FACULTEIT ECONOMIE
EN BEDRIJFSKUNDE

TWEEKERKENSTRAAT 2
B-9000 GENT
Tel. : 32 - (0)9 – 264.34.61

Fax. : 32 - (0)9 – 264.35.92

WORKING PAPER[1]

The collapse of a European bank in the financial crisis: an analysis from strategic, stakeholder, ethical and governance perspectives

Yves Fassin[2]

Derrick Gosselin[3]

June 2011

2011/726

[1] An important part of this article has been published in the *Journal of Business Ethics*: DOI 10.1007/s10551-010-0586-y

[2] Corresponding author, Department of Management, Innovation and Entrepreneurship, Tweekerkenstraat 2, 9000 Gent, Belgium

[3]Department of Marketing, Tweekerkenstraat 2, 9000 Gent, Belgium & University of Oxford, Green Templeton College, Woodstock Road OX2 6HG Oxford, United Kingdom.

D/2011/7012/31

The collapse of a European bank in the financial crisis:
an analysis from strategic, stakeholder, ethical and governance perspectives

In 2007, the sub-prime mortgage crisis in the US spread to Europe and to the rest of the world leading to a global financial crisis without precedent since the 1930s**.** Banks stopped trusting each other, pushing the world's economy into the deepest recession of the post-war era. After the collapse of the *Lehman Brothers* bank and *Northern Rock* in the UK, mid-September 2008, the Fortis group was the first major European bank and insurance company to fail in mainland Europe as a result of the financial crisis.

Fortis was the leading Benelux financial group, with worldwide activities and one of the top five financial institutions in the EU. Until then, Fortis had been a success story of successive mergers of bank and insurance companies. Its leadership in corporate social responsibility (CSR), stood as a model for international cooperation, with Belgian and Dutch roots. The acquisition of a major part of the important Dutch financial conglomerate *ABN AMRO*, was a further step to bring Fortis in the top financial groups in Europe, with market leadership in Benelux. However, one year after this acquisition, as a result of the crisis in the financial markets, trust disappeared in the sector, leading to the collapse of the Fortis group. This fall has been one of the key events in the history of the Belgian and Dutch economy, with tremendous impacts and important consequences for all stakeholders and for the Belgian economy.

The purpose of this article is to use the collapse process of Fortis's during 2008 - 2009 as a basis for reflective considerations from strategy perspectives, stakeholder, ethical and corporate governance perspectives. The case analysis of the fall of Fortis based on those perspectives is relevant since Fortis group was internationally recognized as an example of good and leading practice in the field of CSR. Additionally most literature on causes of irresponsibility is in the fields of economics, and specifically the economics of market failure. The business ethics literature tends "not to address explanatory questions about the causes of CSR breaches" (Mackenzie 2007: 936).

The Fortis story focuses on a short history with a selected number of key events. The case study provides an overall strategic analysis from corporate governance perspectives. Major issues in the corporate governance literature are applied to or confronted with the Fortis case, especially the role of the board in strategy. This analysis is complemented with some specific issues as

social movement theory and agency theory, information asymmetry and conflicts of interests, including the problematic of CEO remuneration and the role of egos. This governance analysis will be followed by considerations on inconsistencies between law and corporate governance, and tensions between the law and ethics. The case concludes with some lessons for corporate governance and corporate strategy.

The Fortis case illustrates the complexity of a stakeholder analysis, with intra-heterogeneity between the stakeholder groups and their multiple roles. It also elucidates the dynamic perspective in stakeholder theory with changes in power and salience among concerned stakeholders. The events surrounding Fortis' bankruptcy put forward a number of on-going concerns with a significant ethical dimension: the need for accountability and reliable information flow; the considerations of fair treatment of stakeholders and respect for their rights; the role of the board in integrating corporate social responsibility and ethical considerations in the strategy formulation. It also leaves a number of unanswered questions around conflicts of interests of CEOs during mergers opportunities and around shareholder activism. The Fortis case postulates the strenuous question of appropriate communication in period of crisis: are CEOs allowed to lie if this can save the company? Finally, it posits the ethical dilemma for the government between bankruptcy and nationalization.

A selected number of key events in the history of the dramatic crisis at Fortis will be analysed using different ethical frameworks. A confrontation between the announced CSR policy and reality raises questions as to why the powerful CSR guidelines, governance codes and ethical principles did not help in assessing the risks. Most literature on the causes of irresponsibility is in the fields of economics, and specifically the economics of market failure. The business ethics literature indeed tends “not to address explanatory questions about the causes of CSR breaches” (Mackenzie 2007: 936). The Fortis case exemplifies the accountability and responsibility of CEOs and boards in the strategy and governance of corporations and their ethical dimension.

The methodology applied in this analysis of the Fortis collapse, is the case study research method. Qualitative research assumes multiple views of reality; hence different methods must be used to reveal different perspectives (Neuman et al., 1997: 336). The case study research method is appropriate for theory development rather than for statistical generalisation (Eisenhardt, 1989; Eisenhardt and Graebner, 2007). Single-case research typically explores a significant phenomenon under rare or extreme circumstances (Yin, 1994).

Empirical research data consists of longitudinal data collection over the period 2007-2010.

Main sources of information collected are publicly available company and official documents, archival data (websites), annual reports, CSR reports and public communication statements by Fortis; besides this, the report prepared by experts at the request of the Fortis investigation commission set up by the Belgian Parliament and a selection of press articles including the international press. In addition, interviews on strategy were held with key managers of Fortis, in tempore non suspecto, before the collapse; individual discussions were held with a number of actors: employees, staff, observers and individual shareholders at the General Assembly in February 2009 which was attended by one of the researchers. Finally, feedback analysis was provided from a few anonymous witnesses with direct contacts with the key actors.

Since ongoing investigation and legal procedures[i] prevented the authors from direct access to key actors and to minutes of the board meetings, data collection was limited to those sources. Finally findings and conclusions were triangulated to the analysis' done by practitioners (Michielsen and Sephiha, 2009; Depuydt, 2010)[ii] on the Fortis case[iii], proposed in experts' report, on a retrospective television-documentary[iv] and the Dutch experts'.report[v].

The success story and the fall of the Fortis bank and insurance group

The *Fortis* group was established in 1990 as the first cross-border financial merger, between *Amev*, a large Dutch insurer with limited banking activities, and the *AG Group*, a large Belgian insurer. Fortis had successfully pursued a strategic objective of growth, through organic growth and successive local and international acquisitions of banks and insurance companies. Thanks to this strategy Fortis became a leader in financial services in Europe, a top-three private banker and a top-tier asset manager. Fortis was present in over 50 countries with more than 85.000 employees. In 2006, financial results amounted to a record € 4 billion profit.

TABLE 1

TO BE INSERTED ABOUT HERE

Table 1 gives a chronology of the major events in the recent history of the dramatic crisis at Fortis, situated in the context of the international financial crisis and also in the local Belgian and Dutch context, over the period from April 2007 to April 2009. Key and critical moments in this overview are: the joint bid for ABN AMRO (13th April 2007), the share issue (21st September

2007), the private placement of new shares and cancellation of an interim dividend (26th June 2008), the removal of the Fortis CEO (11th July 2008), the crisis in the week of the 28th September 2008 with the first governmental action, the renegotiation with the Dutch government and the second government action forcing the sale to *BNP Paribas*, the General Assemblies of Fortis on 2-3 December 2008, 11-12 February 2009 and 28-29 April 2009, and the new deal between the Belgian government and BNP Paribas.

The acquisition of ABN AMRO Bank

In April 2007, the Fortis group was offered a deal to acquire, in collaboration with the *Royal Bank of Scotland (RBS)* and the Spanish bank *Santander*, the Dutch-based ABN AMRO bank. Fortis would commit € 24 billion of the total € 72 billion bid, which offered better conditions than the rival *Barclays* bid. At a general assembly, on 6th August 2007, the acquisition plan was overwhelmingly supported, winning approximately 95 % of the votes in Brussels and in Utrecht. Only one shareholder questioned the recklessness of this ambitious strategy.

Fortis announced excellent half-year results, with a statement that the sub-prime crisis would have limited impact. However, gradually, the market conditions changed with the first problems in the sub-prime market appearing in America during August 2007. In order to finance the deal, Fortis had to increase its capital substantially. The share issue on 21st September 2007 was a success thanks to the huge discount premium. Some weeks later, the Chinese financial group Ping An took a 4.18% stake with the agreement of Fortis' top management. In January 2008, rumours of a possible impact on the collateralised debt obligations (CDOs) of European banks increased. A private placement of new shares – without priority rights for the existing shareholders - and the cancellation of an interim dividend (26th June 2008) - in breach of promises of the Chairman - increased the pressure on management from the shareholders and the press. Fortis CEO was forced to resign on 11th July 2008. Fortis felt obliged to hold a special information session for shareholders.

In mid-September 2008, a run on the *Northern Rock* bank in the U.K. led to its collapse, followed by the bankruptcy of *Lehman Brothers*, a major US financial institution held in high repute (Hall, 2009). In a few months, the price of Fortis shares had dropped from € 32 to € 15 at the time of the capital increase through a share issue, to € 5 by the end of September 2008. In the

second week of August 2008, European banks started to mistrust each other and the European Central Bank had to intervene. Some banks, financial institutions and intermediaries, investment funds and hedge funds speculated against Fortis. On Friday 26th September, the sudden spate of large withdrawals of deposits provoked a run on the bank within a few hours[vi]. Then, in the weekend of 28th September, a rescue operation was lead by Belgian, Luxemburg and Dutch governments involving partial nationalisation and € 11.2 billion investment in Fortis, in order to save the bank from bankruptcy. Chairman Lippens resigned. The Fortis share price had dropped to under € 1.

Continuing pressures forced a renegotiation with the Dutch government, which bought all Fortis's activities in the Netherlands, including ABN AMRO for € 16.8 billion. A second government action forced the sale to *BNP Paribas*, one week later (5th October). Several minority shareholder organisations announced legal action as their approval was not sought before dismantling the group: *Deminor*[vii] specialized in actions to recover losses as a result of corporate wrongdoings, misrepresentation and fraud, the Dutch association of investors *VEB*, and the law firm of Modrikamen.

In the general assembly of Fortis on 2-3 December 2008, the candidature of Viscount Etienne Davignon is rejected as new chairman (49.9 % in favour). After a first reject of the claim by minority shareholders, the Brussels Appeal Court orders that the decisions of 3rd, 5th and 6th October 2008 should be voted on by extraordinary general assembly. The Minister of Justice and the Belgian Prime Minister are forced to resign due to a note of the Court of Cassation over an attempt to influence the court. A Parliamentary commission is set up to investigate Fortis collapse and role of government and a group of experts is installed. In a turbulent general assembly in Brussels and Utrecht, on 11-12 February 2009, shareholders reject the sale of Fortis to BNP Paribas. A new deal is negotiated between BNP Paribas and the Belgian government and approved at the general assembly of 28-29 April 2009, albeit with some opposition.

The partner bank RBS came into serious trouble, while Santander mastered the crisis rather well[viii]. BNP Paribas had also to ask for French governmental help of 5 billion €; a few months later, it announced good profits; the press also discovered that despite the critique of the politicians and the public opinion enormous bonuses for some traders had been awarded, again[ix]. The juridical imbroglio between politics and magistracy has continued with what has been called the Fortis-gate.

An exemplary CSR policy and governance principles

Until those dramatic events, the Fortis group had a leading role in CSR policies in the Benelux. In September 2003, Fortis joined the Dow Jones Sustainability World Index and also the Dow Jones Sustainability Stoxx Index, two of the best known indices in socially responsible investment. Since 2004, Fortis has used the Global Reporting Initiative reporting guidelines as criteria in developing its CSR reports, applying the most recent G3 guidelines. Fortis is a member of the UN Global Compact, CSR Europe and Business & Society Belgium. An international Advisory Board for Corporate Social Responsibility was created in September 2007, with high-level representatives from the academic world, NGOs, CSR research organisations and business.

Fortis had adopted a body of principles and policies, the Fortis Principles of Business Conduct, and specific business applications through a Fortis CSR Statement, Environmental Statements and Human Rights Statement. In 2006, Fortis adopted the Equator principles, a framework promoting environmental and social responsibility by financial institutions in their project financing. Detailed information was provided on the Fortis website[x], including a statement on managing social and environmental risks[xi].

The group benefited from its excellent reputation. In November 2007, Fortis was awarded the title of European Banker of the Year, and received the price for the best CSR report in Belgium. The jury referred to the explicit mission[xii], management's intense engagement, the completeness and number of examples given, the clear structure, the verification by an external auditor, and the impact of the activities, specifically with regard to investment funds, on social responsibility[xiii].

The board of Fortis is a model of corporate governance: the international Board consists of directors with impressive curricula vitae and specific competences in various fields. It transforms the strategic work of the chairman, Count Maurice Lippens, into practice. As Chairman of the Corporate Governance Commission of the stock-quoted company, he had given his name to the Belgian Corporate Governance Code approved in 2004. This code is based on voluntary adoption and follows the principles of the British Cadbury Code: comply or explain. The code foresees a number of principles on independence, audit committee functions, age limits and number of terms. Fortis followed most of the principles. The principal exception – due to the

special circumstances as explained in the annual report – is the prolongation of the mandate given to the Chairman, who served for 28 years.
Fortis has a set of principles for its business conduct directed to its shareholders, employees, customers and internal relationships with intermediaries and its communities[xiv]. A few extracts taken from these principles are revealing: “The Fortis Principles of Business Conduct have been developed with the aim of safeguarding our reputation as a reliable business partner that lives up to its core values.”; “The Principles are intended to provide guidance to our actions and decisions and they reflect the mindset and attitude expected in our company.”; “The reputation we have built up over decades can be destroyed in a single day. Therefore, the highest degree of integrity is expected from us all.”; “We provide our shareholders with the information they need to make their investment decisions and exercise their rights. This particularly concerns financial information and other relevant information of a strategic nature”.

All these measures on CSR, corporate governance and ethics made Fortis’s reputation. They also explain the strong trust of both small and larger shareholders in Fortis. Fortis was the safe and reliable stock par excellence: a stock with a low risk level and a rather high and steady dividend. Fortis was the most widespread stock held amongst Belgian population; it was estimated that about half a million of Belgians (and somewhat fewer Dutch people) held Fortis stock. Many people had held their stock for years, even before the creation of Fortis, and had acquired Fortis shares through share swaps following mergers etc..

Analysis from a strategic perspective

An initial analysis of the crisis within a major European financial group highlights the importance of the issue and its huge impact on the economy and political consequences. Further analysis indicates the complexity of the case, with various complex elements: multi-actor complexity, technical complexity, political complexity and international complexity. The complexity of the context is amplified by the uncertainty in turbulent times. The events are situated in the context of the international financial crisis and also in the local Belgian and Dutch context.

