RBS and ABN would not result in a substantial lessening of competition in Jersey or any part thereof.

(ii) The Relevant Geographic Market

² JCRA Guideline, *Mergers and Acquisitions* at 6.

³ See, e.g., Case No COMP/M.3547 – Banco Santander/Abbey National ¶ 16 (15 Sept. 2004). Article 60 of the Law requires that, so far as possible, matters arising under the Law in Jersey are treated in a manner that is consistent with the treatment of corresponding questions arising under competition law in the European Union

22. Prior European Commission decisions indicate that with respect to services offered in the banking sector, the relevant geographic market can be either national in scope or broader, depending on the services and customers in question.⁴
23. Similar to the relevant product market, the ultimate definition of the relevant geographic market may be left open in this matter. Even if the relevant geographic market is restricted only to Jersey, the combination of RBS and ABN would not result in a substantial lessening of competition.

Effect on Competition

24. According to the Guideline, market shares and concentration levels provide useful first indications of the relevant market structure and of relative market power of the parties and their competitors within the relevant market(s).
25. According to the Application, market shares are difficult to estimate with respect to the banking sector in Jersey, as limited information is available publicly. However, as of June 2007 there were 47 banks registered with the JFSC as deposit takers in Jersey.⁵ These banks include ABN and RBS/RBSI. Although the combination of ABN and RBS would result in some consolidation in Jersey's banking sector, these JFSC statistics indicate that many alternative sources of supply would remain.
26. As for specific banking sectors, as indicated above, both RBS (through its local subsidiaries) and ABN offer private banking services in Jersey.⁶ Furthermore, according to the Application, RBS also offers corporate banking services, and

⁴ See, e.g., Case No COMP/M.3547 – Banco Santander/Abbey National ¶ 18 (15 Sept. 2004); Case No IV/M.1029 – Merita/Nordbanken ¶¶ 11-12 (10 Dec. 1997).

⁵ Data available on www.jerseyfsc.org.

⁶ According to the Application, private banking is a term for personalised banking, investment and other financial services provided by banks to private individuals disposing of sizable assets, usually via dedicated bank advisers.

ABN may also offer such services to a limited extent.⁷ Again, a combination of ABN and RBS would lead to some consolidation in the provision of these services. According to the Consortium, however, many other banks in Jersey offer such services, and this view is supported independently by information available from individual bank websites as well as on the website of a relevant industry group, Jersey Finance.⁸ These sources indicate that in addition to ABN and RBS, the following banks offer private and/or corporate banking services in Jersey.

Banks in Jersey Offering Private and/or Corporate Banking Services⁹		
Bank	Private Banking	Corporate Banking
AIB Bank	X	X
Ansbacher	X	X
Bank of Scotland	X	
Barclays	X	X
BNP Paribas	X	X
Citigroup	X	X
Deutsche Bank	X	X
Dexia Private Bank	X	
Fairbairn Private Bank	X	X
HSBC	X	X
ING	X	
Kleinwort Benson	X	
Lloyds TSB	X	X
Royal Bank of Canada	X	
SG Hambros	X	
Standard Bank	X	X

⁷ Corporate banking encompasses banking services provided to corporate clients and including deposits, lending, international payments, letters of credit, and financial advice. See Case No IV/M.1029 – Merita/Nordbanken ¶ 8 (10 Dec. 1997).

⁸ www.jerseyfinance.je.

⁹ Services offered as indicated by publicly available information. This list should not necessarily be considered comprehensive, as additional banks may offer one or more of these services in Jersey.

27. Thus, the available evidence indicates that with respect to specific banking sectors, a number of suppliers would remain after the combination of RBS and ABN.
28. Because various alternative sources of supply would continue to remain after a combination of RBS and ABN, both in the banking sector in general and with respect to private banking and corporate banking, the proposed acquisition is unlikely to result in a substantial lessening of competition in Jersey or any part thereof.
29. Furthermore, although not necessary for reaching the conclusion herein, the JCRA observes that if the Consortium were to implement Stage 2 of the proposed acquisition as they currently intend, ABN's activities in Jersey would be transferred to Fortis. Fortis currently is not registered as a bank in Jersey and, as indicated above, currently is active in Jersey on a very small level in the sale of insurance, an activity in which ABN otherwise currently does not engage. The implementation of Stage 2 would thus negate even the limited consolidation in Jersey's banking sector that would flow from the combination of RBS and ABN resulting from Stage 1 of the proposed acquisition.

Conclusion

30. In light of the analysis set out above, the JCRA concludes that the proposed acquisition is not likely to lessen competition substantially in Jersey or any part thereof. Given this conclusion, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

17 September 2007

By Order of the JCRA Board