

AKZO NOBEL N.V./METLAC HOLDING S.R.L. MERGER INQUIRY

Provisional findings report

Published: 21 September 2012

The Competition Commission has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets.

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Glossary

Summary

1. On 23 May 2012, the Office of Fair Trading (OFT) referred the anticipated acquisition by Akzo Nobel N.V. (AkzoNobel) of Metlac Holding S.r.l. (Metlac Holding) to the Competition Commission (CC) for investigation and report under the Enterprise Act 2002 (the Act). We are required to publish our final report by 6 November 2012.
2. The reference requires us to determine:
 - whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - if so, whether the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
3. AkzoNobel has an existing stake of 49 per cent in Metlac Holding through its subsidiary Akzo Nobel Coatings International B.V. (ANCI). The remaining 51 per cent is owned by members of the Bocchio family (the Bocchio family). Metlac Holding owns 55.56 per cent of its subsidiary Metlac S.p.A. (Metlac), the operating company. The remaining 44.44 per cent of Metlac is indirectly owned by AkzoNobel.
4. ANCI has a call option to buy the remaining shares in Metlac Holding, which it has exercised. AkzoNobel does not currently have sole control of Metlac. Upon completion of the transfer of the shares (the anticipated merger), AkzoNobel's shareholdings in Metlac Holding and Metlac would increase to 100 per cent and AkzoNobel would obtain sole control of Metlac.
5. We found that the transfer of shares if completed would result in the creation of a relevant merger situation because it would result in the parties coming under common ownership and control of AkzoNobel and the share of supply test was met

with the parties having a combined share of supply of 61 to 70 per cent of metal packaging coatings in the UK.

The products

6. AkzoNobel and Metlac both manufacture and supply metal packaging coatings and metal decorating inks in the UK. These are both intermediate manufacturing products in the production of metal packaging, principally cans for food and beverages. Coatings are designed to protect the package contents from reacting with the packaging and/or external contaminants. Metal decorating ink is used to decorate packaging.
7. 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. We did not receive any evidence that the proposed merger would be likely to create competition concerns in relation to metal decorating inks and, based on the evidence we were provided with regarding metal decorating inks, we provisionally found that the parties' combined market shares in metal decorating inks would not give rise to unilateral or coordinated effects in the UK and therefore did not consider metal decorating inks further.
8. Demand for metal packaging coatings is derived from the demand for metal packaging, which tends to be divided into four main categories, according to its end use: beverage cans, food cans, caps and closures (ie metal lids for glass jars and bottles) and general line metal packaging such as cans and tubes for a broad range of products such as aerosols, cosmetics, chemicals, paints and dry food products. The range of coatings supplied is determined by end-use market, type of metal, coatings application technology, functional and decorative surface properties, final coating performance requirements and food contact regulations.

9. The table below sets out the four main types of metal packaging coating by end use: beer and beverage coatings (B&B); food coatings (Food); caps and closures coatings (C&C); and general line coatings (GL) and describes types of coatings within these segments. The latter three segments are together referred to as 'FCG'.
10. Coatings differ depending on whether they are for the body of the can or the ends of the can and, in each case, whether they are for internal or external application. Coatings for internal application will need to withstand the contents of the packaging, whereas external coatings will need to withstand the external environment. Internal coatings which come into contact with food and beverages are subject to specific regulatory requirements.

Metal packaging coatings by end use

<i>Metal packaging coatings</i>	<i>End use</i>	<i>Segments</i>	<i>Sub-segments</i>
B&B	B&B	Beverage externals (B2E)	Aluminium or steel Rim coatings
		Beverage internals (B2I)	Aluminium or steel
		Beverage ends (BE)	Internal or external
FCG	Food	Food external	Often divided depending on whether two- or three-piece and by manufacturing process. Some beverage cans are three-piece and they may be included in this category. Other types of coatings required for two-piece food cans include side stripe coatings
		Food internal	
		Food ends	
	C&C	Twist-off caps	As with Food and B&B, each different type of cap requires both internal and external coatings
		Tamper-proof caps	
		Other	
GL	General line	Aerosol	As with other categories each different type of packaging requires both internal and external coatings and, in the case of tins (eg for paint) and three-piece tubes, ends.
		Collapsible tubes	
		Aluminium monobloc	

Source: CC.

11. The production of metal coatings is relatively concentrated at the global level with three large producers: AkzoNobel, PPG Industries, Inc (PPG) and The Valspar Corporation (Valspar). Metlac is an intermediate-sized producer with a strong presence in the European Economic Area (EEA) but limited activities elsewhere. In addition, there is a range of intermediate and smaller producers operating in the EEA which offer a more limited range of products than Metlac.

12. A significant feature of the industry is that coatings need to be tested and qualified with the customer prior to use. Once a new coating formulation has been developed by a manufacturer, it must go through a rigorous process of testing, at both manufacturer and customer level, and qualification before it can be used commercially. Qualification is also required for coatings which differ slightly from coatings already used by the customer or which have previously been used by the customer, but in a different plant or at a different time. The whole process from start to finish can take from four months for a general line product to more than two years for a food or beverage can coating. Less rigorous testing is required if a product is already qualified for a customer. The need for qualification prior to use by a customer results in relatively significant switching costs.

13. Because of the costs and the length of time required, switching to a previously unqualified product requires forward planning on the part of the customer and, in relation to product segments where qualification takes longer (eg B&B and Food), a level of customer sponsorship may be required for new suppliers to start supplying in these segments. There is an ongoing qualification cycle for suppliers and customers and qualification is one of the most crucial factors in the competitive dynamic of the metal packaging coatings industry.

14. The downstream metal packaging industry is also concentrated, with four global manufacturers and a small number of regional manufacturers in the industry. The global operators are The Ardagh Group (Ardagh), Ball Corporation (Ball), Crown Holdings Inc (Crown) and Rexam plc (Rexam). In Europe Can Pack SA (Can-Pack) also has a strong presence. Can manufacturers can generally be distinguished between those producing cans for B&B and those producing cans for FCG.
15. Ball, Can-Pack, Crown and Rexam account for all EEA demand for coatings for B&B can bodies. There are five further B&B customers which purchase coatings for beverage ends. Demand for FCG coatings is significantly more fragmented. Two large customers account for 31 to 40 per cent of demand (and 51 to 60 per cent in the Food segment). However, there are many smaller customers, reflecting the large number of niche packaging products made for food, general line and caps and closures which are often tailored for a specific product and geographic focus.
16. A number of metal packaging companies, including all of the large companies listed above, have factories producing metal packaging in the UK.
17. AkzoNobel is among the largest suppliers of coatings for the protection of metal packaging. AkzoNobel manufactures metal packaging coatings globally, including at four sites in Europe, including in the UK.
18. From its Italian site Metlac supplies metal packaging coatings to customers throughout Europe and globally. It manufactures coatings for all of the main segments except B2I or BE coatings. Metlac traditionally focused on selling to customers based in Italy but its non-domestic sales have grown significantly since 2003.

Control and management of Metlac

19. The governance arrangements of Metlac Holding are set out in the 2007 Formation and Quotaholders Agreement (FQA) and associated by-laws. The governance arrangements of Metlac are set out in the 2007 Shareholders Agreement (SHA) and associated by-laws.
20. We sought evidence on the current arrangements for management of Metlac and whether these arrangements would change.
21. We considered whether the rights associated with AkzoNobel's current shareholdings in Metlac and Metlac Holding give AkzoNobel the ability to influence Metlac's commercial strategy, and whether AkzoNobel would have a greater or lesser ability in the future to influence Metlac's commercial strategy.
22. We found that the situation is unusual as, despite being a beneficiary of Metlac's profitability and having representation on the boards of Metlac and Metlac Holding, AkzoNobel does not have the ability to use its shareholding and associated rights in Metlac and Metlac Holding to significantly influence the commercial strategy of Metlac or to significantly constrain Metlac's ability to compete or the manner in which it competes.
23. Metlac's day-to-day management is controlled by the Bocchio family. As such, we have treated AkzoNobel and Metlac as independent competitors for the purposes of our competitive effects analysis.

Counterfactual

24. We considered the situation that would have prevailed absent the merger (the counterfactual). We found that, absent the merger, there were two possible counterfactuals:
- the status quo ante—ie AkzoNobel remains as a shareholder of Metlac Holding at the same level of shareholding as it currently has. We considered whether it would be likely to be a non-interfering ‘benign’ shareholder or a disruptive shareholder which attempted to limit the extent to which Metlac was able to compete; or
 - AkzoNobel seeks an exit from its shareholding and sells its shares.
25. While both in our view are possible counterfactual scenarios, AkzoNobel submitted that the former was more likely. As the analysis does not change whichever counterfactual is used, because in either case Metlac would continue to compete against AkzoNobel, we have used the status quo counterfactual for our analysis. We did not find it likely that AkzoNobel would have the incentive to be a disruptive shareholder. Even if it were to attempt to be disruptive, we found that AkzoNobel’s shareholdings in Metlac Holding and Metlac do not enable it to diminish Metlac’s ability to compete or prevent Metlac’s management from being able to continue running the company.

The relevant markets

26. We found that the relevant product markets for the purposes of our inquiry were: the supply of metal packaging coatings for beer and beverage cans in the EEA (ie B&B market) and the supply of metal packaging coatings for metal packaging for food, caps and closures and general line in the EEA (ie FCG market).
27. There is no demand-side substitutability for the various different types of coatings products. However, there is a level of supply-side substitutability. We aggregated

these products on the basis of supply-side substitutability. However, there are differences in the conditions of competition within both the B&B and the FCG markets. Therefore in our competitive assessment we considered the specific competitive constraints arising for segments within the markets (specifically the B2I, B2E and BE segments within B&B and the Food, C&C and GL segments within FCG) as appropriate.

28. We found that the geographic scope of this market was EEA-wide. Both Metlac and AkzoNobel currently supply metal packaging coatings for B&B and FCG in the UK. Supply is carried out on at least an EEA-wide basis and the factors set out below which affect competitive rivalry in metal packaging coatings supply therefore also affect supply in the UK, as part of the relevant EEA markets.

Competitive characteristics of the metal packaging coatings industry

29. We considered the current conditions of competition in the metal packaging coatings industry including: existing competitors to the merging parties, market concentration, growth, capacity, margins, switching and innovation. We found that the main factors affecting existing rivalry in the B&B and FCG coating markets, and within segments of these markets, are supplier concentration and customer structure. Against this backdrop, we considered the level of competition between AkzoNobel and Metlac in the relevant markets, focusing on pricing pressure exerted by Metlac; switching; views from the parties, customers and competitors on the level of constraint Metlac places on AkzoNobel and other suppliers; and the strength of competition provided by Valspar, PPG and smaller suppliers.
30. The industry is characterized by spare capacity and margins which are not low. Over the last three years both AkzoNobel and Metlac have grown whilst Valspar and PPG

have not. The evidence showed that Metlac competes against AkzoNobel in all main segments of the market apart from B2I and BE.

31. In the B&B market, the tender data covering a large proportion of purchasing in the market for recent years showed Metlac increasing its sales of B2E and AkzoNobel winning significant volumes of B2I sales. Information from the companies to which Metlac supplies B2E indicated that Metlac offers low prices compared with the other suppliers.
32. In relation to FCG there is a range of large and small suppliers, and Metlac generally offers low prices, which a number of customers submitted they use to bring down the offers of other suppliers. Metlac has grown more quickly than AkzoNobel, Valspar and PPG in this market in recent years, due in some degree to offering low prices.
33. These smaller suppliers have grown in the segments within which they were already active. This is consistent with our view that the customer switching costs are most relevant in relation to suppliers' ability to expand into new segments or product lines where they do not have a reputation with customers, and where customer sponsorship may be required for growth.
34. Metlac's ability to grow sales with larger customers and expand into the B&B market, in contrast to other smaller FCG suppliers, was in part a consequence of its being able to benefit from working with Imperial Chemical Industries plc (ICI, acquired by AkzoNobel in 2008) to supply its customers in Italy, and then leverage those customer relationships to start competing with AkzoNobel and other suppliers outside Italy.

35. In an industry where suppliers have the manufacturing equipment to produce most coatings, their ability to switch production quickly to compete on price in particular segments is constrained by two factors: qualification costs and customer preferences regarding access to suppliers. Customers' supply choices are dictated by three particular factors: supplier's reputation; technological ability, including the ability to innovate and formulate coatings; and the supplier's own appetite to compete across the industry. In relation to reputation, only the three largest suppliers and Metlac have a reputation with customers for being able to provide high-quality coatings with strong service levels across the industry. Other suppliers' reputations are confined to particular market segments. The same applies in relation to technological ability. The final factor, appetite for growth, seems to be Metlac's particular strength compared with other smaller suppliers.
36. The evidence we were provided with, in particular on pricing policies, indicated that Metlac exerted a significant constraint on the behaviour of the larger suppliers. It had steadily gained market share by offering low-priced, technologically sound products, while remaining profitable. The evidence provided showed that it had priced aggressively whilst offering high-quality products, which was made possible by what is perceived in the industry as a low-cost operation based on production efficiencies. There is evidence that its ability to provide nimble, innovative service is highly valued by customers, including those customers which make up a large proportion of industry demand in the EEA and the UK.
37. The evidence provided to us did not allow us to build up a complete picture of pricing or switching in the relevant markets. Our analysis of these markets is therefore based on this partial data, as well as pricing evidence and the views of customers, including all the main customers in the B&B market and a number of large customers and

some key medium-sized customers in the FCG market, all of which are key customers for metal packaging coatings in the UK.

Competitive effects of the merger

38. In considering whether the merger may give rise to unilateral effects in the supply of metal packaging coatings in the UK, we considered:
- Loss of actual competition in the B&B and FCG markets. We also considered the effect of the merger in particular segments of these markets (with a focus on the B2E segment of the B&B market and the Food segment of the FCG market).
 - Loss of potential competition in B&B, focusing on B2I and BE.
39. Underlying factors affecting existing rivalry in the relevant markets are the same in the UK as elsewhere in the EEA, and any effects of the merger at the EEA level would affect purchasers of coating products with plants in the UK.
40. Two factors were particularly relevant to our assessment:
- Metlac is a significant competitive force in the relevant markets (within the terms of paragraphs [5.4.5](#) and [5.4.12](#) of the CC's *Merger Assessment Guidelines*), as it provides a significant competitive threat to other firms in the market by virtue of having a novel business model and a record of offering low prices.
 - Second, a significant proportion of large and small customers which provided us with evidence indicated that they had significant concerns about the transaction. They have commented on the particular competitive force Metlac brings to the markets, which they see as being removed by the transaction and not able to be replicated by smaller suppliers or by a change in conduct on the part of the larger suppliers. While we have not had evidence from every customer, those customers from whom we have received evidence account for a significant proportion of metal packaging coatings demand both in the UK and in the EEA. When

- considering these customer concerns, we have placed most weight on the evidence provided regarding Metlac's low pricing strategy, where the evidence we received is consistent from both small and large customers, across both markets.
41. Our provisional view is that paragraph 5.45 is relevant here because against a backdrop of high market concentration, in our view Metlac has grown from being a small supplier to competing at a similar level to the three larger suppliers in the segments where it is active. This pattern of growth and expansion into the B&B market has not been replicated by other smaller suppliers which have been in the market for some time.
 42. We have considered AkzoNobel's incentive to remove Metlac as a direct competitive constraint to it in the relevant markets. We received evidence that the parties compete in both B&B and FCG and that in the segments in which it competes, Metlac is an important constraint on AkzoNobel, via its low pricing, strong product quality and innovation and willingness to provide a wide range of products. We have also been provided with evidence showing that AkzoNobel competes strongly in the relevant markets, whilst Valspar and PPG do not appear to compete vigorously on price. There is therefore an incentive on AkzoNobel to remove Metlac as a constraint on it and the result of this removal will give it a potential ability to raise prices.
 43. We therefore consider it likely that AkzoNobel would change Metlac's pricing strategy and that customers would lose the benefits they currently enjoy from Metlac as a low priced supplier.
 44. We have considered whether AkzoNobel would be likely to remove Metlac's innovative character from the market post-merger and are of the provisional view that it is unlikely that AkzoNobel would continue to offer Metlac's entire product range

and, in relation to innovation, although there is no reason for AkzoNobel to seek to weaken Metlac's strengths in this area post-acquisition, its strengths in this area may be lost as a result of the merger process.

45. In relation to the B&B market, we considered that as a result of the removal of Metlac as a constraint in the B2E segment, AkzoNobel would be able to increase prices and that Valspar and PPG were unlikely to compete vigorously on price, on the basis of past behaviour, to counter this merger effect. Effects in the B&B market would be reinforced by the removal of Metlac as a potential entrant in the B2I and BE segments of the market.
46. In relation to the FCG market, we considered that AkzoNobel would also be able to increase prices and that Valspar and PPG were not likely to compete vigorously on price. As in B&B, it seems likely that the removal of Metlac as a constraint could result in increased prices. We also considered the extent to which removal of Metlac as a competitive force in the FCG market, particularly in the Food segment, where the merged entity will be nearly three times larger (whether by value or volume) than the next supplier in the segment, could be mitigated by expansion of smaller suppliers. Whilst we found some evidence that smaller suppliers might be able to offer alternatives to Metlac products, at comparatively low prices, we did not receive evidence that they would be able, individually or collectively, to replicate Metlac's constraint across the market or that they had the ability or appetite to expand in a timely manner.
47. Metlac provided us with evidence that it was planning to enter two segments of the B&B market in which it did not currently operate: B2I and BE. We have therefore considered whether Metlac would be likely to enter those segments in the absence of the merger and whether such entry would lead to lower prices.

48. We have provisionally concluded that if Metlac were to enter the B2I and BE segments it would be likely to capture a significant market share. However, there are a number of factors over which we do not currently have sufficient clarity to be able to state that entry is sufficiently certain such that its removal would, on its own, create an SLC.

Market entry/expansion

49. We considered whether entry or expansion would be likely to occur in a timely and sufficient manner to counteract any effects of the proposed merger. We looked at the evidence of the history of entry and expansion being sponsored by customers and we considered whether customers could exert their buyer power in this manner in response to any unilateral effects. We provisionally concluded that entry or expansion into the B&B market was not likely to occur at a sufficient scale in a timely manner to constrain the merged entity.
50. We provisionally concluded that, whilst entry/expansion into some segments of the FCG market was likely, particularly with customer support, it was not clear that such entry or expansion would occur at a sufficient level to constrain the merged entity, given past evidence on growth of smaller suppliers and qualification requirements.

Countervailing buyer power

51. We considered whether the four large customers in the B&B market had sufficient buyer power to counter any adverse effects of the merger. Customers currently rely on having Metlac as an option in their negotiations with B&B manufacturers and we think it is unlikely that the buyers would be sufficiently powerful to keep prices down following the disappearance of Metlac. The fact that a number of customers have found it necessary to sponsor new entry into the B&B segment indicates that they do not view only three suppliers as sufficient. Whilst we do think customer-sponsored

entry is likely to occur, it is unlikely that it would be of a sufficient scale to replace the constraint Metlac currently places on the market in the near term.

52. We therefore do not think that buyer power is likely to be sufficient to counter any adverse effects arising from the merger.

53. In summary, we have provisionally concluded that the proposed merger would likely create unilateral effects in B&B and FCG markets. We found that Valspar, PPG and smaller suppliers would be unable to constrain the merged entity from raising prices. The merger would remove a potential entrant from the B2I and BE markets, which reinforces our provisional conclusion that the merger would result in unilateral effects in the B&B market. We found that new entry and expansion was unlikely to occur in a timely and sufficient manner to counteract the effects of the merger in either market and that countervailing buyer power was unlikely to be sufficient to counteract the effects of the merger in either market. We found that efficiencies were unlikely to provide sufficient customer benefits to counteract any adverse merger impacts.

Provisional conclusion

54. We have provisionally concluded that the proposed merger may be expected to result in a substantial lessening of competition in the markets for supply of metal packaging coatings for B&B and FCG, and this effect on competition in this market will also affect competition in the UK.

Provisional findings

1. The reference

1.1 On 23 May 2012, the OFT referred the anticipated acquisition by AkzoNobel of Metlac Holding to the CC for investigation and report. We must decide, under [section 36](#) of the Act:

(a) whether a relevant merger situation has been created; and

(b) if so, whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.

1.2 Our terms of reference are set out in Appendix A. We are required to take our final decision and report by 6 November 2012.

1.3 This document, together with its appendices, constitutes our provisional findings, published and notified to AkzoNobel and Metlac Holding in line with the CC's Rules of Procedure.¹ Further information relevant to this inquiry, including a non-confidential version of the main parties' initial submissions and summaries of hearing evidence, can be found on our [website](#).

2. The metal packaging coatings industry

2.1 The activities of AkzoNobel and Metlac Holding's subsidiaries, in particular Metlac overlap in the supply of metal packaging coatings and metal decorating ink. These are both intermediate products in the production of metal packaging, principally cans for food and beverages.

2.2 Metal packaging coatings form a thin film which is bonded to aluminium or steel substrates² during the process of manufacturing metal packaging. Coatings are used

¹ [Competition Commission Rules of Procedure, CC1, 2006](#).

² A substrate is the base material used to make the packaging.

to prevent the metal packaging from reacting with either its contents or the external environment, ensuring that the quality of the product is maintained over a shelf life that may range from a few months to several years. Coatings are essential to ensure the functionality of metal packaging but represent a relatively small proportion of the total cost of a finished can.

2.3 Figure 1 sets out a simplified overview of the supply chain for coatings.

FIGURE 1

Overview of supply chain for metal packaging coatings



Source: CC analysis.

2.4 Metal packaging coatings are supplied to four main end-use segments: beer and beverage cans, food cans, caps and closures and general line. The range of coatings produced—in terms of chemical composition—is driven by a variety of factors, including:

- the type of metal to which the coating is to be applied;
- whether the coating is applied to the interior or exterior of a can;
- whether it is to be applied to the body of the can or to the ends of the can;
- the content of the can, which can range from paints and aerosols to food and beverages; and
- the process employed to apply the coating to the metal substrate.

Metal packaging

2.5 Demand for metal coatings is derived from the demand for metal packaging. This section provides an overview of the metal packaging market.

2.6 Packaging is used to distribute products in quantities that are convenient for their consumers, to store and protect the contents of the packaging and to market the product to consumers. These functions can be fulfilled by a variety of materials, including plastics, paper and boards, wood, glass and metal. The choice of packaging material for a given product depends on a broad range of factors such as production costs, transport costs, shelf life and storage functionality, brand image of the product and environmental impact, among others. In many cases, companies will choose to use a range of types of packaging for different formats of the same product according to the type of consumer they wish to supply.³

Product range

2.7 Metal packaging products are manufactured from a range of aluminium and steel substrates; the exact alloys (for aluminium) and surfaces (for steel) vary according to the end-product requirements.

2.8 The products tend to be divided into four main categories, according to their end use:

- beverage cans—these are largely two-piece cans with pull tab openings,⁴ containing a range of drinks, including beer, cider, carbonated drinks, energy drinks, fruit juices and water;
- food cans—these are largely three-piece steel cans for foods such as soups, vegetables and pet food. Two-piece cans are predominantly used for fish and increasingly for pet food;
- caps and closures—metal lids for glass jars and bottles; and
- general line—cans and tubes for a broad range of products such as aerosols, cosmetics, chemicals, paints and dry food products (eg biscuits).

³ For example, Coca-Cola is sold in cans, plastic and glass bottles and, in some cases, metal bottles. The choice of packaging may be influenced by the relative costs of plastic, glass and metal and also by the target consumer market and branding requirements.

⁴ Three-piece beverage cans are still used, mostly in parts of Asia, although they have a small market share.

2.9 The end uses of cans determine the nature of the coatings applied to them. Coatings that come into contact with food, ie those used on the inside of beverage and food cans, must meet a more stringent set of regulations than those that do not. In addition, the type of coating used will depend on the chemical properties of the product stored in the can. Some substances, such as cider, are more corrosive than others and, in consequence, more durable coatings are required for these cans. Similarly, external coatings may be required to protect the can from reacting to environmental conditions, such as damp or heat, and from physical abrasion whilst the can is in transport, as well as to enhance its aesthetic appeal. Different formulations are used to meet these differing requirements.

Manufacturing processes

2.10 The main types of can are two-piece and three-piece cans.

2.11 *Two-piece cans* are manufactured from aluminium or tinned steel using a drawing and wall ironing (DWI) process. These cans are manufactured as a single cup with a separate end or lid that is used to seal the can once it has been filled (hence ‘two-piece’). The process for manufacturing ends is separate and is described in paragraph 2.15 below. Beverage can production lines produce very large volumes at high speeds, with an average capacity of around two million cans per day. Most production sites would contain two or three separate production lines.⁵ Two-piece cans may also be manufactured using a draw and redraw (DRD) process, whereby the can is drawn through a die to form a shallow cup, then redrawn through additional dies to produce the desired dimensions.

2.12 Two-piece DWI cans are coated both internally and externally once they have been formed into cylinders rather than as flat sheets. For beverage cans, internal coatings

⁵ Irfab, ‘Global Industrial Coatings Markets 2010-2020’, 2011.

are applied to the cans as a spray at a rate of up to 2,000 cans per minute. The external coatings are applied by rollers. For two-piece DRD cans used for fish, pet food etc, the cans are coated (and often decorated) in flat sheets using rollers and then formed.

2.13 *Three-piece cans*—The majority of food cans are manufactured as three separate pieces: a cylinder, a bottom and a top. The body of the can is welded together, while the ends are seamed into the cans using a sealant compound which ensures the integrity of the can. Three-piece cans are made out of steel as aluminium is not suitable for the welding process used to form the can. Coating takes place prior to the rest of the manufacturing process, with one metre square flat sheets of metal receiving internal coatings on one side and external inks and coatings on the other. The sheets are then oven- or UV-cured to fix the coatings before being cut into individual blanks that are rolled into a cylinder and welded closed. Finally, one end of the can is mechanically seamed on to the bottom of the can body. The can is then ready to be filled and sealed. Appendix B sets out in detail the manufacturing process for both two-piece beverage and three-piece food cans.

2.14 The differences in manufacturing processes for two- and three-piece cans affect the properties of the coatings used. Internal beverage can sprays need to be less viscous than those applied to flat metal sheets to allow even coverage from a rapid spraying process, whilst external coatings must be able to be applied by rollers to the formed can. Both internal and external coatings for three-piece cans must be sufficiently thick and flexible to allow the metal sheet to be rolled into a cylinder and the perforation area for the easy-open ends to be created without the coating cracking and exposing the metal substrate. In addition, the longer shelf life required

of food cans (as compared with beverage cans) means that their coatings need to be more durable.⁶

- 2.15 *Beverage and food can ends* undergo a different manufacturing process from two-piece and three-piece cans. Coatings are applied to a flat sheet at the steel/aluminium manufacturers. Separate internal and external coatings are required and these need to be sufficiently flexible and tough to handle the forming and rivet process during manufacturing.

Metal packaging producers

- 2.16 There has been significant consolidation in the production of metal packaging over the last decade, resulting in four global manufacturers and a small number of regional manufacturers in the industry. The global operators are Ardagh, Ball, Crown and Rexam. In Europe Can-Pack also has a strong presence. Can manufacturers can generally be divided between those producing cans for beer and beverages and those producing cans for food, caps and closures and general line. Information on some of the largest metal packaging manufacturers in both the EEA and the UK is set out below.