The opportunity of the takeover of ABN AMRO by Fortis constituted an enormous acquisition with the potential of important synergies. However, from a strategic point of view, a major error was to finance long term commitments - in casu a large acquisition - using short term means,

paradoxically a condition that no banker or insurance company would accept from its customers; a further error was to dawdle over the conversion once the deal was signed; then, later, to raise insufficient capital in the second round[xv]; the error was to persist in the position not to make use of the (light) material adverse change clause and, for reasons of proud or vanity not to renounce to the deal (Debels, 2009)[xvi]. The timing appeared to be catastrophic[xvii].
Despite its international experts, management and board failed to assess the global impact of the US financial crisis. Following the dominant strategy of the sector and strongly inspired by the Anglo-Saxon model of shareholder value, financial institutions had developed new products with higher risks to obtain higher returns: structured credits. With inventive mortgage formulas and financial engineering, CDOs were repackaged and sold several times over : what was originally intended to alleviate their actual balance sheet and their capital adequacy ratio by selling off repackaged risk assets –also with a view to maximise their profits-, turned often into an off balance sheet risk accumulation, mainly through special purpose vehicles and through the (often present) swap arrangements. These off balance sheet transactions had not only a much lower capital adequacy ratio, but in turn provided additional income in the search for higher profits[xviii].
Fortis had followed this trend, without realising the risks on time. The application of the newly introduced IFRS standards, which oblige companies to value their investment portfolio at market value, increased the turbulence. Where those IFRS norms work well in a normal situation, they fail in situations where there is no market. This was one of the reasons for the magnitude of the financial crisis.
The whole system of watchdogs and regulative authorities failed completely. Analysts, relayed by the press, auditors, rating agencies, and the official institutions were not up to the job.
The decision to takeover the ABN AMRO bank was initially supported by most shareholders and stakeholders with very few criticisms or warnings[xix]. The fall of Fortis developed into a major mobilisation of shareholder activism in Europe and to a complex legal affair. The case undoubtedly raises some important issues of governance, especially concerning the role of top management and the role of the board in the strategic decision-making. The dispersed shareholder structure, without dominant (reference) shareholders, placed the power with the management team and the CEO, in close contact with the active chairman.

Acquisitions represent a classic means for company growth (Chatterjee, 2009). Banks have followed this trend towards globalisation (Parada, Alemany and Planellas, 2009). Perspectives of synergy, elimination of the target company's inefficiencies and strategic (re)positioning generally motivates them. The relative poor performance of the ABN AMRO group had been

signalled by a hedge funds that argued to split up the group; this indication has been followed by a first bid from Barclays. The product and market complementarity between ABN AMRO and Fortis were definitely present. However, large acquisitions may also have drawbacks. Organization research on corporate takeovers reveals that individual, group and social factors rather than efficient strategic calculation may drive key decisions (Haunschild, 1994; Hayward and Hambrick, 1997). Ego may confuse the CEO's logic during a takeover operation (Roll, 1986; Hirsch,1986; Haspeslagh and Jamison, 1991). Previous successes may reinforce the CEO's self-esteem; overconfidence and hubris may lead to excessive premiums and higher risk (Hayward and Hambrick, 1997). These factors where undoubtedly present in the Fortis case, in the mindset of both CEO and Chairman.

From a strategic point of view, one of the most important questions, with hindsight, concerns the extent to which one can explain why a major institution like Fortis - with such a commitment to CSR, ethical behaviour and a world-class reputation for corporate governance - is currently perceived to have completely contradicted its own principles and beliefs. In order to explain the possible root causes of this strategic derailment, we first make three assumptions,.

Firstly, we assume that corporate governance bodies play a key role. This statement is based on similar cases (*e.g.* AIG, Arthur Andersen & Co., Enron) that had strong CSR and ethical culture as well, and where only the highest authority, the senior executives and governance bodies, could have disrupted the ongoing strategy. These cases show similar discrepancies and fissures between what leadership and corporate governance bodies assume and declare as strategy and values, and how they behave when it comes to strategic decision-making. Rewards and "incentive problems, rather than malice or wickedness", lead companies to breach their own CSR policies (Mackenzie 2007: 936-37). It is the lack of alignment between the performance objectives and the CSR policy that lead to scepticism towards CSR activities (Bakan 2004, Weaver et al. 1999). The questions that raise are whether a firm that takes on that level of risk is really socially responsible and why the powerful CSR guidelines did not help in the assessment of the risks.

Secondly, we introduce the notion of a *turbulent environment*. This is a context in which disruption is likely to occur. Turbulent environments are defined within the theory of causal textures presented by Emery and Trist (1965) and further developed by McCann and Selsky (1984). Emery and Trist identified four distinct causal textures and, in response to each,

organisations should pursue specific appropriate strategies. A turbulent environment is the most complex and unpredictable one identified, and if responded to with inappropriate strategies adopted from other, less messy, contexts it can eventually develop into a catastrophic texture. In a turbulent environment, external decisions tend to take over from company decisions. Our conjecture is that, in the two decades before the fall of Fortis, its distinctive strategy and culture, with a focus on CSR and ethics, was successfully implemented in a less turbulent and less messy texture, and therefore they may never have developed a clear environmental scan or an early warning system to detect weak signs of changes in context. Their strategy was already becoming inappropriate for the turbulent context in 2006 but this was only visible much later in 2008, maybe without even realising, seeing or understanding what was happening. Interviews with key managers confirm that processes and safeguards for contextual sense making were never introduced or implemented. One of the key questions the board should have asked itself was what were the consequences of the acquisition strategy in a situation of major turbulence given the fact that the ABN AMRO acquisition was a *strategic structuring* act – the deal was a quantum leap in size relative to its assets base. Fortis was effectively betting its existence on a narrow band of positive assumptions related to this project, resulting in a lack of robustness in changing adverse circumstances. This high-risk situation was not balanced by any process to question, change or stop the structuring strategy, or to assess and understand the critical elements of a changing environment through an early warning system. With hindsight, it is clear that the accelerated growth strategy through the acquisition of ABN AMRO was not a robust one, and could only be successful in a stable, long-term, growth environment. This is a high-risk strategy fuelled by optimism and a collective or imposed belief in a single best possible strategy and a refusal to countenance a critical analysis. The combined effects of over-ambitious growth targets, acquisitions with excessive debt financing, and "a divorce between top management aspirations and business reality" are classical antecedents of strategic misfit (Grant and Viscondi, 2006).

Thirdly, we will introduce some elements of the prospect theory developed by Kahneman and Tversky (1979). This theory predicts that decision-makers are particularly ill equipped to analyse complex situations when the future outcomes and consequences are uncertain.

Based on these three perspectives, we argue that the strategic derailment at Fortis was due to the lack of the competences and processes needed to comprehend (*i.e.* sense-making) radical changes in the environment. One would normally expect this to be a core competence of any

insurance and finance group specialist involved in risk management. Such competences are demonstrated by leadership at the executive and board level in organising horizon scanning and creating an organisational learning culture that is willing to consider alternative realities rooted in the concept of 'strategic conversations' (Gosselin and Tindemans 2011, Gosselin and Leysen 2008, Van der Heijden 2005). Since this openness towards, and awareness of, the context was absent at Fortis, any signal that might disturb their planned vision was overlooked. As Lovallo and Kahneman (2003) put it, optimism is a high risk strategy: it tends to eliminate information that would disturb the accepted sense-making awareness of the context. Alpaslan et al. conclude that "in the context of crises, the stakeholder model approach to corporate governance may result in a more successful crisis management outcomes such as early detection of warning signals, minimal downtime, and effective containment of damage than the shareholder model" (Alpaslan et al. 2009). This confirms Ocasio and Joseph (2006) who argue that "a tight coupling of information and communication flows across governance channels is critical for the overall integration and effectiveness" of corporate strategy.

Ethics and CSR programmes help in "signalling that the corporation conforms to societal expectations in its internal organisational processes and structures. However, CSR programmes may display a strong instrumentalist motivation, since top management is expected to be committed to the financial, strategic and operational success of its organisation" (Weaver et al. 1999: 543). The Fortis case supports the previous authors' hypothesis that "the more a company's top management is committed to financial, strategic, and operational concerns, the more the company's formal ethics program will incorporate easily decoupled practices such as policy communication". Building on this, we can formulate an additional hypothesis: in turbulent circumstances, where financial and operational imperatives dominate, companies may simply be tempted to adopt decoupled communication practices.

Crises lead to a focus on corporate public, social, economic, legal, and ethical responsibilities and raise questions about "how corporations should be governed and managers ought to act"(Freeman 1994: 413). However, the literature offers little on corporate governance approaches that enable firms to prevent crises from happening or to recover from them successfully (Alpaslan et al. 2009: 38, Daily et al. 2003). Following discussion will cover the corporate governance mechanisms, the role of the board of directors and other major actors.

Next to a strategic analysis our analysis will focus on the view from stakeholder management and on CSR and ethical perspectives.

A stakeholder theory perspective

Stakeholder management assumes the needs of all the stakeholders of a firm are considered (Freeman 1984). In the case of Fortis, the list of stakeholders (Table 2) is impressively long, reflecting the importance as well as the impact on the social fabric of the group. The complexity even grows when one considers the subgroups. The Fortis case illustrates the need to go beyond the simplified stakeholder analysis, and to consider intra-heterogeneity between the stakeholder groups and the multiple roles played by some stakeholders (Fassin 2008). This case also clearly raises the issue of prioritising between stakeholders (Freeman 1994, Frooman 1999, Mitchell et al. 1997) and on changes in power and salience among concerned stakeholders.

TABLE 2

TO BE INSERTED ABOUT HERE

The intra-heterogeneity of the stakeholders means that all the stakeholders within a group are not equal. Stakeholder subgroups have multiple interests and different objectives. Shareholders, for example, are "far from being a monolithic, homogeneous group, differing widely in terms of interests, involvement and influence capacity" (Winn 2001). They represent a vast array of subgroups such as financial partners, institutional or private controlling shareholders, with or without representation on the board, down to small individual investors, long-term and short-term investors and day traders (Fassin 2008). The Fortis case illustrates perfectly the intra-heterogeneity of shareholders with many different groups with completely different objectives. The long-term traditional investors, mainly former shareholders of *Generale Bank* and *AG insurance* in Belgium and *Amev* in the Netherlands, included many old families, the nobility, industrialists, and also many small investors. Fortis was the most widespread held stock in Belgium, with more than five hundred thousand Belgians and Dutch citizens holding Fortis stock directly, and many more indirectly through pension funds. Further, loyal employees had also accumulated shares.

Alongside the individual investors, there are investment funds with a medium-term perspective and large hedge funds with a short time horizon. Some specialised funds invest in what they see as an underperforming stock to sell it later at a profit. Some hedge funds even speculate on a stock price falling and buy back shares to cover shares sold previously at a lower price, and which they did not possess earlier, but borrowed from third parties. All these shareholder subgroups have conflicting interests, with both personal and group interests clashing. Table 2 lists the objectives of the various stakeholders and their changes in salience.

The Fortis case clearly illustrates how those various stakeholders, and also shareholder groups, pursue different agendas and priorities (Fassin 2008).

The Fortis case also illustrates multiple inclusion or double appurtenance of stakeholders. Most individuals are likely to belong to more than one stakeholder group at the same time (Jansson 2005) and they may simultaneously occupy several roles (Freeman 1984: 58, Fassin 2008, Post et al. 2002: 23, Pesqueux and Damak-Ayadi 2005). In the case of Fortis, this phenomenon is extremely complex to analyse due to the huge number of stakeholders. In fact, many of these individual stakeholders have very different roles: many of them are also customers of the bank, as depositors and/or creditors; most employees are also shareholders, and all private shareholders are citizens and taxpayers. Given the government involvement, in this instance, it is particularly relevant that they are also electors; an important factor in view of the then forthcoming June 2009 elections for the European parliament, combined with elections for the regional parliament in Belgium.

The Fortis story provides an interesting case for discussing the prioritisation among stakeholders (Mitchell et al. 1997). Crises may drastically reshape the salience of affected stakeholders (Alpaslan et al. 2009: 40). This issue became critical when the government had to take hard decisions, with some urgency, in turbulent times within the constraints of the law and corporate governance principles. It was confronted with the dilemma of conflicting interests of shareholders, customers, employees, the state and the government. Mitchell et al. (1997) distinguished three major attributes of stakeholders – power, legitimacy and urgency; and introduced the terminology of dormant, dangerous and definitive stakeholders to reflect their salience. The Fortis case illustrates how the dramatic changes in power and salience affected stakeholders. Traditionally, the financial group had many dormant stakeholders. Typical of a situation with a dispersed ownership, the management and board held power and legitimacy, and were the dominant group. The state had the conventional role of controller, and facilitator:

provider of the external infrastructure, possible support and receiver of tax levies. The thousands of small shareholders had been passive and dormant but, with the crisis, their claims became more salient and urgent. Representatives of minority investors and lawyers emerged, changing the dormant stakeholders into dangerous stakeholders. They became active in the search for proxies that could tilt any decisions in their favour.

Decision-making during crises can be characterised by time constraints (Pearson and Clair 1998: 66) and a major loss of control because the environment takes over (Emery and Trist 1965). In the heart of the crisis, when the central bank and the Belgian bank and stock market regulator *Banking, Finance and Insurance Commission (CBFA)* intervened, the resulting incapacity of Fortis's top management lost them their legitimacy; with the government taking power, and calling on a number of experts. To substantiate the need for action, the *Belgian National Bank* had urged the chairman of the *European Central Bank* to personally convince the Belgian government of the seriousness of the situation and the need to take decisive measures, which added to their legitimacy. In one week, power shifted from the management to the government who forced the chairman to resign - a highly symbolic act - and prepared for the transfer of Fortis to an international bank. As such, a foreign competitor, another dormant stakeholder, would become both dominant and definitive.
At the general assembly meetings, the votes of the once dormant small shareholders appeared to be decisive, these dangerous stakeholders appeared to have become definitive but, having become engaged in a long juridical procedure, lost their urgency.

Analysis of selected critical moments from ethical perspectives

Different perspectives can be used in the analyses of the Fortis case, including the ethical attitude of the various stakeholders in selected events at different critical moments: the acquisition of ABN AMRO, the period after this acquisition until the capital increases, the run on the bank, end of September, the governmental intervention in the crucial week, and the transition period after this intervention. Applying different ethical frameworks can also be useful in assessing the attitude of the various stakeholders in the various steps (Buchholz and Rosenthal,1998; Ferrell and Fraedrich, 1994). It can question the intent and the motives of various players, their loyalty and fairness, especially the role of various groups of shareholders, management, board of directors, employees, customers, competitors, and governments. It also sheds light on some procedural aspects.

Without any ambition to enter into a legal analysis –we leave that to the lawyers and the courts - it also raises questions on the responsibilities of some important stakeholders.

The acquisition of ABN AMRO

Mergers and acquisitions (M&A) are one of the strategic options for a growth strategy. As M&A can have a tremendous impact on the future of the company, the board has an extremely important role to play. More than rubberstamping a "go or no go" decision, boards should ensure that the opportunity offers a strategic rationale and sufficient reward potential, and assess the risks. Uncertainty and information asymmetry made it is not easy for outside directors to give a judgement on proposed mergers and acquisitions as they must rely on information from management and advisors (Armour, 2002; Thomas et al, 2009). The interests of management and advisors are indeed not always aligned with the company's interest: advisors want to close the deal, and management may be tempted by financial benefit, career and prestige reasons, or simply by a new challenge.

Acquisitions can be friendly or hostile, according to whether they are realised through cooperation between the partners or not. The origin of the ABN AMRO takeover was a hostile attack by a British hedge fund to dismantle the ABN AMRO group[xx]. Barclays was a candidate to buy ABN AMRO, and the favoured choice of ABN AMRO's top management. However, the Royal Bank of Scotland approached the Spanish bank Santander and Fortis to join forces in a rival bid.

