



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

A report on the anticipated acquisition by Akzo Nobel N.V. of Metlac Holding S.r.l.

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The Competition Commission has excluded from this published version of the 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 [X]. Some numbers have been replaced by a range.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 1 January 2013.
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 through its subsidiary Akzo Nobel Coatings International B.V. (ANCI) has a shareholding of 49 per cent in Metlac Holding. The remaining 51 per cent in Metlac Holding 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 held by another AkzoNobel subsidiary, Mortar Investments International Limited (Mortar). AkzoNobel does not currently have sole control of Metlac.
4. ANCI holds a call option to buy the Bocchio family shares in Metlac Holding, which it has exercised. 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 proposed transfer of shares if carried into effect would result in the creation of a relevant merger situation because it would result in the parties ceasing to be distinct by coming under the common ownership and control of AkzoNobel and the share of supply test was met with the merged entity having a combined share of supply of 61 to 70 per cent of metal packaging coatings in the UK.

The products

6. AkzoNobel manufactures and supplies metal packaging coatings and metal decorating inks in the UK and Metlac supplies metal packaging coatings in the UK. Both coatings and decorating inks are 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 or to protect the external packaging from abrasion or damage. Metal decorating ink is used to decorate packaging.
7. Metal packaging coatings and metal decorating inks 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 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 (eg 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. AkzoNobel is among the largest suppliers of coatings for the protection of metal packaging. AkzoNobel manufactures metal packaging coatings globally, including at five sites in Europe, of which two are in the UK.
10. From its sole Italian site Metlac supplies metal packaging coatings to customers throughout Europe and globally. It manufactures coatings for all of the main segments except B2I and BE coatings. Metlac traditionally focused on selling to customers based in Italy but its non-domestic sales have grown significantly since 2003.
11. 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'.
12. 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>Sub-categories</i>	<i>Further distinctions</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	
	C&C	Food ends	
		Twist-off caps Tamper-proof caps Other	As with Food and B&B, each different type of cap requires both internal and external coatings
GL	General line Aerosol Collapsible tubes Aluminium monobloc	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	

Source: CC.

13. 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 a producer of metal packaging coatings with a strong presence in the European Economic Area (EEA). In addition, there is a range of smaller producers in the EEA which supply metal packaging coatings.

14. 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.
15. 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.
16. The downstream metal packaging industry is also concentrated, with four global manufacturers and a 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.
17. Ball, Can-Pack, Crown and Rexam accounted for almost all EEA demand for coatings for B&B can bodies. There are four further large B&B customers which purchased coatings for beverage ends. Demand for FCG coatings is significantly more fragmented. Two large customers account for 31 to 40 per cent of EEA 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.
18. A number of metal packaging companies, including all of the large companies listed above, have factories producing metal packaging in the UK.

Control and management of Metlac

19. The governance arrangements of Metlac Holding were set out in the 2007 Formation and Quotaholders Agreement (FQA) and its associated by-laws. The governance arrangements of Metlac were set out in the 2007 Shareholders Agreement (SHA) and its associated by-laws. The FQA and SHA have expired and Metlac Holding and Metlac are now governed by their by-laws.
20. We considered whether the rights associated with AkzoNobel's current shareholdings in Metlac and Metlac Holding gave AkzoNobel the ability to influence Metlac's commercial strategy, and whether that would change in the future.
21. We found that the situation was 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.

22. Metlac's day-to-day management is controlled by the Bocchio family and absent the exercise of the call option this situation would not change in the future. As such, we have treated AkzoNobel and Metlac as independent competitors for the purposes of our competitive effects analysis.

Counterfactual

23. We considered the situation that would have prevailed absent the merger (the counterfactual). We found that, absent the merger, there were three possible counterfactual scenarios:
 - the status quo ante—ie AkzoNobel remains as a shareholder of Metlac Holding at a similar level of shareholding and similar level of support/engagement in the business as it currently has;
 - AkzoNobel remains as a shareholder at the same shareholding level as it currently has and opposes decisions made by Mr Bocchio and Metlac's management team; or
 - AkzoNobel seeks an exit from its shareholding and sells its shares.

While we recognized that sale by AkzoNobel was a possibility, we did not, based on the evidence, consider that it was the most likely outcome in the foreseeable future.

24. We discounted a counterfactual scenario in which AkzoNobel was 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 because we found that AkzoNobel's rights over Metlac were not sufficient to enable it significantly to influence the commercial strategy of Metlac.
25. We decided that Metlac would continue to be a successful company. We found that it was possible that disagreements between its shareholders would result in more cumbersome governance arrangements for Metlac, but saw no reason to believe that Metlac would not be able to continue with its current business strategy.
26. We found that the most likely counterfactual was the status quo ante.

The relevant markets

27. We concluded that the relevant markets on which to consider the potential effects of the merger were: 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 products and across customers within both B&B and FCG. As such, we took into account differences between products and across customers within both the B&B market and FCG markets when examining the effects of the merger. Our conclusions would not change if narrower markets were defined.
28. We concluded that the relevant geographic market was EEA-wide but focused our analysis on the possible impacts of the merger on customers with operations in the UK.