- 2.17 Ardagh is a private company incorporated in Luxembourg and its metal packaging business is estimated to produce annual revenues of approximately €2.0 billion. Ardagh began by manufacturing glass packaging for the food and drink industry in Ireland in 1932. Following the acquisition of Impress in 2010, Ardagh manufactures metal packaging for food and general line (including aerosols and paint cans). Ardagh's customers include Anheuser-Busch InBev N.V. (AB InBev), Heineken N.V. (Heineken), Diageo plc, Pernod Ricard S.A., Bacardi Martini Inc., HJ Heinz Company Ltd (Heinz), Nestlé S.A. (Nestlé), Groupe Danone (Danone), Unilever N.V. (Unilever),

⁶ *ibid.*

Procter & Gamble, L'Oréal S.A, Dr Pepper Snapple Group Inc (Snapple), The Coca-Cola Company (Coca-Cola) and Del Monte Foods. Ardagh has metal packaging plants in Europe, Africa, North America and Asia-Pacific.

- 2.18 Ball is listed on the New York Stock Exchange. It reported revenues in the 2011 financial year of \$8.6 billion, of which \$2 billion was attributed to the European metal beverage packaging market. Ball manufactures more than 50 billion aluminium cans annually. Its European metal beverage packaging business supplies two-piece cans for carbonated soft drinks, beer, energy drinks and other beverages, as well as aluminium aerosol cans. Ball has facilities in Germany, the UK, France, the Netherlands, Poland, Serbia and the Czech Republic, which together produced approximately 17 billion metal beverage cans and 700 million aerosol cans in 2011.⁷
- 2.19 Can-Pack is a private Polish company founded in 1989. Can-Pack manufactures metal and glass packaging. Its global 2011 turnover is reported to have been approximately \$1 billion. Its metal packaging business comprises beverage and food cans, aerosols, paint tins, general line boxes and crowns. Within the EEA, Can-Pack has metal packaging manufacturing facilities in Poland, Romania, the UK, Spain and Finland. Approximately [71–80] per cent of Can-Pack's EEA purchases of metal packaging coatings by volume in 2011 were for metal packaging for beer and beverages.
- 2.20 Crown is listed on the New York Stock Exchange. Crown reported revenues of \$8.6 billion in the 2011 financial year accounting for sales of some 51 billion beverage cans. Approximately \$4.4 billion of its revenue was from European sales. Crown manufactures metal packaging: cans and closures for food and beverages, aerosols for household and consumer and general line cans for industrial and

⁷ Information set out in this report submitted by Ball only relates to Ball's purchases of coatings for beverage cans in Europe and not information on its purchases of coatings for aerosol cans.

promotional. Its customers include AB InBev, Carlsberg Group (Carlsberg), Coca-Cola, Cott Corporation (Cott), Nestlé, Unilever, Danone, Mars GmbH (Mars), Snapple, Heineken, National Beverage Corp (National Beverage) and PepsiCo Inc (PepsiCo). Crown has 73 plants within Europe, the Middle East and Africa (EMEA), including plants in Belgium, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Slovakia, Spain, Switzerland and the UK. Crown is the only large metal packaging coatings customer with large-scale activities in both the beverages segment, on the one hand, and, on the other hand, the food, caps and closures and general line segments.

2.21 Rexam is listed on the London Stock Exchange. Its turnover for the 2011 financial year was £4.7 billion, with sales of beverage cans accounting for £3.8 billion of this turnover. Rexam claims a 40 per cent share of the European beverage can market and manufactures approximately 57 billion cans annually. Its customers include AB InBev, Carlsberg, Coca-Cola, Heineken, Red Bull GmbH (Red Bull) and PepsiCo. Within the EEA, Rexam has beverage can plants in Austria, the Czech Republic, Denmark, France, Germany, Ireland, Italy, the Netherlands, Poland, Spain, Sweden and the UK.

2.22 The activities of metal packaging producers can be distinguished between beer and beverage metal packaging and metal packaging for food, caps and closures and general line, as follows:

- *Beer and beverage metal packaging manufacturers*—Ball, Can-Pack, Crown and Rexam account for all EEA demand for coatings for beverage can bodies. We estimated that these customers accounted for approximately [71–80] per cent of B&B coatings consumption by volume in the EEA in 2011. The remaining [21–30] per cent of B&B consumption by volume in the EEA was accounted for by customers that purchase coatings for beverage can ends: Alcoa Inc (Alcoa),

Constellium, Elval S.A. (Elval), Hydro Aluminium Rolled Products GmbH (Hydro) and Novelis Inc (Novelis).

- *Food, caps and closures and general line metal packaging manufacturers*—This market is more fragmented than beer and beverages. Two large customers, Ardagh and Crown, account for [31–40] per cent of purchases of metal packaging coatings for food, caps and closures and general line in the EEA and there are many other customers such as Can-Pack, Guala Closures S.p.A. (Guala), Mivisa Envases S.A.U. (Mivisa), Pelliconi & C S.p.A. (Pelliconi) and Silgan Holdings Inc (Silgan). This partly reflects the large number of niche packaging products made for food, general line and caps and closures which are often tailored for a specific product and geographic focus. Within the food segment, we estimate that Ardagh and Crown account for [51–60] per cent of demand, by volume, for coatings.

2.23 Further information on the demand of customers for metal packaging coatings is included in Appendix C.

2.24 As described in paragraphs 2.17 to 2.21, the large metal packaging companies have manufacturing plants across the EEA. The location of their plants depends on various factors such as company history, location of the end-customers (eg food, beverage, pharmaceutical, paint producer etc) and individual company policy as to how to focus manufacturing operations (eg separate plants for producing steel and aluminium cans).

UK metal packaging producers

2.25 A number of metal packaging companies, including all of the large metal packaging companies listed above, have factories producing metal packaging in the UK. In the UK there are more beer and beverage metal packaging manufacturers than food, caps and closures and general line metal packaging manufacturers, compared with

some EEA countries. Producers purchase metal packaging coatings for their cans from suppliers based throughout the EEA and then supply their finished cans throughout the EEA.

Metal packaging customers

2.26 The main customers of metal packaging producers are large consumer products groups, such as Carlsberg, Coca-Cola, Heineken, Heinz, Nestlé and Unilever. Their size and the importance of metal containers and coatings as inputs to the final products mean that these customers are highly engaged in the metal coatings industry, driving many of the quality requirements and innovations. For example, prior to using a new coating, a can manufacturer will need to involve the end-customer in testing and approving the coating for use.

Metal packaging coatings

2.27 The market for metal packaging coatings is shaped by the requirements of the metal packaging industry. The range of products demanded is determined by end-use market, substrate, coatings application technology, functional and decorative surface properties, final coating performance requirements and food contact regulations.

2.28 We estimated that the EEA metal packaging coatings market in 2011 was approximately 193,500 tonnes or €666.5 million. Demand for coatings has increased by approximately 11 per cent by volume and 27 per cent by value in the past three years. Over the period 2011 to 2015, the volume of metal packaging coatings consumed in the EMEA region is expected to increase by 8.5 per cent.⁸

2.29 The production of metal coatings is relatively concentrated at the global level with three large producers; AkzoNobel, PPG and Valspar. Metlac is an intermediate-sized

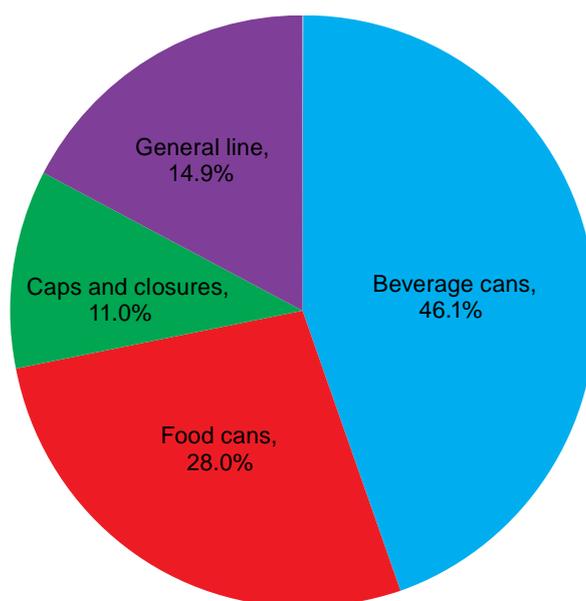
⁸ Ifab, op cit.

producer with a strong presence in the EEA but limited activities elsewhere. In addition, there is a range of intermediate and smaller producers operating in the EEA and offering a more limited range of products. These smaller producers include: Salchi Metalcoat S.r.l. (Salchi), Actega Rhenania and Actega Rhenacoat (Actega), Schekolin A.G. (Schekolin), Grace Darex Packaging Technologies/Grupo Sistiaga (Grace), Diostyl and VPL Chemicals Pvt Ltd (VPL).⁹

2.30 Figure 2 shows the split of the market (in volumes) between the different end uses for coatings. Food and beverage cans represent nearly three-quarters of total metal packaging coatings demand.

FIGURE 2

Metal packaging coatings demand in EEA (2011)



Source: CC calculations.

2.31 In 2011, AkzoNobel's metal packaging coatings customers Ardagh, Ball, Can-Pack, Crown and Rexam accounted for approximately [51–60] per cent of its EEA sales by value and approximately [71–80] per cent by volume. In 2011, Metlac's sales to these customers accounted for approximately [41–50] per cent of its EEA sales by value

⁹ Two of these smaller suppliers (Grace and Actega) are part of larger manufacturing conglomerates.

and approximately [41–50] per cent by volume. Metal coatings are distributed from European production plants to can manufacturers' plants across the whole EEA region and beyond, due to transport costs that are relatively low in relation to the value of the coatings products. Prices quoted to can manufacturers generally include transport costs.

- 2.32 In relation to the UK, AkzoNobel has a number of customers for metal packaging coatings, of which the largest three accounted for approximately [81–90] per cent of its UK sales by volume in 2011. AkzoNobel's UK customers include: [X]. Metlac has four customers which purchase metal packaging coatings in the UK: [X].

Product range

- 2.33 The range of coating specifications used in the industry is broad, reflecting the fact that many products are developed specifically for individual customers' requirements. However, product categories can be segmented by end use, with the technology employed in each case well established.
- 2.34 Table 1 sets out the four main types of metal packaging coating by end use: beer & beverage coatings (B&B); food coatings (Food); caps and closures coatings (C&C); and general line coatings (GL). The latter three segments are together referred to as 'FCG'. The table also describes product types within these segments.

TABLE 1 **Metal packaging coatings by end use**

<i>Metal packaging coatings</i>	<i>End use</i>	<i>Segments</i>	<i>Sub-segments</i>
B&B	B&B	Beverage externals (B2E)	Aluminium or steel Rim coatings
		Beverage internals (B2I)	Aluminium or steel
		Beverage ends (BE)	Internal or external
FCG	Food	Food external	Often divided depending on whether two- or three-piece and by manufacturing process. Some beverage cans are three-piece and they may be included in this category. Other types of coatings required for two-piece food cans include side stripe coatings
		Food internal	
		Food ends	
	C&C	Twist-off caps	As with Food and B&B, each different type of cap requires both internal and external coatings
		Tamper-proof caps	
		Other	
GL	GL	General line	As with other categories each different type of packaging requires both internal and external coatings and, in the case of tins (eg for paint) and three-piece tubes, ends.
		Aerosol	
		Collapsible tubes	
		Aluminium monobloc	

Source: CC.

2.35 Modifications are made to these basic technologies to adapt the coating to the type of substrate, the contents of the can and any other specific requirements. For example, internal coatings for food cans may take the form of a white lacquer, a clear coating, a gold coating or an ‘aluminized’ coating. Moreover, each type of coating will be adapted for the type of food with which it will come into contact.

2.36 The majority of food can and general line coatings are solvent-borne, while in Europe around 95 per cent¹⁰ of beverage can coatings are waterborne.

¹⁰ Irfab, op cit.

2.37 As a result of all these factors, there are a significant number of different types of coatings. However, plants can often manufacture a wide range of coatings using the same equipment, as described in paragraphs 2.43 to 2.49 below.

External coatings

2.38 External coatings are manufactured using a number of chemical bases, including polyester, acrylic and epoxy esters. These can be either solvent-borne or water-borne. The range of external coatings includes basecoats, inks and varnishes. Basecoats are the first layer applied to a metal sheet/can, followed by inks and finally varnish, which may be overvarnish and/or rim varnish. Steel cans all require a basecoat followed by a layer of ink but do not require an overvarnish. In the case of aluminium cans, a basecoat is not always used but an overvarnish is required. Rim varnishes prevent the cans from rubbing together and scratching the design. Basecoats are used to provide a clear or white surface on to which to apply the inks, which are used to decorate the can according to the brand owner's design.

2.39 Some of the coatings manufacturers, including both AkzoNobel and Metlac (via its Metinks S.r.l. subsidiary), also supply inks to can manufacturers. There are a number of other suppliers that specialize in the production of inks, including INX International Ink Co (INX) and DIC Corporation (DIC). See paragraphs 2.77 and 2.78 below for further information regarding inks supplied to metal packaging manufacturers.

Internal coatings

2.40 The type of coatings used internally varies with the end use of the can:

- Beer & beverage cans—Interior coatings for both aluminium and steel beverage cans are based on waterborne or water-reducible epoxy-acrylic-amino technology.

- Beverage ends—Internal coatings for beverage ends (BE) may be either waterborne or solvent-borne and are made from epoxy acrylics and epoxy polyesters.
- Food cans—The principal technologies used for food cans are solvent-borne epoxy-based coatings. In addition, solvent-borne PVC-based organosol coatings are used on full-aperture, easy-open ends. Many internal food can coatings have pigments added in order to present the contents in the most appealing way.
- General line—Internal coatings are not always required for general line containers. However, when they are used, the main technology is acrylic, for dry products, and epoxy-phenolic for other products.
- Caps and closures—The dominant technology for caps and closures is solvent-borne epoxy-phenolic coatings. This is also the case for three-piece aerosol cans and collapsible aluminium tubes.

2.41 Metal packaging for the same end use can be coated with more than one type of coating formulation (eg polyester or epoxy acrylic) and a number of similar technologies (solvent-borne, waterborne, powder) can be used for similar end uses.

Ends coatings

2.42 In the food ends and beverage ends segment, coatings are supplied to aluminium manufacturers, such as Alcoa, Constellium and Novelis. These manufacturers coat flat sheets of metal with the coatings and then stamp out and complete the ends, which are supplied as a finished product to the can manufacturers.¹¹ The coatings used for ends may be specified either by the aluminium manufacturer or by the can manufacturer. AkzoNobel and Metlac both currently supply coatings for food ends. AkzoNobel supplies coatings for beverage end external use, but not internal use in the EEA. Metlac does not currently supply coatings for beverage ends.

¹¹ Some ends are made by the can manufacturers using coated coil stock produced by the aluminium manufacturer.

Manufacturing processes

2.43 There are two main manufacturing processes employed in producing metal coatings:

- The first process is to mix resins together with solvents, additives and pigments, in either a blending or a dispersion process. Any solid particles, such as pigments, are milled or ground down to a fine powder prior to/during this mixing to ensure an even surface on the coating. The coating is then filtered and filled into containers for transport to the customer. The tank used is cleaned with a solvent solution, which takes 20 to 30 minutes, prior to being used for the next batch of coatings. This basic process is used for all product types with the exception of internal beverage can coatings.
- Both AkzoNobel and Metlac generally use a specific production area/site only once a day, ie there will not generally be time for a particular production site to be used to make a number of different batches in a day. This may be because each batch will need to be tested by the chemists on site to ensure it meets customer specifications before being sealed and packed. These tests take around 3 hours to complete on average.
- The second process is for the manufacture of internal beverage coatings and is different, requiring specialized equipment in the form of a reactor to bring about a chemical reaction with epoxy resins. This intermediate is then used as an input to create a coating (as described above) to the specification of the end-user.

2.44 In the first production process described above, batch sizes can vary significantly depending on the quantity of a given coating specification demanded. In the external beverage coatings segments, there are generally fewer distinct products sold and the quantities demanded by customers tend to be large. Consequently, these are usually produced in large batches (high-volume fixed tanks). A corollary of this is that some manufacturers of B&B coatings may choose to invest in a reactor to produce their

own resin. A number of companies have indicated to us that significant savings can be made by bringing resin manufacturing in-house.

- 2.45 Internal beverage coatings are highly commoditized, with customers demanding large volumes. The impact of this is that plants producing such coatings tend to be more highly automated, have more specialized equipment and operate on a larger scale than other coatings production facilities. AkzoNobel highlighted the importance of economies of scale for its Birmingham plant as noted in paragraph 3.5 below. In particular, the factory seeks to manufacture on a semi-continuous basis, with high rates of inventory turnover, a limited number of formulations and with limited flexibility to switch between them.
- 2.46 The speed of the production process, particularly in B&B, means that stoppages due to difficulties in applying coatings can result in significant levels of lost output, while any poor quality end products can result in negative publicity to brand owners and expensive (and extensive) product recalls. This creates significant financial and reputational risks throughout the supply chain.
- 2.47 Although a single production facility can generally be used to produce a number of different formulations, the production of coatings suitable for food/beverage contact and those that are not suitable for food/beverage contact are generally kept separate to avoid issues of cross-contamination. This is particularly the case for fixed tanks, which are used to manufacture larger volumes. Portable tanks, which are easier to clean, may have more flexibility. Similarly, containers used to produce solvent-borne coatings will generally not be used to produce waterborne coatings due to concerns regarding cross-contamination.

- 2.48 Across the industry as a whole, coatings manufacturers have told us that there is significant spare capacity that could accommodate the switching of volumes between producers and/or increases in demand. This comes in the form of plants that could add further shifts, as well as production tanks that could be used to produce larger batches than they do at the current time. Additional capacity is available to the industry via toll manufacturers which produce resins and coatings to order for some businesses.
- 2.49 The inputs for the production process are generally sourced from large chemicals companies. The price of inputs is affected by global commodities prices and the availability of certain inputs can fluctuate. For example, in 2011 there was a shortage of titanium dioxide (which is used as a white pigment for coatings) which caused a rapid and significant increase in price as well as a lack of availability to certain, smaller, coatings manufacturers.¹²

Toll manufacturing

- 2.50 Toll manufacturing is an arrangement whereby a company with specialized equipment processes raw materials or semi-finished goods for another company.¹³ Some metal packaging coating suppliers contract chemical companies to toll manufacture goods on their behalf. In some cases toll manufacturers will supply finished product directly to the customers of the company for which it is manufacturing the product. This may occur either as part of an entry strategy (to eliminate the need for capital equipment) or by a company using third party capacity to meet a short or medium term need. In some cases, suppliers will use a toll-manufactured product when testing it with customers and only start manufacturing it themselves as they move to supply larger volumes, in order to prevent capacity reorganization before demand for the product is settled.

¹² [X]

¹³ www.businessdictionary.com.

2.51 Toll manufacturers therefore create additional, flexible capacity in the market. Toll manufacturers range in size from large chemicals companies to smaller, local manufacturers. Arrangements can vary in format from supplying a batch of chemicals to meet a one-off order through to partnering with a coatings supplier to invest in manufacturing capacity and develop new formulations that are tailored to customer needs.

Customer contracts

2.52 Metal coatings manufacturers supply their customers on both a spot basis and under a range of agreements. The nature of the supply relationship tends to depend on the requirements of the can manufacturer. Some B&B customers hold formal tender processes, selecting suppliers with which to sign a one- or multi-year framework contract on the basis of a number of criteria including price. Others buy from any one of a number of suppliers whose products have been qualified for supply as explained in para 2.60 below as needed. We have been told that tender processes are not the norm in supply of FCG. Contracts tend to specify a price that fluctuates fully or partially with changes in raw materials costs. AkzoNobel highlights that the volumes contained in the contracts tend to be indicative rather than a firm commitment, with the risk of lower production levels being transferred to the coatings supplier rather than resting with the can manufacturer.

2.53 In addition to price, customers focus on several aspects of a coating manufacturer's offering, including quality, technical assistance and payment terms. The importance of technical assistance to customers varies depending on their size and internal expertise. However, all customers require coatings manufacturers to visit their can manufacturing plants on a regular basis and provide support and advice to the local teams. This is particularly important when a new coating is being introduced into that plant for the first time to overcome any start-up problems. Some customers prefer

that a coatings manufacturer has local teams to assist them in these respects, whilst others do not require local assistance provided the coatings manufacturer can ensure a swift response in the case of a technical problem.

- 2.54 We were told that dual- or multi-sourcing is common in the industry for reasons of commercial strategy and due to concerns over security of supply. Multi-sourcing may also mean having more than one qualified supplier rather than actually purchasing from more than one supplier.

Product regulation

- 2.55 It is generally the responsibility of the coatings supplier to ensure that the raw materials it uses in a product are approved and to certify the product for the relevant end use.
- 2.56 There are two main types of regulation within the EU that affect the metal packaging and coatings industry: food contact regulations; and packaging and packaging waste regulations.
- 2.57 Within the EU there is no single set of regulations for coatings products that come into contact with food with several different types of regulation affecting the industry. The main regulation is the EU framework, Regulation 1935/2004, on Food Contact Materials, which aims to ensure that all food contact coatings are safe. The European Paint Producers Association has used this regulation to develop the Industry Code of Practice for food contact coatings.¹⁴

¹⁴ EC Regulation 1895/2005 sets a limit on the safe levels of migration of BPA into food and drink products. Regulation 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) provides criteria for the registration of chemicals produced or imported into the EU (in quantities greater than one tonne). Users of chemicals must follow risk management procedures for any dangerous substances employed, as set out on the supplier Safety Data Sheets. For coatings manufacturers, these regulations mean that certain new products developed will need to be registered before they can be sold. Directive (94/62/EC) on packaging and packaging waste prohibits the use of heavy metals in packaging and

- 2.58 In addition to these EU-wide regulations, some countries impose additional regulations on packaging coatings that come into contact with food (eg Greece, Denmark, France, Germany, Italy and the Czech Republic). The approach taken by the larger coatings producers is to manufacture all products according to the most stringent quality criteria within the EEA.
- 2.59 In addition, coatings manufacturers in the EEA are affected by regulation imposed by the US Food and Drug Administration (FDA).¹⁵

Qualification of products

- 2.60 The reliability of coatings products (and their suppliers) is of paramount importance to the can manufacturers who therefore insist on a rigorous qualification process.
- 2.61 Before a coating can be used on a customer's product line it needs to be tested by the manufacturer and then qualified with the customer. Qualification of a coating is generally undertaken by a customer in the following circumstances:
- (a) For new coating formulations, which have not been used before by the supplier or the customer. If new coating formulations use genuinely new ingredients or ingredient combinations (as opposed to known ingredients or ingredient combinations in new measures), regulatory approval may also be required.

requires that the packaging itself be minimized and designed for recovery and re-use in order to aid the achievement of EU-wide recycling targets. In addition, there are a number of Directives that set out EC regulations on various related areas, which may be relevant to coatings manufacturers:

- Commission Regulation No. 2023/2006 Good Manufacturing Practice covers materials and articles intended to come into contact with food;
- Council Directive 78/142/EEC (and amendment 80/766/EEC) sets out the levels of vinyl chloride monomers permitted in materials that come into contact with food;
- Council Directive 81/432/EEC sets out the Community method of analysis for the official control of vinyl chloride released by materials and articles into foodstuffs;
- Council Directive 82/711/EEC (and amendments 93/8/EEC, 97/48/EC) describes the basic rules necessary for testing the migration of the constituents of plastic materials and articles intended to come into contact with foodstuffs;
- Council Directive 85/572/EEC sets out the list of stimulants to be used for testing the migration of constituents of plastic materials and articles intended to come into contact with foodstuffs; and
- Commission Regulation No. 450/2009 which regulates the use of active and intelligent materials and articles intended to come into contact with food.

¹⁵ The main standard used worldwide for food and drink packaging is the US Regulation FDA 21, CFR 175.300. This regulation sets out the permitted ingredients for both the resins and additives used in can coatings. The regulation also details the analytical procedures to determine the level of migration of any potentially harmful products. Although this regulation does not directly apply to the European market, many customers require coatings products used in their packaging to adhere to it as cans produced in the EU are shipped around the world.

- (b) For coatings which are similar to those already used by the customer, but which have not previously been supplied by a particular coatings manufacturer to that customer (although they may have been supplied previously to other can manufacturing customers).
- (c) For coatings made by a particular coatings producer, which the customer already uses on another product line but not at the particular product line in the particular plant where it now requires that coating.
- (d) For coatings which have previously been used by that customer but not for some time.

2.62 For any particular end use, the qualification time and cost will typically be greatest in case (a) and least in case (d). Qualification times also depend on the end use of the coating, generally being longer for coatings which will come into contact with food or beverages (ie internal coatings in the B&B, Food and C&C segments). If a manufacturer wishes to sell a coating which has not previously been supplied to a particular customer (cases (a) and (b) in paragraph 2.61 above), the coating must go through a rigorous process of testing and certification before it can be qualified by the customer.

2.63 The first step in this process is to conduct a 'pack test' during which the new coating is applied to a small number of cans, which are then filled with their intended contents and stored for a period of time before being opened and examined for migration of the coating into the food and for corrosion of the can. Customers and end customers may provide input on these tests, which occur at the manufacturer. The length of time for which the cans are stored depends on the shelf life required of the product by the brand owner. Beverage cans in the EEA generally only need a shelf life of six months or less, whilst cans of tuna may need a shelf life of several

years.¹⁶ External coatings and those that will not come into contact with food may require shorter and/or less rigorous pack testing.

- 2.64 In parallel to the pack test, for entirely new food contact coatings, it may be necessary to obtain approval from the FDA or EEA authorities, to use the particular coating formulation (in terms of chemical composition and migration of chemicals of concern) for its intended application.¹⁷ Where changes in formulation have been made to coatings based on approved raw materials (eg those bought from a third party supplier), such approvals are not required.
- 2.65 The second step is the industrial 'scaling up', which involves the can manufacturer testing that the coating performs as expected when used in all its plants. This is a particular issue for B2I coatings that are applied using a spray technology. End customers that purchase the cans may also be involved in testing the product at this stage.
- 2.66 We have been told that whilst some General Line coatings may only take four months to qualify, and other non-food/beverage contact coatings generally take six to 18 months to qualify, coatings in the B&B, Food and C&C segments which come into contact with food and beverages would take longer to qualify. Customers and competitors have told us that food/beverage contact coatings would generally take 18 months to two years to qualify, with some customers stating that qualification can take a number of years. Significantly new formulations (case (a) in paragraph 2.61 above) will also take longer to test and qualify. Time frames for qualifying a coatings product are set out further in paragraphs 8.45 to 8.56 and Appendix G and vary by supplier and customer, as well as by end use.

¹⁶ During the pack test, heat and pressure may be applied to the can in order to accelerate any process of corrosion or migration. This allows a shorter pack test to be carried out on products with very long shelf lives. For certain products, such as internal sprays for beverage cans, standardized tests are carried out.

¹⁷ See paragraphs 2.55–2.59 for a description of relevant regulations.

- 2.67 The costs of any required regulatory approvals are borne by the coatings manufacturer, while the costs of pack tests and scaling up are often shared between the coatings and the can manufacturers. The timing of the qualification process is dependent on (a) whether the coating is for food contact or non-food contact, (b) the required shelf life of the coating and (c) whether the relevant product has been qualified before—whether with that customer for a different factory or for the same factory at a previous time.¹⁸
- 2.68 In a number of cases, the process of certification will not be successful and the coatings manufacturer will need to reformulate the coating in order to achieve the level of performance required by the can manufacturers and brand owners.¹⁹
- 2.69 The process of qualifying products is a continuous cycle for coatings manufacturers and their customers; PPG indicated that it had qualified over [X] products in the last five years. Given the timescales for qualifying products, there are benefits to customers in having multiple suppliers qualified for key coatings products, even if they do not immediately purchase the product from multiple sources.