As a key component of the capitalist system, hostile acquisitions often justify their ends by using all means possible, thereby neglecting elementary principles of business ethics. In these takeover battles, all sorts of tricks are used: information leakages, partisan news, rumours and allegations[xxi], including dirty tricks (Fassin, 2005). When the Royal Bank of Scotland launched its rival bid, a range of defence mechanisms were used: ABN AMRO sold the American bank La Salle – and one of the major objectives of RBS in the ABN AMRO deal was to acquire this bank – without obtaining the agreement of its shareholders[xxii].

Even if the opportunity was in conformity with the growth strategy, conflicts of interests were present in the takeover of ABN AMRO: for the board of the acquirer, Fortis, and also for the CEO of the acquired ABN AMRO.

Capital increase and communication

One of the major ethical issues involved in the Fortis case concerns the fairness of communication, alleged information manipulation and the withholding of important information.

Key questions concern the communication by key people on the bank's situation, its solvency and its liquidity, on various occasions: in particular, prior to increasing its capital through a share issue, later with the promises of no further share dilution and maintenance of the dividend policy. Was communication transparent[xxiii]? Had there been manipulation? Were there attempts to influence? One should note that perception plays an important role in communication (Broadbent 1958). Some concerns arose with the fall in the Fortis share price due to the large acquisition in times of turbulence in the banking sector. Was all information given in a timely fashion? On several occasions, communication was far from optimal, and information on the risk due to CDOs was scarce[xxiv]. In the presentation of excellent half-year results by Fortis on 9th August 2007, only one instance of the term 'subprime' can be found in the 354 page report; which also includes a statement that the ongoing crisis will have no impact on the 2007 results, or at least no more than € 20 million should the sub-prime products fall in value by 20%. During a breakfast meeting with a Dutch newspaper in early June 2008, CEO Votron declared that there was no issue of solvency problems with Fortis; three weeks later, a private share placement worth € 1.5 billion was made[xxv].

In decreasing the share values through a rights issue, some information seems to have been released after a certain delay. Other sensitive information was only detected by the press, resulting in negative public reactions: such as the news that some board members had not fully subscribed to their entitlement under the rights issue[xxvi]. Some statements were interpreted in a way that produced the opposite result to that intended, such as the bank's chairman Lippens interview in a Dutch newspaper over a capital influx[xxvii]. The cancellation of an interim dividend, at the end of June, and the proposal to replace the cash dividend by additional shares was considered as a breach of promise after previous official statements, made during the capital increase, by the chairman that the dividend policy would be maintained.

End of July 2008, following the removal of CEO Votron, the Fortis Nomination and Remuneration committee advised the Board for the resignation of financial director Mittler who they felt had presented, for too long, an over-optimistic view[xxviii]. At the shareholder information meetings (which were boycotted by Deminor who had campaigned for a general assembly) from 18th to 20th August 2008, Lippens and the new CEO Verwilst tried to restore tranquillity and trust. At a press conference, on 26th September 2008, Verwilst denied any problems with liquidity[xxix]. Two days later, Fortis sought a government rescue to avoid bankruptcy.

In retrospect, the board apparently did not take CDOs into account in their risk assessment of the acquisition. It is the presence of this double risk that led to the collapse. A crucial question, both

from a strategic perspective and from an ethical viewpoint, is whether some key information had been withhold and, if so, at what level in the organization: within the bank risk department, between bank management and the top of Fortis holding, or between Fortis's CEO and the board[xxx]. Apparently, the board was not informed timely over the declining liquidity position of the bank[xxxi]. If the board had been well informed on the real risk of CDOs, would they have taken a different decision; would they have given positive advice to their shareholders? And would they have had the courage to annul the deal while they still could? Analysis from the perspectives of ethics of duties, ethics of justice and utilitarianism would arrive at the same conclusion of more prudence being required. As trustees of the shareholders, the board has the duty to act towards specific others in the way we would expect to be treated from others, and to follow the greatest happiness principle: the greatest amount of good for the greatest amount of people affected by the action, or the least harm. However, an even more delicate point could occur once the point of no return has been reached, once the deal is completed. When the CDO crisis erupts, can top management and the board really acknowledge and make public the catastrophic situation without causing panic reactions. It posits the ethical dilemma of CEO communication in periods of crises: are CEO allowed to lie if the lie can save the company[xxxii] (Wetlaufer, G 1989; Seglin, 1998a)? If one acknowledges liquidity problems in banking, the bank collapses; if one denies them, the bank might survive. A problem that can be seen as similar to that of a Minister of Finance confronted with a possible devaluation and forced to keep silent to save the country's currency. Whereas lying or withholding the truth can be interpreted as an intent to deceive, and therefor unethical behaviour, from a utilitarian point of view, the lie can be motivated to avoid greater harm. The dilemma is about "the risk to raise more alarm that you are out of control about the issues than necessary" (Seglin, 1998a). However following the principles of good faith, due care and loyalty, Batson (report cited in Cosimano, 2004) states that "Whenever corporate fiduciaries communicate publicly or directly with stockholders, they must do so honestly, candidly and completely in all material respects".

One may also question the effectiveness of regulations and the limited degree of intervention. In Belgium, both the CBFA and the Belgian National Bank have a mission concerning the control and inspection of banks. These watchdogs clearly did not fulfil their critical role as they should have. The Fortis shares have continued to be supported by analysts, rating agencies and the financial press (Debels, 2009). Rating agencies have completely mislead many investors including the professionals in the banks. Ironically, it is the AAA-rating awarded to the CDOs that had inspired the management of Fortis to heavily invest in obligations rather than in stock after the crash of 2002-2003 [xxxiii].

The run on the bank

At the time of the crucial governmental intervention in September 2008, we saw strong self-interested behaviour from most actors: many clients, including key account holders, wanted to secure their money and transferred their accounts to other banks.

On Friday 26th September, hundreds of important professional customers withdrew their deposits at Fortis within a few hours. Banks also suspended or stopped their credit lines to Fortis, leading to insurmountable liquidity problems. These rapid developments velocity provoked a run on the bank[xxxiv]. Some rumours even alluded to a concerted action by the Dutch government and banks to force the resale of ABN AMRO to the Netherlands at a knockdown price[xxxv]. This situation left the bank's management seeking help from the government as the only way out.

Advised or not by their brokers or bankers, some shareholders sold their stock at heavy losses, other more-opportunistic funds short-sold the shares, and some insiders were alleged to have sold their stock immediately before the intervention. Most of the traditional shareholders kept their shares with huge losses. Some hedge funds took the opportunity to buy large quantities of Fortis shares at an extremely low price and then to sell them a few weeks later. The ethical component of the behaviour of hedge funds in their attacks on industrial groups can certainly be questioned (Donaldson 2008).

The greatest happiness principle, fairness and duty to act with others as with yourself, seem to have been completely forgotten in these dramatic circumstances.

The governmental intervention in the crucial week

As in most negotiation processes, self-interests prevailed in the negotiations during the last week of September 2008. The potential acquirer makes a low offer; the seller wants to obtain the best deal. Negotiations under time pressure add further uncertainty and risk, which encourage the acquirer to be prudent as there is no time for a thorough due diligence assessment. From an international perspective, national self-interest dominates: the Dutch government and its National Bank saw the opportunity to recapture their ABN AMRO bank, not without a certain sense of revenge[xxxvi].

In this crucial period, the Belgian government seems to have adopted a utilitarian approach: seeking the best solution for the majority of the stakeholders for the least harm. This choice led to protecting the bank, the savings of its customers and the jobs of its employees, to the detriment of the shareholders. The utilitarian approach by the government led to a decision, based on the common good principle, which was aligned with its self-interests to protect the economy. This implies that, in times of turbulence, one follows criteria of urgency and salience

and prioritises amongst stakeholders (Mitchell et al. 1997). That shareholders, and even the board, were not consulted over this decision to dismantle the group and to sell it to the Dutch government and to BNP Paribas is a derogation of procedural justice, and also contrary to some laws and principles of corporate governance. However, were there really any alternatives? Further, in times of crisis, a quick decision has to be taken. The self-interested approach of the Dutch government also coincides with a utilitarian approach from their standpoint: to make the best decision for their economy - to recover a large national bank; albeit interestingly that their decision was the exact opposite of the Belgian government's. But both national banks and the governments had the concern to avoid the bankruptcy of a major bank, as the regulation rule offers a state guarantee for every personal account up to 20.000 € in Belgium and 38.000 € in the Netherlands[xxxvii].

The decisions made may invite criticism from an ethics of justice perspective, both on interactional and on procedural justice grounds. Loyal shareholders where unfairly treated: they felt neglected in the process, and deceived by the management and the board of the company in whom they had put their trust; they felt they had been sacrificed by the government against the employees and the customers of the bank[xxxviii]. The government intervention that made the shareholders aware that the losses would never be recovered led to their anger spreading to the government, and resulted in a desperate turn to legal actions by lawyers and shareholder associations.

But the bank's employees were also harmed by the whole process. Many had loyally advised their customers to invest in the share issue in 2007 and had also invested themselves. They were on the front-line in receiving complaints and sometimes more aggressive reactions from customers and shareholders, while in reality they were not responsible for events. Fortis' personnel would be part of the sale to a new group, with the threat of restructuring and job losses.

From a standpoint of distributive justice, many bank employees and local branch managers felt betrayed. This sentiment was also present at the departmental level. When the CBFA asked Fortis to sell its prime assets, the insurance department which had not made similar errors to the merchant bankers, felt unfairly treated[xxxix]. The large majority of employees and middle management had not taken reckless risks nor had they behaved irresponsibly. Many middle managers had not been happy with the change in company culture since 2005 gradually imposed by CEO Votron, with a huge training programme and *Fortioma's*[xl] campaign based on growth. Heads of department who did not achieve double-digit growth figures had been fired. The

previous collegiate style matrix organisation involving consultation had been transformed to an American style shareholder model with one autocratic leader[xli]. For many employees and managers, this was no longer the company they had chosen to work for. They perceived this change in corporate culture as a breach of an implicit promise, and felt unfairly treated.

Further criticism of the government came when, one week after the Fortis crisis, two other major Belgian financial institutions, *Dexia* and *Ethias*, were faced with severe liquidity problems. Here again, the government had to intervene. Both received state guarantees, whereas a similar request from Fortis had been refused, pushing Fortis to the sale of the bank under unfavourable conditions. Fortis shareholders and management accused the government of partiality. *Dexia* is the bank of the local authorities, in which many municipalities and also Christian Democrat organisations had a large stake. *Ethias*, on the other hand, was more closely linked to socialist organisations. The public reproached the favourable treatment of these banks compared with Fortis which it saw as amounting to the result of a conflict of interest. The shareholders of Fortis found themselves harmed by governmental decisions made for reasons of procedural and distributive justice.

Another plausible explanation may simply reflect the learning curve (Levitt and March 1988, Spence 1981). The attack on Fortis led to the first run on a major bank in continental Europe. Nobody was really prepared for a catastrophic scenario, not the management and board, not the government and not the National Bank. Perhaps the sense of urgency resulted in some panicked reactions. The different treatment of the other banks, and also later the independent *KBC* – additional state guarantees and extension of the capital base with loans from the government- was maybe based on lessons learnt from the Fortis events.

The rupture between Dutch and Belgians

There has always been some tension between the two national entities of Fortis in Belgium and in the Netherlands due to different cultural approaches. Although the cooperation on the Board with the two Chairmen had worked well, the integration through the successive acquisitions was not completed; some cultural clashes still existed. Moreover, at the time of the bid on ABN AMRO, the insufficient presence of the Fortis top in Amsterdam, was deplored. Some decisions were not very diplomatic such as the hasty application of the new Fortis logo on ABN AMRO's offices in Amsterdam.

From a regulator point of view, the leadership of the control on the Fortis group had been assigned to the Belgian CBFA, something the Dutch National Bank governor had difficulties to

accept, certainly at the time of the ABN AMRO bid. His attitude has been very skeptical and even hostile against the acquisition of a major Dutch bank to split the group between the three members of the consortium. The Dutch regulator retarded its consent to the acquisition keeping asking for additional information[xlii].

There was a contradiction between the requirement and the time limit to sell one of the subsidiaries of the ABN AMRO bank - the Hollandsche Bankunie- imposed by the European Commission and the constraints imposed by the Dutch National Bank and regulator to obtain authorization. This caused a delay, which in a period of deterioration of the economy had important negative consequences on the price paid by the acquirer, the Deutsche Bank, and on the financial cover needed by Fortis; which resulted in the necessity of an additional capital increase. Some attributed this delay and bureaucracy to protectionism of the Dutch authorities. Paradoxically, some of the cash problems had been caused by the Dutch subsidiary of Fortis[xliii].

The poor communication between both regulators[xliv] had increased the mistrust from the Dutch, which was not compensated by a good communication and informal contacts between the Belgian and Dutch ministers. Additional tactical errors to forget to invite the Dutch government during the crucial negotiation raised suspicion. When the Dutch discovered that the Belgian government had (at an earlier stage) negotiated a guarantee which they had not, they felt deceived. The Dutch government invoked this fact as a reason to refuse to honour the Herenakkoord[xlv], the gentleman's agreement of 28th September; the Dutch authorities refused to pay the committed 4 M € and forced a renegotiation of the deal[xlvi], to recover the Dutch parts of the Fortis group of ABN AMRO through nationalization.

The refusal to honour a gentlemen's agreement is a highly uncommon event for a government in Europe; it was perceived as unethical in Belgium, but it originates from a perception of unfairness by the Dutch. Even if there was no intent to hide information by one of the two parties, the lack of clear communication resulted in a breach of trust and refusal to honour a signature by the other party; it created a clash between two founding members of the European Union.

The general assemblies

The traditional shareholders of Fortis had historically displayed loyalty to the company and trust in its management. Most of them would not attend the general assembly meetings; and those who did generally approved all the resolutions. Unconditional agreement was given when the plan to acquire ABN AMRO was officially endorsed in August 2007. The unconditional trust was shown again in April 2008 when the mandates of Chairman Lippens and CEO Votron were

extended. However, with the declining share price, this unconditional trust evolved into conditional trust, and when the shareholders perceived that important information on the situation was being withheld, they felt betrayed. The cancellation of the interim dividend and proposal to pay the final dividend in shares and not in cash bewildered the loyal shareholders, wealthy families and groups who had subscribed to the capital increase in October 2007. They developed a sentiment of distrust and anger (Jones and George 1998). They looked for a scapegoat; and were supported by the press in seeking the firing of the CEO and the chairman. Huge upset and a sentiment of revolt was caused when the press divulged the exorbitant severance pay offered to several of Fortis's top managers. In total, the exit packages for four top executives amounted over € 10 million[xlvii], a high premium in the Belgian context, this in a company that had failed and where the stock price had declined by 95% during their mandate.

The embarrassing events at the general assembly in December 2008 and February 2009, a normally distinguished affair, deserve further stakeholder analysis. As their justified questions regarding manipulation and information were not really answered, some individual shareholders expressed their anger towards the board of directors in a somewhat aggressive fashion. Some lost their self-control and insulted board members; some even threw objects at them. Only anger and despair can explain this rude behaviour by normally rather polite and civilised people. It was the emotional reaction of thousands of small shareholders who felt betrayed by decision-makers who did not show them either respect or dignity in the process. This occurrence illustrates the need to combine reason and emotion in business ethics (ten Bos and Willmott 2001). Thus, one can see that "personal, cultural, psychological, cognitive and context-related factors play a role in decision-making and in the moral component of decisions in business" (Crane and Matten 2004: 106).