Competitive characteristics of the metal packaging coatings industry

29. We considered the nature and extent of rivalry between AkzoNobel and Metlac, and how this compared with rivalry between them and their existing competitors. In doing so, we considered evidence relating to market structure, market development (growth and innovation), product overlap, switching and pricing. We found that supply of metal packaging coatings was carried out on (at least) an EEA-wide basis but that, as a result of the need to undergo a qualification process, at any given point in time the suppliers from which a customer can readily source will vary across products and customers. As such, competition will vary by product and customer and we therefore focused on pre-merger competition between AkzoNobel and Metlac for customers with plants located in the UK.
30. The market for metal packaging coatings is shaped by the requirements of the metal packaging industry; end-use requirements give rise to a wide range of different types of metal packaging coatings, which are not substitutable from a customer perspective. 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 factors including: technological know-how (to innovate and formulate coatings); reputation; technical support; regulation and qualification; and the appetite to compete.
31. Therefore the degree to which companies compete with one another will depend upon the ease with which they can supply fully-qualified, functionally-equivalent and competitively-priced products to each other's customer bases (because this determines the ease with which customers can switch between them). Some suppliers may not have the technical expertise or support, capacity, efficiency, reputation or appetite to compete in certain sub-segments; others will but may need to undergo a regulatory and/or qualification process before they can supply. Some customers have multi-sourcing policies which were also relevant to the time it would take them to switch. We therefore considered the qualification process in detail, including times and costs of qualification in various circumstances.
32. We received a range of views on the precise costs, risks and timing associated with the qualification process. However, in general we found that for most products except general line coatings there were relatively long time frames associated with switching to previously unqualified (de novo) products. These costs were higher for food contact coatings. We also found that the qualification process was shorter for products already qualified at a plant within the customer's group (ie compared with de novo products). It was less clear that qualification was quicker if the product was already qualified in the industry, although not with the relevant customer. We noted that, in 2011 by volume, AkzoNobel was the largest supplier of metal packaging coatings in the EEA and the UK and Metlac was the fourth largest. We also noted that they were the second and third largest B2E suppliers by volume in the EEA in 2011 and the first and third largest B2E suppliers by volume in the UK in 2011. In FCG they were the first and second largest suppliers by volume in the EEA in 2011 and the first and sixth largest suppliers by volume in the UK in 2011. Given the information we received on qualification and the manner in which the parties competed, we did not attach significant weight to the aggregate market shares.
33. For purposes of evaluating pre-merger competition, we focused upon:
 - (a) competition between companies that were qualified to supply the same product to the same plant ('Type I competition'); and

- (b) competition between companies that were qualified to supply the same product to the same customer on the basis that this ability to enter relatively quickly may limit the degree to which incumbents can increase price, or at least materially shorten the time horizon over which price increases could be sustained ('Type II competition').
34. We used AkzoNobel's MIS database to identify where competition of these types occurred, for the period 2006 to 2011.
35. Overall, this analysis indicated that a significant proportion of UK sales in B2E and FCG had been exposed to rivalry between AkzoNobel and Metlac, either because they were both qualified to supply the same plant with the same product or because they were both qualified to supply the same customer with the same product and could therefore be expected to exert a meaningful constraint because they could be relatively rapidly qualified at a different plant.
36. We noted that for a large proportion of these products PPG or Valspar or both were also qualified to supply and in the FCG segments other smaller suppliers were, in general, also qualified. We considered that these suppliers might exert a constraint. We then considered the extent to which Metlac is a significant competitive force, in particular among the four largest suppliers and we found that.
- (a) Where Metlac was active, the majority of customers indicated that Metlac was an aggressive competitor on price, and that this was not at the expense of product quality or services. Our pricing analysis and analysis of switching/opportunities where customers threaten to switch was broadly consistent with this. More specifically, in B&B, tender data covering a large proportion of purchasing in the market for recent years showed Metlac increasing its sales of B2E (at the expense of AkzoNobel). Evidence indicated that Metlac offered low B2E prices compared with the other suppliers.
- (b) In relation to FCG, there was a range of large and small suppliers, and Metlac generally offered low prices, which a number of customers submitted that they used to bring down the offers of other suppliers. Metlac and some smaller suppliers have grown in this market in recent years.
37. This evidence was provided by customers with facilities across the EEA, including significant customers for metal packaging coatings in the UK.
38. In our view, where Metlac was active it exerted a significant constraint on the behaviour of the larger suppliers. It steadily gained market share by offering low-priced, technologically sound products, without supply of coatings becoming unprofitable. Its ability to provide nimble, innovative products and service was highly valued by customers, including those customers that make up a large proportion of industry demand in the EEA and the UK.
39. We also noted that in relation to appetite for growth, this seemed to be Metlac's particular strength.
40. The evidence provided to us did not allow us to build up a complete picture of pricing or switching in the relevant markets. We acknowledged that our understanding of these markets was therefore based on partial data, and we placed significant weight on the views of customers, including 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 whom were also the key customers for metal packaging coatings in the UK.

Competitive effects of the merger

41. We considered whether the merger would give rise to an SLC in the supply of metal packaging coatings in the UK, with regard to:
 - (a) loss of actual competition in supply of metal packaging coatings, focusing on the B2E and FCG products in which both AkzoNobel and Metlac overlap (ie both supply to the same customer); and
 - (b) loss of potential competition in the supply of metal packing coatings, focusing in particular on the areas where we expected Metlac to grow and may therefore overlap with AkzoNobel in the future (including B2I and BE where Metlac is currently not active).
42. We focused upon the impact of the transaction on metal packaging coatings supply in the UK (although we took account of evidence from the wider EEA in so far as it informed us of the likely impact of the merger in the UK). Both Metlac and AkzoNobel supplied metal packaging coatings for B&B and FCG in the UK, and whilst Metlac sales in the UK were small, particularly in the FCG segment, they were found to be growing.
43. We also considered it relevant that Metlac had grown in the EEA from being a small supplier to competing at a similar level to the three larger suppliers in the segments where it competes. In FCG various smaller suppliers had been in the market for some time but had not grown their market shares to the same extent as Metlac. In the B&B market, where the level of supplier concentration was particularly high, only a few small companies were active and none had grown to the extent that Metlac had. 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 had priced aggressively whilst offering high-quality products, which was made possible by what is perceived in the industry as a low-cost operation. We believed that this business model was different from that of other small suppliers in the industry and some customers told us that it was not one which could be quickly replicated.
44. This was particularly relevant to our assessment and we noted that paragraphs 5.4.5 and 5.4.12 of our guidelines state that:¹

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
45. Secondly, a significant proportion of large and small customers that provided us with evidence which indicated that they had significant concerns about the transaction. They commented on the particular dynamic competitive force that Metlac brought to the markets and which they saw as being removed by the transaction and not able to

¹ CC and OFT: *Merger Assessment Guidelines, CC2*, September 2010. Paragraph 5.4.12 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.

be replicated by smaller suppliers or by a change in conduct on the part of the larger suppliers. We acknowledged that we received responses only from a selection of customers in the industry. However, these customers accounted for a significant proportion of metal packaging coatings demand in the UK.

46. Finally, we noted that this was an unusual situation in that AkzoNobel's incentives to remove Metlac could potentially be dampened by the fact that it received dividends from its shareholding in Metlac. However, Metlac was found to be acting as an independent competitor to AkzoNobel and we did not see evidence that shareholder dividends from Metlac had affected AkzoNobel's incentives to compete.

