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State aid: Commission opens in-depth investigation into alleged aids to Fortis Bank Nederland and Dutch activities of ABN Amro

The European Commission has opened an in-depth investigation under EC Treaty state aid rules to establish whether state measures in favour of Fortis Bank Nederland (FBN) and the activities of ABN Amro which were acquired by Fortis ("the ABN activities", see [IP/07/1442](#)) are in line with EU state aid rules. On 3 October 2008, the Dutch state purchased FBN and provided it with loans amounting to tens of billion of euros. On 24 December 2008, the Dutch state purchased the ABN activities from FBN. At this stage, the Commission has reason to believe that the measures may not be in line with its Communications on state aid to banks during the crisis (see [IP/08/1495](#) and [IP/08/1901](#)). In particular, the temporal scope and remuneration of the loan facilities and the purchase price of the ABN activities do not seem to meet the criteria set by the Commission. The opening of an in-depth investigation gives interested parties an opportunity to comment on the proposed measure. It does not in any way prejudice the outcome of the procedure.

Competition Commissioner Neelie Kroes said: "The Dutch state was justified in intervening to prevent the bankruptcy of Fortis Bank Nederland, which would have caused a serious disturbance of the Dutch economy. However, the Commission has to ensure that the rescue aid was limited to the minimum necessary and did not create undue distortions of competition liable to cause problems for banks in other Member States."

Before its purchase by the Dutch state, FBN was a subsidiary of Fortis Bank. When the latter acquired the Dutch retail, private and merchant banking activities of ABN AMRO ("the ABN activities"), it harboured them within FBN. Without considering the ABN activities, FBN was the fourth largest bank on the Dutch retail and merchant market.

In response to the acute difficulties faced by Fortis Bank, which were directly threatening its subsidiary FBN, the Dutch state purchased the latter on 3 October 2008 and immediately provided a loan facility of tens of billions of euros allowing it to reimburse its short term debt to Fortis Bank. Thereby, FBN was effectively separated from Fortis Bank.

The Commission's preliminary view is that this facility constitutes state aid to FBN and potentially also to the ABN activities. At this stage, the Commission has reason to believe that this aid may not fulfil the conditions laid down in the Communication on how the state aid rules apply to banks during the current crisis (see [IP/08/1495](#)). In particular, it doubts that the amount and duration of the facility is limited to the minimum. Moreover, the Commission has doubts that the interest charged by the state is sufficient to avoid distortions of competition and does not merely provide cheap funding to FBN and the ABN assets.

The Commission will also investigate thoroughly the purchase of the ABN activities from FBN for a price of €6.5 billion on 24 December 2008. The price paid by the Dutch state may have been above the market value of these activities, thereby providing an aid to FBN. It seems that this measure actually had the effect of a recapitalisation of FBN. The Commission doubts whether the condition for recapitalising banks (see [IP/08/1901](#),) are fulfilled.

Finally, the Commission is in close contact with the Dutch authorities on the implementation of its merger decision in the Fortis/ABN AMRO case (see [IP/07/1442](#)).

The non-confidential version of this decision will be made available under the case number [NN 53/B/2008](#) in the [state aid register](#)) on the [DG Competition website](#) once all the confidentiality problems have been resolved. New publications of state aid decisions on the internet and in the Official Journal are listed in the online newsletter [State aid Weekly e-News](#)).