The presence of five thousand individual investors at a general assembly is rather exceptional. The grouping of individual shareholders in minority associations is a new unusual phenomenon in Europe. The general assembly had lost its traditional role. It became an exhaust valve for the frustration of the shareholders in revolt when realising their impotence of changing the course of history. The emotional content of this assembly made it impossible to carry out business as usual. The rare interventions by the employees' representatives and some pragmatic individual shareholders in favour of giving approval of the sale to BNP Paribas and to look to the future, were drowned out by criticisms. The assembly had more in common with political meetings, where it is emotional arguments make the difference rather than rational objective elements. The

only power that small shareholders often have is in voting for or against the election or re-election of directors, and then seldom able to have a decisive impact against the majority. In a very subjective way, often based on some details or on perception; they use this vote as a referendum on the directors and potential candidates. These are the protest votes of the silent majority. In this view, the non-election of Viscount Davignon at the general assembly, a respected personality of the Belgian establishment, represents a symbolic victory[xlviii].

The turbulent events at the final Fortis general assemblies illustrate the social movement theory as applied to shareholders and the resource mobilisation perspective as applied to shareholder activists (Mc Carthy and Zald 1997, Jenkins 1983, Davis and Thompson 1994). The small shareholders who wanted to reject the deal acted irrationally. Rejection would likely lead to a chaotic situation with lawsuits that would further immobilise the bank. The negative effects could easily result in bankruptcy, in which case everybody would lose. Public interventions in the press, and even from the Belgian Prime Minister, in support of the proposed deal with BNP Paribas irritated shareholders and caused a loss of confidence in the bank and in the government[xlix]. The last minute manipulative intervention by the Belgian Minister of Finance to give the Fortis shares held by Fortis itself voting rights, was another tactical error. When this news was brought out at the general assembly, held to confirm the sale of the bank, the small individual shareholders interpreted this as another attempt to ensure approval by any means of the government's decision. This news was sufficient to change their voting intentions, which led to a negative vote[l]. Incited by the vehement intervention by the lawyer Modrikamen, the shareholders emotionally reacted to their frustration and grievances. Having already lost 95 % of their shares' value, they felt they had virtually nothing left to lose and were willing to give up their normal prudence and play poker with what was left. In this emotional reaction, they did not consider other stakeholders at all: nor the employees nor the depositors of the bank, nor the taxpayers. Their anger was focused on the board and towards the government. They did not care that the potential bankruptcy of the bank could result in major problems for the country's economy, and that ultimately the taxpayers – including themselves - would have to pay for this. Maybe there was also a lack of belief in the bankruptcy scenario and an optimistic belief in a hypothetical stand-alone solution for the bank, a scenario the government clearly wanted to avoid. Stimulated by the analysis by reputed lawyers, the minority shareholders gambled that the government would do whatever it could to find a solution that would avoid an economic drama: a tactic that partially succeeded. But the loyal stakeholders had forgotten any stakeholder considerations and behaved irrationally, even in a rather socially irresponsible way, losing sight

of elementary principles of duty, fairness and the common good. But, in a capitalistic system, who can blame shareholders to vote as they wish, when they feel betrayed, and to try to protect their savings privileging self-interest?

On a more fundamental level, the alleged intervention by the Belgian Prime Minister's cabinet with the judges caused a terrible upset because it was seen as a transgression of the separation of powers in a democracy. The financial crisis had clearly crossed over to politics and justice, and reached the heart of the institutions. The political opposition and the press attacked vigorously, leading to a political crisis which ultimately led to the resignation of the Belgian Minister of Justice and the Belgian Prime Minister.

As a consequence of the management's loss of credibility and the panic decisions taken by the government in managing the first crisis week-end of 28th September 2008, the impartiality of the expert's report into the crisis was even questioned. Emotions led to the juridical competences of the chairman of the expert panel being questioned.

The events around the Fortis general assemblies illustrate that the emotional attitude of the major stakeholders does not always follow principles of distributive, procedural or interactional justice. And that, in crisis situations, transgressions of ethical principles by loyal stakeholders sometimes occur; and also in striving for the least harm and for the common good, legal principles are sometimes exceeded.

The most visible elements of questionable behaviour concern conflicting interests and agency problems involving several protagonists: management, board, intermediaries, associations representing minority shareholders, the political world and the governments, even the media; all having their own agendas, and not always immune from conflicts of interests.

Analysis from a corporate governance perspective

Corporate governance research studies the effectiveness of the board in relation to a number of characteristics of the board composition: size, diversity, heterogeneity, board tenure, the number of proportion of outside and independent directors (Barroso-Castro, 2009).

Besides structure and outcomes, corporate governance research should study the decision making process, the relations within the board and the interactions between the board, top management team and stakeholders (Van Ees, Gabrielsson and Huse, 2009).

In this chapter, we will discuss the corporate governance context, the role of the major actors of corporate governance: the board, the independent directors, the CEO and chairman, and the nature of the group-dynamics between the board and the top management team. These major issues in the corporate governance literature will be applied to or confronted with the Fortis case. As noted in the introduction, the board of Fortis was a model of corporate governance with its international board composition. Fortis' Chairman, Count Maurice Lippens, was also chairman of the Belgian Commission of Corporate Governance and of Guberna, the Belgian Institute of Directors.

The corporate governance context

Fortis was in a situation of having a very dispersed ownership, characterised by outside share ownership dispersed among a large number of relatively unconnected shareholders (Williams and Ryan 2007, Marcoux 2003). In the case of Fortis, this amounted to hundreds of thousands of individual shareholders and many more indirectly through pension funds. Further, loyal employees had also accumulated shares. Alongside the individual investors, there are other investment funds with a medium-term perspective and large hedge funds with a short time horizon. The dispersed shareholder structure, without reference shareholders, leaves power in the hands of the management and the CEO. No individual shareholder had more than a few percent of the total; only the Dutch fund *VSB* hold a little more than 3 % [li]. In this sense, the recent entry of the Chinese holding company *Ping An* with a 4.8% stake has a tremendous impact when only around 20% of the share owners are normally represented or present to exercise their vote.

The board of directors

Fortis' international board grouped personalities from different nationalities (4 Belgians, 2 Dutch, 2 Germans, 1 French, 1 British, Canadian and 1 Indian) with impressive curricula vitae and specific competences in various fields. In 2007, the board counted 12 members, including only one women. Their average age was 62. All the directors were classified as independent directors, except the CEO and the deputy CEO. Most of them had no operational CEO job anymore, but were board members or chairman of important stock quoted companies. Three members have been one the board for more than 10 years; five had been appointed three years before the crisis and three one year before. They have been selected in function of the international ambition of the group.

Fortis followed most of the principles of the corporate governance code on independence of directors, audit committee functions, age limits and number of terms (Chatterjee & Harrison 2001; Monks and Minow, 2004; Clarke, 2004). The only derogative to the Belgian Code of Corporate Governance is that the Chairman had been on the board for 28 years, whereas the code suggests a maximum of two terms of six years.

Large boards groups with cognitive diversity and networks dispose of more resources and skills, which should enhance their information-processing and decision-making capabilities but can alter the diffusion of responsibility or social loafing (Barroso-Castro, 2009: 750).
Board diversity is likely to enhance both the breadth and the speed op top management team strategion action capability (Kim et al, 2009).

Corporate governance literature generally associates long board tenure to organizational status quo, group conformity, inertia and a reduced willingness to take risks (Barroso-Castro, 2009); the ABN AMRO acquisition tend to refute this feature. Long board tenure can also lead to the establishment of routines and repertoires for dealing with problems and issues (Miller and Freisen, 1984). The success of successive acquisitions of Fortis under Lippens' reign may have impeded the board's critical sense.

Independent directors

The value of the board rests in term of human capital it comprises: the capabilities of its members and their commitment (Snell & Dean, 1992; Stiles, 2001 647). The external social capital of individual board members may confer legitimacy and status within the board, as well as granting them access to information and critical resources in the external environment (Geletkanycz et al. 2001, Finkelstein and Mooney 2003). The Fortis year reports show that board attendance was very high in the critical period 2007-2008; the attendance was excellent in the audit committee, in the nomination and remuneration committee, but also in the risk and capital committee. However, after a meeting on 1st August, the Board did not met for eight weeks[lii], although very turbulent times, a new CEO, and a committee that seemed rather without guidance. Despite evidence of an enhanced involvement of the board due to recent expansion of its responsibilities (Schwarz, Dunfee & Kline, 2005), 'the overwhelming impression, certainly from the business press, is one of board passivity and reluctance to introduce contestability into the boardroom' (Stiles, 2001 627). 'Although outside independent board directors appear to

strengthen corporate boards, their presence will not solve the deficiencies exposed in corporate boardrooms' (Petra 2005).
Given the selection of outside directors and the electoral process mainly controlled by management (or by the chairman of the board in the Fortis case), and, given the prestige and financial rewards of a seat on the board, outside directors are unlikely to criticize management (Stiles, 2001; Cosenza, 2007).

The CEO and the Chairman

An important topic in corporate governance research is CEO duality, the combination of the positions of Chairman and CEO by the same person. CEO duality creates concentrated leadership, in contrast with diffused leadership. Kim et al (2009) posit that concentrated board leadership is likely to decrease top management team's capability to act with strategic breadth but is likely to promote its capacity to act with speed.
Maurice Lippens, had established the Fortis group as active chairman of the board for nearly three decades; it was his strategic vision of a merger of AG and Amev that led to a successful bi-national group. With the ABN AMRO deal, he aimed to replicate his original deal, in the insurance sector, in the banking sector.
The role of the board's chair is especially important in the relationship with the CEO and in the information conduit (Nowak and McCabe, 2003). Often, the Chair has the most seniority and organises the operations and working of the board; that is, the chair is at the centre of the network. In the case of Fortis, the dominant role of Maurice Lippens is unquestionable. He had been the architect of Fortis's strategy over the last decade, and it was he who formed an international board to reflect the international ambition of the group. With the help of a exclusive head hunter, it was Lippens had chosen Votron as von Rossum's successor as CEO, without any consultation with the Executive Committee[liii]. According to the Fortis governance's statements, the CEO had to maintain a close contact with the active chairman[liv]. On this basis, some observers placed the real power at Fortis with the Chairman; others say he delegates, but that it boosts his ego to have people believe he still runs the show[lv]. With his past achievements for the group, with his longevity, but also his time spending and salary, Fortis' Chairman was an active chairman. In fact, in Fortis, the power many scholars assign to CEOs was concentrated in the duo Chairman-CEO.

A board of directors functions as social networks: each director has their own internal network within the organisation, and especially with the CEO, and also an external network. Power differentials within boards can affect board processes and outcomes (Hambrick et al., 2008 382). The power relationship of the board to the CEO, and the relative distribution of influence among board members, may affect the strategic impact of decisions made (Finkelstein and Mooney 2003: 105, Herris and Helfat 2007). The board of directors may have been overwhelmed by acquiescence to a dominant figure on the board (Garratt, 2005).

The role of the board in strategy

The fundamental dilemma for board directors is how to 'drive this enterprise forward whilst keeping it under prudent control' (Garratt, 2005). The board has four directional tasks: monitoring, service, strategy and resource provision (Daily et al. 2003; Zahra and Pearce, 1989). While much corporate governance discussion has focused on accountability and compliance - the monitoring role of the board - many scholars have recently, probability due to and increased turbulent environment related to globalization, re-emphasized the reflective role of the board in strategy (Kerr and Werther, 2008; Hendry and Kiel, 2004; Dallas, 2003; Barroso-Castro et al., 2009). The passive school of thoughts regarding board's involvement in strategy rests upon the managerial hegemony theory, where strategy is seen as the responsibility of the top management team supposed to be reviewed and approved by the board. The active school of thoughts relies on stewardship theory - providing support and advice to management, agency theory - control and supervision – and on resource dependence theory – network and links to outside resources (Barroso-Castro, 2009: 746).

External factors as well as the outside directors own perception on how to fulfill their role lead to their increasing involvement in all stages of the strategic management process (Kim et al. 2009). The variety of expertise and perspectives of a board with heterogeneous composition can be beneficial to take strategic decisions in highly complex and rapidly changing environments. (Van Der Walt et al., 2006).

The importance of the reflective role of the board is highlighted in situations of mergers and acquisition (M&A). While M&A can have a tremendous impact on the future of the company, it is not easy for outside directors to give a judgement on proposed mergers and acquisitions as they must rely on information from management and advisors (Armour, 2002; Thomas et al,

2009). The interests of management and advisors are indeed not always aligned with the company's interest: advisors want to close the deal, and management may be tempted by financial benefit, career and prestige reasons, or simply by a new challenge. The most difficult problems for the board to integrate risk management into decision-making and strategy evaluation are the uncertainty, information asymmetry and the lack of specific tools to quantify the organization's acceptable level of risk (Wittenberg and McDowell, 2007). More than rubberstamping a "go or no go" decision, boards should ensure that the opportunity offers a strategic rationale and sufficient reward potential, and assess the risks. The board directors should press management for more details and challenge them (Armour, 2002).

A crucial element in the decision-making in crisis situations times is to dispose of the right and correct information. Good governance needs transparency. Fortis board has a Risk and Capital Committee, to assess the risks. They rely on information from outside and internal experts.
The paradox for the board of directors is that the 'power over information is held by the agent (management) whom they are charged to monitor'. Consequently, 'management integrity is central to information flows' (Nowak and McCabe, 2003: 305, 306).
A few days before the launch of the capital increase operation, internal risk experts value the losses of the subprime credits to 400 M €. In the meeting of 20th September 2007, the Risk and Capital Committee should formulate an advice to the board for the capital increase. It was exceptionally attended by a number of observers and guests: additional board members including the chairman, Fortis bank top management and advisors. The report mentions that the risks seems to be minimized, with a maximum additional exposure of 20 M € [lvi]. Question is where in the hierarchical line, crucial information was lost or kept hidden: between the risk manager and the top of the bank, or between the bank and Fortis top management, or between the CEO and the board. If the board had received the right information, would they have taken a different decision?

In the ABN AMRO acquisition, the rationale and the reward potential were present, but the board failed short to press the management for additional details on the risk assessment and on the way to secure/guarantee the financing of the deal. From a prudent viewpoint, one might criticise the lack of a fallback position, and the lack of foresight in assuring the financing of the deal. This probably arose due to the overconfidence, in times of opulence, of the management and board. This can be seen as a failure in risk-management and a fundamental error in strategy. Concerning the lack of adequate information on subprime mortgages, some observers also assign

a significant share of the blame for troubles in the bank industry to the bank boards of directors (Phahn, 2007). 'The danger zone is the space where neither management nor the board has knowledge about a situation' (Thomas et al., 2009: 71). Despite its international experts, the board failed to assess the global impact of the US financial crisis.