Loss of actual competition in the supply of B&B coatings

47. We considered whether the removal of Metlac as a significant competitive force in the B2E segment market would result in an SLC in the B&B market. In our view, any likely effects of a loss of rivalry would be in relation to both price and non-price aspects such as innovation.
48. We considered that AkzoNobel and Metlac competed to supply B2E coatings to customers. In particular, we noted that in the UK:
- (a) Cases in which AkzoNobel and Metlac had both supplied the same B2E product to the same customer (in the UK) represented 21–30 per cent of B2E volumes purchased in the UK, and there were reasons to consider that this understated the true level of this type of overlap.
 - (b) Cases in which either AkzoNobel or Metlac had supplied in the UK and the other had supplied elsewhere in the EEA, and were therefore likely to be qualified to supply, the same B2E product to the same customer across the EEA represented 41–50 per cent of UK sales (and again there may be reasons to consider that this understated the level of overlap).
49. It was generally the case that Valspar and PPG are also active on both types of overlap we have identified. 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. Against the background of our evidence that Metlac tended to price aggressively in areas where it was active, we considered whether removal of this constraint would result in a significantly lower level of competition in the market, notwithstanding the presence of PPG and Valspar.
50. Based on the evidence we collected, we believed that Valspar and PPG had not competed vigorously on price in relation to B2E in the way Metlac has done. Metlac constrained 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 were rebid, in the absence of a supply-side response from any other suppliers.
51. We considered barriers to entry and expansion in the B2E segment and, in particular, whether customers would have the ability to counter any merger effects by sponsoring entry or expansion. We found it unlikely that suppliers already active in the B2E segment would be able to expand to a sufficient scale in a timely manner to constrain the merged entity, either independently or via customer sponsorship. In our view, it was unlikely that, in the foreseeable future, there would be entry into B2E on a sufficient scale to constrain the merged entity.

52. We also considered whether buyer power held by the four B2E customers would be sufficient to counteract any merger effects. Given the challenges associated with switching and developing suppliers and the significant concerns raised by three of the four customers, in our view buyer power was unlikely to be sufficient to counter any potential competitive harm caused by the merger in the B2E segment of the B&B market.
53. In summary, in relation to loss of actual competition in the supply of B2E coatings, we are of the view that prices sought by suppliers for the B2E products that AkzoNobel and Metlac are currently qualified to supply (in the UK or somewhere in the EEA) are likely to increase post-merger. More specifically, we would expect to see an overall increase in prices sought by suppliers when B2E contracts contested by Metlac are rebid, as Metlac will have been removed as a potential low-price competitor for these contracts. We would also expect a weakening of rivalry in innovation, particularly when AkzoNobel and Metlac are head-to-head in the race to develop new formulations or minor changes to existing products (and this is also relevant to our views in relation to potential competition in B&B).

Loss of actual competition in the supply of FCG coatings

54. We considered whether the removal of Metlac as a significant competitive force in the FCG market would result in an SLC, noting that the merger would combine the two largest suppliers by volume in the FCG market (in the EEA, although not in the UK). As with B2E, in our view any likely effects would be in relation to both price and non-price aspects of competition such as innovation.
55. In relation to the FCG market, a number of customers that responded to our questionnaire expressed concern about the effects of the merger on competition in the supply of metal packaging coatings. Generally, these customers expected a negative impact for their business, mostly in terms of reduced number of suppliers and higher prices, but also expected less innovation, lower product quality and narrower product range. However, some other customers did not expect any significant change.
56. We found that a significant proportion of UK sales in FCG have been exposed to some form of rivalry between AkzoNobel and Metlac. AkzoNobel and Metlac competed to supply FCG coatings but the proportion of overlaps based on the MIS database was lower in all FCG sub-segments than in the B2E segment. In the UK:
- (a) Cases in which AkzoNobel and Metlac both supplied, based on the MIS database, and were therefore likely to be qualified to supply, the same FCG product to the same customer to the same plant represented: 0–10 per cent of the C&C external volumes; 0–10 per cent of the GL external volumes and 0–10 per cent of all other FCG sub-segment volumes purchased in the UK. However, there were reasons to consider that this potentially understated the true level of this type of overlap.
- (b) Cases in which AkzoNobel and Metlac both supplied, based on the MIS database, and were therefore likely to be qualified to supply, the same FCG product to the same customer across the EEA represented the following percentage of UK sales: 0–10 per cent of Food internal; 0–10 per cent of Food external; 11–20 per cent of C&C external; 0–10 per cent of GL internal and 21–30 per cent of GL external (there was no overlap in C&C internal) (and again there may be reasons to consider that this understated the level of overlap).
57. As in B2E, we noted that it was generally the case that either Valspar or PPG or both were also active on both types of overlap we have identified, and so we considered

the extent to which Valspar and PPG would be likely to constrain the merged entity. For the same reasons as found in relation to the B&B market, we did not find that Valspar and PPG competed aggressively on price with AkzoNobel in the FCG market and were of the view that this was unlikely to change post-merger.

58. In contrast to the B2E segment, we found a wide range of smaller suppliers active in FCG, albeit many of these were only present in particular segments or sub-segments of the market. We found that it was often the case that a number of smaller suppliers were already active alongside the larger competitors on AkzoNobel/Metlac overlaps: ie they were also likely to be already qualified to supply the 'overlap' product to the same customer somewhere in the EEA.
59. We considered the barriers preventing these suppliers from entry or expansion to replace Metlac as a constraint in relation to overlaps where no smaller supplier was present, and more generally.
60. In summary, based on our assessment of the evidence in relation to barriers to entry and expansion into the production of FCG coatings, we were of the view that the availability of additional productive capacity within the FCG market, together with the strong interest and ability on the part of customers to sponsor entry or expansion in the market, meant that entry or expansion was likely in some segments of the FCG market, in particular the General Line sub-segments. In relation to products within the other segments (Food and C&C), despite the presence of smaller suppliers who supplied products within these sub-segments (albeit not in all cases supplying the products to which the overlaps relate), the evidence was less clear-cut both in relation to technological know-how and reputation, as well as the impact on the qualification process, as to whether entry and/or expansion would be sufficiently likely and timely. There was some evidence to suggest that qualification times are sufficiently short (and therefore switching costs sufficiently low) to enable timely entry/expansion in relation to external food and C&C coatings although we could not be confident of this. Longer qualification times and therefore switching costs in relation to food contact coatings suggested that timely entry/expansion would be least likely, in comparison with other sub-segments, in relation to Food internal and C&C internal (although we could not rule out the possibility that it would happen).
61. On balance, we considered that there would be more scope to exercise buyer power in the FCG segment than in the B2E segment because switching to smaller suppliers and/or sponsoring entry/expansion was more credible. Whether they would be able to sponsor entry/expansion would depend on the ability of suppliers to offer substitutable products, and we acknowledged that the evidence on this was mixed.
62. In conclusion, we could not rule out that smaller suppliers would be able to enter or expand to replicate the constraint provided by Metlac in relation to FCG in the UK, particularly given Metlac's small presence in the UK in supply of FCG.
63. We noted Metlac's relatively small presence in FCG in the UK, particularly in relation to Food. We found that even where Metlac did overlap with AkzoNobel, the merger would be likely to have a limited impact in the UK in the Food internal, Food external, C&C internal and General Line internal sub-segments because nearly all customers already had a credible choice of smaller supplier to switch to in the event of a post-merger price increase (which was already qualified to supply them with the product in one of their plants in the EEA and is therefore in the same position as Metlac was pre-merger). Therefore, whilst Valspar and PPG were unlikely to compete vigorously on price to constrain the merged entity, we believed that, in the majority of cases, and in the UK, smaller suppliers were likely to be in a reasonably good position to