New product development

- 2.70 Although the basic technology used in the production of coatings has existed for many years, there is continual investment by all major operators in the industry in developing new products. This is driven both by pressure from end-customers to deliver new coatings that allow them to market their products in attractive and differentiated packaging (ie coatings that provide different colours, textures and finishes) and from the can manufacturers to reduce the costs of coatings and/or the application process.

¹⁸ See paragraphs 8.45–8.56 below and Appendix G for further details.

¹⁹ For example, Rexam noted that [X] had been trying to certify a particular product with it for in excess of five years, so far without success.

- 2.71 New products are, in some cases, protected by patents. In the majority of cases, however, formulations are not protected by patent but can be recreated by a competitor or new entrant if they have the skills to do so.
- 2.72 The time required to develop a new product depends largely on the extent to which the new coating differs from existing formulations. Small adjustments to existing formulations can be made with a few days R&D, whilst the development of Bisphenol-A non-intent (BPA-NI) products is taking years.

BPA-NI

- 2.73 Customer concerns over the use of the chemical BPA in coatings are driving the research and development (R&D) currently being undertaken by all the main coatings manufacturers to develop alternative products which are BPA non-intent.²⁰
- 2.74 There are concerns regarding the effects of BPA on human health. These concerns have led to the product being banned from use in baby bottles and baby food containers in several regions, including Canada and the EU. In October 2011, the French National Assembly passed a bill banning the sale of any food packaging containing BPA by 1 January 2014. However, in order to take effect, the bill must also be ratified by the Senate and, at the current time, it is unclear whether this will happen. It is not clear whether other national or supranational authorities will move to ban BPA and therefore by when coatings manufacturers could be required to produce BPA-NI coatings.

²⁰ Rather than developing 'BPA-free' products, coatings manufacturers are looking to develop 'BPA non-intent' products, ie coatings that have not had BPA intentionally added to them, as is currently the case with epoxy resins. This emphasis recognizes the fact that BPA is present in the environment (as the chemical is very widely used), making it extremely difficult to guarantee that any given product will not contain traces of it. There are currently some products that are not based on epoxy resin technology and which are therefore already BPA-NI. However, these are largely external rather than internal coatings. The latter require greater chemical resistance properties which are provided by epoxy resins.

- 2.75 Pressure from brand owners, who are concerned about potential legislation that restricts the use of BPA, has resulted in coatings manufacturers investing in developing BPA-NI products. While there are currently some formulations used commercially (particularly in the baby food segment), their use has been limited by their higher costs as compared with the coatings currently used in beverage and food cans and by their failure to meet some of the relevant performance requirements. The higher cost is driven partly by the use of more expensive resins and materials and partly by the need to use thicker layers of coatings. New BPA-NI coatings, suitable for beverage cans and their contents (among other end uses), are currently being developed, with the majority of coatings manufacturers at the stage of conducting pack tests on their BPA-NI products with can manufacturers.²¹ The lack of proven track record of these products may also be a factor delaying adoption prior to the introduction of legislation. When asked about developments in the industry, a number of can manufacturers and coatings manufacturers referred to the development of BPA-NI products as the most significant change to the industry for some time.
- 2.76 In addition to BPA, coatings manufacturers are investing in the development of coatings that reduce or eliminate other chemicals regarding which consumers have raised health and/or environmental concerns.

Metal decorating inks

- 2.77 Metal decorating inks are applied to the outside metal packaging to provide decoration (ie branding, pictures, product information, etc). 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. AkzoNobel and Metlac agree that metal decorating inks do not form part

²¹ These new formulations will need to be resistant to contents such as cider and fizzy drinks and be capable of being applied in the appropriate format.

of the metal packaging coatings market. They both told the OFT that metal packaging coatings and decorating ink used different technologies, and required different production equipment due to the different chemical formulations. Ink is supplied in much smaller batch sizes than coatings and is often specific to one manufacturing line.

- 2.78 The market for metal decorating inks is also different on the supply side, with AkzoNobel estimating that its EEA market share was [11–20] per cent in 2010. It noted that Metlac mainly sold decorating inks in Italy, with no sales in the UK, and had an EEA share of [0–10] per cent.
- 2.79 AkzoNobel and Metlac also overlap in supply of metal decorating inks. We have provisionally concluded on the basis of the evidence provided to us that the parties' combined market share in metal decorating inks would not give rise to unilateral or coordinated effects in the UK. On this basis, we do not consider the market for metal decorating inks further in this report.

3. The companies

AkzoNobel

- 3.1 AkzoNobel is publicly listed on the NYSE Euronext Amsterdam stock exchange. AkzoNobel divides its business into three main categories, which each accounted for approximately one-third of AkzoNobel's 2011 turnover: Performance Coatings, Decorative Paints and Specialty Chemicals. The Performance Coatings category includes industrial coatings (which include metal packaging coatings, manufactured in the sub-business unit ANPG); and wood finishes and adhesives.²²
- 3.2 AkzoNobel entered the manufacture and supply of metal packaging coatings in January 2008 with its acquisition of ICI. The European Commission approved the

²² [REDACTED]

acquisition in 2007²³ but did not consider metal packaging coatings in its decision, on the basis that there was no overlap between the activities of AkzoNobel and ICI in this sector. ICI also held minority shareholdings in Metlac Holding and Metlac, which were acquired by AkzoNobel as part of the transaction.

3.3 In 2008, following AkzoNobel's acquisition of ICI, ANPG became a separate business unit and ANPG's headquarters was relocated to Hilden, Germany, with a new leadership team. In 2010 AkzoNobel completed the acquisition of the Swedish packaging coatings and inks business, Lindgens.

3.4 AkzoNobel manufactures and supplies metal packaging coatings. It is among the largest suppliers of coatings and inks for the protection and decoration of beverage, food, aerosol and general line cans, metal closures and collapsible tubes. In 2011 the ANPG business unit globally earned an EBITDA of €[X] million on revenues of €[X] million (2010, EBITDA €[X] million on revenues of €[X] million).^{24,25} AkzoNobel's UK plants accounted for revenue of €[X] million and earned an EBITDA of €[X] million in 2011 (2010, EBITDA €[X] million on €[X] million revenue).

3.5 AkzoNobel manufactures metal packaging coatings globally, including at four sites in Europe: Birmingham, in the UK; Vilafranca, in Spain; Hilden, in Germany; Elbeuf, in France and it has a metal inks site in Hull, in the UK. The capacity (based on existing site utilization and shift patterns) and segment focus of the coatings plants are as follows:

- Birmingham, in the UK—Site supplies coatings throughout EMEA for [X]. The site has coatings capacity of [X]kt. Coatings for [X] are manufactured at this

²³ Case COMP/M.4779, *AkzoNobel/ICI*, 13 December 2007.

²⁴ In EMEA, the ANPG business unit achieved an EBITDA of €[X] million on revenues of €[X] million (2010, EBITDA €[X] million on revenues of €[X] million).

²⁵ [X]

- separate site because (a) of AkzoNobel's manufacturing model and (b) large-scale, semi-continuous production of forecast volumes is required to meet the needs of customers in this segment;
- Hull, in the UK—Site mainly supplies [X] and also some [X] globally, with a capacity of [X]kt;
 - Vilafranca, in Spain—Site supplies EMEA with [X] coatings, with capacity of [X]kt;
 - Hilden, in Germany—Site supplies EMEA with [X] coatings, with capacity of [X]kt; and
 - Elbeuf, in France—Site supplies EMEA with [X] coatings, with [X]kt capacity.

Relationship between AkzoNobel and Metlac

3.6 AkzoNobel has an existing stake of 49 per cent in Metlac Holding, through ANCI. ANCI is a wholly-owned subsidiary of AkzoNobel and is a pure holding company for a number of AkzoNobel's coatings entities. AkzoNobel also has a shareholding of 44.44 per cent in Metlac through its subsidiary Mortar Investments International Limited. The remaining shares in Metlac Holding are owned by members of the Bocchio family (Bocchio shares), which owns the remaining shares in Metlac and controls the day-to-day commercial strategy of Metlac. The shareholding structures of Metlac Holding and Metlac are depicted in Figure 3 below.

3.7 ANCI has a call option to buy the remaining shares in Metlac Holding, which it has decided to exercise. Upon transfer of the shares, AkzoNobel's shareholding in Metlac would increase to 100 per cent.

Metlac

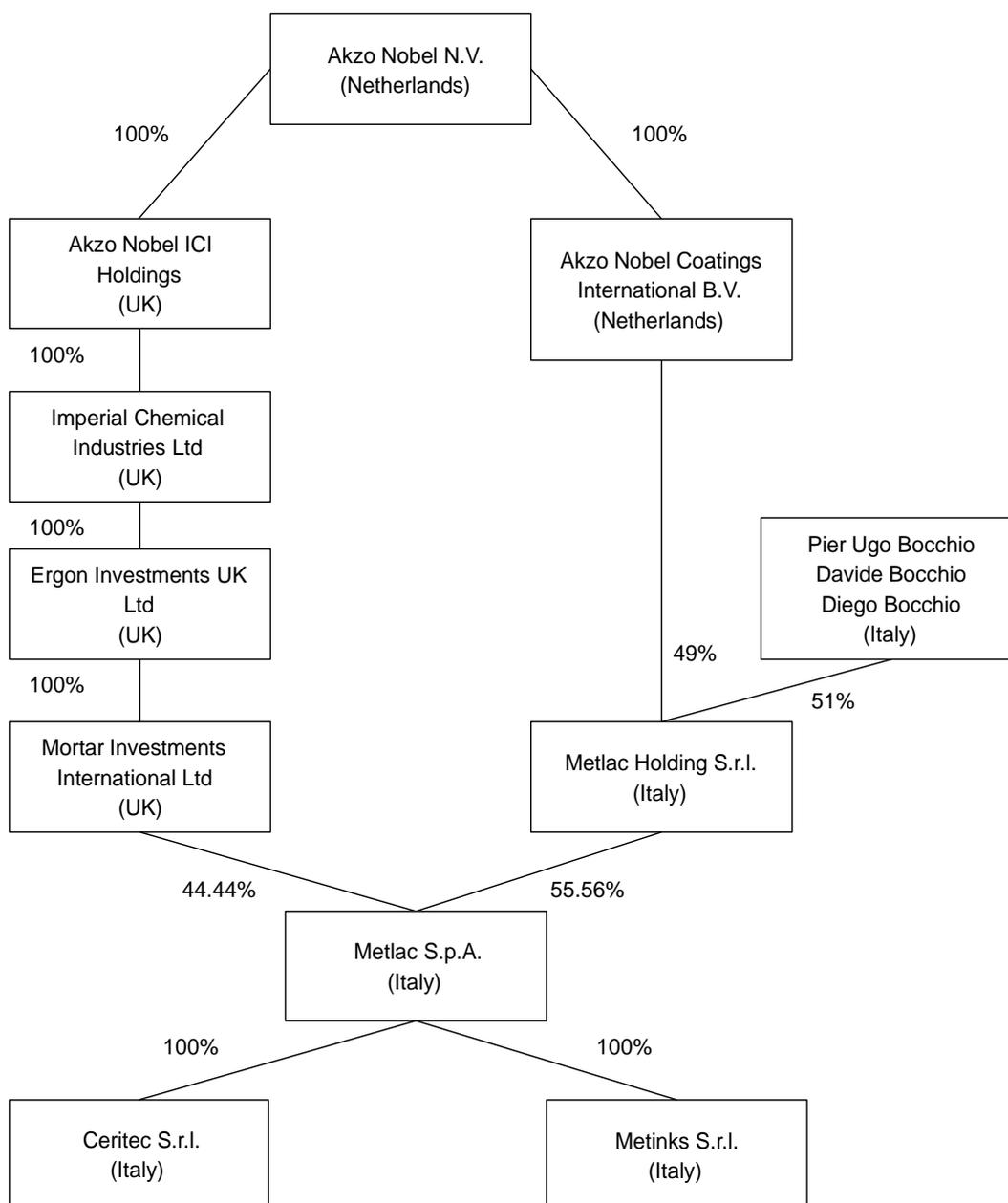
3.8 Metlac Holding is a holding company, of which 51 per cent is owned privately by three members of the Bocchio family (the Bocchio family) and 49 per cent is owned

by ANCI. Metlac Holding owns 55.56 per cent of the share capital in Metlac. The governance arrangements of Metlac Holding are set out in the 2007 Formation and Quotaholders Agreement (FQA) and associated by-laws. The governance arrangements of Metlac are set out in the 2007 Shareholders Agreement (SHA) and associated by-laws. The contents of these agreements are explained in further detail in Sections 4 and 5 below.

3.9 Figure 3 shows the shareholding structure of Metlac Holding and Metlac.

FIGURE 3

Shareholding structure of Metlac Holding and Metlac



Source: CC.

3.10 The Metlac Group is comprised of four companies (together, the ‘Metlac Group’):

- Metlac Holding S.r.l., the holding company of the group, with no activities other than holding a 55.56 per cent interest in Metlac.
- Metlac S.p.A., the operating company of the Metlac Group, which manufactures and sells metal packaging coatings. Metlac operates its business from a single

factory located in Bosco Marengo, Italy. Its current production is approximately [X]kt, with nominal capacity of [X]kt.

- Ceritec S.r.l. (Ceritec), a wholly-owned subsidiary of Metlac, which carries out R&D. Ceritec was incorporated with the intention that it would be a separate entity which could license technologies developed to third parties. It is located at Metlac S.p.A.'s production site.
- Metinks S.r.l., a wholly-owned subsidiary of Metlac, which manufactures and sells inks used for the external decoration of metal cans. It is located in Cava dei Tirreni, Italy.

3.11 From its Bosco Marengo site Metlac supplies metal packaging coatings to customers throughout Europe and globally. It manufactures coatings for beverage, food, caps & closures and general line products but does not currently manufacture coatings for beverage ends or internal spray for beverage cans. Metlac's consolidated group turnover was €101.4million in 2011 (€84.8 million in 2010), of which €[X] million was attributable to the EEA. Of this, €[X] million was attributable to the UK. Its EBITDA in 2011 was €18.8million (€16.9 million in 2010).

3.12 Metlac traditionally focused on selling to customers based in Italy but its non-domestic sales have grown significantly since 2003 (when they made up only [21–30] per cent of sales) to reach [51–60] per cent of sales in 2011 and a forecast [61–70] per cent of sales in 2012.

3.13 The Metlac Group was founded in 1986, as a metal packaging coatings supplier, and has had various shareholders—including ICI whose participation began in 1997 and was sold to AkzoNobel in 2008. Mr Pier Ugo Bocchio (Mr Bocchio) is a founder member of the Metlac Group and has been Managing Director of Metlac since its inception. For further details of the history of the Metlac Group see Appendix D.

4. The proposed merger and the relevant merger situation

Outline of the merger situation

4.1 The transaction referred to the CC is the proposed completion of a share transfer which has come about as the result of the exercise by AkzoNobel of a call option over shares in Metlac Holding.

4.2 The FQA entered into in 2007 between ICI and the Bocchio family contained put and call options over the Bocchio shares.²⁶ AkzoNobel acquired the rights held by ICI when it purchased ICI in 2008.

- The Bocchio family acquired a put option to sell the Bocchio shares to AkzoNobel at a predetermined price; this put option was exercisable in the three-year period between 1 October 2009 and 30 September 2012, but has not yet been exercised.

[redacted]²⁷

- AkzoNobel acquired a call option to acquire the Bocchio shares, exercisable in the period between 1 October 2011 and 30 September 2012.

4.3 On 23 December 2011, AkzoNobel formally exercised its option to acquire the remaining shares in Metlac Holding which were held by the Bocchio family. Metlac Holding contacted various competition authorities, including the Bundeskartellamt (BKartA) and the OFT and completion was suspended pending the review by various competition authorities. The BKartA and competition authorities in Austria, Cyprus, Brazil, Colombia, Pakistan, Russia and Turkey have cleared AkzoNobel's proposed acquisition of Metlac Holding. The BKartA decision is being appealed by Metlac Holding and Mr Bocchio in Germany.²⁸

²⁶ [redacted]

²⁷ [redacted]

²⁸ AkzoNobel told us that the authorities in Spain and Italy, who were informed about the merger, did not raise any competition concerns.

- 4.4 [REDACTED], the consideration to be paid for the exercise of the call option was €[REDACTED] million, based on a pre-agreed formula set out in the FQA.²⁹
- 4.5 [REDACTED]
- 4.6 [REDACTED] AkzoNobel and Metlac have confirmed that ‘antitrust’ clearance includes clearance from the CC of the proposed share transfer.
- 4.7 AkzoNobel and Mr Bocchio in his capacity as Managing Director of Metlac and on behalf of the owners of the Bocchio shares in Metlac Holding have offered interim undertakings to us, which we have accepted. These undertakings prevent AkzoNobel from completing the transaction.
- 4.8 If the share transfer completes, then AkzoNobel will acquire sole ownership of Metlac Holding and consequently Metlac, Ceritec and Metinks .

Rationale for the merger

- 4.9 AkzoNobel told us that the legal and economic rationale for AkzoNobel’s exercise of its option to acquire the remaining shares in Metlac was that:
- Metlac is already an associated company within the AkzoNobel group. Since the establishment of the Metlac shareholding arrangements by ICI in 1997, it was always envisaged that the Metlac and AkzoNobel businesses would come under full common control, [REDACTED];
 - Metlac complements AkzoNobel’s existing position in regions where AkzoNobel is underrepresented, [REDACTED]. In particular, Metlac has a significant presence in Italy,

²⁹ [REDACTED]

whereas Italy accounts for [REDACTED] per cent of AkzoNobel's EEA sales of metal packaging coatings [REDACTED],³⁰ and

- the full integration of Metlac with AkzoNobel will give rise to significant synergies and efficiencies, enabling AkzoNobel to deliver further benefits to customers. [REDACTED]

Synergies

4.10 AkzoNobel's estimate of the synergies available to it following the acquisition are set out below:

- AkzoNobel stated that [REDACTED].
- AkzoNobel anticipates that [REDACTED].
- AkzoNobel stated that [REDACTED].

4.11 AkzoNobel told us that its plans envisaged that these synergies and cost savings would enable it to pass on some of the benefits of the merger to customers in the form of lower prices.

Alternative options considered by AkzoNobel

4.12 In the Industrial Coatings Acquisition Request [REDACTED] (Acquisition Request), two options were identified as alternatives to the exercise of the call option: 'do nothing' or sell AkzoNobel's shareholding [REDACTED]. These options are set out in detail in Section 6.

Relevant merger situation

4.13 Under [section 36](#) of the Act and pursuant to our terms of reference (see Appendix A) we are required to decide whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. If so, we must then consider whether the creation of that situation may be expected to result in an SLC within any market or markets in the UK for goods or services.

³⁰ [REDACTED]

- 4.14 A relevant merger situation is created if two or more enterprises cease to be distinct within the statutory period for reference and either the share of supply or turnover test set out in the Act is satisfied.³¹
- 4.15 We are satisfied that both AkzoNobel and its subsidiaries and the Metlac Group are businesses and the activities of each constitute an enterprise for the purposes of the Act.
- 4.16 Enterprises will cease to be distinct if they are brought under common ownership or common control. For the reasons explained in Section 5, AkzoNobel does not currently have sole control of Metlac or Metlac Holding. We are satisfied that if the transfer of shares completes, Metlac Holding and Metlac will come under the common control of AkzoNobel which will own 100 per cent of shares in both Metlac Holding and Metlac.
- 4.17 The turnover test will apply where the value of the turnover in the UK of the 'enterprise being taken over' exceeds £70 million. The turnover of Metlac in the year ended 31 December 2011 was less than £70 million (£[~~80~~] million) in the UK³² and so the turnover test in the Act is not met. We therefore considered the share of supply test.
- 4.18 Both Metlac and AkzoNobel supply metal packaging coatings on an EEA-wide basis, including to the UK. We estimate that in 2011 Metlac's share of UK metal packaging coatings supply by volume was approximately [0–10] per cent and AkzoNobel's share of supply was approximately [61–70] per cent. As a result of the merger the combined share of supply in the UK of the merged parties would be approaching [61–70] per cent and therefore we are satisfied that the share of supply test is met.

³¹ Section 23 of the Act.

³² ECB €£ exchange rate of 0.85784 for 2011.

4.19 We therefore provisionally conclude that the proposed transaction, if carried into effect, will result in the creation of a relevant merger situation.

5. Control and management of Metlac

5.1 AkzoNobel holds significant minority shareholdings in Metlac Holding and Metlac. As a minority shareholder it does not have sole control or full ownership of either or both companies, but it does have legal rights and duties arising from the constitutional documents of Metlac Holding and Metlac. We have considered whether the exercise of these rights may allow it to significantly influence the commercial policy or strategy of Metlac thereby affecting Metlac's ability to compete or the manner in which it competes.

5.2 The legal rights of the shareholders which govern the relationship between AkzoNobel, Metlac Holding and Metlac are set out in the FQA, SHA and associated by-laws, referred to in paragraph 3.8 above.³³ [REDACTED]³⁴

5.3 [REDACTED]³⁵

5.4 Details of the legal rights and duties attached to AkzoNobel and relevant to its ability to influence day-to-day management of Metlac are summarized in Appendix E. Our provisional conclusions on the management of Metlac are set out below.

5.5 [REDACTED]

5.6 [REDACTED]

³³ The FQA refers to 'quotaholders' which is the title given to the owners of an S.r.l. company but does not differ in any material respect from 'shareholders'. This agreement sets out the rights and obligations of the shareholders originally involved in setting up the current corporate structure. ICI was the original signatory to this agreement but AkzoNobel took this on from ICI when it acquired ICI, thereby acquiring ownership of the ICI entity that was party to the SHA.

³⁴ [REDACTED]

³⁵ [REDACTED]

- 5.7 Metlac told us that the Bocchio family has sole control over the Metlac Group and would continue to do so after the expiry of the FQA and SHA.
- 5.8 Through its shareholdings in Metlac and Metlac Holdings AkzoNobel has the right to board representation on the two companies and receives the benefits of [REDACTED] per cent of Metlac's dividends.³⁶ However, neither shareholding gives it a majority of the shareholder votes in either company, [REDACTED]. The Bocchio family thereby controls the majority of votes of the shareholders and directors in both companies.
- 5.9 [REDACTED]
- 5.10 [REDACTED]
- 5.11 [REDACTED]
- 5.12 The situation will change to an extent by 2014 [REDACTED].³⁷ Following 2014, AkzoNobel told us that, if it did not acquire full control of Metlac, [REDACTED].
- 5.13 We found that AkzoNobel does not currently have the ability to use its shareholdings and associated rights in Metlac and Metlac Holding to significantly influence the commercial strategy of Metlac or to significantly constrain Metlac's ability to compete or the manner in which it competes. Despite AkzoNobel's large economic interest in Metlac, most decisions relating to the commercial strategy of Metlac [REDACTED]. We found that AkzoNobel and Metlac have operated as independent competitors.

³⁶ ANCI has a 49 per cent shareholding in Metlac Holding. Another subsidiary of AkzoNobel, Mortar Investments (Mortar), a subsidiary of ICI holds a 44.44 per cent shareholding in Metlac. Metlac Holding holds the remaining 55.56 per cent of Metlac. Through these shareholdings, AkzoNobel therefore has an indirect economic interest of 71.67 per cent in Metlac (44.44 per cent + (49 per cent * 55.56 per cent)).

³⁷ [REDACTED]

5.14 A move from AkzoNobel's current level of rights to ownership of 100 per cent of the shares in Metlac Holding and Metlac, and therefore sole ability to appoint directors to the companies' boards, would therefore significantly change AkzoNobel's rights over Metlac.

6. Counterfactual

6.1 In carrying out our competitive assessment we compare the prospects for competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual'.³⁸

AkzoNobel's view of the counterfactual

6.2 AkzoNobel told us that if the exercise of its call option was not put into effect, the status quo would be preserved as regards the shareholding structure, ie AkzoNobel would continue to hold its 49 per cent stake in Metlac Holding and the Bocchio family would continue to own their 51 per cent interest in Metlac Holding.

6.3 We also took account of AkzoNobel's consideration of alternative options to the proposed transaction—to do nothing or to sell its shareholding [REDACTED]. These are described in its Acquisition Request (see paragraph 4.12 above) as follows:

- *Do nothing:* [REDACTED] The Acquisition Request therefore rejects the 'do nothing' option.
- *Sell AkzoNobel's shareholding* [REDACTED]: The Acquisition Request rejects this possibility as being inconsistent with the overall strategy for AkzoNobel [REDACTED].

6.4 [REDACTED]

6.5 [REDACTED]

³⁸ *Merger Assessment Guidelines, September 2010, CC2 (Revised)*, paragraph 4.3.1.

6.6 AkzoNobel told us that it [REDACTED].³⁹

6.7 AkzoNobel stated that [REDACTED].

Metlac's view of the counterfactual

6.8 Metlac told us that if the transaction did not proceed, it would continue to compete as vigorously with AkzoNobel (and others) as it had to date. It would remain a significant competitive force, expected to grow in all segments and continue to innovate.

6.9 [REDACTED]⁴⁰

6.10 Metlac told us that it expected significant growth [REDACTED], with a productive output exceeding [REDACTED] by 2016, representing total turnover well above €[REDACTED] million.

6.11 [REDACTED]⁴¹

Our assessment

6.12 We considered two possible counterfactual scenarios:

- AkzoNobel remains as a shareholder at the same shareholding level as it currently has. We considered whether it would be likely to be a non-interfering 'benign' shareholder or a disruptive shareholder which attempts to limit the extent to which Metlac is able to compete.
- AkzoNobel seeks an exit from its shareholding and sells its shares. The Bocchio family appears to be the most likely buyer in this outcome.

³⁹ [REDACTED]

⁴⁰ [REDACTED]

⁴¹ [REDACTED]

AkzoNobel retains its current shareholding

- 6.13 AkzoNobel currently ultimately receives the benefit of [X] per cent of Metlac's dividends and holds a substantial albeit minority shareholding in Metlac Holding (49 per cent) and Metlac (44 per cent). [X] for the reasons set out in Section 5 above.
- 6.14 We considered the extent to which AkzoNobel is likely to be supportive of Metlac management, or disruptive.
- 6.15 There is now some animosity between Metlac and AkzoNobel. These factors might lead AkzoNobel towards opposing Metlac management's decisions.
- 6.16 The decision as to whether it is in AkzoNobel's interests to support the management of Metlac will also depend, in our view, on a calculation by AkzoNobel as to whether the reduction in value of reduced dividends and the reduced final exit value of its stake in Metlac exceeds the net present value (NPV) of reduced competition from Metlac. This calculation will be affected by the fact that all competitors (eg PPG or Valspar) will benefit from Metlac being weakened and AkzoNobel will suffer most from a reduction in the value of Metlac or its dividends.⁴²
- 6.17 As regards AkzoNobel remaining as a shareholder (the status quo):
- Remaining as a shareholder may not be attractive to AkzoNobel—it would have a lot of capital tied up with limited control over Metlac. This control would reduce following 4 December 2012 although it would continue to benefit from dividends from Metlac.

