

**ANTICIPATED ACQUISITION BY AKZO NOBEL N.V. OF  
METLAC HOLDING S.R.L.**

**Statement of issues**

**27 June 2012**

**The reference**

1. On 23 May 2012, the Office of Fair Trading (OFT) referred the anticipated acquisition by Akzo Nobel N.V. (Akzo) of Metlac Holding s.r.l. (Metlac Holding) to the Competition Commission (CC) for investigation and report.
2. The CC must decide:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted in or may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.

**Background**

3. Akzo Nobel's subsidiary Akzo Nobel Coatings International B.V. (ANCI) and Metlac Holding's subsidiary Metlac S.p.A. (Metlac) both manufacture and supply metal packaging coatings. These are used, for example, in the production of beverage and food cans.
4. ANCI has an existing stake of 49 per cent in Metlac Holding. Akzo Nobel has an additional 44.44 per cent share in Metlac. Akzo Nobel's current stake in Metlac entitles Akzo to, among other things, board representation and a proportion of Metlac's earnings. The remaining shares in Metlac Holding and Metlac are owned by the Bocchio Family, which has day-to-day management control of Metlac.
5. ANCI has a call option to buy the remaining shares in Metlac Holding, which it has decided to exercise. Upon transfer of the shares, Akzo Nobel's shareholding in Metlac would increase to 100 per cent and Akzo will obtain sole control of Metlac.

**The markets in which the parties operate**

6. The parties' activities overlap in metal packaging coatings and metal decorating ink, both intermediate manufacturing products in the production of metal packaging, principally cans for food and beverages. Coatings are designed to protect the package content from reacting with the packaging and/or external contaminants. Metal decorating ink is used to decorate packaging.

***Metal packaging coatings***

7. Both parties supply metal packaging coatings in the UK. Metal packaging coatings are supplied to four main end-use sub-segments: food cans, beer and beverage cans (B&B), caps and closures and general line. A wide range of chemical formulations

may be used for coatings, which vary depending on end-use, type of metal, interior or exterior application, production process and content of the can.

8. The CC understands that the two parties' operations and activities in the manufacture and supply of metal packaging coatings are undertaken independently and its initial view is that Akzo and Metlac compete in this market. The CC will assess the extent to which Akzo's shareholdings in Metlac Holdings and Metlac constrain this competition.

### ***Metal decorating inks***

9. Metal packaging coatings and metal decorating ink are not substitutable for each other, from a demand- or supply-side perspective, due to their different uses and different manufacturing processes.
10. The CC understands that Metlac does not supply metal decorating ink in the UK and is not a potential entrant to the UK, and therefore does not propose to consider further this market in the absence of any material UK overlap in the parties' activities in metal decorating ink.

### **Market definition**

11. The purpose of market definition is to provide a framework for the CC's analysis of the competitive effects of the acquisition.
12. The CC's initial view is that the manufacture and supply of metal packaging coatings is the appropriate market within which to consider the acquisition.
13. Within this market, metal packaging for B&B cans constitutes a significant proportion of overall supply. Of the various coatings required for a B&B can (internal, external and ends), fewer companies are active in the supply of internal spray coatings for B&B cans. We will give consideration as to whether the supply of internal sprays for beverage cans forms a distinct segment of the broader market. We will also consider whether there are any other distinct segments of the broader market, considering evidence as to the extent to which conditions of competition might vary for different types of coating.
14. The geographic scope of this market will be analysed as part of the assessment of the competitive effects of the merger. Evidence suggests that a large proportion of procurement is conducted centrally within Europe and then transported to European countries. Our initial view is that the appropriate geographic market is therefore likely to be at least EEA-wide, although we will consider any further evidence that comes to our attention in this regard.

### **Theories of harm**

15. The CC's initial view is that there are two principal ways in which the merger could give rise to an SLC (referred to as 'theories of harm'):
  - (a) *Unilateral effects*. The CC's initial view is that the acquisition could give rise to an SLC or the expectation of an SLC via the ability of the merged entity to unilaterally exercise market power in the manufacture and supply of metal packaging coatings (referred to as 'unilateral effects theory of harm'). The CC will assess whether the merger would be likely to give rise to unilateral effects such as, for

example, higher prices, reduced innovation, reduced quality or restrictions of quantity in the supply of metal packaging coatings.

- (b) *Coordinated effects.* A further theory of harm is that the acquisition would remove Metlac as a significant external constraint to coordinated behaviour in the market between the three largest suppliers. A number of factors suggest that the conditions for coordinated effects might be difficult to sustain in this market—particularly lack of price transparency in the industry, irregular orders and asymmetric capacities.
16. The CC's initial view is that the unilateral effects theory of harm outlined in paragraph 15(a) above is the most likely theory of harm which could give rise to an SLC or the expectation of an SLC. Accordingly, our analysis will focus on this theory of harm. As things currently stand, we are not minded to pursue the coordinated effects theory of harm described in paragraph 15(b).
17. The CC may revise its theories of harm as its assessment of the merger progresses. The identification of these theories of harm does not preclude an SLC being identified on another basis following further work by us or the receipt of additional evidence. In particular, it will be alert to whether the evidence it gathers shows that the conditions indicative of coordination in the market are likely to be fulfilled.