replicate the constraint provided by Metlac in relation to these overlap products in the relevant sub-segments.

64. We noted that there may be some customers who did not currently have the option of switching to a smaller supplier that was already qualified either in the UK or in the EEA. In relation to these customers, our evaluation of barriers to expansion and entry suggested that qualification time frames were sufficiently short to enable timely entry/expansion in some segments of the FCG market, in particular the General Line sub-segments. This may also be a possibility for Food and C&C external although, given that the qualification process could be quite long and costly in these sub-segments, we could not be confident that this was the case.
65. Longer qualification times and therefore switching costs in relation to food contact coatings suggested that timely entry/expansion was least likely, in comparison with other sub-segments, in relation to Food internal and C&C internal, were there to be overlaps in this sub-segment (although we could not rule out the possibility that it would happen). We also noted that, unlike expansion of smaller suppliers into B&B, these smaller suppliers were likely to have a level of reputation with customers in some or all of the relevant FCG sub-segments which made expansion into a similar product more feasible, particularly if they were already supplying the same or similar products elsewhere in the EEA or to another customer.
66. Given the mixed evidence base on the ability of smaller suppliers to enter/expand, due to qualification costs and reputational factors, we did not find that the merger would be expected to result in unilateral effects from the loss of actual competition in the FCG market in the UK.
67. We also considered whether there was evidence indicating that AkzoNobel may have incentives to reduce its product range if Metlac's constraint was removed after the merger and did not expect the merger to result in a significant reduction in the product range available to the customers.

Loss of potential competition in the supply of B&B coatings

68. Evidence from third parties indicated that there were a number of opportunities for Metlac to become qualified and start supplying customers with additional products in the B&B segments, in both the UK and in the EEA. We also noted that customers indicated that the B&B market may move towards a requirement for Bisphenol-A non-intent (BPA-NI) coatings in the future. The evidence provided to us indicated that Metlac, along with AkzoNobel, Valspar and PPG, was developing BPA-NI B&B coatings, and we were of the view that a move to BPA-NI B2E coatings would enhance Metlac's ability to expand further its B2E supplies, given its strong position in development of BPA-NI coatings.
69. We decided that in the future Metlac was likely to qualify to supply customers with additional products in B2E, in some cases where AkzoNobel is qualified too. For this reason, we expected that Metlac would be able to extend its competitive constraint on AkzoNobel on a broader range of product/customer pairs than it currently does. As a consequence, the merger would remove a potential competitor for a number of product/customer pairs.
70. 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 unilateral effects would arise from a reduction in potential competition in the B&B market, in particular from the loss of a potential entrant in B2I and BE.

71. We concluded that if Metlac were to enter the B2I and BE segments, it would be likely to capture a significant market share, and that such entry was likely. However, there were a number of factors over which we did not have sufficient clarity to be able to state that entry was sufficiently certain such that Metlac's removal would, on its own, create an SLC.
72. However, we considered that the risk that the merger removed a potential entrant from the B2I and BE segments reinforced our conclusion that the merger would result in unilateral effects in the B&B market.

Loss of potential competition in the supply of FCG coatings

73. As in the case of B&B, the evidence we collected indicated that Metlac was increasingly qualifying new products with the major customers. A number of customers told us that they intended, and were in the process of, switching part of their coatings demand to Metlac.
74. Overall, the evidence showed that Metlac was well placed with respect to BPA-NI food contact coatings.
75. We received some evidence that some of the smaller suppliers were generally weaker in BPA-NI product development than the biggest four, although a number of smaller suppliers were developing BPA-NI products. As such, whilst there could be a time lag before the smaller suppliers could catch up with the larger suppliers in BPA-NI product development, we did not receive sufficient evidence to show that they would be unable to provide a credible alternative to Metlac in the event of the merger.

Conclusion on loss of actual and potential competition in the B&B and FCG markets

76. In summary, we found that the proposed merger may be expected to create unilateral effects in the B&B market from a loss of actual competition. We also found that the proposed merger may be expected to create unilateral effects in the B&B market from a loss of potential competition. Metlac was in the process of becoming qualified to supply customers with additional products in B2E, and we considered it likely that Metlac will place a constraint on AkzoNobel on a larger number of product/customer circumstances in the future. We did not consider that Valspar, PPG and smaller suppliers would constrain the merged entity from raising prices or implementing non-price effects at least in the short to medium term. The merger would also remove Metlac as a potential entrant from B2I and BE, which reinforced our finding that the merger would result in unilateral effects in the B&B market. We found that new entry and expansion would be unlikely to occur in a timely and sufficient manner to counteract the SLC in this market and that countervailing buyer power was unlikely to be sufficient to counteract the SLC in this market. We did not consider that efficiencies were likely to provide sufficient customer benefits to counteract any adverse merger impacts.
77. In relation to the FCG market, notwithstanding that we saw some evidence indicating that the merger might result in unilateral effects, given the mixed evidence base on the ability of smaller suppliers to enter/expand we did not find that the merger may be expected to result in unilateral effects resulting from a loss of actual or potential competition in the FCG market in the UK.