⁴² Metlac paid out €[X] million in dividends to shareholders in 2011 and this has been increasing slowly over the years. AkzoNobel ultimately receives almost [X] per cent of this, ie approximately €[X] million. [X]

- AkzoNobel would still benefit from any growth or innovation of Metlac (as it does already). Metlac has provided us with estimates of its future growth, forecasting significant growth over the next five years.
- Remaining as a disruptive shareholder would not appear to offer financial benefits to AkzoNobel. AkzoNobel could attempt to undermine the company but this would damage the value of its asset and the loss falls mostly on AkzoNobel (losing [X] per cent of every pound value destroyed) while the benefits (Metlac's lost sales) would be shared between AkzoNobel and other coatings suppliers, including PPG and Valspar.

6.18 Even if AkzoNobel wanted to remain as a shareholder and attempted to disrupt Metlac, as explained in Section 5 there appears to be limited ability for it to do so.

6.19 We therefore consider it more likely that Metlac would continue to be able to compete at least as strongly as it does at the moment.

6.20 [X]

AkzoNobel sells its stake in Metlac

6.21 [X]

6.22 It is not clear what buyer would be attracted to the stake for the same reasons that make holding this shareholding unattractive to AkzoNobel compared with the exercise of the call option [X]. In our view, this does not rule out the possibility that AkzoNobel could at some stage decide to sell the shareholding.

6.23 However, both the FQA and SHA and the by-laws contain pre-emption rights and accordingly both parties have the ability to buy any shares being sold by the other

party in preference to a sale to third parties, as long as they are willing to pay an equivalent price.

6.24 [REDACTED] In our view this indicates that the Bocchio family may be likely to exercise the pre-emption rights should any third party express an interest in purchasing the AkzoNobel shares. [REDACTED]

6.25 In our view, it is therefore possible that the Bocchio family could potentially offer to buy AkzoNobel's shares in Metlac and AkzoNobel's quotas in Metlac Holding. [REDACTED] This indicates to us that nothing would prevent AkzoNobel from selling its shares and quotas but there may be an issue with finding a buyer at a price acceptable to AkzoNobel.

6.26 We considered the time period over which we should assess the counterfactual. In this instance it appears to be relevant to look beyond 4 December 2012. [REDACTED] Although the management structure may change slightly after 2014, this does not appear likely to change the ability of the Bocchio family to control Metlac.

6.27 Following 2014, [REDACTED].

6.28 [REDACTED]

Provisional conclusion

6.29 In summary, we have considered two possible counterfactuals: AkzoNobel selling its shareholding in Metlac Holding to a third party (which may be the Bocchio family) or AkzoNobel keeping its shareholding. Whilst both seem plausible counterfactual scenarios, AkzoNobel has submitted that the latter is more likely. As the analysis does not change whichever counterfactual is used, as in both scenarios Metlac continues to

compete at the same level as it does currently, we have used the status quo counterfactual for our analysis. For the reasons set out above we have discounted a counterfactual scenario in which AkzoNobel is able to use its shareholdings in Metlac Holding and Metlac to diminish Metlac's ability to compete or in which Metlac management is unable to carry on running the company. For the reasons set out in Section 8, we consider for the counterfactual that Metlac would continue to grow at its current pace and continue with its current business strategy [✂].

7. Market definition

7.1 In this section we set out our provisional findings on the relevant markets. The purpose of market definition in merger analysis is to provide a framework for the analysis of competitive effects.⁴³

7.2 There are normally two dimensions to the relevant market: a product dimension and a geographic dimension. The relevant product market is a set of products that customers consider to be close substitutes. The relevant geographic market may be local, regional, national or wider.

Product market

7.3 The parties overlap in the supply of metal packaging coatings. There are four main end-use categories within this which are described in Section 2: B&B, Food, C&C and GL. As shown in Table 1, B&B can be further segmented into B2I, B2E and BE. Food, C&C and GL can also be segmented between coatings for internal and external application and ends.

⁴³ CC2, Section 5.2.

7.4 Markets are generally defined primarily on the basis of demand-side substitution.

However, we may aggregate several narrow relevant markets into one broader market on the basis of supply-side substitution when:

- (a) production assets can be used by firms to supply a range of different products that are not demand-side substitutes, and the firms have the ability and incentive to shift supply quickly (generally within a year) between these different products depending on demand for each; and
- (b) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.⁴⁴

7.5 On the demand side, the numerous different types of metal packaging coatings are not substitutable from a customer perspective. If the hypothetical monopolist test were applied to any one of these types of metal packaging coatings (eg internal coatings for steel three-piece food cans, or external coating for aluminium monobloc cans), it would find that customers would not switch to purchasing a different type of coating if the hypothetical monopolist were to raise the price of one of the products in the candidate market by approximately 5 per cent.⁴⁵

7.6 We have therefore examined the extent to which the products are substitutable on the supply side.

Supply-side factors

7.7 AkzoNobel submitted that the production processes for metal packaging coatings were generally similar across all segments, although there were points of distinction in the manufacture of B2I coatings. Further, AkzoNobel submitted that the classes of raw materials used for all segments of metal packaging coatings were substantially the same. The blending process is similar across all segments and converting a tank

⁴⁴ CC2, paragraph 5.2.17.

⁴⁵ CC2, paragraphs 5.2.10–5.2.16 describe how the hypothetical monopolist test may be applied.

or reactor to produce a different segment of coatings is straightforward and not particularly costly. In addition, regulatory requirements are broadly the same for the various internal, food contact coatings used in metal packaging products. However, the testing protocols may differ between segments depending on the contents of the final product—a factor that distinguishes internal from external coatings.

- 7.8 Metlac submitted that while there was a degree of supply-side substitutability across the segments within FCG, B&B should be treated separately. This is a distinction which a number of customers also supported.
- 7.9 There are important similarities on the supply side across all products. In most cases, AkzoNobel, Valspar and PPG are prominent suppliers, although their relative and collective strength is not the same for all products. The similarity in the set of suppliers reflects the technical similarity of the different products—many are variants of a small number of basic coating types; many can be made using the same equipment, or after modest modifications to that equipment.
- 7.10 In our view, the conditions of competition for various metal coating products on the supply side are sufficiently similar to enable us to consider two main product markets, notwithstanding that—as shown below—there are also differences in the conditions of competition within each of those markets. The reasons for not aggregating B&B and FCG together are set out in paragraphs 7.12 to 7.23 below.
- 7.11 In relation to aggregating products within B&B and within FCG, it is our view that the conditions of competition are not exactly the same for each product within these categories. The main reason the conditions of competition differ for the supply of various metal packaging coating types is because of the differences in switching costs created by the requirement to qualify each coating. This requirement inhibits

expansion of production into a new segment with ease or quickly shifting capacity across segments in response to an increase in demand or a change in competitive conditions in a segment. This switching or expansion cost is considered in more detail in paragraph 8.62. Conditions of competition also differ between segments due to commercial decisions of suppliers as to which segments to focus on supplying. Therefore, distinctions within B&B and FCG are significant to our analysis and we have considered possible differences between segments within B&B and within FCG in our competitive effects analysis.

Differences between FCG and B&B segments

7.12 We do not consider it possible to aggregate supply of FCG and B&B coatings on the basis of supply-side substitutability due to significant differences in the conditions of competition in these segments. These differences are considered below. Differences between segments within FCG and within B&B are also described where relevant.

- *Scale of operation*

7.13 Average monthly volume demanded by customers differs significantly between B&B and FCG and there are generally only a few main categories of coatings for B&B (internal (for steel or aluminium), external (for steel or aluminium), overvarnish for aluminium, rim coatings (for steel or aluminium), and internal and external ends coatings (for steel or aluminium)), whereas in the FCG sector there are hundreds of different types of coatings. The larger scale of operation needed to provide B&B coatings is indicated by Table 2. In addition, because of the speed at which B&B coatings are applied to large volumes of cans, the technical characteristics of B&B coatings are more complex. Also, an error in the coating can result in a much greater loss for the manufacturer than in other metal packaging areas, and the coatings manufacturer may be required to bear some or all of this loss if the coating is deficient.

TABLE 2 Monthly volume demanded to AkzoNobel in 2011 in the EEA

Type of coatings	Customers' average monthly volume (kg)
Beverage ends	[REDACTED]
Beverage external	[REDACTED]
Beverage Internal	[REDACTED]
C&C external	[REDACTED]
C&C internal	[REDACTED]
C&C others	[REDACTED]
Food external	[REDACTED]
Food internal	[REDACTED]
Food others	[REDACTED]
GL external	[REDACTED]
GL internal	[REDACTED]
GL others	[REDACTED]

Source: CC calculations based on AkzoNobel data.

Note: We exclude from our computation all transactions that had a 0 or negative volumes. However, the results are not significantly different if these transactions are included. [REDACTED]

7.14 Table 2 shows that the customers' average monthly volume placed with AkzoNobel for B2I is [REDACTED] as large as the average monthly volume for BE and [REDACTED] larger than the average monthly volume for B2E. This may have implications for the amount of capacity required for B&B production (particularly B2I) compared with FCG. Within the FCG segment, Table 2 also shows that the average monthly volume for food is around [REDACTED] as high as for C&C and GL. In addition, coatings that come into contact with food (particularly food internal coatings) have stricter regulations than C&C and GL.⁴⁶ Finally, the qualification of new products is longer (up to two years) as food contact coatings may require approvals by both the can manufacturer and its downstream food manufacturing customer, which may extend the timescale for qualification.

- *Production*

7.15 B&B cans undergo a significantly different manufacturing process from FCG cans, which means that coatings for B&B need to be applied at great volumes and speeds,

⁴⁶ In its observations on Metlac's initial submission, AkzoNobel submitted that the focus of regulation was on coatings which were in contact with food/beverages for human consumption. This primarily relates to internal coatings in the B2I segment (in which Metlac is not active) and in the and in the interior coatings for food two-piece cans and interior coatings for food three-piece cans segments. External coatings are not subject to extensive regulation in either B&B or FCG.

to supply large orders to major downstream customers very quickly. There are some important factors that distinguish B2I, BE and B2E. As explained in Section 2, internal beverage coatings are highly commoditized, with customers demanding large volumes and this may affect production facilities, as explained in paragraph 2.45. Manufacture of B2I also requires a reactor in order to economically produce epoxy resin. Unlike most other coatings, B2I coatings need to be able to be applied to the inside of a can using dispersion spraying techniques which apply the coating uniformly across the internal surface at great speed.⁴⁷

7.16 To withstand these different manufacturing processes, coatings must be formulated differently but this does not necessarily mean that separate production facilities are required for B&B, although a number of suppliers do use separate production facilities.⁴⁸ Therefore B&B coatings have significantly different formulations from FCG coatings, and within B&B coatings differ significantly between the segments.

- *Suppliers*

7.17 The four leading coating suppliers, AkzoNobel, Valspar, PPG and Metlac manufacture both B&B and FCG coatings. A number of smaller suppliers, including Grace, Salchi, Schekolin and Actega only produce FCG coatings. [X]

7.18 Within B&B, only AkzoNobel, Valspar and PPG supply B2E, B2I and BE. Metlac supplies B2E. There are specific production factors that distinguish B2I from B2E and BE, as explained in paragraph 7.15. These factors make it more costly for existing

⁴⁷ Specifically, B2I coatings must be applied much more thinly than FCG internal coatings—in fact as a spray rather than a coating.

⁴⁸ For example, AkzoNobel and PPG have separate factories. However, AkzoNobel submits that there is no technological reason why coatings for the B&B and FCG sectors could not be produced at the same plant as, with the exception of B2I, the production process and equipment required are the same for both B&B and FCG coatings. AkzoNobel has submitted that its use of separate factories for B2I coatings is due to the location of the reactors used in the B2I production process. Valspar manufactures coatings for beverage ends, general packaging and two-piece cans at one facility. Metlac manufactures B2E coatings at the same plant at which it manufactures FCG coatings. However, Metlac submits that its production lines dedicated to B&B coatings are kept entirely separate from other production lines and are located in separate areas fully dedicated to B&B.

suppliers of metal packaging coatings that do not produce B2I to enter this segment, implying that conditions of competition are not uniform across B&B.

7.19 Within FCG, where there is a very wide range of products, individual producers do not supply the full range of products across all segments.

- *Customers*

7.20 As explained in Section 2, customers tend not to purchase both FCG and B&B products—only Crown and Can-Pack have a significant presence across both segments. Within B&B, the customer set for BE differs from the set for B2E and B2I. There are four EEA customers for B2E and B2I (Rexam, Ball, Crown and Can-Pack), which manufacture beverage cans. The ends are supplied pre-coated to these four customers in the EEA by five aluminium and/or steel manufacturers (Hydro, Alcoa, Novelis, Constellium and Rio Tinto Alcan Inc (Alcan)). Similarly, within FCG, the customer set is different across Food, C&C and GL. With respect to Food, the top three customers account for over [51–60] per cent of purchases.⁴⁹ This contrasts with C&C and GL, where the top three customers in each segment account for approximately [21–30] per cent of demand, for C&C and GL respectively, by volume.^{50,51}

- *Shifting supply*

7.21 As the same production facility can be used to manufacture B&B and FCG coatings (B2I differs somewhat in that to be profitable it also requires upstream resin manufacturing facilities), capacity can theoretically be switched between the B&B and FCG coatings and available capacity would be applicable across the types.

⁴⁹ [X] and the share of demand made up by the top three Food customers may therefore be understated.

⁵⁰ CC calculation—see Appendix C, Table 1.

⁵¹ In relation to these figures for C&C and GL note that we did not receive data from all large customers in the FCG segment and it is possible that there are larger customers in each segment than the ones listed in paragraph 7.20.

- 7.22 We have received mixed evidence from suppliers regarding whether they do this in practice as some manufacturers isolate equipment or production facilities for particular coating types as noted in paragraph 7.16. As the industry has spare capacity, companies have not generally had to make the choice as to whether to utilize equipment for one type of coating production at the expense of another.⁵²
- 7.23 Qualification requirements, which can result in long time periods for qualifying particular coating types (eg internal coatings which come into contact with food or beverages), impact these switching decisions as even if a coating has previously been supplied to a customer, it will need to be retested if it has not been supplied to that particular plant; if the formulation has changed slightly; or if there has been a significant gap in time since it was last supplied to that plant. As noted in paragraph 7.11, this results in differing conditions of competition between product types despite the coatings being manufactured on the same production equipment.

Summary of product market

- 7.24 For the reasons described above in relation to scale of operations, supplier set and customer set, our provisional view is that there are separate markets for the supply of B&B coatings and the supply of FCG coatings. In our view this distinction reflects industry practice—the set of suppliers and customers is more distinct between B&B and FCG than between the various segments within FCG and B&B.
- 7.25 We acknowledge that there are differences in the conditions of competition between segments within both B&B and FCG. We have taken into account differences between the B2E, B2I and BE segments and between the Food, C&C and GL

⁵² AkzoNobel submitted that with the exception of B2I coatings, it frequently switched the production of coatings at its manufacturing facilities. PPG and Valspar submitted that they had not in the past switched production between product categories in response to changes in the competitive environment. In the case of PPG, this was because they had sufficient capacity available and it was easy to increase production. In the case of Valspar, this was because it already offered a full range of products.

segments when examining the competitive effects of the merger and are of the view that our conclusions would not change if narrower markets were defined.

Geographic market

- 7.26 AkzoNobel submitted that the market was at least EEA-wide in scope, if not global because:
- (a) the supply of metal packaging coatings generally took place from production facilities across Europe;
 - (b) the relevant coatings products were easily transported, and transport costs were low;
 - (c) customers typically purchased their requirements for at least the whole of Europe, and neither purchasing preferences nor prices varied significantly across Europe; and
 - (d) legal and regulatory requirements for coatings products were primarily based on EU legislation or were highly similar across Europe.
- 7.27 Metlac also submitted that the relevant geographic market was EEA-wide on the basis that:
- (a) a presence in the EEA was required in order to service customers' EEA premises;
 - (b) the quality of the packaging coatings manufactured for European customers was generally different than for customers in regions outside the EEA because coatings were subject to strict regulatory requirements within the EEA;
 - (c) there were higher transport costs for exporting products outside the EEA, including custom duties;
 - (d) an estimated 99 per cent of European demand for metal packaging coatings was met by coatings produced within the EEA; and

(e) prices differed significantly between the EEA and other regions (for products having equivalent quality standards, EEA prices were more than 10 to 12 per cent lower than prices in, for example, the USA).

- 7.28 There is some indication that the market could potentially be geographically wider than the EEA (suppliers supply EMEA-wide and in some cases globally from EEA plants; customers procure in some cases on a wider-than-EEA basis). However, the evidence provided to us shows that dynamics of competition seem generally to occur on an EEA-wide basis.
- 7.29 There are local dynamics in relation to some countries, for example some countries have higher food coatings consumption (Spain) compared with others which have a B&B focus (UK).
- 7.30 Most competitors suggested that there were no differences in customer preferences between UK and other EEA countries.⁵³ The exception is Actega, which noted that UK customers preferred to have suppliers with a UK presence. All competitors who responded also suggested that there were no material differences in the supply of metal packaging between the UK and other EEA countries. Two competitors did not comment on either point.
- 7.31 Whilst some customers have indicated that support from suppliers at customers' plants is important there is conflicting evidence on whether this means that suppliers need local support teams. The fact that Metlac supplies support to customers throughout EMEA, including in the UK, from its plant in Italy would seem to counter this.

⁵³ Diostyl suggested that very few can coatings manufacturers made any distinction between the different countries in Europe.

Summary of geographic market

7.32 For the reasons explained in paragraphs 7.26 to 7.31 above, we have provisionally concluded based on the evidence provided that there are no particular factors (such as national regulatory requirements, transport costs, local support requirements) which would indicate the conditions of competition for supply of metal packaging coatings differ significantly on a national basis within the EEA. In relation to the UK, there appear to be no specific UK customer preferences and no significant differences in supply to the UK. Nor is it generally necessary to provide local support to UK plants from the UK. Therefore, we have provisionally concluded that the relevant market is EEA-wide.

Provisional conclusions on market definition

7.33 We have provisionally concluded that the relevant markets on which to consider the potential effects of the merger are: supply of metal packaging coatings for beer and beverage metal packaging in the EEA (B&B market) and the supply of metal packaging coatings for metal packaging for FCG in the EEA (FCG market). However, there are differences in the conditions of competition between segments within both B&B and FCG. As such, we have taken into account differences between the B2E, B2I and BE segments and between the Food, C&C and GL segments when examining the competitive effects of the merger.

8. Competitive characteristics of the metal packaging coatings industry

8.1 The following section sets out factors affecting competition in the markets for supply of metal packaging coatings and considers current rivalry in these markets. More specifically, we have considered existing competitors to the merging parties, market concentration, growth, capacity, margins, switching and innovation. In light of these factors, we have considered current competition between AkzoNobel and Metlac in the relevant markets, focusing on pricing pressure exerted by Metlac; switching;

views from the parties, customers and competitors on the level of competitive constraint Metlac places on AkzoNobel and other suppliers; and the strength of competition provided by Valspar, PPG and smaller suppliers. Section 9 then considers the effect of the merger in the relevant markets in light of these factors.

- 8.2 As explained in paragraph 5.13, we found that AkzoNobel's shareholdings in Metlac Holding and Metlac do not significantly constrain Metlac's ability to compete or the manner in which it competes (and are not likely to do so). As such, these arrangements are not considered in this section. We have not seen any evidence that AkzoNobel's incentives to compete with Metlac are affected by any benefits it receives from these shareholdings (such as shareholder dividends) and we have therefore analysed them as independent competitors.
- 8.3 Both Metlac and AkzoNobel currently supply metal packaging coatings for B&B and FCG in the UK. Supply is carried out on at least an EEA-wide basis and the factors set out below which affect competitive rivalry in metal packaging coatings supply (for example in relation to market structure, growth, capacity, switching costs, etc) therefore also affect supply in the UK, as part of the relevant EEA markets. The information provided to us by the major customers of AkzoNobel and Metlac also relates to the UK as these customers purchase metal packaging coatings for supply across the EEA, including in the UK. The four largest B&B customers, who purchase all coatings for B2I and B2E, all have operations in the UK, as do the two large FCG customers who make up nearly [31–40] per cent of demand in the FCG segment. Underlying factors affecting existing rivalry in the relevant markets are therefore the same in the UK as elsewhere in the EEA, and any effects of the merger at the EEA level would affect purchasers of coating products with metal packaging manufacturing plants in the UK.

8.4 The main factors affecting existing rivalry in the B&B and FCG coating markets, and within segments of these markets, are supplier concentration and customer structure, explained in Sections 2 and 7 above. The merger is unlikely to have the same impact in segments of the markets due to structural differences in the conditions of supply and we have therefore analysed segments of the markets separately where relevant.

Market concentration

8.5 As described in paragraph 2.29, metal packaging coatings are supplied in the EEA by four major suppliers (AkzoNobel, Metlac, Valspar and PPG) and a number of smaller suppliers, some of them providing metal coatings for a few sub-segments and others offering products for a larger product range within the FCG market.

8.6 AkzoNobel is the largest supplier of metal packaging coatings (by volume and value) in the EEA. Valspar is the next largest supplier and PPG is significantly smaller. Metlac is the fourth largest supplier of metal packaging coatings. The parties have provided estimates for their market shares in the EEA and in various segments. We have made our own calculation of market share estimates, which show the parties' combined share of supply of metal packaging coatings in the EEA as [41–50] per cent by volume and [31–40] per cent by value. This is almost [21–30] per cent more than the next largest supplier (Valspar) by volume and [11–20] per cent more by value. Our estimates are set out in Tables 3 and 4 below and market shares for 2009 to 2011 are provided in Appendix F. Further details of market shares of suppliers of metal packaging coatings, including in the main segments of the relevant markets, are set out in Tables 4 to 8 below.

8.7 We did not receive responses from all competitors in the market and have therefore used AkzoNobel estimates of 'Others', minus volumes/values for additional information received from Schekolin, Salchi and Diostyl where relevant, to calculate

its market shares.⁵⁴ Using Metlac estimates of ‘Others’ would not have resulted in a significant difference in the parties’ combined market shares by value or volume (ie more than [redacted] per cent) except in the GL segment, where the difference was approximately [redacted] per cent by volume and [redacted] per cent by value.

TABLE 3 Market shares by volume in the EEA (2011)*

Supplier	B&B		FCG		Total	
	kt	%	kt	%	kt	%
AkzoNobel	[redacted]	[41–50]	[redacted]	[21–30]	[redacted]	[31–40]
Metlac	[redacted]	[0–10]	[redacted]	[11–20]	[redacted]	[11–20]
Combined	[redacted]	[51–60]	[redacted]	[41–50]	[redacted]	[41–50]
Valspar	[redacted]	[21–30]	[redacted]	[11–20]	[redacted]	[11–20]
PPG	[redacted]	[11–20]	[redacted]	[11–20]	[redacted]	[11–20]
Grace	[redacted]	[0]	[redacted]	[0–10]	[redacted]	[0–10]
Actega	[redacted]	[0]	[redacted]	[0–10]	[redacted]	[0–10]
Schekolin	[redacted]	[0]	[redacted]	[0–10]	[redacted]	[0–10]
Others	[redacted]	[0–10]	[redacted]	[0–10]	[redacted]	[0–10]
Total	[redacted]	100.0	[redacted]	100.0	[redacted]	100.0

Source: CC estimates.

*[redacted]

TABLE 4 Market shares by value in the EEA (2011)

Supplier	B&B		FCG		Total	
	€m	%	€m	%	€m	%
AkzoNobel	[redacted]	[31–40]	[redacted]	[21–30]	[redacted]	[21–30]
Metlac	[redacted]	[0–10]	[redacted]	[11–20]	[redacted]	[11–20]
Combined	[redacted]	[41–50]	[redacted]	[31–40]	[redacted]	[31–40]
Valspar	[redacted]	[31–40]	[redacted]	[11–20]	[redacted]	[21–30]
PPG	[redacted]	[21–30]	[redacted]	[11–20]	[redacted]	[21–30]
Grace	[redacted]	[0]	[redacted]	[0–10]	[redacted]	[0–10]
Actega	[redacted]	[0]	[redacted]	[0–10]	[redacted]	[0–10]
Schekolin	[redacted]	[0]	[redacted]	[0–10]	[redacted]	[0–10]
Diostyl	[redacted]	[0]	[redacted]	[0–10]	[redacted]	[0–10]
Salchi	[redacted]	[0]	[redacted]	[0–10]	[redacted]	[0–10]
Others	[redacted]	[0–10]	[redacted]	[0–10]	[redacted]	[0–10]
Total	[redacted]	100.0	[redacted]	100.0	[redacted]	100.0

Source: CC estimates.

8.8 Valspar and PPG are both NYSE-listed US companies. Valspar specializes in the production of a broad range of coatings, paints and varnishes and operates four plants in the EEA which are focused on the production of rigid metal packaging coatings. One of these plants is located in the UK. PPG operates five metal

⁵⁴ Salchi and Diostyl did not provide data by volume. Salchi did not provide a detailed apportionment of its sales in each FCG segment, but told us that its sales in value could be apportioned as follows: [redacted] per cent GL, [redacted] per cent C&C and [redacted] per cent Food.

packaging coatings plants in the EEA and specializes in the production of a broad range of coatings and speciality materials.

8.9 Of the smaller suppliers, Actega is a German manufacturer of coatings, focusing on coatings for food cans, general line and caps and closures. Actega has two production facilities in the EEA: one in Germany (ACTEGA Rhenania) and one in France (ACTEGA Rhenacoat). Actega is part of the Altana Group, which had turnover of €1.6 billion in 2011. Grace is a US-based manufacturer of coatings and sealants, which has expanded its presence in the European packaging coatings market via its acquisition of Grupo Sistiaga in 2007. It focuses on producing coatings for food cans, monobloc aluminium containers, and both beverage and food closures, with a minimal presence in the other segments of the market. Schekolin is a Liechtenstein-based coatings manufacturer with a focus on higher-value, speciality products. Salchi is an Italian manufacturer, founded in 1994. The business focuses on coatings for closures, general line and food cans. In 2010/11, Salchi expanded its offering outside Italy through the acquisition of the packaging coatings business of Rembrandtin. Diostyl is a Netherlands-based company, founded in 2008 by a group of people previously employed at international can-coating and can-making companies. It was set up to serve some of the smaller, niche segments of the FCG market and uses a Belgian toll manufacturer to manufacture its coatings. None of these smaller suppliers produces coatings for beverage cans.

8.10 In addition to these businesses, there are several other smaller coatings manufacturers active in the markets, including VPL—a German coatings manufacturer, founded in 2011, which manufactures a range of FCG and external beverage coatings via a toll manufacturing agreement; Tiger Coatings GmbH—a German coatings manufacturer, established in the 1930s and active in industrial coatings a recent entrant to metal packaging coatings for certain types of powder coatings; and

IPC Company Limited (IPC)—a producer of external beverage can coatings via a toll-manufacturing arrangement.

8.11 The positions of suppliers in metal packaging coatings reflect growth and success which has occurred on an opportunistic basis, determined by: the segments to which a supplier has focused on supplying; initial location of the supplier and any companies it has acquired; and the relationships the supplier has with particular customers. This pattern of growth is taken into account in our analysis of the likelihood of entry and expansion set out in Appendix G.

8.12 Tables 3 and 4 indicate that the structure of the B&B and FCG markets differ significantly, with the four largest suppliers making up over [91–100] per cent of the B&B market, compared with approximately [71–80] per cent of the FCG market. This is because customers for B&B coatings generally have larger volume requirements, leading to production on larger scales which fewer manufacturers can supply. In contrast, orders of FCG coatings are much smaller on average, often requiring very differentiated products, allowing smaller producers to enter certain sub-segments of metal coatings products.