The board of directors is one of the internal governance mechanisms by which it is proposed that agency costs are minimized (Nowak and McCabe, 2003: 301). However, the innumerable studies on the impact of board composition on performance are inconclusive on the relation between director independence and performance (Bhagat and Black, 1999; Bhagat, Bolton and Romano, 2008). The business judgment rule implies that directors are required to inform themselves about the subject matter, if need be by seeking independent information and second opinion (Nowak and McCabe, 2003: 305). For the acquisition of ABN AMRO, Fortis management and board relied on one single advisor, Merrill Lynch. Fortis failed also to have neglected to ask for external legal advice on possible observations from the European Commission[lvii].

Shields developed a 'tri-dimensional integrated model of corporate governance and agency and power relationships'. In this view, agency theory applies to the relationship between external shareholders and executives, while managerial power theory applies to the relationship between the board and executives. Both perspectives have neglected the relationship between external shareholders and the board (Capezio and Shields, 2009). The fact that the majority of the shareholders were located in Benelux while half of the board were international authoritative professionals, contributed to this tunnel vision. An effective application of corporate governance would normally have increased strategic awareness and flexibility, but the link with the shareholder role was mainly handled by the Belgian and Dutch directors, and especially by the chairman, Lippens, with his extraordinary longevity on the board. This unique situation placed much of the managerial power in the hands of the CEO - Chairman duopoly, and may explain the lack of strategic flexibility.

While the international board members did have information on new markets, essential for Fortis's growth strategy, it appears that, in this particular crisis, they were not in touch with the local reality and with the deeply felt motives of the small shareholders. The foreign directors simply did not grasp the impact of the fall in the stock price on the Belgian and Dutch shareholders[lviii]. When some of the board members advised against negotiating with activists, and against putting energy into dealing a group of shareholders representing only 15% of the

share capital, they failed to understand the gravity of the situation and showed a lack of comprehension of stakeholder management[lix].

The Fortis case illustrates classical pitfalls linked to the CEO role: neglecting signals from the external world and becoming isolated from the rest of the company (Grant and Viscondi, 2006). According to interviews with his colleagues, Votron did not fully realize that he had breached the trust of the shareholders; his behaviour evolved into an autocratic, peremptory style. He isolated himself, along with his chief financial officer CFO Mittler, and gave preference to working with staff he had recruited. Votron did not feel a need to maintain contacts with the local political world. In the discussions with the chairman, he saw resignation as a humiliation[lx]. When all the economic signals were changing, he persisted in the ABN AMRO acquisition deal, even the suggestion to renegotiate the deal, or to withdraw citing material adverse change, was categorically rejected[lxi]. The award for European Leader of the Year conferred on him external legitimacy, while positive press articles comforted him in his opinions. The international jury praised his extraordinary leadership and exceptional vision that had led to Fortis's excellent performance. The Financial Times headlined that the sleeping beauty of Benelux had awakened[lxii]. Reconfirmation came a few months later, in November 2007, when Fortis was named European Banker of the Year.

Specific issues and considerations

Some specific issues of the Fortis affair merit some additional analysis to illustrate the application of specific theory such as social movement theory, information asymmetry, agency theory, and conflicts of interests.

Shareholder activism and social movement theory

Generally, directors are expected to be present at a General Assembly. However, in such a meeting where the two official languages are French and Dutch, and they understand neither, the international directors see little added value in attending. Especially in a situation where the board is likely to be heavily criticised and attacked it is not a pleasant job. It is to his credit that the vice-chairman, Hessels, who stood in after the resignation of the chairman, Lippens, agreed to face the public. Hessels attempted to insist on the presence of all the directors and, although most of the international directors declined, about half of the directors recognised their responsibility, took up their courage and were present.

Shareholder activism generally involves institutional investors, and is least common when there is a dispersed ownership (Williams and Ryan 2007). Most individual and stable long-term small investors do not usually attend general assemblies or submit proxy votes, although some activities in recent decades, such as shareholder clubs, have made efforts to motivate individuals to actively participate. It is rare for a quorum to be as high as 20%, and, even in a critical situation, only 35 % of the shares would be represented at a Fortis assembly, despite all the efforts of three associations established to defend minority stakeholders. The presence of five thousand individual investors at a general assembly is rather exceptional. The grouping of individual shareholders in minority associations is a new unusual phenomenon in Europe.

The embarrassing events at the Fortis General Assembly made that it had lost its traditional role. It became an exhaust valve for the frustration of the shareholders. They felt robbed and their human reaction was to revolt realising their impotence and the impossibility of changing the course of history. The emotional content of this assembly with high attendance, the rude and aggressive behaviour by normally rather polite and civilised people, made it impossible to carry out a serious debate. The assembly had more in common with political meetings, where emotional arguments make the difference rather than rational objective elements. The only power that small shareholders often have is in voting for or against the discharge and for the election of directors. In a very subjective way, often based on some details or on perception; they use this vote as a referendum on the directors and potential candidates. These are the protest votes of the silent majority. As in most cases the majority will largely outreach these protest votes, a score between 50 % and 100 % of the votes has only a symbolic value with no effect on the outcome of the election. In this view, the non election of viscount Davignon at the General Assembly, respected personality of the Belgian establishment, represents a symbolic victory, and announces the end of an area[lxiii].

The turbulent events at the final Fortis general assemblies illustrate the social movement theory as applied to shareholders and the resource mobilisation perspective as applied to shareholder activists (Mc Carthy and Zald 1997, Jenkins 1983, Davis and Thompson 1994). The small shareholders who wanted to reject the deal acted irrationally. Rejection would likely lead to a chaotic situation with lawsuits that would further immobilise the bank[lxiv].

Agency theory and conflicts of interests

Managements and boards have moral responsibilities. Executives have moral obligations to their shareholders in the form of keeping promises and meeting their fiduciary duties (Williams and Ryan 2007, Marcoux 2003). Some corporate executives, perhaps unconsciously, violate these fiduciary duties to their shareholders by attempting to withhold information or enabling privileged access to information to some classes of investors. On several occasions, communication was far from optimal, and information on the risk due to CDOs was scarce[lxv]. Was communication transparent? Had there been manipulation? Were there attempts to influence? Was all information given in a timely fashion? The successive private calls for new capital, in poor trading conditions, were attempts to correct past errors; but the traditional loyal shareholders found themselves unfairly treated since they were not given the opportunity to participate under the same conditions.

The most visible forms of questionable practices concern responses to conflicting interests, illustrated by agency problems with management and the hidden agenda of the CEOs. The Fortis case illustrates the roles of ego, power, tactical games and politics in the actions of top executives in critical and timely issues. It elucidates, on various occasions, the huge conflicts of interest that can arise for CEOs in merger opportunities (Haunschild, 1994; Roll, 1986; Hirsch,1986; Hayward and Hambrick 1997; Fendt 2005; Bodolica & Spraggon, 2009). Fortis had discussed mergers on several occasions in recent years, but negotiations were blocked by the CEO or chairman of one of the entities with hidden agendas[lxvi]. The case also gives some insights into a particular theme in corporate governance and ethics: the controversial issue of CEO remuneration, bonuses and golden parachutes[lxvii] (Moriarty 2005, Nichols and Subramaniam 2001). Further, the case offers insights into the critical conflicts of interests of regulators, intermediaries, advisors, analysts[lxviii] and observers.

The Fortis case illustrates, on various occasions, the conflicts of interest that can arise for CEOs in merger opportunities (Fendt 2005; Bodolica & Spraggon, 2009) and the hidden agendas of top management and some board members. Further, the roles of intermediaries and advisors can also be highlighted, as well as the conflicts of interests of lawyers and the minority shareholder organisations.

The CEO in merger opportunities

Organization research on corporate takeovers indicates that individual, group and social factors rather than efficient strategic calculation may drive key decisions (Haunschild, 1994; Hayward and Hambrick, 1997). Fortis had discussed mergers on several occasions in recent years, but negotiations were blocked by the CEO or chairman of one of the entities with hidden agendas[lxix]. In 2002, Lippens had conversations with ABN AMRO about an alliance, but the negotiations ended when ABN AMRO's CEO, Rijkman Groenink, demanded the CEO function in the merged company. In early 2003, Fortis's CEO, van Rossum, negotiated a merger with BNP Paribas in which he would become CEO of the group, while all the major functions in the executive committee would be left to BNP Paribas, inclusive the Presidency of the Board. When Lippens objected to this proposal as unfair, Van Rossum ended negotiations. The BNP Paribas chairman later told Lippens that it was Van Rossum who had proposed these conditions. In 2006, Fortis was approached by TSB-Lloyds to discuss a possible merger. A headhunter saw Votron as the best candidate to lead the merger, but TSB-Lloyds demanded this function. Clearly, the personal ambitions of top executives influence their decision-making. Facing the termination of his mandate, Votron reacted that he wanted to continue but only under his conditions. Filip Dierckx, who seems to have rejected an offer to head KBC because his chairman indicated he would become Number One in Fortis, was deeply disappointed when Verwilst was instead chosen to succeed Votron[lxx]. When, in April 2009, in the new Board of the reduced Fortis, George Ugeux, a newly elected director nominated by Deminor, was not accepted as Chairman, he withdraw from the board.

Placing the personal ambitions of the CEO or chairman above the objective needs of the corporation constitutes a severe abuse of power. Negotiating an exit bonus or a golden parachute by CEOs and top management prior to, or as a condition of, a takeover amounts to a serious conflict of interest[lxxi]. Such attitudes also constitute a transgression of principles of ethics of justice.

Ego may confuse the CEO's logic during a takeover battle (Roll, 1986; Hirsch,1986; Haspeslagh and Jamison, 1991). Especially when previous successes reinforce the CEO's self-esteem, overconfidence and hubris may lead to excessive premiums and higher risk (Hayward and Hambrick, 1997). The egos of the CEO and of the Chairman undoubtedly played a crucial role in the fall of Fortis. When the investment bank Merrill Lynch approached Votron (the then CEO) with the proposal to participate in a deal with two other prestigious banks, Royal Bank of Scotland and Santander, the top management of Fortis was flattered[lxxii]. Perhaps with the Chairman's eagerness to grow Fortis into one of the most important European groups, he saw

himself as indispensable. Previous success may have altered his judgement and lowered his guard.

Financial incentives for CEOs and top management, as stock options and bonuses, but also the power and status[lxxiii] of leading a larger group, can boost the proclivity of CEOs to engage in acquisitions and to take higher risks (D'Aveni and Kesner 1993; Dalton and Daily 2001).

Psychological factors also affect behaviour. For some observers, a sense of revenge was not absent for Votron who had missed a top-position at ABN AMRO a few years earlier, nor for Lippens who reminded the fight against ABN AMRO for the acquisition of Generale Bank[lxxiv].

The role of intermediaries and advisors

The Fortis case and, by extension, the crisis in the whole financial system, poses another fundamental question: what are the roles of intermediaries and observers? A few secondary stakeholder groups play important roles in the financial markets: analysts, lawyers and investment bankers, and journalists. Analysts have increased the pressure to achieve high growth by praising acquisitions: banks that were seen as too prudent received rather negative reports as over conservative, while the more aggressive banks were praised for their innovativeness and creativity. The press advices often have decisive impact on the stock price. Such evaluations provide strong incentives for bank managements to expand and, in so doing, to increase risk exposure. Innovative bankers who developed new products were praised. Investment bankers proposed highly leveraged deals to acquire competitors. Together with lawyers, such intermediaries made fortunes, out of all proportion to the added value, and without any consideration of social responsibility. When the investment banker Andrea Orcel proposed embracing the ABN AMRO deal to Votron, he was rewarded with a huge commission without accepting any responsibility. Moreover, the analysts also had a conflict of interest, as the same bank was advisor over Fortis' capital increase in October 2007[lxxv].

The lawyers and the minority shareholder organisations

As in many complex cases, some lawyers engage in procedural battles that have little added value and are questionable even from an ethical viewpoint, such as Modrikamen's procedural demand to address 2400 shareholders individually in their own languages (requiring 35 translations) at their home address rather than through his office, although Modrikamen did justify this claim as a reaction to obstruction[lxxvi].

Minority shareholder organisations specialize in actions to recover losses as a result of corporate wrongdoings, misrepresentation and fraud. They pursue the objectives of shareholder activists

through legal actions they launch for the clients they represent. However, notwithstanding their noble objectives, they also have an inherent conflict of interests as they benefit from a substantial commission on any sums they recover. Class actions have become a very profitable business in the United States.

In the Fortis case, a few organisations were operating: *Deminor*[lxxvii] the Dutch association of investors *VEB*, and the law firm of Modrikamen. All had their own agendas and their own tactics. Deminor did not agree with the more aggressive tactic of Modrikamen, and tried to gain influence in the Fortis group by supporting the candidatures of respected business people for the new board.

Modrikamen pursued his own path with a lot of juridical procedures. His actions were more media-aware and he profited from the notoriety in launching his own political party.

Besides ethical concerns at an individual level of shareholder, CEO or advisors, the Fortis' rescue also posits the ethical dimension for decision-makers of the authorities.

The ethical dimension of bankruptcy and nationalization

The sinking of Fortis offers interesting ethical questions around the ethics of bankruptcy and the ethics of nationalization of large national corporations[lxxviii].

Was it legitimate to nationalize Fortis? Could the alternative scenario of bankruptcy reasonably be envisaged? Many citizens, who are also tax payers and electors, would indeed not be in favour to bailout bankers (Ayotte and Skeel 2010). Why would the government be allowed to tax citizens in order to bailout the national and international shareholders of a bank? Can urgency constitute a defendable rationale for an exception to the principle not to intervene in the market? From an utilitarian perspective, the state can rescue bankrupt corporations, in a way that protects the interests of the creditors (Kilpi, 2006). The cost-benefit analysis in case of bailout of a large bank might display less harm for the depositors than the cost for the country's economy in case of bankruptcy.

This key dilemma – bankruptcy or nationalization - has a profound ideological dimension and consequently a political one. In the case of the Lehman Brothers, a few weeks before, the US government had deliberately chosen for the bankruptcy scenario, in line with the dominant ideology.

In a different context, in Europe, where pure market economy is not the' pensée unique' ideology, the debate is more pragmatic. The key question in the governmental decision-making

has been debated with the government's expert group. Seen the importance of the bank in Belgium and in the Netherlands, and having seen the disaster caused by the bankruptcy of the Lehman Brothers a few weeks earlier, the bankruptcy scenario was rejected, as the worst of all solutions. Some politicians argued that the government could handle the bank during the period of instability and resell the bank with a profit after the crisis when the stock markets would have recovered; some other politicians doubted that the government would be able to run a large bank, some feared for too much political intervention and poor decision-making. Curiously, the alternative solutions were not always supported according the classical political views: some liberal politicians privileged the total nationalization scenario, whereas some social democrats and socialists were advocates of a sale to a foreign bank, the solution also supported by the liberal Minister of Finance. Whereas the Dutch government has chosen for a nationalization of the Dutch branch of Fortis, the Belgian government took the option of a partial nationalization with resale to the French bank *BNP Paribas* a week later. The pragmatic view made the government realize that it could not bear the risk of keeping the bank in stand-alone scenario, surely with the knowledge that other banks would have similar liquidity problems in the coming weeks. Some critiques argued that negotiating with only one partner and under time pressure limits the manoeuvring space; although the nationalization scenario was kept as alternative when the alternative potential acquirer *ING* had withdrawn. Other observers have criticized the sale to a French bank and invoked conflict of interests; they consider the choice of a French bank as a favour for the French president, that could lead to some ulterior rewards for political friends.