### **Unilateral effects theory of harm**

18. To assess the unilateral effects theory of harm, the CC will consider various factors including:
- (a) the extent to which the parties are close competitors for customers, compared with other suppliers, in particular as indicated by win/loss data and evidence from customers and competitors. The CC will investigate the extent of differentiation between the parties, whether by product type, supplier range or other relevant characteristics;
- (b) the variable profit margins of the merging parties (ie whether higher margins increase the likelihood of unilateral effects);
- (c) the extent to which competing suppliers could respond to a post-merger price increase in output possibly by switching product types at production facilities;
- (d) the cost (in terms of time, cost and security of supply) to customers of switching metal packaging suppliers. The CC will consider the impact of the certification and qualification process on customers' ability to switch;
- (e) whether any spare capacity held by alternative suppliers reduces the likelihood and scope for unilateral effects;
- (f) the constraint provided by other suppliers of metal packaging coatings, taking into account market concentration, product differentiation, variable profit margins, movements in market shares over time and other general indicators of suppliers' competitive strength; and
- (g) the extent to which consumers (metal packaging companies) are likely to respond to any exercising of market power by the merging companies by substituting for other products—such as flexible plastics.

## Counterfactual

19. The CC will consider whether, were the transaction not to occur, the pre-existing competition between Akzo and Metlac would be likely to continue.
20. There are two main factors which indicate that the pre-acquisition situation may not be the appropriate counterfactual to the acquisition. The CC will investigate the extent to which these factors should form part of the appropriate counterfactual. They may in any event be relevant to the CC's assessment of the competitive effects of the transaction:
  - (a) Development of bisphenol-A-free (BPA-free) metal packaging coatings by any of the companies currently supplying metal packaging coatings may significantly change the competitive landscape of the market. BPA is present in epoxy resin used in many metallized coatings. There is some consumer support for BPA-free products due to concerns regarding the safety of BPA for human health and some governments are considering legislating against use of BPA in certain packaging. The CC will investigate the extent to which the counterfactual should account for the potential of dynamic effects arising from demand for BPA-free products.

We will seek evidence to determine how near term these plans are on the part of any particular companies, in particular whether development by Metlac of BPA-free products is sufficiently advanced to increase its competitive strength in the near future.
  - (b) Metlac does not currently operate in the market for internal beverage spray. We will investigate Metlac's potential to enter this part of the market in the near future, absent the merger.
21. The CC will also investigate whether the current level of competition between Akzo and Metlac may change should the merger not proceed due to changes to the arrangements between the parties, including arrangements for management of Metlac.

## Countervailing factors

22. The CC will consider whether the following countervailing factors would prevent or reduce an SLC:
  - (a) *Entry*. The CC will consider whether entry could occur to restrain the market power of the merged entity. One part of this assessment will cover the extent to which the sunk costs for a new entrant and the certification and qualification process act as barriers to entry. The CC will explore whether there are recent examples of entry in this market.
  - (b) *Expansion*. The CC will consider whether suppliers could respond to any post-merger exercise of market power by Akzo by expanding their product offerings, for example by using spare capacity or building more capacity and the extent to which the certification and qualifications processes may act as barriers to such expansion. The CC will also assess whether differences in margins between various product types would disincentivize a supplier from shifting capacity between product types.

(c) *Buyer power.* The CC will assess the extent to which the merged entity's customers have countervailing buyer power and whether any such buyer power would be sufficient to protect all customers from the effects of an SLC.

(d) *Efficiencies.* Depending on likely size of efficiencies, the CC may examine arguments made as to efficiency gains from the merger, such as synergies from manufacturing and procurement.

23. The CC is not currently aware of any other countervailing factors.

### **Possible remedies and relevant customer benefits**

24. Should the CC conclude that the acquisition may be expected to result in an SLC, we will consider whether and, if so, what remedies might be appropriate and will issue a further statement.

25. In any consideration of possible remedies, the CC will take into account whether any relevant customer benefits might be expected to arise as a result of the acquisition and, if so, what these benefits are likely to be and which customers would benefit.

### **Responses to the issues statement**

26. Any party wishing to respond to this issues statement should do so in writing, by no later than 5pm on 11 July 2012. Please email [Akzo.Metlac@cc.gsi.gov.uk](mailto:Akzo.Metlac@cc.gsi.gov.uk) or write to:

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