8.13 Tables 5 and 6 show the parties' shares in the segments of the B&B market.

TABLE 5 Market shares by volume in the EEA (2011) in B&B, B2E, B2I and BE

Supplier	B2E		B2I		BE		Total B&B	
	kt	%	kt	%	kt	%	kt	%
AkzoNobel	[3]	[11–20]	[3]	[61–70]	[3]	[11–20]	[3]	[41–50]
Metlac	[3]	[21–30]	[3]	[0]	[3]	[0]	[3]	[0–10]
Combined	[3]	[41–50]	[3]	[61–70]	[3]	[11–20]	[3]	[51–60]
Valspar	[3]	[31–40]	[3]	[21–30]	[3]	[31–40]	[3]	[21–30]
PPG	[3]	[11–20]	[3]	[0–10]	[3]	[51–60]	[3]	[11–20]
Others	[3]	[0–10]	[3]	[0]	[3]	[0]	[3]	[0–10]
Total	[3]	100.0						

Source: CC estimates.

TABLE 6 Market shares by value in the EEA (2011) in B&B, B2E, B2I and BE

Supplier	B2E		B2I		BE		Total B&B	
	€m	%	€m	%	€m	%	€m	%
AkzoNobel	[X]	[11–20]	[X]	[51–60]	[X]	[11–20]	[X]	[31–40]
Metlac	[X]	[11–20]	[X]	[0]	[X]	[0]	[X]	[0–10]
Combined	[X]	[31–40]	[X]	[51–60]	[X]	[11–20]	[X]	[41–50]
Valspar	[X]	[31–40]	[X]	[21–30]	[X]	[31–40]	[X]	[31–40]
PPG	[X]	[11–20]	[X]	[0–10]	[X]	[41–50]	[X]	[21–30]
Others	[X]	[0–10]	[X]	[0]	[X]	[0]	[X]	[0–10]
Total	[X]	100.0	[X]	100.0	[X]	100.0	[X]	100.0

Source: CC estimates.

8.14 As Tables 7 and 8 show, Metlac supplies products at a comparable scale to AkzoNobel, Valspar and PPG in the Food and C&C segments, and also has a significant market share in the GL segment. In comparison with the three largest suppliers, Metlac's shares are lower by value than by volume, which is also true of [X]. We received evidence that both Metlac and [X] are low-priced suppliers and this is analysed further below in paragraphs 8.96 to 8.112

TABLE 7 Market shares by volume in FCG segments in the EEA (2011)

Supplier	Food		C&C		GL		Total FCG	
	kt	%	kt	%	kt	%	kt	%
AkzoNobel	[X]	[31–40]	[X]	[11–20]	[X]	[21–30]	[X]	[21–30]
Metlac	[X]	[21–30]	[X]	[21–30]	[X]	[11–20]	[X]	[11–20]
Combined	[X]	[51–60]	[X]	[31–40]	[X]	[31–40]	[X]	[31–40]
Valspar	[X]	[11–20]	[X]	[21–30]	[X]	[0–10]	[X]	[11–20]
PPG	[X]	[0–10]	[X]	[11–20]	[X]	[21–30]	[X]	[11–20]
Grace	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]
Actega	[X]	[0–10]	[X]	[11–20]	[X]	[0–10]	[X]	[0–10]
Schekolin	[X]	[0–10]	[X]	[0–10]	[X]	[0]	[X]	[0–10]
Others	[X]	[0–10]	[X]	[0–10]	[X]	[21–30]	[X]	[0–10]
Total	[X]	100.0	[X]	100.0	[X]	100.0	[X]	100.0

Source: CC estimates.

TABLE 8 Market shares by value in FCG segments in the EEA (2011)

Supplier	Food		C&C		GL		Total FCG	
	€m	%	€m	%	€m	%	€m	%
AkzoNobel	[X]	[31–40]	[X]	[11–20]	[X]	[11–20]	[X]	[21–30]
Metlac	[X]	[11–20]	[X]	[11–20]	[X]	[11–20]	[X]	[11–20]
Combined	[X]	[41–50]	[X]	[31–40]	[X]	[21–30]	[X]	[31–40]
Valspar	[X]	[11–20]	[X]	[21–30]	[X]	[0–10]	[X]	[11–20]
PPG	[X]	[11–20]	[X]	[11–20]	[X]	[21–30]	[X]	[11–20]
Grace	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]
Actega	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]
Schekolin	[X]	[0–10]	[X]	[0–10]	[X]	[0]	[X]	[0–10]
Diostyl	[X]	[0–10]	[X]	[0]	[X]	[0–10]	[X]	[0–10]
Salchi	[X]	[0–10]	[X]	[11–20]	[X]	[0–10]	[X]	[0–10]
Others	[X]	[0]	[X]	[0]	[X]	[11–20]	[X]	[0–10]
Total	[X]	100.0	[X]	100.0	[X]	100.0	[X]	100.0

Source: CC estimates.

8.15 The above tables show that AkzoNobel and Metlac compete in all segments of metal packaging coating except B2E and B2I and in all the segments in which they compete they are within the four largest suppliers. We have calculated concentration ratios according to the Herfindahl-Hirschman Index (HHI) based on the market shares above. These HHIs are set out in Appendix F. HHI is a measure of market concentration that takes account of the differences in the sizes of market participants, as well as their number, to measure the change in market structure resulting from the merger.⁵⁵ Our guidelines note that any market with a post-merger HHI exceeding 2,000 may be regarded as highly concentrated and a change between the pre-merger HHI and post-merger HHIs (or 'delta') of less than 150 in such a market is not likely to give cause for concern.⁵⁶ The HHI figures confirm that the B&B market is highly concentrated (with post-merger HHIs of [3,501–4,000] and [3,001–3,500] by volume and value respectively and deltas of [X] and [X]) and that the delta is significantly above 150. In relation to FCG, the HHIs also show a highly concentrated market (with post-merger HHIs of [2,501–3,000] and [2,001–2,500], by volume and value respectively) and with a significant deltas ([X] and [X], by value and volume). While HHIs are not in themselves decisive, they do indicate that this market is highly concentrated.

Growth

8.16 We have assessed Metlac's historical growth compared with that of the markets, in order to understand better the level of constraint it places on the larger suppliers and its position compared with smaller suppliers. Detailed information on this assessment is set out in Appendix H.

8.17 Supply of metal packaging coatings in the EEA has grown by approximately 11 per cent by volume and 27 per cent by value in the past three years. The B&B market

⁵⁵ CC2, paragraph 5.3.4.

⁵⁶ CC2, paragraph 5.3.5.

has experienced growth of 12 per cent by volume and the FCG market growth of 9 per cent. We acknowledge that in relation to the B&B market, where a larger proportion of demand is tendered in the form of multi-year contracts, market shares over a three-year period may not fully reflect competitive growth dynamics in the market.

- 8.18 Reviewing suppliers' growth by volume, both Metlac and AkzoNobel grew at a faster rate than their competitors between 2009 and 2011, with growth over the period of [21–30] and [31–40] per cent respectively. PPG's sales have [0–10] over the three years while Valspar's sales have fallen by [0–10] per cent.
- 8.19 In the B&B market both AkzoNobel and Metlac's volume sales have grown (by [41–50] and [11–20] per cent respectively in the past three years, and by [31–40] and [31–40] per cent in the past five years⁵⁷), whereas Valspar's sales have shrunk by [11–20] per cent in the past three years and PPG's level of sales have [0–10].
- 8.20 In the FCG market, AkzoNobel's volume sales have grown by [0–10] per cent, Metlac's by [21–30] per cent, Valspar's by [11–20] per cent and PPG's sales [0–10]. Of the smaller players, Actega has increased by [11–20] per cent, Grace by [11–20] per cent, Schekolin by [0–10] per cent and the remaining suppliers altogether have lost [11–20] per cent. Actega and Grace have been active in the FCG market for some decades and still have not expanded their shares above [0–10] per cent or used their positions with customers in this market to enter the B&B segment. It is pertinent to note that Metlac has followed a very different growth pattern to these two companies, when we review its growth over a longer time period.

⁵⁷ We only hold data on a five-year basis for AkzoNobel and Metlac.

8.21 However, it is not possible to draw strong conclusions from growth in this three-year period (for which we have market share information for AkzoNobel, Metlac and their competitors) given the lumpy nature of large contracts, particularly in the B&B market, which means that if we were to look across a longer period, we may see different fluctuations.

8.22 We do hold data over a longer period for AkzoNobel and Metlac, which provides a more robust indication of growth over time, as it reflects wins and losses of major contracts in the past five years (eg [X]). Details of sales by AkzoNobel and Metlac over a five-year period are set out in Tables 9, 10(a) and 10(b) below. A comparison of Tables 10(a) and 10(b) shows that virtually all of the increase in sales achieved by Metlac over this period has been in sales to EEA customers outside Italy where volumes have increased at a compound rate of [21–30] per cent a year.

TABLE 9 EEA sales volumes by AkzoNobel

<i>kt</i>							
Year	B2I	B2E	BE	C&C	Food	GL	Total
2007	[X]	[X]	[X]	[X]	[X]	[X]	[X]
2008	[X]	[X]	[X]	[X]	[X]	[X]	[X]
2009	[X]	[X]	[X]	[X]	[X]	[X]	[X]
2010	[X]	[X]	[X]	[X]	[X]	[X]	[X]
2011	[X]	[X]	[X]	[X]	[X]	[X]	[X]

Source: AkzoNobel.

Note: [X]

TABLE 10 EEA sales by Metlac

<i>kt</i>					
Year	B2E	C&C	Food	GL	Total
<i>(a) EEA (incl Italy) sales by Metlac</i>					
2007	[X]	[X]	[X]	[X]	[X]
2008	[X]	[X]	[X]	[X]	[X]
2009	[X]	[X]	[X]	[X]	[X]
2010	[X]	[X]	[X]	[X]	[X]
2011	[X]	[X]	[X]	[X]	[X]
<i>(b) EEA (excl Italy) sales by Metlac</i>					
2007	[X]	[X]	[X]	[X]	[X]
2008	[X]	[X]	[X]	[X]	[X]
2009	[X]	[X]	[X]	[X]	[X]
2010	[X]	[X]	[X]	[X]	[X]
2011	[X]	[X]	[X]	[X]	[X]

Source: Metlac.

- 8.23 To date, competition in the FCG segment between AkzoNobel and Metlac has been confined to markets outside Italy, [REDACTED]. In comparing the two firms' performance in recent years, we have therefore focused on the relative growth of Metlac's volumes (Table 10(a)) as well as its growth across the EEA (Table 10(b)) and on AkzoNobel's total EEA production. On this basis, Metlac's non-Italian EEA volumes have been increasing strongly in each main product segment since 2007. In contrast, AkzoNobel's sales volumes have shown small (less than [0–10] per cent) increases in B2E, Food and GL, and have declined in BE and C&C. Its sales in B2I have increased significantly.
- 8.24 We have examined Metlac's growth forecasts and compared these with AkzoNobel's forecasts [REDACTED]. An examination of these forecasts is set out in Appendix H.
- 8.25 Metlac told us that it expected an annual average growth of [REDACTED].
- 8.26 Third parties said that they were willing to grow their spend with Metlac, with [REDACTED]; and a large number of companies told us that they were testing BPA-NI products with Metlac along with other companies. Generally third parties confirmed that Metlac had growth potential.
- 8.27 Despite these indications of customers' willingness to expand purchases from Metlac, we regard Metlac's growth projections as optimistic, particularly in relation to the B2I and BE segments, which it does not currently supply. In our view it is more likely that, in the absence of the merger, Metlac would continue to increase its sales to EEA customers outside Italy in line with recent performance. Such a rate of growth would be significantly higher than the level of growth forecast by AkzoNobel for the Metlac business, as explained in Appendix H.

8.28 When asked why it had not accrued a more significant market share, Metlac told us that, despite its low pricing policy (which is analysed further in paragraphs 8.96 to 8.112 below), it could not expand more quickly in case it endangered quality and service standards. It emphasized that customer trust was paramount and therefore growth had to be at a pace which did not risk customer relationships.

8.29 As explained in paragraph 8.34 below, Metlac has provided information indicating that it is able to grow its sales significantly from the [redacted]kt produced in 2011 to [redacted]kt without seeking additional regulatory approvals and it believes further approvals for capacity of [redacted]kt could be obtained within three months.

8.30 In summary, Metlac's sales have grown in recent years at a faster rate than market growth and its projections indicate it plans to continue to grow aggressively. We believe that future growth by Metlac is likely, at its current rate.

Capacity

8.31 There is significant spare capacity in the metal packaging coatings markets generally. Table 11 summarizes relevant information provided by AkzoNobel, Metlac, PPG, Valspar and Grace on spare capacity in their plants.

TABLE 11 **Free capacity for large suppliers at the EEA level (2011)**

AkzoNobel	[redacted]
Metlac	Calculations include seven product groups, providing free capacity figures in the range of [redacted] per cent. However, see paragraph 8.33 below for caveats on these figures.
PPG	Estimates for five plants: average: [redacted] per cent; range: [redacted] per cent.
Valspar	Estimates for [redacted]: average: [redacted] per cent; range: [redacted] per cent.
Grace	Estimates for two plants: [redacted] per cent for both plants.

Sources: Responses to the CC market questionnaire.

- 8.32 The information presented in Table 11 suggests that the industry has substantial spare capacity. [REDACTED] We estimate there to be between 20 and 30 per cent free capacity in the market.
- 8.33 Metlac has submitted that the manner in which spare capacity is measured in the industry (production capacity is measured on the basis that each production vessel operates at its full capacity (ie is full), operates continuously (ie 24 hours a day, subject only to regular cleaning and/or maintenance), and that all batches are made to optimum quality in the shortest time only) is much higher than practical capacity because it is impracticable and/or uneconomic to switch vessels between different product families. Therefore, a plant could utilize 100 per cent of its theoretical capacity only if demand exactly matched the production capacity for each product family. This does not happen in practice, as demand fluctuates both in absolute terms and also in terms of product mix. It stated that it could not therefore estimate actual 'realizable' capacity, as production volumes realizable depended on how closely the mix of customer demand matched the manufacturer's theoretical capacity over a given period.
- 8.34 Metlac said that, as an example, it had the necessary authorizations to produce up to [REDACTED]kt in total. Subject only to a satisfactory fire and safety inspection, and some further minor investments in storage and blending tanks, Metlac estimated that within two to three months its existing site could produce at least [REDACTED]kt. All of these figures were well below its theoretical capacity of [REDACTED]kt.
- 8.35 However, an example weekly batch schedule provided by AkzoNobel in relation to its Vilafranca plant contradicted Metlac's statement that it was uneconomic to switch vessels between different product families, showing a switch between B2E and Food, and switches between Food and GL, Food and C&C etc. Valspar told us that its

plants were relatively dedicated to particular production but this could change from one year to another, depending on production plans/wins and losses. In its view, switching between product families (eg Food and B&B) came down to whether the product was technologically very similar and whether the batch size was very similar.

8.36 We acknowledge Metlac's comments on capacity figures which indicate that we may have overestimated the level of spare capacity in the markets. However, suppliers' views vary on whether it is difficult to switch production between coating types and Metlac has provided significantly higher spare capacity estimates than all other suppliers. In our view, the industry is characterized by a significant level of spare capacity.

Margins

8.37 The analysis of profit margins may provide additional insights into the potential impacts on competition of the proposed merger.

8.38 We have received information on margins from AkzoNobel, Metlac, Valspar, PPG, Grace and Actega. All suppliers except for [REDACTED] provided data which enabled us to calculate gross margins (price minus variable costs and fixed costs⁵⁸) and contribution margins (price minus variable costs). AkzoNobel only provided contribution margins. We note that contribution margins in the industry are not low ([REDACTED] per cent). If fixed costs are included in some cases margins fall below [REDACTED] per cent, but in general margins remain in the range of [REDACTED] per cent. In some cases, margins are significantly higher ([REDACTED] per cent).

8.39 AkzoNobel has submitted that contribution margins are not an indicator for profitability, and cannot be (and are not) used on their own to decide whether to

⁵⁸ We have not been provided with detailed definitions of fixed costs for the data supplied. However, parties have mainly included plant-related costs and some labour costs in their fixed costs.

expand into a certain segment or not. In particular, production and SAR (sales, technical service & distribution, admin & general, R&D) costs are not considered when contribution margins are calculated. However, AkzoNobel does take this contribution margin information into account to an extent in some of its business decisions—[✂].

8.40 We have not placed significant weight on the margin data provided, other than to note that contribution and gross margins are not low. In particular, we have not been able to use this margin data to carry out a merger impact analysis, given the differing bases on which margins were calculated by suppliers.

8.41 Further information on industry margins is set out in Appendix I.

Switching

8.42 As described in paragraphs 2.60 to 2.69, the process for qualifying new products with customers (and their customers) is a critical part of coatings supply. Customers require metal packaging which must meet strict quality and temporal requirements and it is paramount for them that coatings are fit for purpose. Customers have told us that reliability of the coating is a crucial factor in relation to which they judge their suppliers.

8.43 In our view, the costs associated with switching is the critical factor preventing conditions of competition being equalized across the range of metal packaging coating products within the FCG market and across the range of metal packaging coating products within the B&B market, and also across the markets. This is consistent with our understanding that despite the existence of spare capacity, suppliers in this industry do not make marginal decisions to increase production of

higher margin products or that competition in high margin segments becomes more intense so that returns are ultimately equalized across all products.

- 8.44 In order to assess the significance of switching barriers in the competitive dynamics of the industry, we therefore consider the timescales and costs of switching. These barriers are relevant both to the ability of smaller suppliers to expand their product offerings in a timely manner (eg in relation to post-merger price increases) and to the ability of customers to switch to other suppliers in the event of a price increase. The timeliness of switching depends on a number of factors, as explained in paragraphs 2.61 and 2.62 above, including whether the customer has another supplier qualified for the relevant product, whether that supplier has supplied the same factory with that product in the past and how recently it has done so. Customers' and suppliers' estimates of time taken to qualify products are explored further below.

Time

- 8.45 Appendix G assesses in detail the likely time to qualify various coatings, noting that whilst some coatings may only take six to 18 months to qualify, coatings which come into contact with food and beverages take longer (generally 18 months to two years, sometimes up to four or five years).
- 8.46 As noted in section 2, qualification is an ongoing process for the suppliers, with AkzoNobel, Metlac and PPG all providing information showing that they qualify a large number of products per year, although a number of these products will be slightly reformulated versions of existing products, rather than entirely new formulations.

- 8.47 Metlac stated that ‘the most important constraint to the expansion of production [by smaller suppliers] is represented by the complex approval procedures established by the main customers’.
- 8.48 AkzoNobel estimated that the process for external coatings took six months or less and that for internal food coatings it could take up to 24 months.
- 8.49 PPG indicated that the time taken to qualify new products was between six months and two years. Valspar stated that the qualification of a new product could take between one and five years, with external coatings sitting at the lower end of that range. It indicated that a food contact product would take at least 18 months, if not more.
- 8.50 Ardagh told us that it took between 12 and 18 months to qualify an external coating for food cans, whilst the process of qualifying an internal coating could take significantly longer (giving an example of 48 months).
- 8.51 [X] noted that the development of a new product could take ‘a few months’, followed by 12 to 18 months to get the coatings qualified with customers, although this time frame could be shortened if the customer sought to ‘push’ the process.
- 8.52 Diostyl told us that customers could be reluctant to switch products due to the uncertainty over whether new formulations would meet customer requirements in all circumstances. This view was supported by Ardagh, which noted that it was possible to spend over a year testing a new product and then discover that it did not function as required. Ardagh indicated that companies had a greater incentive to incur the costs and potential risks of switching where they were buying large volumes of a homogeneous product.

8.53 In relation to B2E coatings specifically, parties provided differing estimates of how long it would take to switch suppliers (between six months and four years).

8.54 [REDACTED]

8.55 Rexam stated that it took between [REDACTED] to switch to a different supplier of external beverage can coatings, including the time required to qualify the new product.

8.56 Crown estimated that entry into the external beverage coatings segment by a coatings manufacturer that was already active in another segment would take between 12 and 24 months.

Cost

8.57 We have received conflicting evidence on the costs of switching and consider that it is likely to differ depending on the product being switched (eg cost of shutting down a customer or end-customer production line to run final tests on coatings will be much greater in the B&B sector than in the FCG sector) and the operational constraints of each production line.

8.58 Metlac submitted that although the entire market was theoretically contestable each year (with the exception of supplies to Rexam, whose tenders cover a period of three years), given the presence of switching costs, customers generally try to maintain the same supplier from one year to another. Metlac submitted that switching was time-consuming and very expensive, a view supported by some customers. Metlac estimated that the cost to approve a new B&B product (from laboratory trials to final approval) could exceed €1 million, but added that this estimate had not been quantified in detail. It stated that the exact cost was not known by Metlac but it was in any case 'very expensive'. This was also due to the fact that testing new coatings

required dedicating the production line of a B&B can manufacturer to the trial, inevitably resulting in a period of interruption and loss of production.

8.59 AkzoNobel submitted estimates of testing costs for products which were borne by customers, which indicated that testing a new B2I product was significantly more expensive (approximately €[REDACTED]) than testing a new external FCG product (approximately €[REDACTED]), but substantially less than submitted by Metlac. However, costs for testing a new internal food coating (at approximately €[REDACTED]) were similar to the cost for testing a new B2I coating. Costs for testing products which were not new were somewhat lower, but still significant (AkzoNobel estimated that the costs for customers were approximately €[REDACTED] for a B2I product, €[REDACTED] for an internal coating for a three-piece food can and €[REDACTED] for an external coating for a two piece can.

8.60 PPG provided information showing that it took between [REDACTED] months and [REDACTED] years to develop a new product, with associated costs of development, qualification and certification ranging from €[REDACTED]k to €[REDACTED]k.

8.61 Rexam told us that switching time and costs would apply to the B&B sector as follows:

Overvarnish will take [REDACTED] to switch supplier, including the period of qualification. The cost to switch would be approximately €[REDACTED] and would involve [REDACTED] people and we would need to alter [REDACTED] machines ([REDACTED]). Inside spray would take approximately [REDACTED] to switch supplier, including the period of qualification. The cost to switch would be approximately €[REDACTED] to Rexam, more to the supplier, and would involve [REDACTED] people [REDACTED] and we would need to alter [REDACTED] machines per plant to achieve this. Base coat spray would take approximately [REDACTED] to switch supplier, including the period of qualification. The cost to switch would

be approximately €[X] and would involve [X] people and we would need to alter [X] machines per plant to achieve this... and so on. Basecoats can be time consuming even with qualified products in particular plants. This can lead to high costs for supplier and Rexam and be very time consuming.

8.62 Our provisional view is that supply is characterized by relatively significant costs and time to switch to a previously unqualified product. These costs vary between market segments and by the factors set out in paragraphs 2.60 to 2.67 above, with qualification taking longer for B&B products and coatings in the Food and C&C segments which come into contact with food or beverages. In some instances customers' decision to switch is thwarted by products failing to qualify pack test or industrial scale tests—despite years of investment in the process. Switching does occur in the industry, as examined in paragraphs 8.90 to 8.95. However, there are barriers to switching to unqualified products: for the reasons explained above it requires forward planning on the part of the customer and, in relation to product segments where qualification takes longer (eg B&B coatings, food contact coatings), a level of customer sponsorship may be required for suppliers to start supplying in these segments. As noted in paragraph 2.69, there is an ongoing qualification cycle for suppliers and customers and qualification is one of the most crucial factors of the competitive dynamic in the metal packaging coatings industry.

Innovation

8.63 The metal packaging coatings industry is mature, with the same key technologies having been used for decades. However, innovation is still an important part of the competitive process for some product lines, with suppliers competing to develop new chemical formulations to make metal packaging look better or stand out from competing products. We have also been told that the industry is on the cusp of the

most significant change in decades, as it may be required to stop using products containing BPA, which would affect both the B&B and FCG markets.

8.64 We were told that Metlac is a recognized innovator both generally and also, more specifically, in relation to development of BPA-NI products. There are some indicators that AkzoNobel may also regard Metlac's innovativeness in a positive light—although AkzoNobel does not agree that Metlac is particularly innovative:

(a) AkzoNobel indicated to us that [REDACTED].

(b) [REDACTED]⁵⁹

8.65 One third party indicated that Metlac's R&D would be a rationale for AkzoNobel's purchase of Metlac. Appendix J sets out further details of the parties' developments of BPA-NI portfolios together with information from AkzoNobel's internal documents and from third parties in relation to innovation in the metal packaging coatings industry.

8.66 In relation to BPA-NI, information from customers provides a picture of Metlac and Valspar leading the development of BPA-NI products, with AkzoNobel and PPG lagging. Some of the smaller suppliers are developing products for particular segments.

8.67 In relation to product range, we have received conflicting evidence from AkzoNobel and Metlac as to whether Metlac has a wide product range. We received the general impression from third parties of Metlac having a product range similar to the three large suppliers but perhaps with a greater willingness to develop niche products for customers should they request them.

⁵⁹ See Appendix J for further details.

8.68 [REDACTED]

TABLE 12 [REDACTED]: Active coating products per suppliers, 2011

Supplier Total

[REDACTED]

Source: [REDACTED]

8.69 Ardagh noted that the smaller suppliers focused on particular products (Grace on food external end coatings, Actega on external coatings) and that Salchi currently did not have products for all the segments and developing such products could take significant amounts of time.

8.70 Some customers indicated that they were concerned about reduced product range as a result of the merger—see Appendix J for further information.

8.71 In summary, we found evidence that customers regard Metlac highly in terms of product innovation.

Current competition between AkzoNobel and Metlac

8.72 We considered the extent of competition between AkzoNobel and Metlac. When considering this competition we also considered the extent to which Metlac is a significant competitive force more generally in the market, such that its removal would be more likely to result in unilateral effects (see our guidelines, paragraphs [5.4.5](#) and [5.4.12](#)).

8.73 AkzoNobel submitted that Metlac is not its closest competitor and that their product ranges were largely complementary.

8.74 Our view is that this is true to an extent in the B&B market, where Metlac does not supply B2I or BE. However, the parties compete in B2E and FCG, as AkzoNobel's Acquisition Request acknowledges:

(a) In relation to beverage externals, [REDACTED];

(b) In relation to product technologies, [REDACTED].

8.75 Metlac has stated that AkzoNobel is its closest competitor.⁶⁰

8.76 We have reviewed the level of competition between AkzoNobel and Metlac, based on evidence of the pricing pressure Metlac places on AkzoNobel; evidence of procurement in the markets and switching between suppliers; and information from third parties and AkzoNobel's internal documents.

8.77 In relation to the switching and pricing analysis, we note that paragraph 2.52 describes the manner in which customer contracts are formed, finding that tenders are more common in B&B, fixing supply for large volumes over multi-year periods. All supply is subject to some price instability, due to fluctuation in raw material chemicals prices, which makes suppliers reluctant to enter into long-term or fixed price contracts.

The MIS database maintained by AkzoNobel

8.78 RBB Economics submitted a paper on behalf of AkzoNobel which concludes that 'outside of Italy, Metlac is a minor player that is far less close a competitor to AkzoNobel than Valspar or PPG'. The analysis uses data from AkzoNobel's MIS database that reports AkzoNobel's estimates of the volume of products sold and the identity of the supplier on each product line in the EEA over the period 2006 to 2011.