With its pragmatic solution, in view of the limited alternatives and time constraint, the Belgian government followed a utilitarian principle opting for the least harm principle: to save the bank's customers and by this to save the country's economy.

In this discussion on nationalization versus bankruptcy, an unanswered question will remain: what would have happened if Lehman Brothers would have been rescued by the US government (Hall, 2009; Ayotte and Skeel 2010)? It may reasonably be assumed that the magnitude of the financial crisis might have been lower, that the domino effect could have been more limited and that Fortis would probably not have collapsed. It summarizes the ethical dilemma posed to the governments in this strenuous crisis.

CSR policy and reality

Confronting the fine statements on CSR, ethics and integrity concerning the sustainability of the financial services, the information to the shareholders, and the integrity of the professionals, with the reality experienced in this financial crisis shows a sharp contradiction.

CSR implies delivering goods and products that correspond to the needs of the customer. It implies a duty to consider safety and guarantee measures for customers and for employees. There is an increasing trend towards recognising product liability in all industrial sectors. When a product does not match its description, the manufacturer has to redo the job at its own expense. In the pharmaceutical industry, products are withdrawn for side effects and victims compensated. The tobacco industry has been condemned in court where people died from smoking, even if they knew it was dangerous. Curiously, all forms of product liability seem absent in the financial world. If all banks were held responsible for the products they sell, and had to provide guarantees on these products from other banks they sold, they would have been more cautious. CDOs would not have been so widespread. But apparently, all these new innovative financial products based on creative financial engineering and optimization have been developed in accordance to all legal procedures. Financial products are intangible goods. Legal clauses stipulate the limited responsibility of the issuers of the financial products. Contracts in the financial world are engagements of means, not commitment of results. Buyers are supposed to know that financial products involve certain risks. All transactions are perfectly legal, at every step in the sales process. But some basic assumptions may be questioned: the complexity and the lack of transparency of the products, the high leverage and the off-balance sheet risk accumulation. After the Enron debacle, new regulations following the strict Sarbanes Oxley law had increased control for the corporations and responsibility of the board members, forbidding off-balance operations such as special purposes vehicles which hide the leverage and the increased risk. Curiously, despite this increased regulation, the financial institutions developed CDOs, and other financial products with similar creative off-balance sheet risk accumulation through high leverage.

Contrary to the Fortis statement on the social and environmental risks presented earlier, Fortis' management seems to have concentrated on legal activities and compliance, rather than on the relationship with its customers and on the sustainability of its financial products.

In this respect, and from both distributive and procedural justice points of view, one can question the ethical motivation of a golden parachute that rewards top executives for poor performance and a company's failures. Shareholders and also other stakeholders, and public opinion, rightly question how huge executive remuneration and golden parachutes can be reconciled with a corporation's social responsibility when the latter is publicly promoted by the CEOs but apparently ignored in practice. The fine Fortis Principles of Business Conduct that are supposed to provide guidance for actions and decisions, the highest degree of integrity and meet the concerns for relevant information of a strategic nature seem to have been neglected or overlooked by management. An interesting question to ask to board directors would be how much (or perhaps how little?) time the board spent on discussing matters of corporate social responsibility, ethics and business conduct once these official statements had been approved. It is highly probable that, in times of crisis, accounting information and financial results are the top priority of the management and the board, at the expense of less tangible issues such as corporate social responsibility (McGuire et al. 2003).

Curiously, analysts and the financial press that report these merger and acquisition activities seldom refer to corporate social responsibilities. Analysts see only shareholder value. Journalists amplify this message, and this has an impact on the share price. The positive comments made at the time of the ABN AMRO deal were mainly about market share and growth. The social effects of mergers are generally only commented upon in the press when comparing potential buyers and the impact on personnel. Instead, the press plays a large role in massaging the ego of board members and CEOs, according a higher status to the most powerful amongst them. During and after the Fortis crisis, the press gave little attention to social responsible issues.

Ethical questions can be raised around a certain inconsistency in the press when first uncritically praising innovative financial products and later attacking the same banks for the debacle of the financial crisis; or when first applauding and making heroes of CEOs and later, when problems occur, calling for their dismissal. Apart from the ethical aspect, one can question the wisdom of decisions taken under pressure from the press and from shareholders to sacrifice the CEO like a scapegoat (Boeker 1992, Wiersema 2002)[lxxix].

The lack of alignment between the performance objectives and the CSR policy lead to scepticism towards CSR activities (Bakan 2004, Weaver et al. 1999). Ethics and CSR programmes help in "signalling that the corporation conforms to societal expectations in its internal organisational processes and structures. However, CSR programmes may display a strong instrumentalist

motivation, since top management is expected to be committed to the financial, strategic and operational success of its organisation" (Weaver et al. 1999: 543). The Fortis case supports Weavers and colleagues' hypothesis that "the more a company's top management is committed to financial, strategic, and operational concerns, the more the company's formal ethics program will incorporate easily decoupled practices such as policy communication". Building on this, we can formulate an additional hypothesis: in turbulent circumstances, where financial and operational imperatives dominate, companies may simply be tempted to adopt decoupled communication practices.

Banks have one major asset: trust, and that makes their reputation. More than any other business, bankers need to be seen as trustworthy and reliable. It is the bank's failure to refer back to its noble principles of integrity and social responsibility that increased its risk profile and caused the huge problems in this financial crisis. It unfortunately resulted in the loss of Fortis's impeccable reputation, and for a reputation loss in the whole sector. Trust has to be gained through actions: reputation counts for more than image.

Corporate reputation explains why successful organisations like to partner with other exclusive organisations through patronage and sponsorship. Partners of Fortis, who had benefited from sponsorships, as the leading Belgian soccer team, RSC Anderlecht, where not happy with the spoiled image due to the Fortis debacle. Some partners seriously doubted to extend their association.

Law, ethics and responsibilities

Managements and boards have legal and moral responsibilities. Executives have to respect the law, and the rules and regulations of their sector. However, if "law circumscribes the limits of tolerable behaviour, it does not define ethics as such." (Solomon 1997: 20). There are moral obligations that may not be a part of the law, not enforceable but nevertheless very real. Executives have moral obligations to their shareholders in the form of keeping promises and meeting their fiduciary duties (Williams and Ryan 2007, Marcoux 2003). Some corporate executives, perhaps unconsciously, violate these fiduciary duties to their shareholders by attempting to withhold information. Compliance with the law is, in this sense, only secondary to the compliance with the demands of ethics and morality (Solomon 1997: 33). Innovative financial products, such as subprimes and CDOs, had been designed with a lack of transparency and with a complexity that escaped regulation. When, in their defence, banks who sold these

dangerous products to their clients used compliance arguments and legal contracts to deny responsibility, they may have failed to meet the spirit of the law. Law and ethics are indeed not always similar.

Some will argue that the top management and the CEO cannot be responsible for all the problems created by Fortis's employees: for the problems caused by the investment managers investing in CDOs, or for traders that took huge risks, or for accepting new products offered them by hedge funds, or for the chief financial officer's optimistic foresight. Are the CEOs of banks responsible for these sorts of actions? Solomon argues that "responsibility need not mean you are the cause of the problem. It does mean however, that you are in a position to do something about it. … Responsibility is accountability, but it is also do-ability" (Solomon 1997: 70). Using these arguments, some ethicists and legal theorists have introduced the notion of regulative responsibilities, "a sort of responsibility that results not from one's direct or 'proximate' contact with the case at hand nor does it even suppose knowledge of, much less acquiescence to, the harm in question. It is responsibility that results from one's 'position of overall responsibility', from being 'in charge'. That is after all, what those extremely high-paid executives are supposedly paid so much money to do, to be responsible for the company – its decisions, its mistakes as well as it successes" (Solomon 1997: 220).

The future: shareholder activism and legal suits

The Fortis saga is not terminated. The vote by the General Assembly in May 2009 confirmed the sales of the Fortis Bank to BNP Paribas, enabling Fortis to refocus its strategy as an insurance group. Fortis's large European project failed because of unforeseen circumstances and the failure of its board and management to take sensible precautions. However, the Fortis saga will continue for a few years to come. A parliamentary commission hold its hearings. Experts were designated to further investigate the case. There are several legal procedures under way, launched by assorted groups of shareholders[lxxx]. Modrikamen, Deminor and the Dutch *VEB*[lxxxi]. A Dutch firm, *Bas and partners*, have summonsed chairman Lippens, CEO Votron and CFO Mittler to appear before an Amsterdam court. A Dutch group is striving to obtain compensation from the Dutch government and from the Dutch Central Bank. In the US, another suit has been launched against the top management. Some parties, such as the Chinese holding company Ping An, have yet to take a definitive position regarding legal procedures. Fortis holding is thinking of launching a procedure against the Dutch State. The only certainty is that the situation is complex,

with various juridical procedures pending, before different courts in different countries with different time frames. The outcomes are unpredictable. The juridical imbroglio with dozens of court cases in Belgium and in the Netherlands can attempt to determine where errors have been made, and may possibly identify the responsibilities of major actors, but they will never restore the company, nor indemnify the losses of the shareholders.

Early 2010, the Belgian Parliament voted a law to allow intervention in the banking system in case of emergency [lxxxii]. The financial control authorities of the bank are transferred from the CBFA to the National Bank.
Criticism of the Belgian government has continued, the Minister of Finance, Reynders, has remained under attack, and his party lost the June 2009 elections. A similar boomerang effect has hit the Dutch Finance Minister, Bos, who was first praised for his intervention to reclaim ABN AMRO, elected political personality of the year in the Netherlands[lxxxiii] and then attacked a few months later for having paid too high a price (€ 23.8 billion rather than the € 16.8 billion announced). In Belgium, the juridical imbroglio between politics and magistracy has continued with what has been called the Fortis-gate. The partner bank RBS came into serious trouble, while Santander mastered the crisis rather well[lxxxiv]. BNP Paribas had also to ask for French governmental help of 5 billion €; a few months later, it announced good profits; the press also discovered that despite the critique of the politicians and the public opinion enormous bonuses for some traders had been awarded, again[lxxxv].

Fortis was the first of the major European banks to fall victim of the international financial crisis. The implicit stakeholder approach in the rescue of Fortis, although at the expense of shareholders, contributed to maintaining the European banking system. It also served as a test case for other European governments confronted with the dramatic global consequences of the financial crisis. Whether or not one believes that the origins of the financial crisis are to be found in the irresponsible behaviour of certain US fund managers and bankers in the US, prudent loyal shareholders were undoubtedly victims around the world. The question as to whether a similar approach by the US authorities to the problems at Lehman Brothers would have reduced the magnitude of the worldwide financial crisis will never be answered. Prime Minister Van Rompuy observed the irony of the financial crisis that the group that was supposed to incorporate the highest trustworthiness - bankers - had to be saved by the group that the had the lowest reliability, namely politicians [lxxxvi].

Conclusions

Fortis' sharp decline provides an example of the inability to question major structural decisions. It outlines the intricacy between finance, economy and politics, and demonstrates several fields of tension between management and its environment influenced and represented by politics, and between law, corporate governance and ethics.

The collapse of Fortis illustrates the process of value destruction due to an ambitious strategic decision, taken while ignoring uncertainty in turbulent times. In this process, nearly everyone loses. It has impoverished the Belgian economy, with the loss of one of its few remaining decision centres with international impact. It has also impoverished thousands of Belgian and Dutch small shareholders, with unknown consequences. It is the failure of a European project[lxxxvii].

It also shows how good intentions and stakeholder management tend to be forgotten when self-interest is at stake, even at the national and even EU level. Solidarity of banks and large companies disappeared for each individual interest and personal safety.

Besides this unsurprising conclusion, the analysis of the Fortis case through the lenses of various academic disciplines provides a number of lessons.

Applying different ethical frameworks in analysing the Fortis case at different critical moments results in a number of interesting findings. If one may reasonably accept that there was no intent to deceive, the misjudgements in risk assessment on the part of Fortis management and the board constitute a fundamental error in strategy management and certainly a failure of good governance through applying precautionary principles. On many occasions, not only stakeholder management but also principles of ethics of justice, deontological and utilitarian ethics have been neglected by various key players, with catastrophic consequences. In those turbulent and difficult times, most stakeholders – individual shareholders, larger groups, creditors but also the governments - tend to safeguard their self-interest, especially when they have got the perception of having being treated unfairly. The Fortis events illustrate the difficulties of a correct information flow and communication in periods of crisis . In delicate negotiation issues, a lack of clarity or incomplete information but also involuntary tactical errors can lead to misinterpretation, suspicion and mistrust, and to the perception of unfair treatment. Even without intent to deceive, some party may have the perception of unethical behavior by the other party.

The Fortis case developed into a major mobilisation of shareholder activism in Europe and to a complex legal affair with international and political implications. The events surrounding Fortis' bankruptcy put forward a number of on-going concerns and unanswered questions. It raises the

issue of product liability of financial products and services. This questions the fundamental role of the banks to its essence: should commercial banks better return to their core business to inject capital in industry, not speculating and revamping existing credits, with no real additional value, except for the financiers.

In addition, the Fortis experience posits the ethical issues in bankruptcy and nationalization.

From a strategic point of view, one of the most important questions, with hindsight, concerns the extent to which one can explain why a major institution like Fortis - with such a commitment to CSR, ethical behaviour and a world-class reputation for corporate governance - is currently perceived to have completely contradicted its own principles and beliefs. The fundamental questions that arise are whether a firm that takes on that level of risk is really socially responsible and why the powerful CSR guidelines did not help in the assessment of the risks. Whereas being ethical does not necessarily keep a company from bankruptcy, keeping an ethical mind-set in decision making may help to reduce the risks.

The Fortis case can be compared to similar cases as Arthur Andersen & Co. and AIG that also had a strong CSR and ethical culture. These cases show similar discrepancies between the official statements of top management and board on strategy and values, and how they behave when it comes to strategic decision-making. Rewards and “incentive problems, rather than malice or wickedness”, lead companies to breach their own CSR policies (Mackenzie 2007: 936-37). Alpaslan et al. conclude that, normally, “in the context of crises, the stakeholder model approach to corporate governance may result in a more successful crisis management outcomes such as early detection of warning signals, minimal downtime, and effective containment of damage than the shareholder model” (Alpaslan et al. 2009). However, in an international crisis that involves virtually every player in a global industry, a failure of corporate governance and ethics may lead to a strategy derailment with fatal consequences.

The Fortis case offers an immense richness for the analysis from ethical and stakeholder point of view, especially as to the vastness of perspectives: at the level of the individual, the corporation and the state level. It is sad to observe that the more the bankers talked of social responsibility and stakeholder management, the more it was shareholder value and personal bonuses that seem to have driven them. The irony of the financial crisis, as Prime Minister Van Rompuy observed, is that the group that was supposed to represent the highest level of trustworthiness - bankers - had to be saved by the group that the had the lowest standing, namely politicians [lxxxviii]. This

dramatic case and the global financial crisis constitute a compelling call for once again paying genuine attention to ethics and responsibility.

References

Alpaslan, C. M., Green, S. & Mitroff, I. 2009. 'Corporate Governance in the Context of Crises: Towards a Stakeholder Theory of Crisis Management.' *Journal of Contingency and Crisis Management,* 17:1, 38-49.

Armour, E. 2002. 'How boards can improve the odds of M&A success.' *Strategy & Leadership*, 30: 2, 13-20.