Conclusion

78. We have concluded that the proposed merger may be expected to result in an SLC in the market for supply of metal packaging coatings for B&B in the UK.
79. Notwithstanding that we have seen evidence showing that the merger may result in unilateral effects in the market for supply of metal packaging coatings for FCG, we did not find that the merger may be expected to result in an SLC in this market in the UK.

Remedies

80. We found that the only remedy likely to be effective was prohibition of the transaction. This would be an effective remedy and would have no associated risks. We considered various behavioural remedies mentioned by AkzoNobel and concluded that these would not be effective. We were unable to identify another remedy that would be similarly effective in addressing the adverse effects of the proposed transaction.
81. We considered potential relevant customer benefits (RCBs) in some detail and tested the assumptions behind them. We found that there were no RCBs that would meet the criteria set out in our guidelines. We also found that there were no costs arising from prohibition.
82. We therefore decided that the remedy of prohibition would be a proportionate remedy given the absence of effective alternatives, the benefits of achieving a comprehensive solution to the substantial competition problems, and the absence of any evidence that RCBs would arise from the transaction.
83. We concluded that prohibition would be as comprehensive a solution as is reasonable and practicable to the SLC arising from the proposed transaction.
84. The CC has the choice of implementing remedies by obtaining undertakings from the relevant merger parties or by making an order. Where possible, we prefer to proceed by accepting undertakings. However, if agreement on undertakings is not expected to be forthcoming on a timely basis, we will have recourse to imposing an order.

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, pursuant to [section 36](#) of the Act:
- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; 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 were originally required to take our final decision and report by 6 November 2012 but in accordance with section 39(3) of the Act the inquiry was extended to 1 January 2013.
- 1.3 This document, together with its appendices, constitutes our report, published and notified to AkzoNobel and Metlac Holding in line with the CC's Rules of Procedure.² Further information relevant to this inquiry, including our issues statement, non-confidential versions of written submissions and summaries of third parties hearing evidence, can be found on our [website](#).

2. The metal packaging coatings industry

- 2.1 AkzoNobel and Metlac Holding's relevant subsidiaries, in particular Metlac, both manufacture and supply metal packaging coatings and metal decorating ink. These are 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 substrates³ during the process of manufacturing metal packaging. Coatings are used 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, or to protect the external packaging decoration from abrasion. 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 *Competition Commission Rules of Procedure, CC1, 2006.*

³ A substrate is the base material used to make the packaging.

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 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.⁴

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,⁵ 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.⁶ There are also two-piece cans, that are predominantly used for fish and increasingly for pet food⁷;
- caps and closures—metal lids for glass jars and bottles; and

⁴ 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.

⁵ Paragraph 2.11 describes the manufacturing process for two-piece beverage cans. Three-piece beverage cans are still used, mostly in parts of Asia, although they have a small market share.

⁶ Paragraph 2.13 describes the manufacturing process for three-piece food cans.

⁷ Paragraph 2.12 describes the manufacturing process for two-piece food cans.

- general line—cans and tubes for a broad range of products such as aerosols, cosmetics, chemicals, paints and dry food products (eg biscuits).
- 2.9 As explained in paragraph 2.4 above, the contents of cans influences 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. Appendix B sets out diagrams of the manufacturing processes for both two-piece beverage and three-piece food cans, which are described in paragraphs 2.11 to 2.13 below.
- 2.11 *Two-piece cans* are manufactured from aluminium or tinned steel using a drawing and wall ironing (DWI) process and are generally used for beverages. 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.⁸ 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 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.
- 2.12 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. For two-piece DRD cans used for fish, pet food etc, the cans are coated (and often decorated) in flat sheets using rollers before being formed.
- 2.13 *Three-piece cans*—The majority of food cans are manufactured as three separate pieces: a cylinder, a bottom and a top (ie the ends). 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.
- 2.14 The differences in manufacturing processes for two- and three-piece cans affect the properties of the coatings used. Internal sprays for beverage cans need to be less viscous than those applied to flat metal sheets to allow even coverage from a rapid

⁸ Irfab, ‘Global Industrial Coatings Markets 2010-2020’, 2011.

spraying process. External coatings for two-piece beverage cans must be able to be applied by rollers to the formed can, in comparison with external coatings for three-piece cans which are applied to a flat metal sheet. 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.⁹

- 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.
- 2.16 *Caps and closures and general line* metal packaging are manufactured differently from two- and three-piece cans, but are generally coated flat (as both two- and three-piece food cans are (with the exception of two-piece DWI food cans)) prior to being formed.

Metal packaging producers

- 2.17 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.¹⁰ Information on some of the largest metal packaging manufacturers in both the EEA and the UK is set out below.
- 2.18 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 the Republic of 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 has metal packaging plants in Europe, Africa, North America and Asia-Pacific.
- 2.19 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

⁹ *ibid.*

¹⁰ Crown and Can-Pack are the only large metal packaging coatings customers 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. Ball also has activities in both segments, but its EEA activities in non-beverage metal packaging are limited to manufacturing aerosol cans in Europe. Ball told us that it was only active in B&B and aerosols in Europe (and not in FCG). Ball has activities in FCG outside the EEA. All responses provided to us related to Ball's activities in Europe only. See footnote to paragraph 2.19 for further information regarding Ball.

Netherlands, Poland, Serbia and the Czech Republic, which together produced approximately 17 billion metal beverage cans and 700 million aerosol cans in 2011.¹¹

- 2.20 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.
- 2.21 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 promotional. 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.
- 2.22 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. Within the EEA, Rexam has beverage can plants in Austria, the Czech Republic, Denmark, France, Germany, the Republic of Ireland, Italy, the Netherlands, Poland, Spain, Sweden and the UK.
- 2.23 The activities of metal packaging producers can be distinguished between manufacturing beer and beverage can bodies; beer and beverage can ends and metal packaging for food, caps and closures and general line, as follows:
- *Beer and beverage can body manufacturers*—Ball, Can-Pack, Crown and Rexam account for all EEA demand for coatings for beverage can bodies.¹² We estimated that these customers accounted for approximately [71–80] per cent of B&B coatings consumption by volume in the EEA in 2011.
 - *Beer and beverage can ends manufacturers*—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: 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

¹¹ 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.

¹² According to AkzoNobel's MIS database two other customers, [X] and [Y], purchased very small volumes of B2E in 2011. Neither are UK customers and we do not take account of them further in this report.

product and geographic focus. Within the food segment, we estimate that Ardagh and Crown accounted for [51–60] per cent of coatings demand, by volume.