⁶⁰ Hearing with Metlac, 16 August 2012. 'AkzoNobel is our main competitor. We find AkzoNobel everywhere.' We do not have internal documents from Metlac evidencing its views on closeness of competition with AkzoNobel. Metlac does not generally produce board papers etc containing analysis of its competitors, partly due to not wanting this information to be shown to the AkzoNobel directors on its board.

RBB Economics used this data to estimate the proportion of the total EEA market (excluding Italy, where AkzoNobel and Metlac have not competed) that has been supplied to product lines where AkzoNobel and specified other suppliers are currently or have been active at some point during the period 2006 to 2011. RBB Economics' analysis shows that on the basis of the AkzoNobel estimates of sales, [REDACTED] per cent of the total volumes sold across all segments were for customers that were supplied by both AkzoNobel and Valspar at some point for a common product at a given production facility. The overlap with PPG is [REDACTED] per cent but the overlap with Metlac is only [REDACTED] per cent (a level of overlap which is much lower than Metlac's market shares). Furthermore, RBB Economics noted that in virtually all cases where both AkzoNobel and Metlac supplied a customer, there was at least one additional supplier.

8.79 AkzoNobel submitted that this database was the most comprehensive set of data on AkzoNobel's activity in the packaging coatings market and should be used for an analysis of closeness of competition—instead of the procurement, switching and tender data set out below, which is incomplete.

8.80 Based on this analysis, AkzoNobel submitted that Metlac was a more distant competitor to it than Valspar or PPG and that AkzoNobel was not aware of instances where either AkzoNobel or Metlac was a customer's primary supplier and the other party was the only qualified back-up supplier.

8.81 [REDACTED] However, we were able to compare AkzoNobel's MIS database estimates for Metlac sales to particular customer plants with information held on Metlac's own customer transaction database. This comparison covered approximately 30 per cent of the Metlac-related information in the MIS database. We found very significant

differences between AkzoNobel's estimates of Metlac's sales to these plants and Metlac's actual sales to these customers. [REDACTED]

8.82 [REDACTED]

8.83 However, further information provided to us by Metlac confirmed this limitation. To assess the extent of this limitation we asked for information from Metlac regarding plants where it is qualified to supply but has not supplied in the past. Metlac provided the following examples to us in relation to its largest customers: at nine plants supplied by AkzoNobel, Metlac is also approved to supply although it has not currently supplied to date (two B&B externals to [REDACTED]; seven FCG to [REDACTED]); whilst at a further 17 plants owned either by [REDACTED], which are already supplied by both Metlac and AkzoNobel, Metlac has customer approval to supply additional products to those which it has sold to date. Neither of these types of competitive interaction would be captured in the MIS database.

8.84 The MIS database that AkzoNobel has provided is only comprehensive for AkzoNobel and to the extent we can test the database we have serious concerns regarding its accuracy, for the reasons set out in paragraphs 8.81 to 8.83. Whilst we have only been able to obtain partial data regarding pricing and switching in the industry (particularly for the FCG market), the MIS database does not allow us to build a more accurate picture of competitive rivalry across the industry. We have therefore provisionally concluded that the information in the database is likely to be inaccurate and cannot be relied on to draw robust conclusions regarding the specific level of competition between AkzoNobel and Metlac.

Other evidence of competitive overlap

8.85 To analyse the level of rivalry between Metlac and other suppliers, including AkzoNobel, in the markets for supply of metal packaging coatings, we have also reviewed evidence on samples of customer procurement events supplied by AkzoNobel and evidence on customer switching among suppliers in the market. We based our analysis on the following information, which is described in detail in Appendix K:

- (a) Evidence provided by AkzoNobel summarizing [REDACTED] procurement instances which occurred between 2008 and 2011. Of these, [REDACTED] related to product instances outside the EEA which we excluded for the purposes of our analysis. AkzoNobel told us that for the FCG market the information only covered about [REDACTED] per cent of the total EEA sales value, and possibly significantly less.⁶¹ In the B&B segment, the coverage is higher as formal tenders are used more often. Based on a rough estimate, AkzoNobel told us that the information would cover approximately [REDACTED] per cent of the total EEA sales value.⁶²
- (b) Information provided by AkzoNobel regarding tenders which occurred in the B&B market.
- (c) Information provided by Metlac regarding wins and losses in recent years.
- (d) Information submitted to us by customers regarding switching which has occurred in recent years.

8.86 On the basis of the procurement data provided, Metlac participated in [REDACTED] of all [REDACTED] procurement events [REDACTED].

⁶¹ AkzoNobel stated that this was calculated as follows: The value of all contracts of FCG customers in the EEA was summed and added to half of the value of the sum of the [REDACTED] contracts ([REDACTED] manufactures in both the FCG and B&B segments); when only the volume was listed, an average price computed from the other contracts was used. This was then set in proportion to the total FCG segment size of €[REDACTED] million. AkzoNobel told us that some customers were active outside the EEA, and some of the contracts would have run for less than the four-year period covered by the [REDACTED] procurement instances. AkzoNobel said that the proportion of the market covered by the database would be overstated by this simplified calculation, and in reality be less than [REDACTED] per cent. We have not been able to replicate these calculations.

⁶² AkzoNobel told us that this calculation was based on the same logic as above and the proportion was likely to be overstated due to products included in the list being shipped outside the EEA.

8.87 [redacted] of the [redacted] procurement events evaluated were in B&B. Metlac participated in only [redacted] of these.⁶³ It was a successful bidder in [redacted] procurement events that it took part in (although these events may have involved multiple product types and Metlac may not have bid for each product, as it does not supply B2I or BE, or won business for each product that it bid for within the contract).⁶⁴ Additional tender evidence on B&B formal tenders was provided by AkzoNobel and is described below. This showed that Metlac was one of four main suppliers of B&B coatings and in terms of volume it won a similar share of business as PPG.⁶⁵ This showed that Metlac is a strong competitive constraint on the other suppliers, when it participates.

8.88 [redacted] of the [redacted] procurement events were in FCG. In FCG, Metlac participated in [redacted] events ([redacted] per cent of the total) and won some business in [redacted] of which AkzoNobel also participated. AkzoNobel was a successful bidder in [redacted] per cent of the [redacted] procurement events (it participated in [redacted] per cent of these events). Smaller players participated in [redacted] per cent of events and at least one smaller player was successful in winning some business in [redacted] per cent of these FCG procurement events. A more detailed analysis of this information is set out in Appendix K.

8.89 In our view the procurement data submitted by AkzoNobel provides evidence of AkzoNobel and Metlac competing in both the B&B and FCG markets. The procurement data also provides evidence that smaller suppliers participate and win in a significant number of the FCG procurement events. However, given the relatively low proportion of demand represented by the FCG information, and our inability to estimate what proportion of actual switching in the FCG market this represents, we cannot draw strong conclusions on the level of competition between the parties from this information alone.

⁶³ Metlac would not have participated in procurement events within B&B which involved only B2I and BE.

⁶⁴ Of the [redacted] procurement events in B&B, [redacted] were exclusively for BE or B2I coatings which Metlac does not produce.

⁶⁵ AkzoNobel, Valspar, PPG and Metlac were the only competitors in B&B.

Switching analysis

8.90 The evidence that was available to us did not enable us to build a complete picture of switching behaviour carried out in the market in the past three to five years, although overall, the evidence indicates that the level of switching is quite low, especially in the FCG segment. This may well be due to the existence of the significant switching costs described in paragraphs 8.42 to 8.62, particularly in FCG but there also may be other reasons for the low level of switching.⁶⁶ While the evidence presented below on FCG may only account for a relatively small proportion of supply, it could nonetheless account for a larger proportion of the total volumes switched. We have considered the evidence in this context.

8.91 In relation to the B&B market, detailed information on recent tenders in the market provided by AkzoNobel showed that, Metlac participated in [X] out of these [X] tenders and won B2E business in each of them. For [X] in which Metlac participated, AkzoNobel was a competitor, along with PPG and Valspar. This information, together with AkzoNobel's statement that it has [X] to Metlac, reinforces our finding in paragraph 8.87 above that Metlac is able to compete effectively for business vis-à-vis AkzoNobel, Valspar and PPG in the B2E segment of the B&B market.

8.92 Information submitted by Metlac regarding volumes won between 2009 and 2011 showed that of Metlac's total wins of [X] tonnes in the B&B market, [X] tonnes or [X] per cent were from AkzoNobel and in the FCG market [X] per cent were from AkzoNobel. Furthermore, around [X] per cent of Metlac's total wins came from AkzoNobel in the period 2009 to 2011. This represents a larger amount of switching from AkzoNobel than would be expected given AkzoNobel's market shares. This is only a selection of switching data provided by Metlac, and may not reflect switching

⁶⁶ The BKartA found that there was little switching in the industry. Paragraph 99 of its decision suggests: 'The supplier switch analysis revealed that the customers of metal packaging coatings only change back and forth between the individual suppliers of metal packaging coatings to a restricted degree'. And footnote 48 suggests: 'between 2009 and 2011 the highest quota of change between two suppliers was 6.2 per cent'.

across the entire B&B and FCG markets. We are unable to identify whether this switching information overlaps with the [REDACTED] procurement events in FCG identified by AkzoNobel and described above.

- 8.93 We reviewed a small sample of FCG switching data provided by six customers, some of which have metal packaging coating plants in the UK.^{67,68} This data showed that Metlac won approximately [REDACTED]kt out of the [REDACTED]kt or [REDACTED] per cent which were switched by [REDACTED] in the FCG market for the years 2009/10 and 2010/11. [REDACTED] these switches were to Metlac from Valspar (approximately [REDACTED]kt out of [REDACTED]kt). Approximately [REDACTED]kt of [REDACTED]kt won were switched to Metlac from AkzoNobel, and [REDACTED]kt from PPG. Switching data provided by [REDACTED] for 2008 to 2010 showed that Metlac won [REDACTED]kt of [REDACTED]kt or [REDACTED] per cent of switches by these customers in the FCG market for relevant period.
- 8.94 We cannot draw strong conclusions from this data as it is a very small FCG switching sample, both in terms of the proportions of the markets it represents (as the customers were not asked to provide information on all volumes they had switched, but only changes of at least 10 per cent compared with the previous year or changes of at least 20 per cent over the entire period) and in terms of the number of years it covers.
- 8.95 Based on the procurement and switching evidence we have seen, we are of the view that Metlac is already a strong competitor in the markets for B2E coatings and FCG coatings. This evidence has been provided by customers with facilities across the EEA, including significant customers for metal packaging coatings in the UK.

⁶⁷ Some of this switching data was originally provided to the BKartA. See Appendix K for details.

⁶⁸ Customers also provided switching data for the B&B markets. As shown in paragraphs 8.91 & 8.92 above, we have received detailed evidence of switching between the four suppliers in the B&B market, which this further evidence reiterates.

Pricing pressure

- 8.96 We have received evidence from third parties which purchase a substantial share of their demand from Metlac that it is one of the lowest-priced competitors in the supply of metal packaging coatings and that its pricing is used to extract better terms for customers even when the customer does not switch to Metlac. We have therefore considered the extent to which Metlac is currently a significant constraint on the larger suppliers, particularly AkzoNobel, due to it supplying coatings at lower prices than most other suppliers. This constraint will not always show up in switching data as Metlac's prices may be used to bring down prices of other suppliers, in situations where no switch to Metlac occurs.
- 8.97 We were told by customers that purchase a substantial share of their demand from Metlac that it was often the lowest-priced supplier. As a result, we sent a questionnaire to customers asking them to provide details of any instances in the past five years where Metlac's lower pricing was a factor used in pricing discussions with other metal packaging coatings suppliers, in order to successfully drive a lower price from those other suppliers. We also asked customers to estimate the proportion of pricing discussions with metal packaging coatings suppliers where Metlac's lower pricing is referenced (and the proportion of their total volume of metal coatings purchases that was affected by these discussions). Alternatively, if Metlac's pricing was not used as a negotiating factor with other suppliers any more frequently than any other metal packaging coatings supplier's prices are used to negotiate a lower price, customers were asked to indicate this.⁶⁹
- 8.98 Of the 20 respondents, ten customers claimed to have been using Metlac's low prices or quotes of low prices to lower the prices of the other suppliers; one customer

⁶⁹ AkzoNobel submitted that the threat of switching to Metlac had not been used as a 'stick' to reduce AkzoNobel's prices any more than it had been used to reduce other suppliers' prices. We disagree with AkzoNobel's comment regarding Metlac's pricing as it specifically asked customers to identify where it used other suppliers' prices as a 'stick' more than it used Metlac's prices in this manner, as shown by the responses in paragraphs 8.98.

stated that it had not used Metlac's pricing as a negotiating factor with other suppliers any more frequently than others to negotiate lower price; three customers stated that they had not used Metlac's prices to drive down the prices of competing suppliers and three customers submitted that Metlac was not one of their suppliers and therefore they had not used its prices to drive down prices for other suppliers. Three customers provided responses which did not answer the question.

- 8.99 The extent to which Metlac's prices or price quotes were used in negotiations with other suppliers varies. In some cases, Metlac's low prices were only used to inform customers about what target price levels should be for particular products. In other cases, Metlac's low price quotes were used more explicitly in pricing negotiations.
- 8.100 Three customers provided specific examples of how Metlac's prices have been used to bring down pricing generally in negotiations with suppliers. In some cases, competitors were not able to match Metlac's prices, and Metlac won business, whereas in others the competitors did reduce their prices and keep the supply contract. For the three customers these contracts related to significant proportions of their business in the relevant period, as shown in Appendix L. One of these customers told us that it would use smaller suppliers in a similar manner to how it used Metlac, 'to keep the larger suppliers honest' ([redacted]). The evidence indicated that a number of customers claim to use Metlac's low pricing as a 'stick' to reduce the price offered by their other suppliers, and that they do not use other customers' prices in the same manner. The constraint that Metlac places on the markets, in the segments to which it supplies, appears to be equally strong across different competitors and different segments.
- 8.101 We have examined whether this strategy of low pricing is sustainable by Metlac. Metlac told us that in some instances the low pricing may be used as an incentive to

persuade a supplier to switch to it. However, it also noted that it believed it had a lower cost base than some of its competitors, which enabled it to offer lower prices. We have not been able to compare cost information for AkzoNobel and Metlac. We note that there is a general industry perception that Metlac is a low-cost producer. As indicated by the customer comments set out in paragraphs 9.30 and 9.43 below, customers have not indicated that AkzoNobel is a low-priced supplier and we have not received evidence that AkzoNobel is a low-cost producer.

8.102 We also reviewed information provided by six customers, [REDACTED], to the BKartA in the context of its review of the effects of the proposed merger in Germany. Customers were asked to describe how the prices of the five most important packaging coatings purchased by their company have developed in recent years and to provide average prices (€/kg) for each year.⁷⁰ These six customers described Metlac as one of their five most important suppliers.

8.103 These customers' responses, as well as information submitted separately to us by [REDACTED] are summarized in Appendix L.⁷¹ We do not have access to the full set of customer responses from the BKartA. However, we estimated that these customers represent [61–70] per cent of B&B coatings demand in the EEA in 2011 and [31–40] per cent of FCG demand in the EEA in 2011 ([51–60] per cent of Food demand, [11–20] per cent of C&C demand and [21–30] per cent of GL demand). They also represent a significant proportion of UK demand for these products. These percentages refer to the total purchases of these customers in the EEA and not to the specific set of products for which we have compared prices.

⁷⁰ In its market questionnaire to customers, the BKartA asked the following specific question: "Please describe how the prices of the five most important packaging coatings purchased by your company have developed in recent years. Please indicate the average purchase price (net/€/kg) of the respective supplier for the respective year. If you have purchased the same product from several suppliers, please indicate their prices separately. Please give a rough estimation of the average proportion (in percentage) this product accounts for in your EEA-wide purchase volume of metal packaging coatings."

⁷¹ The remaining [REDACTED] customers, for which the CC has evidence from the BKartA, did not use Metlac as a supplier for their five most important packaging coatings and their information cannot therefore be used to compare Metlac's prices with others. These customers are [REDACTED], who provided similar tables to the other [REDACTED] customers but did not include Metlac as a supplier.

- 8.104 In relation to B&B, for the [REDACTED] customers for which we have information ([REDACTED]⁷²) for a set of specific products Metlac was the lowest-priced provider in [REDACTED] of [REDACTED] instances⁷³ with a price advantage ranging between 1 and 25 per cent (in nine instances the price advantage was larger than 10 per cent). On [REDACTED] it was the lowest-priced provider alongside PPG and in [REDACTED] instances it was not the lowest-priced provider (in [REDACTED] instances AkzoNobel was the lowest-priced supplier).
- 8.105 In the most recent year for each product for which we have this information, Metlac was the lowest-priced provider for all B2E products (in [REDACTED] Metlac's price advantage was over 10 per cent).
- 8.106 In relation to Food, we reviewed information from [REDACTED] purchasers [REDACTED]^{74,75}) for [REDACTED] types of products. For [REDACTED] products which Metlac supplied AkzoNobel was also a supplier to the same customer at some point in time. Out of [REDACTED] instances for which we could run this comparison Metlac was the lowest-priced supplier in [REDACTED] instances. Metlac's price advantage ranged between 1 and 23 per cent (in [REDACTED] instances the price advantage was over 12 per cent).
- 8.107 For the most recent year for which we have data Metlac was the lowest-priced supplier for [REDACTED] Food products examined (in [REDACTED] instances Metlac's price advantage was over 12 per cent).
- 8.108 In relation to C&C, we reviewed information on pricing provided by [REDACTED] customers [REDACTED]⁷⁶) for [REDACTED] types of products. For [REDACTED] products which Metlac supplied AkzoNobel was also a supplier to the same customer at some point in time. Out of [REDACTED] instances for which we could run this comparison Metlac was the lowest-priced supplier in [REDACTED]

⁷² [REDACTED]

⁷³ An 'instance' in this context is a year for which data has been provided.

⁷⁴ [REDACTED]

⁷⁵ [REDACTED]

⁷⁶ In terms of total purchases in the EEA these products represent, respectively, [REDACTED].

instances. Metlac's price advantage ranged between 1 and 24 per cent (in [X] instances the price advantage was over 10 per cent).

8.109 For the most recent year for which we have data Metlac was the lowest-priced supplier for [X] C&C products examined (in [X] instances Metlac's price advantage was over 12 per cent).

8.110 Overall, the evidence presented above showed that while Metlac was not always able to supply the lowest prices across the entire period to the customers it supplied, in the large majority of instances for which we have data it was the lowest-priced supplier. In particular, the data and analysis suggest that Metlac had a price advantage especially for the B&B products where it competes and FCG (C&C). For FCG (Food) Metlac showed a strong price advantage overall but less so for the most recent year for which we have data.

8.111 Whilst Metlac's prices were found to be likely to provide a level of constraint on the pricing of AkzoNobel, PPG, and Valspar, this is only one of the factors in the competitive mix. This may partially explain why despite being the lowest-cost supplier, Metlac had not managed to gain more market share. Another possibility is that Metlac has not sought to expand too rapidly at the expense of reliability. Finally, there is evidence that Metlac's low prices have been used by some customers as a means to negotiate reductions in the prices offered by incumbent suppliers; such reductions may have enabled incumbents to retain the business. Where Metlac sought to compete for customers, it was often successful, as shown by the switching and procurement information set out in Appendix K.

8.112 The pricing information examined by us indicates that Metlac is a low-priced provider and its prices are used to constrain pricing in the relevant markets, including markets

where AkzoNobel supplies. This evidence has been provided by customers with facilities across the EEA, including significant customers for metal packaging coatings in the UK. Further details of our pricing analysis is set out in Appendix L.

Other evidence of closeness of competition

- 8.113 We have reviewed other internal documents provided by AkzoNobel. Neither its [✂] nor its SWOT analyses⁷⁷ for particular customers indicate that AkzoNobel views Metlac as a close competitor across the board. The SWOT analyses [✂].⁷⁸
- 8.114 The majority of customers see AkzoNobel and Metlac as being competitors. In particular 12 out of 18 customers that responded to our questionnaire regarded them as competitors, with eight of them regarding them as close competitors (at least in some segments). Of the remaining six, three customers are of the view that AkzoNobel and Metlac are not close competitors and one customer does not form an opinion as it does not have business contact with Metlac. Two customers did not answer this question.
- 8.115 Valspar, Actega, Schekolin and Grace view themselves as competing with Metlac and AkzoNobel in all the segments in which they are present, whereas PPG indicates that it competes more with AkzoNobel and only occasionally with Metlac.

Constraint from larger suppliers

- 8.116 As shown by the market share and switching data above, Valspar and PPG also compete with AkzoNobel and Metlac to supply metal packaging coatings for B&B and FCG. They have not grown in recent years and are not generally seen as particularly price competitive by customers, as explained in the following paragraphs. Each has a

⁷⁷ A SWOT analysis is a strategic planning method used to evaluate the Strengths, Weaknesses/Limitations, Opportunities, and Threats involved in a project.

⁷⁸ AkzoNobel submitted that these slide packs were not intended to reflect the market as a whole, but to analyse the particular customer/supplier relationships with identified key accounts.

level of excess capacity. On this basis, we have considered the level of constraint Valspar and PPG currently place on AkzoNobel.

8.117 We have seen evidence of dynamic competition between AkzoNobel and Valspar in the B2I segment of the B&B market, as evidenced by the large switch in volume from [REDACTED]. In the B2E segment, both [REDACTED] have both switched volumes among the four suppliers.

8.118 The BKartA asked customers 'Do you have the impression that there is intense competition between these suppliers (AkzoNobel, Valspar and PPG) and that they exert pricing pressure on one another? In the past five years, did you notice any peculiarities in their price setting behaviour (striking similarities, striking differences)?' We reviewed the customer responses to the BKartA questionnaires from [REDACTED]. These customers make up over 81 to 90 per cent of the B&B purchases and approximately 41 to 50 per cent of FCG purchases.⁷⁹

8.119 Their responses to a questionnaire from the BKartA indicated that the majority of customers believe that there is a relatively little competition between AkzoNobel, PPG and Valspar on price and these suppliers tend to adopt similar pricing and commercial strategies.

8.120 Seven out of eleven respondents were of the view that there is relatively little price competition between the three suppliers. These respondents represent customers which purchase both B&B and FCG coatings. Three suppliers did not express opinions. In the case of one customer it had not been supplied by PPG and Valspar on a regular basis. The other customer ([REDACTED]) is the only customer that did not raise concerns, saying that the competition between the three suppliers is 'healthy'.

⁷⁹ See Appendix C, Table 1.

- 8.121 One FCG customer ([REDACTED]) mentioned that Valspar and PPG's prices had increased more than the other suppliers' prices in the last four years. In explaining why it had significantly reduced its purchases from AkzoNobel, another FCG customer ([REDACTED]) stated that 'due to huge price increments of the "three main suppliers" and looking for our economic survival we have moved from big suppliers to medium/small suppliers which have more flexibility in prices and maintain good capacity/quality/service'.
- 8.122 A number of additional companies noted to us the lack of competitiveness of the three large suppliers, particularly in relation to price.
- 8.123 One customer ([REDACTED]) said that before Metlac's entry Valspar, AkzoNobel and PPG were not competing on innovation either. It stated that, they 'seemed quite happy to sell their basic products for as high a price as possible without the need to develop special, niche and brand differentiating products'.
- 8.124 Customers ([REDACTED]) have somewhat confirmed the view expressed in the responses to the BKartA, ie historically PPG and Valspar have not been strong competitors to AkzoNobel and customers would not therefore expect them to exert a strong competitive constraint after the merger. More specifically:
- (a) One customer ([REDACTED]) said that Valspar or PPG were not delivering the high-volume, low-cost, low-price items, like three-piece internal gold and some three-piece internal white—those were really the big volumes—and external end coatings.
 - (b) Another customer ([REDACTED]) said that it did not like to do business with Valspar: 'their service is appalling, their prices are far, far too high, so we were trying to get away from Valspar as a supplier'.
 - (c) One customer ([REDACTED]) said that

[REDACTED] once Metlac have arrived and are part of the bidding process.

They really shook up, for us, what used to be quite a tight pricing, and hardly ever changing [marketplace], so actually they opened it up for us.

(d) In response to the question if it sees other suppliers (for example, PPG and Valspar) changing their behaviour to try and compete away some of that market share which AkzoNobel has gained, one customer ([REDACTED]) said [REDACTED].

8.125 Diostyl noted that Metlac was, for a number of historical reasons, significantly more efficient than the other big suppliers (AkzoNobel, PPG and Valspar), and it was therefore able to exert a significant competitive pressure.

8.126 Our provisional view based on the basis of growth, pricing, switching and customer evidence, Valspar and PPG do not currently compete particularly aggressively on price with AkzoNobel, and have not grown sales as significantly as AkzoNobel and Metlac have grown sales in recent years.

Constraint from smaller suppliers

8.127 In relation to the smaller suppliers, our market share calculations (based on volume for the entire metal packaging coating industry) show Metlac (with [11–20] per cent of supply) to be closer to PPG (with [11–20] per cent) than to the smaller players, none of which has more than a [0–10] per cent share of the total market. Grace has a share of [0–10] per cent and [0–10] per cent of the FCG market, which comes from sales in Food ([0–10] per cent share), C&C ([0–10] per cent share) and just [0–10] per cent in GL; Actega has a share of [0–10] per cent and [0–10] per cent in the FCG market, which comes from C&C ([11–20] per cent), GL ([0–10] per cent) and Food ([0–10] per cent). Salchi has a share of [0–10] per cent by value and [0–10] per cent in the FCG market (C&C [11–20] per cent, Food [0–10] per cent, GL [0–10] per

cent).⁸⁰ Schekolin has a share by volume of [0–10] per cent and [0–10] per cent in the FCG market ([0–10] per cent Food, [0–10] per cent C&C). None of these companies is present in B&B. Other smaller suppliers which comprise approx [0–10] per cent of the total metal packaging coatings supply, ([0–10] per cent of B&B, [0–10] per cent of FCG (of which: [0–10] per cent of Food, [0–10] per cent of C&C and [21–30] per cent of GL)) are most prominent in C&C and GL. Overall the share of smaller suppliers has fallen by approximately 20 per cent during the past three years, partly due to industry consolidation.⁸¹

8.128 Smaller suppliers do not have a significant presence in B&B. VPL and IPC supply small amounts of particular types of coatings. These two companies currently provide niche products in small volumes and do not constrain the larger B&B suppliers. One customer ([REDACTED]) told us that it was developing a further company for supply of overvarnish. For the reasons set out in paragraphs 9.107 to 9.118 below it is likely to take them years to grow to a sufficient scale to that of Metlac in the B&B market.

8.129 On the basis of these responses and also for the reasons set out in Section 9 in relation to time frames for entry and expansion, (paragraphs 8.45 to 8.56, 9.108 to 9.118 and Appendix G) we do not consider that smaller suppliers currently constrain the conduct of AkzoNobel, Valspar or PPG to a significant extent in the B&B market, particularly in the B2E segment. Based on the evidence we have seen, we have no reason to believe that this position would change post-merger.

8.130 We have provisionally concluded that the role of small suppliers is significant in relation to the FCG market, where there are a number of very small suppliers and three suppliers with market shares in the region of [0–10] per cent (Grace, Salchi and Actega). One smaller competitor provides a range of products (unlike the very small

⁸⁰ Salchi did not provide figures by volume. Other figures in this paragraph are by volume.