Ayotte, K., & Skeel, D. (2010). 'Bankruptcy or Bailouts?' *Journal of Corporation Law,* 35: 3, 469-498.

Bakan, J. 2004. *The Corporation, The Pathological Pursuit of Profit and Power.* New York: Free Press.

Bodolica Spraggon, 2009. 'The implementation of special attributes of CEO compensation contracts around M&A transactions.' *Strategic Management Journal*, 30: 9, 985-1011.

Boeker, W. 1992. 'Power and Managerial Dismissal: Scapegoating at the Top.' *Administrative Science Quarterly,* 37:3, 400-21.

Broadbent, D. 1958. *Perception and Communication.* Pergamon Press.

Buchholz, R. & Rosenthal, S. 1998. *Business Ethics: The pragmatic path beyond principles to process.* Upper Saddle River (N.J.): Pearson Education.

Crane, A. & Matten, D. 2004. *Business Ethics: A European Perspective.* Oxford: Oxford University Press.

Cosimano, T. 2004. 'Financial Institutions and Trustworthy Behaviour in Business Transactions.' *Journal of Business Ethics*, 52,2: 179-188.

D'Aveni, R. A. & Kesner, I. F. 1993. 'Top Managerial Prestige, Power and Tender Offer Response: A Study of Elite Social Networks and Target Firm Cooperation during Takeovers.' *Organization Science,* 4:2, 123-51.

Dalton, D. R. & Daily, C. M. 2001. 'Director stock compensation: an invitation to a conspicuous conflict of interests?' *Business Ethics Quarterly,* 11:1, 89-108.

Davis, G. & Thompson, T. 1994. 'Social Movement Perspective on Corporate Control.' *Administrative Science Quarterly,* 39:1, 141-73.

Debels, T. 2009. *De Ondergang van Fortis*. Houtekiet. Antwerpen.

Depuydt, P., 2010. *De Kloof- Hoe de breuk tussen Belgen en Nederlanders Fortis fataal werd*. Prometheus, - HRC Amsterdam.

Donaldson, T. 2008. 'Hedge Funds Ethics,.' *Business Ethics Quarterly,* 18:3, 405-16.

Eisenhardt, K. M. 1989. 'Agency Theory - an assessment and review.' *Academy of Management Review,* 14:1, 57-74.

Eisenhardt, K. M. & Graebner, M. 2007. 'Theory building from cases: Opportunities and challenges.' *Academy of Management Journal,* 50**:**1, 25-32.

Emery, F. and Trist, E. 1965. 'The causal texture of organizational environments.' *Human Relations*, 18:1, 21-32.

Fassin, Y. 2005. 'The reasons behind non-ethical behaviour in business and entrepreneurship.' *Journal of Business Ethics,* 60:3, 265-79.

Fassin, Y. 2008. 'Imperfections and shortcomings of the stakeholder model's graphical representation.' *Journal of Business Ethics,* 80:4, 879-88.

Gosselin, D. and Tindemans, B. 2011. *Traceurs d'Avenir*. Brussels: RacineCampus.

Gosselin, D. and Leysen, J. 2008. 'Vision of evolutions in the petroleum market.' *European Review of Energy Markets*, 2:3, 131-163.

Fendt, J. 2005. *The CEO in Post-Merger Situations.* Delft: Eburon Academic Publishers.

Ferrell, O. & Fraedrich, J. 1994. *Business Ethics.* Boston: Houghton Mifflin.

Freeman, E. 1984. *Strategic management: A stakeholder approach.* Boston: Pitman.

Freeman, E. 1994. 'The politics of stakeholder theory: Some future directions." *Business Ethics Quarterly,* 4:4, 409-21.

Frooman, J. 1999. "Stakeholder influence strategies." *Academy of Management Review,* 24:102, 191-205.

Hall, M. 2009. 'The sub-prime crisis, the credit crunch and bank "failure" :An assessment of the UK authorities' response.' *Journal of Financial Regulation and Compliance,* 17:4, 427-452.

Haspeslagh, P. and Jamison, D., 1991. *Managing Acquisitions: Creating Value through Corporate Renewal*. New York: Free Press.

Haunschild, P. 1994. 'How much is that organization worth? Interorganizational relationships, uncertainty and acquisition premiums.' *Administrative Science Quarterly*, 39:3, 391-411.

Hayward, M., and Hambrick, D. 1997. 'Explaining Premiums Paid for Large Acquisitions: Evidence of CEO hubris'. *Adminsitrative Science Quarterly*, 42:1,: 103-127.

Hirsch, P. 1986. 'From ambushes to golden parachutes: Corporate takeovers as an instance of cultural framing and institutional integration.' *American Journal of Sociology*, 91:4, 800-837.

Jansson, E. 2005. 'The Stakeholder Model: The Influence of Ownership and Governance Structure.' *Journal of Business Ethics,* 56:1, 1-13.

Jenkins, J. C. 1983. 'Resource Mobilization Theory and the Study of Social Movements.' *Annual Review of Sociology,* 9:1, 527-53.

Jones, G. & George, J. 1998. 'The experience and evolution of trust: Implications for cooperation and teamwork.' *Academy of Management Review,* 23:3, 531-46.

Kilpi, J., 1998. *The Ethics of Bankruptcy*, London, Routledge.

Levitt, B. & March, J. 1988. 'Organizational Learning.' *Annual Review of Sociology,* 14:1 319-38.

Mackenzie, C. 2007. 'Boards, Incentives and Corporate Social Responsibility: the case for a change of emphasis.' *Corporate Governance An International Review,* 17:5, 935-43.

Marcoux, A. 2003. 'A Fiduciary Argument Against Stakeholder Theory.' *Business Ethics Quarterly,* 13:1, 1-24.

Mc Carthy, J. & Zald, M. 1997. 'Resource Mobilization and Social Movement Theory.' *American Journal of Sociology,* 82:6, 1212.

McGuire, J., Dow, S. & Argheyd, K. 2003. 'CEO Incentives and Corporate Social Performance' *Journal of Business Ethics,* 45:4, 341-59.

Michielsen, S. & Sephiha, M. 2009. *Bankroet.* Tielt (Belgium): Uitgeverij Lannoo.

Mitchell, R., Agle, B. & Wood, D. 1997. 'Toward a theory of stakeholder identification and salience: Defining the principle of who and what really counts.' *Academy of Management Review,* 22:4, 853-86.

Modrikamen, M. 2009. *Fortis, jusqu'au bout.* Brussels: Editions Luc Pire.

Neuman, W.L. 1997. *Social research methods: qualitative and quantitative approaches*_(3rd ed.). Boston: Allyn and Bacon.

Pearson, C. M. & Clair, J. A. 1998. 'Reframing crisis management.' *Academy of Management Review,* 23:1, 59-76.

Pesqueux, Y. & Damak-Ayadi, S. 2005. 'Stakeholder Theory in Perspective.' *Corporate Governance,* 5:2, 5-21.

Post, J., Preston, L. & Sachs, S. 2002. 'Managing the Extended Enterprise: The New Stakeholder View.' *California Management Review,* 45:1, 6-28.

Roll, R.,1986. The hubris hypothesis of corporate takeovers. *Journal of Business*, 59:2, 197-216.

Seglin, J., 1998a. Would you lie to save your company? *Inc*. July 1st.

Seglin, J., 1998b. True Lies. *Inc*. October 20, p. 136-139.

Solomon, R. 1997. *It's Good Business. Ethics and Free Enterprise for the New Millennium.* Lanham: Rowman & Littlefield D. Publishers.

Spence, A. 1981. 'The learning curve and competition.' *The Bell Journal of Economics,* 12:1, 49-70.

ten Bos, R. & Willmott, H. 2001. 'Towards a post-dualistic business ethics: Interweaving reason and emotion in working life.' *Journal of Management Studies,* 38:6, 769-93.

Thomas, R., Schrage, M., Bellin, J., & Marcotte, G. 2009. 'How Boards Can Be Better - a Manifesto.' *MIT Sloan Management Review,* 50:2, 69-74.

Vaughan. D., 1999. The Dark Side of Organizations: Mistake, Misconduct, and Disaster. *Annual Review of Sociology*, 25:1, 271-305.

Weaver, G. R., Trevino, L. K. & Cochran, P. L. 1999. 'Integrated and decoupled corporate social performance: Management commitments, external pressures, and corporate ethics practices.' *Academy of Management Journal,* 42:5, 539-52.

Wetlaufer, G. 1989. The Ethics of Lying in Negotiations, Iowa Law Review, 75: 1219.

Wiersema, M. 2002. 'Holes at the Top: Why CEO firings backfire.' *Harvard Business Review,* 80:12, 70-78.

Williams, C. C. & Ryan, L. V. 2007. 'Courting Shareholders: The Ethical Implications of Altering Corporate Ownership Structures.' *Business Ethics Quarterly,* 17:4, 669-88.

Winn, M. 2001. 'Building Stakeholder Theory With a Decision Modeling Methodology.' *Business & Society,* 40:2, 133-66.

Yin, R., 1994. *Case study research: Design and methods* (2nd edition). Newbury Park, Sage.

TABLE 1 - Chronology

Date	Event	(1)	(2)	(3)
2007				
13th April	Fortis announces bid for ABN AMRO with RBS & Santander	x		
29th May	Trio launches better bid than Barclays	x		
6th August	Fortis General Assembly (GA) approves plan	x		
9th August	Presentation of excellent half-year results of Fortis : statement that the sub-prime crisis will have limited impact		x	
21st September	Capital increase by Fortis	x		
10th October	Fortis consortium wins ABN AMRO takeover battle	x		
17th October	Fortis acquires, with its consortium partners, ABN AMRO	x		
29th November	Ping An takes 4.18% agreed stake	x		
4th December	Year report Febelfin, Chairman Jan Vanhevel of KBC: The Belgian Banks are solid, well managed. They have not been active in risk activities. The control organism fulfilled their role		x	x
2008				
25th January	Rumours concerning CDOs - share price falls 10%			x
27th January	Press release: denial of solvency problems – dividend policy confirmed		x	
29th April	Fortis GA: mandates of Lippens & Votron extended with a 90% vote in favour.	x		
26th June	Announcement of new measures: capital increase with partners, cancellation of interim dividend and proposal to give final dividend in shares rather than cash.	x		
11th July	CEO Votron removed – Verwilst new interim CEO	x		
18th-20thAugust	Fortis holds information session for shareholders		x	
14th September	British bank, Northern Rock collapses			x
15th September	Lehman Brothers files for bankruptcy			x
26th September	Fortis press conference: no solvency or liquidity problems		x	
	Verwilst replaced by Dierckx as CEO	x		
28th September	Rescue operation by Belgian, Luxemburg and Dutch governments: part-nationalisation	x		
29th September	Governments of Belgium, Luxembourg and the Netherlands invest € 11.2 billion in Fortis. Fortis will sell its interest in ABN AMRO (RFS Holdings). Lippens resigns from the Fortis Board of Directors	x		
1st October	Dutch government asks to renegotiate deal of 29th September	x		
3rd October	Dutch government buys all Fortis's activities in the Netherlands, including ABN AMRO for € 16.8 billion	x		
5th October	Fortis Bank Belgium and Insurance is sold to BNP Paribas	x		
6th October	Minority shareholder organisations announce legal action as their approval was not sought before dismantling the group	x		
9th October	State issues warranty for Dexia Bank			x
13th October	Modrikamen initiates lawsuit	x		
18th November	Brussels Court rejects claim by minority shareholders	x		
24th November	Dutch Court confirms rejection of claims	x		
2nd December	Fortis GA held in Brussels: Viscount Etienne Davignon rejected as new chairman (49.9 % in favour)	x		
12th December	Brussels Appeal Court orders that the decisions of 3rd, 5th and 6th October should be voted on by extraordinary GA	x		
19th December	Fortis GA decides to pursue activity (legal obligation).	x		
	Minister of Justice and Prime Minister resign due to			x

	Note of Cassation over attempt to influence court			
30th December	Herman Van Rompuy appointed as new Prime Minister, Parliamentary commission will be set up to investigate Fortis collapse and role of government.			x
2009				
27th January	Report by group of experts	x		
30th January	New deal between BNP Paribas and the Belgian government	x		
11th February	Turbulent GA in Brussels: shareholders reject sale of Fortis to BNP Paribas	x		
13th February	De Mey elected new chairman	x		
7th March	New deal between government and BNP Paribas	x		
31st March	Court confirms that only shareholders who held stock before October 2008 are allowed to vote	x		
10th April	Appeal court decides all shareholders are allowed vote	x		
28-29th April	GA shareholders approve third renegotiated deal			
7th June	Elections for European Parliament and for the regional Parliaments in Belgium			x
15th June	New Fortis holding company CEO, De Boeck, resigns	x		
17th June	Dutch Finance Minister Bos, once praised for his actions to safeguard ABN AMRO, is now accused of having invested too much money	x		
18th June	Report by Baron Lamfalussy on reforming bank controls: feud between the National Bank and CBFA			x
22nd June	The International Accounting Standards Board (IASB) launches a proposal that banks should adopt IFRS rules			x

(1) Fortis News - (2) Fortis Communications - (3) External Events

Based on and adapted from Michielsen & Sephina (2009), pp. 308-312, and on website Fortis http://www.holding.fortis.com/general/history.asp retrieved on 7th July 2009.

TABLE 2 - Objectives and changes in salience of major stakeholders

Stakeholders	*Objectives*	*Salience*
Traditional shareholders	Protecting their investments, and later on, recovering losses	Increased voice in assembly, but powerless
Institutional investors	Maximizing their long term share price	creased voice in assembly, but powerless
Hedge funds	Short term profit	Temporary and opportunistic
Customers (private)	Protecting their savings and interests	Undergo the operation
Corporations	Securing continued financing	Undergo the operation
Employees	Saving their job	Undergo the operation
Unions	Save jobs	Undergo the operation
Media	Cover news, tell story - be the first with sensational news to gain audience	Important relay
The public opinion	Stability and safety of the financial system	Influenced panic
Government	Secure trust and stability Save the economy, and the financial system - Save the bank	Key role in safeguard operation
Bank Commission CBFA	Guarantee rules are fair and respected	Lost control and influence
National Bank	Support the economic system	Important role in safeguard operation
European Central Bank	Support the European banking system and the European economy	Important role in safeguard operation
European Commission	Guarantee an open economic trade area	Additional control
Political parties	Retain power by maintaining public support - Gain elections	Undergo the operation
Federation Febelfin	Support the economy and the sector	Undergo the operation
Board	Control management and define strategy Long-term safeguard of shareholders' interests - Deflect critical questions	Lost control and influence
Chairman	Pursue success story at the top, and personal status	Lost control and influence
Top Management	Growth - Profitability to earn bonuses	Lost control and influence
CEO (original)	Accelerated size increase	Lost control - forced to resign
Competitors	Gain market share	Temporary but with analogue problems
Acquisition candidates	Obtain Fortis's sub-parts at a good price	New influential stakeholder
ABN AMRO	Resist original takeover, later on regain independence	Regained influence
Nederlandse Bank	Support the Dutch economic system	New influential stakeholder
Dutch government	Defence of Dutch interests	New influential stakeholder
French government	Defence of French economy as major shareholder in French banks	New influential stakeholder
Shareholder associations	Defence of member shareholders. Convince additional shareholders to join	New influential stakeholder
Modrikamen	Idem + win his case in court and later: political impact	New influential stakeholder
Lawyers	Advice client in merger and acquisitions	Temporary important influence
Investment bankers	Achieving the deal	Temporary important influence
Analysts	Formulate thorough advice	Influential with dissemination
Experts commission	Formulate expert advice at the general assembly	Not influential
Court	Respect for the law and the institutions	Crucial at some moments but problematic

i ‘De Tijd’, 26th September 2009, p. 50

ii In this paper, we will mainly refer to Michielsen and Sephiha, 2009, rather than to the articles of their newspaper ‘De Tijd’.

iii As of September 2009, six books have been written on the Fortis case, four by journalists, one by the lawyer Modrikamen. Modrikamen, M., 2009. Fortis, jusqu’au bout. Brussels and one by an auditor Debels, T. 2009. De ondergang van Fortis, Houtekiet, Antwerpen. Editions Luc Pire; van Caloen, A. & Van de Woestyne, F., 2009. Fortis, Dexia, le séisme. Brussels, Editions Luc Pire & La Libre Belgique; Condijts, J., Gérard, P., & Thomas, P., 2009. La chute de la maison Fortis, Paris, Editions Lattès ; Maelschalck, M., Lambrechts, M., Sephiha M. & Michielsen, S., 2009. Banqueroute, comment Fortis a ébranlé la Belgique, Brussels, Editions Racine. ; Michielsen, S. & Sephiha, M. 2009. *Bankroet.* Tielt (Belgium): Uitgeverij Lannoo. The Dutch newspaper Financieel Dagblad had a special file www.fd.nl/nieuws/dossiers/467202/9433224/ retrieved 28th October 2009.

iv VRT, Canvas, Panorama, De Fortis-files, 31st January 2009.

v The investigation ordered by the Dutch ‘Ondernemingskamer’ also interviewed 42 of the key actors. The cost of report, published in June 2010, amounted to 2.35 M € (against a budget of 600 k€).