- 2.24 Further information on the volume purchased by customers for metal packaging coatings is included in Appendix C.
- 2.25 As described in paragraphs 2.18 to 2.22 above, 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

- 2.26 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 is a higher proportion of beer and beverage metal packaging production than food, caps and closures and general line metal packaging production, 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. Ends are mainly supplied to UK beverage metal packaging plants from producers in other EEA countries. [X]

Metal packaging customers

- 2.27 The main customers of metal packaging producers are large consumer products groups, such as Carlsberg Group, Diageo plc, Groupe Danone (Danone) Heineken N.V., HJ Heinz Company Ltd (Heinz), Nestlé S.A. (Nestlé), The Coca-Cola Company (Coca-Cola) and Unilever N.V. (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

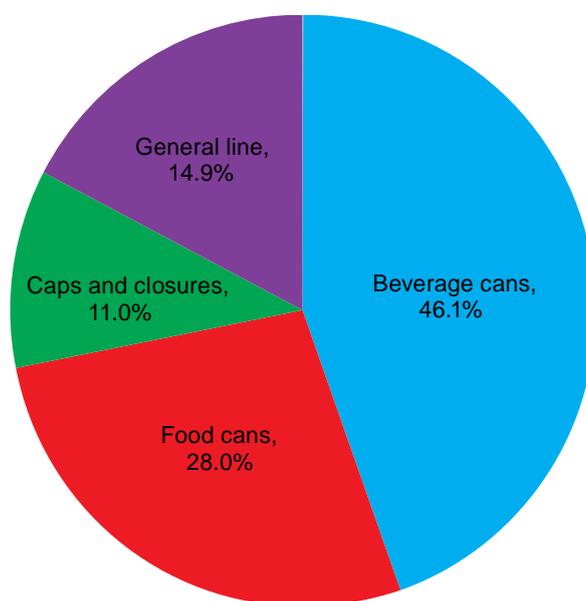
- 2.28 The market for metal packaging coatings is shaped by the requirements of the metal packaging industry. The range of products demanded is determined by end-use market, substrate, coatings application technology, functional and decorative surface properties, final coating performance requirements and food contact regulations.
- 2.29 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 estimated to increase by approximately 8.5 per cent.¹³

¹³ Irfab, op cit. We acknowledge AkzoNobel's reservations regarding the accuracy of the Irfab report. However, we do not hold alternative growth forecasts for the total metal packaging coatings market. We have been provided with a number of reports that estimate growth of the downstream metal packaging industry. For example, the VisionGain Report estimates market growth of between 2 and 3.7 per cent a year between 2011 and 2016 in Western Europe and between 6 and 8 per cent a year

- 2.30 The production of metal coatings is relatively concentrated at the global level with three large producers; AkzoNobel, PPG and Valspar. Metlac has a strong presence in the EEA but more limited activities globally. In addition, there is a range of smaller producers operating in the EEA which supply coatings. These smaller EEA producers include: Actega Rhenania and Actega Rhenacoat (Actega), Diostyl, Grace Darex Packaging Technologies/Grupo Sistiaga (Grace), IPC Company Limited (IPC), Salchi Metalcoat S.r.l. (Salchi), Schekolin A.G. (Schekolin) and VPL Chemicals Pvt Ltd (VPL).¹⁴
- 2.31 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.

- 2.32 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 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.
- 2.33 In relation to the UK, AkzoNobel has a number of customers for metal packaging coatings, of which the largest four ([X]) accounted for approximately [90–100] per cent of its UK sales by volume in 2011. AkzoNobel's UK customers include: [X].¹⁵ Metlac has [X] customers which purchase metal packaging coatings in the UK: [X].

in less developed European markets. AkzoNobel told us that the VisionGain Report had tended to underestimate growth levels, particularly for the growth in value of B&B can production. The Beverage Can Makers Europe report found that the volume of cans produced in Europe increased by 5.1 per cent in 2011 and 3.4 per cent in the first six months of 2012.

¹⁴ Two of these smaller suppliers (Grace and Actega) are part of larger manufacturing conglomerates.

¹⁵ [X]

[X] further customers ([X]) have approached Metlac regarding supply to their UK plants.

Product range

- 2.34 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.
- 2.35 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>Sub-categories</i>	<i>Further distinctions</i>
B&B	B&B	Beverage externals (B2E)	Aluminium or steel
		Beverage internals (B2I) Beverage ends (BE)	Rim coatings Aluminium or steel 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	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 Aerosol Collapsible tubes Aluminium monobloc	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.

Source: CC.

- 2.36 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 food coating will be adapted for the type of food with which it will come into contact.
- 2.37 The majority of food can and general line coatings are solvent-borne, while in Europe around 95 per cent¹⁶ of beverage can coatings are waterborne.
- 2.38 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 2.44 to 2.51 below.

External coatings

- 2.39 External coatings are manufactured using a number of chemical bases, including polyester, acrylic and epoxy esters. These can be either solvent-borne or water-

¹⁶ Irfab, op cit.

borne. The range of external coatings includes basecoats¹⁷ 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 protect the can from external corrosion from abrasion of the base.

- 2.40 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 2.84 and 2.85 below for further information regarding inks supplied to metal packaging manufacturers.

Internal coatings

- 2.41 The type of coatings used internally varies with the end use of the can:
- *Beer & beverage cans.* Internal 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 internal coatings 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.
- 2.42 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

- 2.43 In the food ends and beverage ends segment, coatings are supplied to aluminium manufacturers, such as Constellium, Elval, Hydro and Novelis.¹⁸ 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.¹⁹ 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

¹⁷ 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.

¹⁸ These are the only four companies which we are aware of having purchased metal packaging coatings for beverage ends in the EEA in 2011.

¹⁹ Some ends are made by the can manufacturers using coated coil stock produced by the aluminium manufacturer.

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.

Manufacturing processes

- 2.44 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 B2I coatings. The second process is for the manufacture of B2I 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.
- 2.45 In the first production process described above, batch sizes can vary significantly depending on the quantity of a given coating specification demanded. In external B&B, 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 in B2I production by bringing resin manufacturing in-house.
- 2.46 B2I coatings are particularly 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, which manufactures B&B coatings, as noted in paragraph 3.5 below. In particular, the factory seeks to manufacture the B&B coatings on a semi-continuous basis, with high rates of inventory turnover, a limited number of formulations and with limited flexibility to switch between them.
- 2.47 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. The coatings supplier is likely to be liable for any damages resulting from faulty coatings.
- 2.48 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.
- 2.49 Both AkzoNobel and Metlac generally use a specific production area/site only once a day, ie a particular production site will not need to be used to make a number of different batches in a day. 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.