⁸¹ See Appendix G for a list of exists from the industry, all of which were in the form of purchases by other suppliers.

suppliers), and is starting to expand supply. It sees the merger as creating further opportunities for it to expand.

8.131 The information on growth shows that whilst these small suppliers have recently been growing at a higher rate than the FCG market overall, some of them have been present in the market for a similar period to Metlac but have not grown to present the same level of constraint on the larger suppliers that Metlac shows. Third parties have not described the smaller suppliers as innovative, dynamic or expansionary, which is how Metlac is characterized.

8.132 One customer ([REDACTED]) told us that it had tried to foster smaller players but they had fundamental issues such as manufacturing, capability, capacity, access to raw materials and technology development. [REDACTED] Metlac had been able to grow in a unique manner on the back of its strong position in Italy, where there was high demand for coatings, and because it had always been very efficient. [REDACTED]

8.133 One customer ([REDACTED]) explained that, in relation to developing smaller suppliers, 'There is always opportunity there, but considering the re-qualification times it would take quite a while. It is one thing to want to develop a supplier; it is another thing for the supplier to want to be developed, and so you have to have the right will on both sides, and getting that balance is often a lot easier said than done'. In relation to why Grace, Actega and Salchi could not replace Metlac, it said that Grace was focused on food external ends and did not currently have the technology in other products. It said that Salchi 'do not have enough products for all the segments, so they have to go through a learning curve, which in our industry takes some time – so, to redevelop new products – but again, in the frame of the BPA-NI project, they are given all the opportunity to bring technical solutions and be tested' and that Actega 'are mostly present on external coatings'.

8.134 AkzoNobel's 2009–2013 Packaging Coatings Strategy [X].

8.135 In our provisional view, the smaller suppliers do not constrain AkzoNobel, Valspar and PPG in the B&B market. Their role is significant in the FCG market, where they have been growing. However, customers have told us that these smaller suppliers do not generally have the ability to expand in the manner Metlac has done and that they focus on particular market segments, which may hinder their ability and desire to expand. We further consider the role of small suppliers in the FCG market in the context of merger effects in Section 9.

Provisional conclusion

8.136 We have been provided with evidence of an industry in which both AkzoNobel and Metlac have grown while Valspar and PPG have not.

8.137 In B&B, tender data covering a large proportion of purchasing in the market for recent years shows Metlac increasing its sales of B2E and AkzoNobel winning significant volumes of B2I sales. Information from the two companies to which Metlac supplies B2E indicates that Metlac offers low prices compared with the other suppliers.

8.138 In relation to FCG there is a range of large and small suppliers, and Metlac generally offers low prices, which a number of customers submitted they use to bring down the offers of other suppliers. Metlac and some smaller suppliers have grown in this market in recent years, on the basis of price competitiveness. These smaller suppliers have grown in the segments within which they were already active, demonstrating that the customer switching costs outlined in this section are most relevant in relation to suppliers' ability to expand into new segments or product lines where they do not have a reputation with customers, and where customer sponsorship may be required for growth.

- 8.139 In an industry where suppliers have the manufacturing equipment to produce most coatings, their ability to switch quickly to compete on price in particular segments is constrained by two factors: qualification costs and customer preferences regarding access to suppliers. Customers' supply choices are dictated by three particular factors: reputation; technological ability/ability to innovate and formulate coatings; and appetite to compete across the industry. In relation to reputation, only the three largest suppliers and Metlac have a reputation with customers for being able to provide high-quality coatings with strong service levels across a wide range of products. Other suppliers' reputations are only in relation to particular market segments. The same applies in relation to technological ability. In relation to the final factor, appetite for growth, this seems to be Metlac's particular strength. These dynamics will be particularly relevant to the analysis in Section 9 of whether customers could sponsor entry or expansion to counter any post-merger effects.
- 8.140 In our view the evidence, in particular on pricing policies, indicated that Metlac exerts a significant constraint on the behaviour of the larger suppliers. It has steadily gained market share by offering low-priced, technologically sound products, without losing profitability. There is some evidence that its ability to provide nimble, innovative service is highly valued by customers, including those customers which make up a large proportion of industry demand in the EEA and the UK.
- 8.141 We note that the evidence provided to us did not allow us to build up a complete picture of pricing or switching in the relevant markets. We acknowledge that our understanding of these markets is therefore based on this partial data and we have placed significant weight on the views of customers, which represent all the main customers in the B&B market and the two largest customers and some key medium-sized customers in the FCG market, all of which represent the key customers for metal packaging coatings in the UK.

8.142 The pricing information examined by us indicates that Metlac is a low-priced provider and its prices are used to constrain pricing in the relevant markets, including markets where AkzoNobel supplies. This evidence has been provided by customers with facilities across the EEA, including significant customers for metal packaging coatings in the UK. Further details of our pricing analysis is set out in Appendix L.

8.143 In Section 9, we consider the effect on the markets of the acquisition of Metlac by AkzoNobel.

9. Assessment of the competitive effects of the merger

9.1 In considering whether the merger may give rise to an SLC in the supply of metal packaging coatings in the UK, we have considered:

(a) loss of actual competition in supply of metal packaging coatings. We have analysed this in relation to the B&B and FCG markets separately, and have also considered the effect of the merger in particular segments of these markets (with a focus on the B2E segment of the B&B market and the Food segment of the FCG market); and

(b) loss of potential competition in B&B, focusing on B2I and BE.

9.2 Our analysis first considers merger effects which are likely to be relevant for both loss of actual and potential competition across all markets. It then considers the likely effect of the merger on B&B coatings due to loss of actual competition, the likely effects for FCG coatings and finally considers the likely effects of the merger in B&B due to loss of potential competition.

9.3 We have considered the impact of the transaction on metal packaging coatings supply in the UK. Both Metlac and AkzoNobel currently supply metal packaging coatings for B&B and FCG in the UK. Whilst Metlac sales in the UK are small,

particularly in the FCG segment, they are growing, and the constraint imposed by Metlac on suppliers of metal packaging coatings in the EEA has the same relevance to UK customers. On the basis that the markets are EEA-wide, the transaction will affect UK consumers beyond those coatings customers with factories located in the UK. Supply is carried out on at least an EEA-wide basis and to the extent that the merger affects competitive rivalry in metal packaging coatings supply (in relation to price, quality, product range, etc) these effects will impact the product offering supplied into the UK.

Unilateral effects analysis

- 9.4 As shown by the market shares set out in Section 8, the relevant markets would be characterized by a relatively high degree of concentration and relatively large post-merger market shares.
- 9.5 Against that backdrop, two aspects of the merger are particularly relevant to the CC's assessment. First, paragraphs 5.4.5 and 5.4.12 of our guidelines state that:⁸²
- [5.4.5] 'Unilateral effects resulting from the merger are more likely where the merger eliminates a significant competitive force in the market. For example, the merger may involve a recent entrant or a firm which was expected to grow into a significant competitive force or otherwise to provide a significant competitive threat to other firms in the market (eg by virtue of having a novel business model or a reputation for aggressive price cutting). Unilateral effects are more likely where customers have little choice of alternative supplier [...].'
- 9.6 Second, a significant proportion of large and small customers which provided us with evidence indicated that they have significant concerns about the transaction. They

⁸² Paragraph 5.4.12 of CC2 refers to the wording of paragraph 5.4.5. Paragraph 5.4.12 refers to analysis of differentiated product markets and paragraph 5.4.5 to analysis of undifferentiated product markets.

have commented on the particular competitive force that Metlac brings to the markets and which they see as being removed by the transaction and not able to be replicated by smaller suppliers or by a change in conduct on the part of the larger suppliers. We acknowledge that we have only received responses from a selection of customers in the industry. However, these customers account for a significant proportion of metal packaging coatings demand in the UK. When considering these customer concerns, we have placed most weight on the evidence provided regarding Metlac's low pricing strategy, where the evidence we received is generally consistent from both small and large customers, across the B&B and FCG markets.

9.7 Our provisional view is that paragraph 5.4.5 of CC2 is relevant here because against a backdrop of high market concentration, Metlac has grown from being a small supplier to competing at a similar level to the three larger suppliers in the segments where it competes, as shown by the analysis of growth in Appendix H. Other smaller suppliers have been in the market for some time but have not similarly grown their market shares or moved into the B&B market, where the level of supplier concentration was particularly high, in the way that Metlac has.

9.8 From 1997, Metlac was able to benefit from working with ICI (now AkzoNobel) to supply its customers in Italy, and then leverage those customer relationships to start competing with AkzoNobel and other suppliers to supply outside Italy. It has priced aggressively whilst offering high-quality products, which was made possible by what is perceived in the industry as a low cost operation based on production efficiencies. As such, Metlac currently exerts a significant constraint over the larger suppliers, including AkzoNobel. This business model is different from that of other small suppliers in the industry and not one which can be quickly replicated in the views of some customers.

- 9.9 We have considered whether AkzoNobel is likely to remove Metlac's innovative character from the market post-merger.
- 9.10 We saw no reason for AkzoNobel to seek to denigrate Metlac's strengths post-acquisition, particularly in relation to innovation, an area where AkzoNobel has been perceived as lagging behind its competitors. In our view, AkzoNobel would be likely to keep developing BPA-NI products using Metlac technology, to counteract a perceived weakness in its portfolio.
- 9.11 However, Metlac's innovative and dynamic qualities might be severely weakened or even removed merely through the process of its absorption into a large multinational company with different aims, processes and procedures for product development, sales and R&D and through the loss of key personnel.
- 9.12 In relation to Metlac's product range, it seems unlikely that AkzoNobel would continue to offer Metlac's entire range and to develop niche products in small volumes, since this would be contrary to what customers have told us that the three larger suppliers do. AkzoNobel acknowledged that some product rationalization would occur but said it would not stop supplying products where there was customer demand for them.
- 9.13 Reduced product range would affect all segments but may be more likely to affect the FCG segments, as there are far more niche products supplied to these segments by Metlac. We have also considered whether Metlac's low pricing and dynamic growth will be lost to the industry as a result of the merger or whether there would be an incentive for AkzoNobel to retain these characteristics.
- 9.14 [✂]

- 9.15 In relation to Metlac's past growth, AkzoNobel submitted that [X].
- 9.16 We do not consider this argument to be valid for a number of reasons: [X].
- 9.17 We have analysed Metlac's financial information to assess whether Metlac's profitability has in fact decreased in the past five years. Metlac increased its revenues (net of rebates) from €[X] million in 2007 to €[X] million in 2011. This growth does not appear to have occurred at the expense of its profitability: its EBITDA increased during the same period from €[X] million to €[X] million with the result that its EBITDA margin as a percentage of net sales increased from [X] per cent to [X] per cent.
- 9.18 We have also considered AkzoNobel's incentive to remove Metlac as a direct competitive constraint to it in the relevant markets. However, as explained in Section 8, we have received evidence that the parties compete in both B&B and FCG. Evidence provided shows that in the segments in which it competes, Metlac is an important constraint on AkzoNobel, via its low pricing, strong product quality and innovation and willingness to provide a wide range of products. We have also been provided with evidence showing that AkzoNobel competes strongly in the relevant markets, whilst Valspar and PPG's offerings are somewhat weaker. There is therefore an incentive on AkzoNobel to remove Metlac as a constraint on it and the result of this removal will give it the potential ability to raise prices.
- 9.19 This is also an unusual situation in that AkzoNobel's incentives to remove Metlac could potentially be dampened by the fact it currently receives dividends from its shareholding in Metlac. As explained in paragraphs 5.13 and 8.2 above, we understand that Metlac is acting as an independent competitor to AkzoNobel and we

have not seen evidence that shareholder dividends from Metlac have affected AkzoNobel's incentives to compete.

- 9.20 On the basis that AkzoNobel is removing a company which constrains it from the markets and this company is the low-priced supplier in the markets, we consider it likely that AkzoNobel would maintain its current pricing strategy and that customers would lose the benefits they currently enjoy from Metlac as a low-priced supplier.

Multi-sourcing

- 9.21 Packaging manufacturers frequently source from several coatings suppliers to ensure security of supply and preserve competition. As a result, the merger may cause a reduction in the parties' sales post-merger in situations where both AkzoNobel and Metlac supply or are qualified to supply to a given customer.
- 9.22 AkzoNobel submitted that post-merger, [REDACTED]. It estimated that losses would be up to €[REDACTED], which the CC estimates would reduce its share of supply by approximately [REDACTED] per cent.
- 9.23 AkzoNobel's Acquisition Request assumed that [REDACTED].
- 9.24 Crown told us that if the merger were to proceed, it would attempt to develop the smaller suppliers in the market further in order to take some business away from a combined AkzoNobel-Metlac business.
- 9.25 We are of the view that if customers were to move suppliers to protect their multi-sourcing strategy in the manner suggested by AkzoNobel, they may need to qualify a new product, which imposes costs, takes time and so is a source of customer detriment. In our view, this detriment occurs particularly in situations where a

customer needs to qualify new products (rather than switching to already qualified products or to products it has previously used) as there are qualification barriers to suppliers expanding in a timely manner to counter any such price increase. We cannot quantify the proportion of cases where new products would have to be qualified as opposed to any switching to already qualified products.

9.26 In light of the above factors, we then consider specific effects in the B&B and FCG markets.

B&B

9.27 We have considered the extent to which removal of Metlac as a significant competitive force in the B&B market, particularly the B2E segment, would affect competition in that market. In our view, the B2E segment is a substantial part of the B&B market as it accounts for 20 to 30 per cent of the market.

9.28 In our view, any likely effects would be in relation to price and non-price aspects such as innovation. Service and product quality are factors on which the parties compete, but these factors are also critical for customers and we consider it unlikely that the merger would have any significant effect on these factors, due to the stringent reliability requirements of the B&B market.

9.29 For the reasons set out in Section 8, we consider that AkzoNobel and Metlac compete to supply B2E coatings to customers. We regard Metlac as exerting significant pricing pressure in the B2E segment of the B&B market. This is a substantial segment of the B&B market. As explained, Metlac also represents a potential constraint to AkzoNobel in the B&B market via its entry into BE and B2I.

9.30 We have also taken account of the fact that [REDACTED] customers expressed concern about the effects of the merger, in particular loss of competitive pricing in the market. [REDACTED] customer did not have concerns about the merger. In response to our questionnaire, the [REDACTED] customers responded as follows:

- [REDACTED]: 'The situation on the market will deteriorate since the number of independent suppliers and the level of competition will decrease. The number of independent suppliers will decrease what can influence the prices for lacquers used by [REDACTED].' In relation to the effect of the merger in particular segments it told us that: 'such a situation will force us to look for alternative sources of supply and run next long-lasting implementation processes'.

- [REDACTED]

- Rexam:

For B&B, we [REDACTED] believe that the market will revert to the supply situation before 2008. We believe that the merger will reduce competition [REDACTED]. In relation to the effect in particular segments, Rexam only do B&B, and this is the most restricted market in the metal coatings business. [REDACTED]

9.31 [REDACTED] was unconcerned by the merger as it only used Metlac for one of its B&B products ([REDACTED]) and it would have [REDACTED] approved suppliers of [REDACTED] in 2013 for its next contract period ([REDACTED]). [REDACTED] told us that 'it is always disappointing to lose a supplier in the marketplace; however, this particular one, because of the limited portfolio – ie one to two products that we buy from Metlac – we see it as very low-impact on [REDACTED]'. It confirmed that it did not see the merger as affecting its ability to drive lower prices from other suppliers.

9.32 Metlac's entry to this market is unique in the industry—it has entered the B&B market from the FCG market and managed to gain significant market share in the segment

in which it competes, with a product that its competitors acknowledge as strong. Its entry was sponsored to a significant extent by American National Can (later bought by Rexam),⁸³ which began purchasing B2E coatings from Metlac (through ICI) in Italy in 1998 and made a strategic decision to grow Metlac's supply outside Italy.

9.33 In relation to post-merger pricing in B&B, as noted in paragraphs 9.18 to 9.20 we consider it likely that AkzoNobel would change Metlac's pricing strategy post-merger. More specifically, we would expect to see an overall increase in prices sought by suppliers when B2E contracts currently supplied by Metlac were rebid; in situations where current AkzoNobel contracts were rebid we would also expect to see an overall increase in prices paid by producers, as Metlac would have been removed as a potential low price competitor for these contracts.

9.34 As described in paragraphs 8.128 to 8.129 above we do not consider that smaller suppliers currently constrain the conduct of AkzoNobel, Valspar and PPG to a significant extent in the B&B market and have no reason to believe this will change post-merger.

Constraint from larger suppliers in B&B

9.35 We assessed the extent to which Valspar and PPG would be likely to constrain the merged entity, so that any post-merger price rise or reduction in quality of offering would not be profitable for AkzoNobel. Given that Metlac currently exerts a significant pricing constraint on all suppliers of B2E coatings, we have considered whether removal of this constraint would result in a significantly lower level of competition in the market.

⁸³ Rexam acquired American National Can in July 2000.

- 9.36 Whilst customers for B&B have indicated that in the event of a price increase by AkzoNobel/Metlac post-merger they could switch to Valspar and PPG, we are of the view that it is possible that Valspar and PPG would follow any price increase instituted by AkzoNobel, if their prices are not already higher. This would be consistent with evidence we have received of their past behaviour, outlined in paragraphs 8.116 to 8.126 above, and we have seen no reason to indicate that their behaviour would be likely to differ in the absence of Metlac.
- 9.37 In relation to B2E supply, the customers most directly affected would be [REDACTED]. [REDACTED] said that Valspar and PPG would be likely to follow a price increase by the merged company. [REDACTED] said that it could also potentially move to [REDACTED].
- 9.38 In our view there is conflicting evidence on the level of constraint AkzoNobel would face from Valspar and PPG in the B&B market. Whilst there is past evidence of switching (particularly between AkzoNobel and Valspar in supply of B2I), AkzoNobel and Metlac have been the most recent beneficiaries of switching. We have not seen any evidence of past behaviour that either Valspar or PPG have been willing to compete vigorously on price in the way Metlac has done. Metlac currently constrains Valspar and PPG and the disappearance of Metlac would also remove a competitive constraint on these suppliers, possibly leading to less vigorous price competition when contracts currently held by these two companies are rebid.
- 9.39 In summary, the merger will remove a potential entrant from the B2I and BE segments, which reinforces our conclusion that the merger will result in unilateral effects in the B&B market (see paragraphs 9.61 to 9.96).

FCG

9.40 We have considered the extent to which the removal of Metlac as a significant competitive force in the FCG market, particularly in the Food segment, which is a substantial part of the FCG market, (where the combined post-merger market share would be approximately 51 to 60 per cent by volume and 41 to 50 per cent by value), may result in an SLC. As shown by the HHI figures set out in Appendix F, the delta (or change in concentration levels) in the FCG market is particularly high: [1,001–1,500] by volume and [501–1,000] by value, and even higher for the Food segment ([1,001–1,500] by volume and [1,001–1,500] by value). The merger would combine the two largest suppliers by volume in the FCG market. In our view any likely effects would be in relation to both price and non-price aspects such as product range, service, quality and innovation.

9.41 For the reasons set out in Section 8, we consider that Metlac exerts significant pricing pressure on other suppliers in the FCG segment.

9.42 In relation to the FCG market, [redacted] of the large customers which responded to our questionnaire expressed concern about the effects of the merger on competition in the supply of metal packaging coatings.⁸⁴ The customers generally expected a negative impact for their own business, mostly in terms of reduced number of suppliers and higher prices but also as less innovation, lower product quality and narrower product range. Two customers did not expect any significant change. A further customer, Caldicot which is UK-based, told us that it did not think the merger would have significant effects.

9.43 Companies in the FCG segment stated:

⁸⁴ We note that some of the large food can producers did not respond to our questionnaire. In total 16 customers of FCG coatings responded to our questionnaire.

- ‘The merger is likely to reduce competition in all segments of the food can area whether it is for sheet fed, coil or spray applications. The competition weakening will especially have an impact on main runners, so called “commodity products”’. In relation to the effect on specific product segments, this customer noted that ‘the merger is likely to reduce the product offer as product lines will be stream lined, it will also reduce innovation’. ([REDACTED])
- ‘Should the acquisition take place, there will immediately be price increases and also a strong technological decline will affect the market in the medium run. The main reason for that is that the merger will eliminate from the market the sole competitive player who has been able to challenge the position of large corporations such as AkzoNobel, PPG and Valspar, offering superior quality at low prices (including the capacity to offer BPA-free coatings). Post-merger, we will totally be in their hands, at least for the higher quality coatings, which are not offered by smaller suppliers (such as our current suppliers [REDACTED]). You may also want to take into account that we purchase a wide number of niche products, even if for very limited quantities, from Metlac. We fear that AkzoNobel will not have any interests in continuing the production of such products given that they generate low revenues. Also, our own customers have specific preferences and specifications. Even if, for examples, possible suppliers of a given coating are four, if our customer says that only three are acceptable to him, then we may only use one of those three. In sum, the removal of even one single option from this market (which is already characterised by the presence of few operators) may be very detrimental to us. You may also consider that Metlac can exert a significant pricing pressure on the market, which will be lost.’ ([REDACTED])
- ‘Due to less competition there would be reduced leverage in the purchasing activities: this could lead to higher prices or more volatile prices.’ In relation to the effect in specific segments, it noted ‘[...] should AkzoNobel standardize its product

- portfolio (changing or cancelling Metlac products) we see high cost for the requalification procedures'. ([REDACTED])
- Other companies were consistent in their view that the merger would lead to higher prices. One small company noted that,

We expect the merger to result in higher prices, reduced incentives to innovate, as well as less effective technical support and lower quality of packaging coatings. A counterfactual scenario is offered by the US market, where quality is generally lower in all likelihood because no US supplier has been able to challenge the main players' position, as Metlac has successfully done in Europe. ([REDACTED])

Another small customer noted that in addition to price increases it expected 'longer lead times, neutral after sales and support. No elasticity in business cooperation, monthly or quarter price stability, risk of not honouring purchase orders, poor technical assistance'. ([REDACTED])
 - In relation to the effect on particular segments, customers again noted that they expected price increases—to the level of AkzoNobel's prices—and some smaller customers ([REDACTED]) noted that this could put significant stress on their companies. Customers in the C&C segment ([REDACTED]) were particularly concerned.
 - A number of companies noted that AkzoNobel's control of Metlac would also mean that AkzoNobel would change other terms and conditions for Metlac products (giving examples such as technical support, payment conditions, R&D/no development of new products, service levels, no negotiation over terms), to customers' detriment.
 - In relation to food ends, one customer said that it was currently qualifying Metlac products and noted that 'if the merger would take place, there would be no competition. AkzoNobel would be the only supplier'. ([REDACTED])

9.44 In relation to post-merger pricing in FCG, as noted in paragraphs 9.18 to 9.20 we consider it likely that AkzoNobel would change Metlac's pricing strategy post-merger. More specifically, we would expect to see an overall increase in prices sought by suppliers when contracts currently supplied by Metlac were rebid; in situations where current AkzoNobel contracts were rebid we would also expect to see an overall increase in prices paid by producers, as Metlac would have been removed as a potential low price competitor for these contracts.

Constraint from larger suppliers in FCG

9.45 We asked customers which suppliers they could switch to in the event of a price increase by AkzoNobel/Metlac post-merger. In relation to FCG, customers often mentioned Valspar and PPG and eight customers also referred to other, smaller suppliers. While some responses suggest that switching is possible in the case of a price increase, the feasibility of these potential switches is often conditional on a number of factors. Some respondents said that they did not find switching possible at all and/or were of the opinion that the other two big suppliers (PPG and Valspar) would follow a price increase by the merged company.

9.46 Two customers ([REDACTED]) provided additional responses to this question mentioning that Valspar and PPG would be likely to follow a price increase by the merged company. One customer ([REDACTED]), referring also to Valspar and PPG, said that 'big multinational groups do not have much interest in being competitive on price'.

9.47 Another customer [REDACTED].

9.48 As explained in paragraphs 8.116 to 8.126 past behaviour of Valspar and PPG does not indicate that they currently seek to compete vigorously on price with AkzoNobel and Metlac in the FCG market and we are of the view this is unlikely to change post-

merger, for the same reasons as explained in paragraphs 9.35 to 9.39 in relation to the B&B market.

Constraint from smaller suppliers in FCG

- 9.49 There is a range of smaller suppliers present in FCG, although most of these are only present in particular segments or sub-segments of the market, as explained in paragraph 8.127. Whilst there are no high barriers to expansion to supply on the production side (see Section 7), customer qualification does create a significant switching burden, both in terms of time and costs. We have considered the ability of the smaller suppliers to constrain the merged entity in FCG in this context.
- 9.50 Evidence from the procurement events described in Section 8 suggests that smaller suppliers participate in and win a significant number of the FCG procurement events (other than for Food alone). However, statements by FCG customers indicated that the majority of customers do not view the smaller suppliers as being able to constrain the larger players at present in the same way as Metlac does, although one customer indicated it would use smaller suppliers where possible to protect against price increases. We also reviewed customer responses to the BKartA questionnaire which indicated that the majority of customers believed that smaller players are able to 'exert perceptible pricing pressure'. However, the BKartA questionnaire did not distinguish between Metlac and other 'smaller players'.
- 9.51 To clarify this point, we therefore sent out questionnaires to 39 customers asking:
- (a) For each of the B&B, Food, C&C or GL product categories of the metal coatings market, please identify suppliers to which you could switch if the merged party were to increase its prices.
 - (b) Have you considered sponsoring a company to enter the supply of the metal packaging coatings or any particular segment of it? In what circumstances would

you consider doing so (eg price increase, decreased product range, etc)? Are there any drawbacks of doing so?

- 9.52 Of the 18 customers which responded, the responses indicate that while switching to smaller suppliers is possible in some cases, it is mostly possible under certain conditions (regarding the product, the quantity, access to raw materials, etc), and in other cases it is not possible at all, indicating that smaller suppliers can only place a limited constraint on the larger suppliers.
- 9.53 We have considered whether suppliers (large or small) could counteract any exercise of enhanced market power by AkzoNobel in the FCG market by using excess capacity or switching their production to supply from other segments of the FCG market, and bid to start supplying more of the relevant product at lower prices than AkzoNobel is offering. We do not consider this likely as although suppliers are not currently capacity constrained, and they have not used excess capacity to either significantly expand output of existing products, or to start to supply new products. That is, despite a level of supply-side substitutability, suppliers do not seem to make strategic decisions to expand into new segments on a regular basis.
- 9.54 Given the conflicting evidence of the constraint played by smaller suppliers in the event of a price increase in the FCG market or any segment of it, we have considered the extent to which smaller suppliers could expand to supply customers in the event of a price increase in the FCG market. Whilst there is evidence that smaller suppliers may currently constrain the larger suppliers to an extent in the segments within which they are active, the FCG market is characterized by a very wide range of products which are supplied in relatively small volumes. The smaller suppliers' low market shares indicate that they do not supply a wide range of products in this

market. This is supported by [redacted] showing that the smaller suppliers provide a very limited range, both individually and collectively.

9.55 Evidence shows that both AkzoNobel and Metlac provide a wide range of products. Smaller customers may not be able to replicate all of Metlac's product range from other smaller suppliers, although there are so many products in this market we have not been able to assess whether there are qualified substitutes for each product or smaller suppliers active in adjacent products which could develop and produce competitive new products. Their ability to expand is also driven by technological expertise and reputation with customers, as described in Section 8. Switching costs pose a significant barrier to expansion and based on past evidence the smaller suppliers have not shown the appetite to expand. The ability of smaller suppliers to expand to supply more of a particular product or to supply a new product type in a timely manner is considered further in relation to entry and expansion below in paragraphs 9.101 to 9.118.