See www.ageas.com/Documents/NL_final_report_dutch_investigation_20100616.pdf., retrieved on 28th June 2010.

vi Michielsen & Sephiha, 2009, p. 143

vii More information on www.deminor.com/ retrieved on 7th July, 2009.

viii www.rbs.com/media/news/press-releases/archive.ashx

ix ‘Libération’, 5th August 2009, www.liberation.fr/economie/0101583829-la-bnp-doit-rembourser-a-l-etat-le-milliard-des-traders, retrieved 28th October 2009.

x www.holding.fortis.com/sustainability/gri.asp, retrieved on 7th July, 2009.

xi “Responsible growth requires carefully designed and effective risk management, governance and compliance processes. We are convinced at Fortis that provided they are managed professionally and proactively, these processes can genuinely help improve the quality of our business and enable us to make more balanced and informed decisions. Our corporate risk management procedures, along with our legal and compliance activities, are discussed at length in the Fortis Annual Report 2007. As part of our corporate risk management procedures, a body of policies has been developed to manage the social and environmental risks we face in the relationship with our customers”.

xii Our mission: “Fortis provides compelling customer solutions creatively. One of Europe’s most dynamic and sustainable financial services brands, we deliver specialised, innovative and pragmatic customer solutions, across a network of channels and by leveraging our operational and entrepreneurial expertise”.

xiii “Fortis’s commitment to corporate social responsibility (CSR) continues to develop and strengthen year by year. We’re proud of what we have achieved so far to meet society’s growing demands in terms of sustainability – doing business in a socially and environmentally responsible way – while actively developing products and services that help others do likewise. At the same time, we realise that a number of challenges still lie ahead of us. There are two dimensions to the way Fortis approaches corporate social responsibility. The first is Sustainable development, which we interpret as growing our business in a socially and environmentally responsible way, while simultaneously meeting the legitimate interests of our stakeholders. The second dimension is Community involvement. This means taking an active role and responsibility in helping local communities achieve their ambitions. We do this through a combination of philanthropy and volunteer work, with our Fortis Foundations acting as the primary drivers. Fortis remains fully committed to embedding both these dimensions in our core business and in the way we organise our company”.

xiv www.holding.fortis.com/sustainability/media/pdf/PrinciplesEN.pdf retrieved on 7th July, 2009.

xv ‘De Tijd’, 12th March 2009, p. 3

xvi Debels, 2009, pp. 31-33, 37, 44, 113, 174-177; Dutch experts’ report, in ‘La Libre Belgique’, 17th and 18th June 2010, p. 26

xvii Modrikamen, 2009, p. 41

xviii We thank a former banker for this technical finance formulation.

[xix] One director, Piet Van Wayenberghe, sought a clause to enable the deal to be annulled in the event of adverse circumstances, but his worries were waived away by the CEO and the Chairman. Depuydt, 2010, p. 249. At the General Assembly in August 2007 that approved the acquisition by 93.5%, only one shareholder raised the issue of overconfidence. Michielsen & Sephiha, 2009, p. 77, pp. 83-84

[xx] cfr. J. Smit,, De Prooi, Prometeus, 2009; Depuydt, 2010, p. 220

[xxi] The rumour was spread that ABN AMRO's CEO would receive a huge bonus if the Barclays bid was successful. Later, it was also claimed that Barclays bought Fortis shares before the Fortis extraordinary GA in August 2007 to vote against the acquisition. Finally, at the GA in April 2009, Modrikamen alleged that funds from dubious origins in exotic fiscal paradises were represented in the voting rights. Ibid., p. 284; Debels, 2009, p. 119

[xxii] Michielsen & Sephiha, 2009, pp. 60, 63, 70-71, 73-75; Depuydt, 2010, pp. 226-227

[xxiii] Dutch experts' report, in 'La Libre Belgique', 17th and 18th June 2010, p. 26

[xxiv] Dutch experts' report, in 'De Tijd' 17th Juni 2010, p. 4; Debels, 2009, pp.40-41

[xxv] Michielsen & Sephiha, 2009, pp. 105-110

[xxvi] Ibid., p. 98

[xxvii] When in an interview with the Dutch newspaper 'De Telegraaf', on 13th July 2008, Lippens claimed that the second capital increase through a private placement was necessary to prepare the company for the anticipated financial meltdown, the effect on financial stocks, including Fortis, was disastrous. Ibid., p. 13

[xxviii] Michielsen & Sephiha, 2009, p. 113; Depuydt, 2010, pp. 283-284

[xxix] Depuydt, 2010, p. 322; Michielsen & Sephiha, 2009, pp. 120-121, 143

[xxx] 'Le Soir', February 12th, 2010, p.25-26. Information on the consequences of the sub-prime crisis were signalled in the committee, but only two months later to the Board. Depuydt, 2010. pp. 260-261

[xxxi] CFO Mittler who knew that the imposed deal with the Deutsche Bank for the by the European Commission imposed sale of De Hollandsche Bankunie would require more financial cover, did not inform committee nor Board, Depuydt, 2010, p. 283

[xxxii] We owe the suggestion of this question to an anonymous reviewer.

[xxxiii] 'Financieel Dagblad', 13th December 2008, www.fd.nl/artikel/10673180/accountants-eisten-afwaardering-fortis#f, retrieved 28th October 2009.

[xxxiv] Michielsen & Sephiha, 2009, p. 143

[xxxv] In his testimonial before the Parliamentary Commission, Chairman Lippens fiercely criticized the attitude of the Dutch commercial banks and the Dutch National Bank. Ibid., p. 302

[xxxvi] Ibid., pp. 68-69, 299

[xxxvii] Depuydt, 2010, p. 284

[xxxviii] Paul Betts (16th October 2008). Small investors learn the lessons of Fortis carve-up, *Financial Times,* p. 27

[xxxix] Ibid., pp. 123, 230

[xl] Michielsen & Sephiha, 2009, pp. 49-55

[xli] Michielsen & Sephiha, 2009, p. 53

[xlii] Depuydt, 2010, p. 242

[xliii] Depuydt, 2010, p. 342

[xliv] Ralph Atkins & Nikki Tait (22nd January 2009). Pressure to adopt the least-worst option, *Financial Times,* p. 5

[xlv] Seen the time pressure, a written agreement with the Dutch government around the participation of 49 % in Fortis Netherlands was not signed on Sunday evening, but foreseen to be done on the next Monday. After having signed the agreement checked by the juridical department, Fortis' Vice-president Hessels, realized that the Dutch delegation had not been informed that it had been agreed during the first phase of the negotiation that the shares of the Dutch insurance branch were pledged to the Belgian authorities. Depuydt, 2010, pp. 336-337

[xlvi] Depuydt, 2010, p. 338

xlvii Debels, 2009, p. 170

xlviii Modrikamen, 2009, p. 76

xlix Such as when the Prime Minister announced that an alliance with the French bank BNP Paribas was the best solution for Fortis; or the declaration by Fortis Vice-President Hessels that voting against the BNP Paribas deal would lead to chaotic lawsuits that would destabilise the company, or when Coene, vice-governor of the National Bank of Belgium, who lead the rescue operations, declared in the press that a 'no' vote would mean the end of Fortis (De Tijd, 12 March 2009, p. 3). Another incident was when Lippens insinuated that the unavailability of European Commission staff at a crucial moment caused a loss of credibility. Michielsen & Sephiha, 2009, p. 122, Debels, p. 48

l Michielsen & Sephiha, 2009, p. 262

li Michielsen & Sephiha, 2009, p. 62

lii Depuydt, 2010, p. 338

liii Michielsen & Sephiha, 2009 pp. 34-35

liv Fortis government's statements, English version, 25th January 2008, p. 40: V.1.1. The responsibilities of the CEO are: to enable the Board and the Chairman to exercise their responsibilities, by: "… meeting the Chairman on a regular basis, involving him from the outset in the strategic initiatives and discussing with him all relevant issues and, specifically, the items to be put on Board and Board Committees meetings agendas". On website: www.holding.fortis.com/governance/media/pdf/fortis_governance_statement_UK.pdf

lv Modrikamen, 2009, p. 66

lvi 'Le Soir', 12th February, 2010, p. 25-26

lvii Dutch experts' report, in 'De Tijd', 17th June 2010, p. 4

lviii Michielsen & Sephiha, 2009, pp. 26, 108, 119

lix Michielsen & Sephiha, 2009, p. 119

lx Michielsen & Sephiha, 2009, pp. 102-103, 301; Dutch experts' report, in 'De Tijd', 17th June 2010, p. 4

lxi Debels, 2009, p. 23

lxii Michielsen & Sephiha, 2009, p. 54

lxiii Modrikamen, 2009, p. 76

lxiv The negative effects could easily result in bankruptcy, in which case everybody would lose. Furious about the manipulative last-minute attempt by the Minister of Finance to give the Fortis shares held by Fortis itself voting rights, and incited by the vehement intervention by the lawyer Modrikamen, the shareholders emotionally reacted to their frustration and grievances. Having already lost 95 % of their shares' value, they felt they had virtually nothing left to lose and were willing to give up their normal prudence and play poker with what was left. In this emotional reaction, they did not consider other stakeholders at all: nor the employees nor the depositors of the bank, nor the taxpayers. Their anger was focused on the board and towards the government. They did not care that the potential bankruptcy of the bank could result in major problems for the country's economy, and that ultimately the taxpayers – including themselves - would have to pay for this. There was probably also a lack of belief in the bankruptcy scenario and an optimistic belief in a hypothetical stand-alone solution for the bank, a scenario the government clearly wanted to avoid. Stimulated by the analysis by reputed lawyers, the minority shareholders gambled that the government would do whatever it could to find a solution that would avoid an economic drama. A tactic that partially succeeded.

lxv Debels, 2009, p.40-41; Dutch experts' report, in 'De Tijd', 19th June 2010, p. 14

lxvi In 2002, Lippens had conversations with ABN AMRO about an alliance, but the negotiations ended when ABN AMRO's CEO, Rijkman Groeninck, demanded the CEO function in the merged company (Ibid., p. 60). In early 2003, Fortis's CEO, van Rossum, negotiated a merger with BNP Paribas in which he would become CEO of the group, while all the major functions in the executive committee would be left to BNP Paribas, inclusive the Presidency of the Board. When Lippens objected to this proposal as unfair, Van Rossum ended negotiations. The BNP Paribas chairman later told Lippens that it was Van Rossum who had proposed these conditions (p. 35). In 2006, Fortis was approached by TSB-Lloyds to discuss a possible merger. A headhunter saw Votron as the best candidate to lead the merger, but TSB-Lloyds demanded this function (p. 56). Clearly, the personal ambitions of top executives influence their decision-making. Facing the termination of his mandate, Votron reacted that he wanted to continue but only under his conditions. Filip Dierckx, who

seems to have rejected an offer to head KBC because his chairman indicated he would become Number One in Fortis, was deeply disappointed when Verwilst was instead chosen to succeed Votron (p. 35). When, in April 2009, in the new Board of the reduced Fortis, George Ugeux, a newly elected director nominated by Deminor, was not accepted as Chairman, he withdraw from the board (p. 271).

[lxvii] In autumn 2008, Fortis' top executives fought to keep their favourable exit-packages. Vice-president Hessels used the pressure from the government to limit exits to one-year salary and the threat of further negative reactions from the shareholders, to negotiate lower exit packages, while keeping their pension rights. De Tijd, 25th September 2009, p. 9

[lxviii] Ironically, it is the AAA-rating awarded to the CDOs that had inspired the management of Fortis to heavily invest in obligations rather than in stock after the crash of 2002-2003, Financieel Dagblad, 13th December 2008, www.fd.nl/artikel/10673180/accountants-eisten-afwaardering-fortis#f, retrieved 28th October 2009.

[lxix] Michielsen & Sephiha, 2009, pp. 35, 56, 60, 271

[lxx] Depuydt, 2010.

[lxxi] At the time, when the Fortis group took over the ASLK-CGER bank from the Belgian State, most directors and top management awarded themselves an attractive severance package. Trends, 1993.

[lxxii] Michielsen & Sephiha, 2009, p. 290

[lxxiii] In the period leading up to its collapse, Fortis also bought a private jet, Michielsen & Sephiha, 2009, p. 290

[lxxiv] Debels, pp. 12, 20

[lxxv] Debels, 2009, pp. 84, 90

[lxxvi] Michielsen & Sephiha, 2009, p. 247; Modrikamen, 2009.

[lxxvii] More information on www.deminor.com/ retrieved on 7th July, 2009.

[lxxviii] We owe the excellent suggestion of this chapter to an anonymous reviewer, whom we like to thank.

[lxxix] Depuydt, 2010, p.297

[lxxx] 'De Tijd', De Val van Fortis, een jaar na de feiten. 26th September 2009, p.50

[lxxxi] Michielsen & Sephiha, 2009, p. 226

[lxxxii] 'De Morgen', 15th January 2010; 'De Tijd', 2009, 18th January 2010.

[lxxxiii] Debels, 2009, p. 142

[lxxxiv] www.rbs.com/media/news/press-releases/archive.ashx

[lxxxv] 'Libération', 5th August 2009, www.liberation.fr/economie/0101583829-la-bnp-doit-rembourser-a-l-etat-le-milliard-des-traders, retrieved 28th October 2009.

[lxxxvi] Comments of Prime Minister Herman Van Rompuy, on yearly speech for the Federation of Belgian Industries, 29th September 2009.

[lxxxvii] 'De Tijd', 3rd October 2008, in Michielsen & Sephiha, 2009, p. 203