- 2.50 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.
- 2.51 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.²⁰

Toll manufacturing

- 2.52 Toll manufacturing is an arrangement whereby a company with specialized equipment processes raw materials or semi-finished goods for another company.²¹ 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.
- 2.53 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. However, some customers ([redacted]) told us that they did not use toll manufactured coatings, or only used such coatings in extreme circumstances, as to accept such products would reduce their control over the coatings produced and pose risks relating to quality and security of supply.

Customer contracts

- 2.54 Metal coatings manufacturers supply their customers on both an 'on request' 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. 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.

²⁰ [redacted]

²¹ www.businessdictionary.com.

AkzoNobel told us that the volumes contained in the contracts tended to be indicative rather than a firm commitment.

- 2.55 In addition to price, customers focus on several aspects of a coating manufacturer's offering, including quality,²² 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 them. 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, as noted in paragraph 7.30.
- 2.56 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

- 2.57 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.
- 2.58 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.
- 2.59 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.²³

²² Factors relevant to determining quality of a coating include solid weight (with a lower solid weight being preferable), abrasion resistance for external coatings, ease of application (flow and opacity) and colour tone.

²³ EC Regulation 1895/2005 sets a limit on the safe levels of migration of Bisphenol-A (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 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.

- 2.60 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.
- 2.61 In addition, coatings manufacturers in the EEA are affected by regulation imposed by the US Food and Drug Administration (FDA).²⁴

Qualification of products

- 2.62 The reliability of coatings products (and their suppliers) is of paramount importance to the can manufacturers who therefore insist on a rigorous qualification process.
- 2.63 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.
 - (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 eg at a different plant.
 - (d) For coatings which have previously been used by that customer but not for some time.²⁵
- 2.64 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 'food contact coatings': internal coatings in the B&B, Food and C&C segments) and least in relation to general line coatings. If a manufacturer wishes to sell a coating which has not previously been supplied to a particular customer (cases (a) and (b) in paragraph 2.63 above), the coating must go through a rigorous process of testing and certification before it can be qualified by the customer.
- 2.65 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 contents 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

²⁴ 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.

²⁵ The scale of testing in this situation will depend on whether there have been significant manufacturing changes on that product line since the relevant coating was last used there.

product by the brand owner. Beverage cans in the EEA generally only need a shelf life of six months or less, whilst food cans may need a shelf life of several years.²⁶ External coatings and those that will not come into contact with food may require shorter and/or less rigorous pack testing.

- 2.66 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.²⁷ 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.
- 2.67 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.
- 2.68 We received different views on the precise costs, risks and timing associated with the qualification process involved in switching suppliers (which may reflect differences in the product being switched and the operational constraints of each production line) and consider these views in paragraphs 8.10 to 8.59 below. Nevertheless, some common themes emerged:
- (a) First, with the exception of General Line, there are relatively long time frames associated with switching to a previously unqualified (‘de novo’) product. These costs vary between market segments with qualification of previously unqualified products taking longer for B&B products and coatings in the Food and C&C segments which come into contact with food or beverages (ie internal coatings). 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.
 - (b) Secondly, that across these sub-segments where qualification timeframes are relatively high (B&B, Food Internal, C&C Internal and to some degree Food External and C&C External), the qualification process appears to be shorter for products which are already qualified at a plant within the customers’ group as compared to de novo products.
 - (c) Thirdly, there is also some evidence to suggest that the qualification process is similarly shorter than for de novo products if the product has already been qualified in the industry albeit not with that customer, although this is less clear.
- 2.69 Significantly new formulations (case (a) in paragraph 2.63 above) will also take longer to test and qualify, if regulatory approvals are required.
- 2.70 The costs of any required regulatory approvals are borne by the coatings manufacturer. The costs of pack tests and scaling up may be borne by the can manufacturer (on the basis qualification occurs at its facilities) or shared between the coatings and the can manufacturers.

²⁶ 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.

²⁷ See paragraphs 2.57–2.61 for a description of relevant regulations.

- 2.71 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.²⁸
- 2.72 The process of qualifying products is a continuous cycle for coatings manufacturers and their customers. Metlac has qualified [X] with its customers in the last five years; AkzoNobel estimates that it qualifies 'at least [X] every year'; and PPG indicated that it had qualified over [X] in the last five years.²⁹

New product development

- 2.73 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.
- 2.74 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.³⁰
- 2.75 The time required to develop a new product (excluding qualification) 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 BPA-NI products is taking years.

BPA-NI

- 2.76 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.³¹
- 2.77 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. On 9 October 2012, the French Senate approved a bill banning the use of BPA in all packaging coming into contact with food (including beverages), to take effect from 1 January 2015. We understand that on 13 December

²⁸ 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. [X] told us that it had been working with [X] on a niche level for the last two years to qualify an overvarnish and a basecoat. [X]

²⁹ We do not know to what extent these qualifications related to new or existing products, or to products already qualified with a relevant customer which only required minor requalification.

³⁰ AkzoNobel has told us that it had [X] published patents or 'alive' applications, compared with Valspar's [X], PPG's [X] and Metlac only having [X] ([X] of which relate to metal packaging coatings). Both AkzoNobel and Metlac have told us that they had qualified [X] products in the past few years (see paragraph 2.72) and we have not received evidence that the patent process is an important part of the industry. We are therefore of the view that the number of patents provides only limited indications of the level of innovation in the industry.

³¹ 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.