Conclusion on FCG market

9.56 The FCG market comprises a large set of products with a multiplicity of uses, each of which requires its own technical specifications and there is limited demand-side substitution between products types. The competitive conditions for each product depends on:

- how many direct substitutes for each product type there are;
- the cost (and time) of qualifying each substitute to be used in the customer's plant. This can vary from zero (already qualified) to a significant amount (eg for unqualified internal food coatings) , as described in paragraphs 2.61 to 2.67;
- the number of suppliers who are both perceived to be reliable and are prepared to supply/qualify the product; and

- in the event that there are no/few substitutes already in the market, or the customer requires a new product, the number of suppliers who: have the technical capability to develop a substitute/new product; are perceived to be a reliable supplier; and are prepared to develop and qualify the product and are able to supply the product at a competitive price.

9.57 The evidence we have seen indicates that for a significant part of the market there is at most a small number of suppliers of substitute products. The most important determinant of competitive conditions for a significant proportion of the products in this market is therefore the number of suppliers who have the reputation, the technical expertise and the commercial appetite to develop and supply a substitute product at a competitive price.

9.58 The only suppliers who possess technical expertise and reputation across a broad range of products are AkzoNobel, Valspar, PPG and Metlac. Of these Metlac is significantly the most commercially aggressive. This conclusion is based on its growth record (described in paragraphs 8.16 to 8.30 and Appendix G); its pricing record (described in paragraphs 8.96 to 8.112 and Appendix L); and customer views (set out in this report, including in paragraphs 9.42, 9.43 and 9.45 to 9.47).

9.59 For the reasons set out in paragraphs 9.44, 9.48 and 9.55 above, we are of the view that prices sought by suppliers for FCG products are likely to rise post-merger; Valspar and PPG are unlikely to compete vigorously on price to constrain the merged entity; and smaller suppliers are unlikely to be able to significantly constrain the merged entity for the reasons described in paragraphs 9.56 to 9.58 above.

9.60 Therefore in our view, removal of Metlac from the FCG market is likely to result in post-merger unilateral effects.

Loss of potential competition in supply of B&B coatings

9.61 We have analysed whether unilateral effects may arise from the reduction of potential competition in the B&B market.

9.62 This potential competition has been considered as ‘actual potential competition’ in accordance with our guidelines⁸⁵ as Metlac has plans for entry into supply of B2I and BE. We have not carried out an assessment of Metlac’s entry into B2I and BE as ‘actual perceived competition’ in accordance with our guidelines as it does not consider Metlac’s potential entry a current constraint on how companies operate in B2I and BE.

9.63 We have therefore considered whether Metlac would be likely to enter supply of B2I and BE in the absence of the merger and whether such entry would lead to greater competition.⁸⁶

9.64 Metlac told us that it is planning to enter the B2I segment with a BPA-NI inside spray, [REDACTED]. Metlac also told us that it is planning to enter the BE segment, [REDACTED].

B2I

9.65 We examined whether removal of Metlac as a potential entrant to the market for supply of inside spray would be likely to adversely affect competition. We considered the extent to which it is relevant that Metlac is considering entering with a BPA-NI inside spray, when there is currently no supply of BPA-NI inside spray by any parties in the EEA.⁸⁷

⁸⁵ CC2, paragraph 5.4.14.

⁸⁶ CC2, paragraph 5.4.15.

⁸⁷ [REDACTED]

9.66 Inside spray is required for every beverage can (unlike external overvarnish coatings, which are not required for steel cans and not always used for aluminium cans). As such, inside spray makes up a relatively large proportion of the coatings purchased by B&B can manufacturers.⁸⁸ Inside spray is a high-volume segment with more difficult production conditions than for FCG coatings, and therefore high barriers to entry.

9.67 There is currently no legislative requirement for BPA-NI inside spray for beverage cans. Although customer demand is driving all suppliers to develop BPA-NI products ([REDACTED]), these products are currently at a cost disadvantage compared with BPA-containing products due to a thicker coating being required and initial R&D costs. As such, entry of BPA-NI products on a large scale is only likely if either (a) it is required by legislation or (b) a company develops a technically suitable product which enables it to start supplying, on a large scale, as cheaply as a BPA-containing coating. Even then, it is unclear if customers would want to start using BPA-NI products without legislation because, as one customer stated, to supply only one product that is BPA-NI casts doubt on the remaining BPA-containing products in a product range.

9.68 [REDACTED]

9.69 The following sections consider current competition in inside spray, Metlac as a potential entrant in this market and third party views on inside spray.

Current competition in inside spray

9.70 There are currently three companies supplying B2I products in the EEA: AkzoNobel, Valspar and PPG, as shown in Table 13 below. We have received some evidence that PPG's product offering has not been particularly successful in this area.

⁸⁸ [REDACTED]

TABLE 13 Sales in the B2I segment in the EEA (2011)

Supplier	B2I	
	kt	%
AkzoNobel	[REDACTED]	[61–70]
Valspar	[REDACTED]	[21–30]
PPG	[REDACTED]	[0–10]
Total	[REDACTED]	100

Source: CC calculations.

9.71 [REDACTED] As such, if Metlac were to enter this segment it would likely face strong competition from AkzoNobel and Valspar and weaker competition from PPG.

Metlac as a potential competitor in inside spray

9.72 To the extent that Metlac plans to enter this segment it faces a number of challenges.

9.73 First, it does not plan to supply inside spray as it is currently supplied to the market but plans to enter only with a BPA-NI product. [REDACTED] We understand that Metlac is the only supplier considering entry into the inside spray segment currently.

9.74 Second, it is not clear when customers will demand BPA-NI internal beverage spray. There is currently demand for suppliers to develop this product in case of legislation but as the product will be more expensive it is not clear when customers will actually start purchasing BPA-NI internal spray in large quantities.

9.75 In relation to BPA-NI inside spray, a number of customers have confirmed that an entire BPA-NI beverage solution is required (inside spray, basecoat, rim varnish, end coating, and external overvarnish). [REDACTED]

9.76 However, the time frame for supplying such a product is unclear [REDACTED] as the coatings are still at the test-pack testing stage. To a large extent the time frame for a full BPA-NI beverage can therefore depend on end-customer demand and qualification times. Ball told us that for it to switch inside spray supplier this would take three to six

months if switching to another approved supplier and three years to qualify a new supplier and switch to that supplier. [REDACTED]

9.77 [REDACTED] qualifying a BPA-NI inside spray could also present timing challenges.

9.78 Another challenge for Metlac is whether it can certify its inside spray with customers and develop it at a scale to meet customer demands. [REDACTED]

9.79 [REDACTED]

9.80 The fourth challenge for Metlac would be if BPA-NI is not mandated by legislation. In this case there would be no requirement on all parties to supply BPA-NI inside spray and Metlac could only compete with other companies in this segment if its prices were low enough to compete with BPA products. We do not have evidence on the prices for BPA-NI inside sprays compared with current inside sprays, [REDACTED].

9.81 AkzoNobel identified further barriers to Metlac's entry in that customers might be reluctant to source B2I from a company with a single site and no catastrophe planning available. Second, AkzoNobel stated that if a production run failed due to inadequate coating, claims against the coatings supplier could be very large ([REDACTED]). It is unclear to us why this would apply differently to B2I than to B2E, which Metlac already produces.

Third party views

9.82 In relation to BPA-NI product development, [REDACTED].

9.83 [REDACTED]

9.84 [REDACTED]

9.85 Overall, evidence from customers reveals that they regard Metlac highly in terms of product innovation [X].

Other potential entrants into B2I

9.86 We have considered whether there are other potential entrants to this segment and details of this analysis are set out in Appendix G. Based on evidence from the main and third parties, it appears that entry into the B&B inside spray segment requires significant investment in both developing products and building production facilities with a resin reactor.

9.87 Given the need to recover the high fixed-cost base through economies of scale, we consider that only large-scale entry would be sustainable and sufficient to act as a competitive constraint due to the scale of supply required by large customers (small customers are not present in this segment).

9.88 The process of qualifying a new product and scaling it up for industrial use is time-consuming, costly and highly uncertain. As a result, we do not consider that entry into this segment or expansion within it is likely within the next two to three years.

BE

9.89 The BE segment is currently concentrated, with PPG having approximately [51–60] per cent of the segment, Valspar [31–40] per cent and AkzoNobel [11–20] per cent. AkzoNobel currently only supplies external beverage ends coatings in the EEA.

9.90 [X] Unlike in relation to B2I, there are no significant barriers to producing BE and therefore Metlac's entry is likely. Whether or not its entry would be at a scale sufficient to constrain the current suppliers will depend on whether there is demand for BPA-NI BE. It is unclear whether beverage ends manufacturers would begin

purchasing BPA-NI BE in the absence of legislation, for the same reasons as set out above in relation to B2I. [REDACTED]

9.91 The three beverage ends producers that responded to our questionnaire had the following views on the effect of the merger on competition in supply of metal packaging coatings, with two companies somewhat concerned by the merger: [REDACTED].

Other potential entrants to BE

9.92 In relation to entry to the BE segment, we are of the view that similar factors apply as in relation to entry to the B2E segment, as capital requirements are likely to be the same. We have not received any evidence that parties other than Metlac are likely to enter supply of BE in the near future and are therefore of the view that entry by other companies is unlikely.

Provisional conclusions

9.93 We provisionally concluded that if Metlac were to enter the B2I and BE segments it would [REDACTED].⁸⁹

9.94 We are of the view that entry by Metlac is likely. Metlac has provided us with evidence of its plans for the B2I segment, [REDACTED].

9.95 However, we do not believe that such entry will occur in a timely manner for two reasons. First, Metlac's entry may only occur if BPA-NI beverage cans are required by legislation. Second, in relation to B2I, [REDACTED]. However, there are a number of factors [REDACTED] over which we do not currently have sufficient clarity to be able to state that entry is sufficiently certain such that its removal is unlikely, on its own, to create an SLC.

⁸⁹ [REDACTED]

9.96 In summary, the merger will remove a potential entrant from the B2I and BE segments, which reinforces our conclusion that the merger will result in unilateral effects in the B&B market.

Other competitive constraints which might offset effects of the merger

Market entry/expansion

9.97 The CC Guidelines define barriers to entry as ‘specific features of the market that give incumbent firms advantages over potential competitors’.⁹⁰ We have assessed whether countervailing entry will be timely, likely and sufficient to reduce or prevent an SLC.⁹¹

9.98 In relation to entry, we considered the evidence on the barriers to entry into a relevant product market through the development of a product offering in that market and the acquisition or conversion of a plant to produce the relevant coatings. This entry may take place either ‘de novo’, ie by a company with no presence in the metal coatings market, or from an adjacent product market. In relation to expansion, we considered the evidence of an incumbent’s ability to expand output from existing production capacity, and expand output through increased production capacity, eg through investment in new plant and equipment.

9.99 This section sets out our preliminary conclusions based on the criteria set out in our guidelines in relation to whether, given these barriers, any entry and expansion can be:

- *timely*: whether entry or expansion can be ‘sufficiently timely and sustained to constrain the merged firm’. Our guidelines note that: ‘The Authorities may consider entry or expansion within less than two years as timely, but this is assessed on a case-by-case basis, depending on the characteristics and

⁹⁰ CC2, paragraph 5.8.4.

⁹¹ CC2, paragraph 5.8.3.

dynamics of the market, as well as on the specific capabilities of potential entrants';⁹²

- *likely*: whether firms have the 'ability and incentive to enter the market';⁹³ and
- *sufficient*: whether the scope or scale of entry or expansion would be sufficient to act as a competitive constraint.⁹⁴

9.100 We considered past entry, expansion and exit in the EEA markets for metal coatings. We then considered future entry plans and the likelihood of customers sponsoring entry and/or expansion. Bearing this in mind, we considered the barriers to entry or expansion in the FCG and B&B markets. Further details of our entry and expansion analysis are set out in Appendix G.

Past entry and expansion and future plans for entry and expansion

9.101 The two main parties have expressed contradictory views on the levels of barriers to entry into and expansion within the metal coatings industry, with AkzoNobel highlighting 'numerous' examples of successful entry into the market over recent years, low capital intensity, a low degree of product differentiation and low economies of scale. Metlac, on the other hand, contends that there has been no successful new entry into the EEA market in the last ten years, with substantial barriers to entry in terms of the know-how required to formulate coatings, customer reluctance to switch suppliers, lengthy and costly qualification procedures for new products, stringent regulatory requirements and bulk purchasing discounts for larger manufacturers which confer a cost advantage.

9.102 We have received evidence of a number of new entrants to the B&B and FCG markets in the past decade. Entry has been more common in the FCG market than in

⁹² CC2, paragraph 5.8.11.

⁹³ CC2, paragraph 5.8.8.

⁹⁴ CC2, paragraph 5.8.10.

the B&B market. None of the new entrants, which have generally entered in particular sub-segments of the markets, have captured a significant proportion of a market (more than 5 per cent) and most new entrants focus on particular niche sub-segments. The larger coatings suppliers have not expanded the types of products which they supply by entering new segments, with the exception of Metlac, which started to sell significant quantities of B&B coatings outside Italy in 2007.

- 9.103 We have not received evidence of any potential new entrant into metal packaging coatings. Whilst a number of parties have expressed views on the potential ability of smaller suppliers to expand either the scale of their current product offerings or expand to enter new segments, we only have evidence of one supplier having expansion plans.
- 9.104 Salchi told us that it planned capacity expansion of [REDACTED] by building a new plant. This additional capacity would be used to expand into some parts of the Food and C&C segments of the market (particularly closures) where it was not yet present. It also expected that it may receive some demand from customers outside Italy following the AkzoNobel/Metlac merger who would like an independent supplier. It was not currently considering entry into B&B because of the 24-7 capacity to assist clients in this sector but did not rule out re-entry into the beer and beverage external coatings sector in the future.
- 9.105 Based on past evidence, larger customers have a level of buyer power which enables them to sponsor entry. Such customers have indicated that they would work with suppliers to assist expansion, but that the smaller suppliers may not be willing or able to scale up to meet their needs, as discussed further in relation to the FCG market below. This is borne out by the evidence of the smaller suppliers themselves, with the exception of Salchi.

9.106 We considered, based on evidence from the main and third parties, the following potential barriers: initial capital requirements and economies of scale; intellectual property and regulation; and qualification of new products and customer switching. Details of our provisional conclusions in relation to barriers to entry and expansion in the FCG and B&B markets are set out below.

Barriers to entry and expansion in the FCG coatings market

9.107 Recent examples of entry and expansion indicate that the regulatory requirements on the industry in the FCG segment (with the exception of internal food contact coatings) do not create a significant barrier to entry, either from start-ups or from coatings manufacturers active in other markets, such as industrial coatings, and neither does the skill required to formulate new coatings.

9.108 As noted in paragraph 8.130 above, the role of small suppliers is significant in relation to FCG. Several of the smaller operators in the market have entered and/or expanded into new segments through the formulation of new products (eg [X]). We note that new entrants to the coatings industry have, in the past, been set up by former employees of existing suppliers, such that these entrants have knowledge of the technologies and regulations pertinent to the industry.

9.109 The ready availability of additional productive capacity within the market, the presence of a reasonable number of smaller coatings manufacturers and qualification periods of less than one year in many segments of the FCG market, led us to believe that entry and/or expansion would be likely and also be timely in the GL, external food coatings and external C&C sub-segments, but not in food contact coatings in Food and C&C, for reasons explained further in Appendix G.

- 9.110 We are of the view that expansion by existing suppliers is more likely to provide a constraint to the merged entity than de novo entry, and that such expansion is likely to be particularly effective if sponsored by large customers.
- 9.111 We have therefore considered whether large customers could sponsor expansion (or entry) into this segment. Both Crown and Ardagh indicated that they had sought to encourage and support entry and expansion in the FCG coatings market. For example, Crown told us that it had approached [X] regarding entry into the industry, [X]. Ardagh noted that it had also helped sponsor the expansion of Metlac and Salchi, although it viewed this as a lengthy process. In our view, sponsored entry or expansion is therefore likely in the FCG market.
- 9.112 Diostyl told us that it had been encouraged into the market following the consolidation of the coatings market and concerns from the can manufacturers regarding their dependency on a few large coatings suppliers. The can makers were concerned both about the availability of niche products, given the moves by the large suppliers towards rationalizing their portfolios, and about the prices they were being offered which had risen following the consolidation of the market.
- 9.113 The widespread use of toll manufacturing, both by new entrants and established operators, demonstrates the credibility of this option as a low capital means of entry/expansion within the market.
- 9.114 In the internal food can coatings sub-segment, where qualification of new products for the inside of cans may take up to two years, we consider that entry and/or expansion is unlikely to be timely within the next two years to constrain the merged entity. This will also apply to those internal coatings for C&C which come into contact with food.

- 9.115 Based on our assessment of the evidence in relation to barriers to entry into the production of FCG coatings, we provisionally concluded that the low initial capital requirements, together with the strong interest and ability on the part of customers to sponsor entry or expansion in the market, means that entry or expansion is likely in some segments of the FCG market. However the longer qualification times and therefore switching costs in relation to food contact coatings, means that in our view entry or expansion is less likely in these product types within the Food and C&C segments.
- 9.116 The key issue is therefore in relation to the sufficiency of entry or expansion across the FCG market.
- 9.117 Whilst entry/expansion into parts of the FCG market would be likely and timely, for the reasons set out in paragraph 9.109, particularly with customer support, we do not think it likely that such entry or expansion would occur at a sufficient level to constrain the merged entity, given past evidence on growth of smaller suppliers and qualification requirements.
- 9.118 On the basis of the evidence provided, it seems possible that some sub-segments of the FCG coatings market would experience both new entry and/or expansion in response to any increases in price following the proposed merger. In relation to food contact coatings, the longer time periods required for product qualification (of up to two years) together with the large number of coatings makes it unlikely that entry/expansion would be timely.⁹⁵ Therefore, given past entry and expansion patterns, we do not consider that this entry/expansion would be timely and sufficient across the market to replace the constraint Metlac currently places on the other

⁹⁵ See paragraph 9.99 for our views on what would constitute 'timely' entry in this context.

suppliers in the FCG market, particularly given Metlac's ability to compete at low prices due to its efficient production.

Barriers to entry and expansion in B2E

- 9.119 Within the B&B market, there are different capital requirements for supply of B2I, compared with B2E and BE. Parties have told us that for B2I supply to be acceptable to end customers, and profitable, a supplier would not be able to rely on toll-manufactured resin but would need to invest in a resin reactor. Due to these different capital expenditure requirements, we have considered entry and expansion in the B2I segment separately, see above paragraphs 9.86 to 9.88 and Appendix G. Due to similar production facilities for B2E and BE, barriers to entry or expansion for BE are likely to be similar to those present for B2E coatings, and our conclusions in relation to BE are the same.
- 9.120 The evidence we received supported the view that entry into or expansion within the B2E segment required similar levels of capital investment in production facilities as for entry into the FCG coatings market. Whilst it is likely that the larger volumes of certain products required by can manufacturers may result in economies from in-house and larger-scale manufacturing, we considered that the use of toll manufacturing for B2E by two of the parties provided support for the view that this was a profitable means of operating within the market, at least at a small scale. However, Metlac told us that toll manufacturing was unlikely to be acceptable to all customers for significant volumes of coatings on a long-term basis.
- 9.121 We considered whether customer sponsorship could overcome barriers to entry into this market. Customers have a history of sponsoring suppliers in the external beverage can coating segment. At least three suppliers have been sponsored to enter this segment. [✂]

- 9.122 Metlac entered the external beverage coatings segment in 1998 (when it started to supply external B&B coatings to two Italian plants of American National Can). However, Rexam supported the development of Metlac's business outside Italy, over a number of years, both because Metlac offered more innovative products and because it offered more competitive prices and contract terms as compared with the larger coatings suppliers. Rexam also emphasized that it had sought to do the same with a number of other coatings manufacturers, including [REDACTED].⁹⁶
- 9.123 Whilst the smaller B&B suppliers could potentially expand with the assistance of large customers, the existence of specific technical challenges associated with developing certain types of external coatings and the time frame of around a year or two for qualification of new products, as described in Section 8, gives us reason to believe that these suppliers are unlikely to grow sufficiently in a timely manner to replace the constraint that Metlac currently imposes on AkzoNobel.
- 9.124 The spare capacity held by existing firms in the industry is concentrated among the larger suppliers. Although there is also reasonable scope for the smaller manufacturers to increase their output via toll manufacturing or investment in new facilities, we consider it unlikely that these firms would be able to qualify new products quickly enough to exert a significant competitive constraint on the merged firm.
- 9.125 Metlac is the only example of a supplier which has managed to enter the B&B market in recent years and expand at a scale to constrain AkzoNobel, PPG and Valspar in the segment in which it operates. It took Metlac over a decade to do this. It seems to us that the most likely entry would be by a supplier in the FCG market seeking to expand its offering into B&B. However, given customer comments regarding small suppliers willingness to enter the B&B market (see paragraphs 8.131 to 8.133

⁹⁶ [REDACTED]

above), there is likely to be a significant reputational barrier to this occurring on a sufficient scale within a two-year period.

9.126 In our view, it seems unlikely that there would be new entry into the external beverage segment in a timely manner on a sufficient scale following a merger of AkzoNobel and Metlac. Whilst expansion in this segment seems possible, we do not consider that it would be likely to occur at sufficient scale and in a timely manner to constrain the merged entity.

Countervailing buyer power

9.127 AkzoNobel told us that large customers had buyer power to sponsor entry or expansion by existing suppliers in the market.

9.128 We have considered in the above section whether customers would have the ability to counter any merger effects by sponsoring entry or expansion in the context of its analysis of barriers to entry and expansion. We provisionally concluded that whilst customer-sponsored entry/expansion has occurred in both the B&B and FCG markets, it is only likely to occur in response to merger effects at sufficient scale in certain segments of the FCG market. Longer qualification times for food/ beverage contact coatings in the Food and C&C segments meant that expansion may not be sufficiently timely. In B&B, sponsored entry is unlikely to occur in a timely and sufficient manner.

9.129 When examining the impact the merger has on customers' choice of suppliers, we considered customer size in order to assess the importance of individual customers for the suppliers in the market; customer ability to constrain the merged entity via switching or threat of switching; and customers' views about their bargaining power

and about the impact of the proposed merger on it. Information on buyer size is set out in Appendix C.

9.130 In FCG, although [X] account for approximately [31–40] per cent of demand (and approximately [51–60] per cent of Food demand), any buyer power used in this segment to constrain the merged entity by switching or threat of switching would not protect smaller customers from any merger effects (due to lack of transparent pricing in the industry).

9.131 We also considered whether buyer power might constrain the merged entity in the B&B market, specifically in the B2E segment.

9.132 AkzoNobel submitted that the four customers (Rexam, Crown, Ball and Can-Pack) in the B2E segment exercised buyer power by switching between existing suppliers or other qualified suppliers as switching could be effected quickly and with ease to suppliers whose products were already certified and to suppliers which were not certified within a relatively short time frame at low cost. As shown in Appendix C, these four customers account for 71 to 80 per cent of B&B demand.

9.133 AkzoNobel also submitted that these large customers designed their contractual processes in such a way as to allow switching (eg by allowing them to vary the volumes they source during the duration of the contract) and facilitate lower prices (eg via tender rounds). AkzoNobel submitted that given the strength of these customers the transaction would not result in AkzoNobel being able to unilaterally raise prices post-merger.⁹⁷

⁹⁷ Competitors also told us that the large customers had buyer power. Valspar and Actega told us that customers had a very strong negotiating position, due to the small number of major customers and the fact they generally had at least two suppliers qualified for all applications. PPG stated that customers were sophisticated and wielded considerable buyer power.

9.134 Metlac submitted that customers' negotiating power would be significantly reduced post-transaction due to the reduction in the number of suppliers and the fact that it would typically be less costly to accept a price rise than to qualify a new supplier. It did not provide evidence to support the proposition in relation to costs of qualifying a new product versus accepting a price rise. Metlac also noted that countervailing buyer power would be unlikely to be sufficient to negate or reduce the likelihood of an SLC finding as any buyer power which was present would not be sufficient to protect all customers. It stated that was because there were bilateral negotiations between suppliers and customers and prices were relatively non-transparent, so any prices secured by larger customers through their negotiating power would not protect smaller customers from price rises.

9.135 In our view Metlac is a significant constraint on the larger suppliers in the B2E segment of the B&B market. There are four large customers, each of which has a level of buyer power. However, [REDACTED] of these customers have submitted that the merger will have negative consequences for their business. Of these, one customer has submitted evidence that it currently uses Metlac pricing to constrain pricing of other companies in B2E.

9.136 In our view the removal of Metlac will decrease these customers' buyer power. Customers currently rely on having Metlac as an option in their negotiations with B2E suppliers. Following the removal of Metlac, we have seen no indication that customers could use their negotiation power to keep prices down. The fact that two customers sponsored new entry into the B&B market indicates that they would not view a market of three suppliers, post-merger, as sufficient. As discussed in the barriers to entry section above, whilst we do think that customer-sponsored entry is possible, it is unlikely to be sufficient to replace the constraint Metlac currently places

on the market in the near term, given how long it took Rexam to sponsor Metlac to enter this segment at scale.

9.137 In particular, we are concerned with the removal of Metlac as the supplier which brings significant competition to the B&B market, as indicated by its rapid expansion in B2E and low-pricing strategy. We found evidence showing that one customer had used Metlac's pricing as a stick to secure lower prices in B&B and to the extent Metlac is removed, it is unclear that customers would be able to exert buyer power to bring prices down.

9.138 Given the challenges associated with switching suppliers and the significant concerns raised by three of the four [REDACTED], in our provisional view buyer power is unlikely to be sufficient to counter any potential competitive harm caused by the merger.

Efficiencies

9.139 Depending on likely size of efficiencies, we may examine arguments made as to efficiency gains from the merger, such as synergies from manufacturing and procurement.

9.140 AkzoNobel told us that:

(a) it expected significant synergies to arise out of the full merger between AkzoNobel and Metlac. [REDACTED]

(b) [REDACTED]; and

(c) its plans envisaged that these synergies and cost savings would enable it to pass on some of the benefits of the merger to customers in the form of lower prices, thereby ensuring that it would maintain at least some of the business which customers would otherwise move to Valspar, PPG and smaller competitors.

9.141 AkzoNobel told us that it had [REDACTED].

9.142 There is no evidence that any efficiencies would be passed through to customers in a manner sufficient to counteract any adverse impacts on the market resulting from the merger.

Summary

9.143 In summary, we have found that the proposed merger would likely create unilateral effects in B&B and FCG markets. We found that Valspar, PPG and smaller suppliers would be unable to constrain the merged entity from raising prices or implementing non-price effects. The merger would remove a potential entrant from the B2I and BE markets, which reinforces our provisional conclusion that the merger would result in unilateral effects in the B&B market. We found that new entry and expansion was unlikely to occur in a timely and sufficient manner to counteract the SLC in either market and that countervailing buyer power was unlikely to be sufficient to counteract the SLC in either market. We did not consider that efficiencies were likely to provide sufficient customer benefits to counteract any adverse merger impacts.

10. Provisional conclusions on the SLC test

10.1 We have provisionally concluded that the proposed merger may be expected to result in a substantial lessening of competition in the markets for supply of metal packaging coatings for B&B and FCG, and this likely effect on competition in this market will also affect competition in the UK.