2012, the French Senate ratified the law and it is now awaiting the signature of President Hollande, which will confirm the final date for conversion.³² Belgium has drafted legislation that would ban the use of BPA in containers for foodstuffs aimed at children up to the age of three years, to come into effect on 1 January 2013. This is based on a recommendation of the Belgian Superior Health Council that exposure of young children to BPA should be limited to the lowest level possible.^{33,34}

- 2.78 Whilst it is still 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, as companies will be unable to import cans containing BPA into France, we understand from customers that the requirement will in practice have pan-European implications.
- 2.79 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. Historically their use has been relatively 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. However, there is customer pressure on coatings manufacturers to develop cheaper BPA-NI coatings and during the course of our inquiry we have seen an increased uptake of purchases of BPA-NI coatings, indicating that at least some parties are managing to develop cheaper products. 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.³⁵ The lack of proven track record of these products may also be a factor delaying adoption prior to the introduction of legislation.
- 2.80 The demand for BPA-NI coatings will also depend on whether downstream food and beverage manufacturer customers require BPA-NI. We asked downstream customers about their plans to use BPA-NI coatings and the extent to which this relied on legislation requiring BPA-NI coatings. [X] told us that they were interested in moving their metal packaging to BPA-NI coatings, even in the absence of a legislative requirement. [X] told us that it planned to switch most of its metal packaging to BPA-NI coatings by the end of 2015 and it was actively searching for BPA-NI coatings for all product ranges and internal and external metal packaging coatings. [X] told us that it was evaluating BPA-NI systems in anticipation of BPA-NI coatings being required for food contact coatings within five years, but might consider moving to BPA-NI systems earlier should suitable material become available at commercial prices.
- 2.81 Metlac told us that: 'In March 2012 the Campbell Soup Company decided to phase out BPA from all its food cans before 2015, as a result of public pressure.'³⁶ Heinz,

³² See (in French) at www.lemonde.fr/sciences/article/2012/10/09/le-senat-adopte-le-texte-dinterdiction-du-bisphenol-a-dans-les-contenants-alimentaires_1772668_1650684.html. Prior to the approval by the Senate, the news was reported on English language websites (eg www.packagingnews.co.uk/news/france-to-ban-bpa-in-food-contact-packs-by-2015).

³³ See, for example, www.euwid-packaging.com/news/singlenews/Artikel/bpa-ban-belgiumfollows-frances-lead.html.

³⁴ Metlac response to our provisional findings, p6.

³⁵ 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.

³⁶ See www.foodproductiondaily.com/Quality-Safety/Campbell-Soup-to-complete-bisphenol-Aphase-out-before-2015-source and www.forbes.com/sites/amywestervelt/2012/03/05/under-pressure-from-parents-advocacy-groups-campbells-goes-bpa-free/. See, for example, Heinz Corporate Responsibility Report 2009: www.heinz.com/CSR2009/social/business/food_safety.aspx. See also www.packagingint.com/news/heinz-drops-bisphenol-a-food-packaging.html.

General Mills, Danone, Unilever, and other food companies are also removing BPA from some or all of their product packaging.¹³⁷

- 2.82 A number of customers are already using BPA-NI coatings for food products and we understand that the market for food-contact coatings is rapidly moving towards BPA-NI even in the absence of pan-EEA legislation that mandates its use. We analyse the impact this could have on competitive rivalry in the future in Section 9.
- 2.83 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

- 2.84 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 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.
- 2.85 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 and its UK market share was [0–10] per cent by value and [11–20] per cent by volume in 2011. 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. We have concluded on the basis of the evidence provided to us that the parties' respective presences in metal decorating inks in the UK 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. AkzoNobel³⁸ 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.
- 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 acquisition in 2007³⁹ 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's minority shareholdings in Metlac Holding and Metlac were acquired by AkzoNobel as part of the transaction.

³⁷ [Metlac response to our provisional findings, pp6 & 7.](#)

³⁸ AkzoNobel told us that Akzo Nobel N.V. and its subsidiaries carried on business under the AkzoNobel name.

³⁹ [Case COMP/M.4779, AkzoNobel/ICI, 13 December 2007.](#)

- 3.3 AkzoNobel divides its business into three operational divisions called Business Areas: Performance Coatings, Decorative Paints and Specialty Chemicals, which each accounted for approximately one-third of AkzoNobel's 2011 turnover. Each of these Business Areas are further divided into Business Units, which are further divided into sub-Business Units (SBUs). Depending on the specific activities and customers served, the organization of these Business Units and SBUs is either by market or by geography. The Performance Coatings Business Area includes industrial coatings; Automotive & Aerospace Coatings; Marine & Protective Coatings, Powder Coatings, Industrial Coatings and Wood Finishes & Adhesives.⁴⁰ The Industrial Coatings Business Unit includes Akzo Nobel Packaging Coatings (ANPG), the metal packaging coatings SBU.
- 3.4 In 2011 the ANPG SBU globally earned an EBITDA of €[X] million on revenues of €[X] million (2010, EBITDA €[X] million on revenues of €[X] million).^{41,42} 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).⁴³
- 3.5 AkzoNobel manufactures and sells metal packaging coatings globally. It operates five sites in Europe: Birmingham and Hull, in the UK; Vilafranca, in Spain; Hilden, in Germany; Elbeuf, in France; and it has a metal inks site in Hull, in the UK. Its subsidiary in the UK is Akzo Nobel Packaging Coatings Limited (ANPCL). 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 for [X] which are supplied by AkzoNobel group companies throughout EMEA. The site has coatings capacity of [X] kt. Coatings for [X] are manufactured at this 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.
 - Elbeuf, in France. Site supplies EMEA with [X] coatings, with [X] kt capacity.
- 3.6 In 2010 AkzoNobel completed the acquisition of the Swedish packaging coatings and inks business, Lindgens.
- 3.7 AkzoNobel consolidates the results of its operating subsidiaries in the reporting of the accounts of Akzo Nobel N.V., the ultimate parent company of the group, which AkzoNobel has told us is a pure holding company. The annual report of Akzo Nobel

⁴⁰ [X]

⁴¹ 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).

⁴² [X]

⁴³ [X]

N.V. sets out the overall strategy of the AkzoNobel business describing the activities and strategic ambition of all three Business Areas.

- 3.8 AkzoNobel told us that Akzo Nobel N.V. operated a two-tier corporate structure as required by Dutch law. It had the Board of Management which reported to the independent Supervisory Board. The Board of Management was responsible for management of the company. The company had appointed senior managers together with the Board of Management, collectively known as the Executive Committee (ExCo) as the organizational body responsible for the day-to-day management of the company including the strategic direction. ExCo included members who had responsibilities for Business Areas and Country responsibilities.
- 3.9 ExCo also included members who had responsibilities for Business Areas ('BA Responsibilities'), functions and specific countries/regions.⁴⁴
- 3.10 AkzoNobel told us that [REDACTED].⁴⁵
- 3.11 [REDACTED]⁴⁶

Metlac

- 3.12 Metlac Holding is a private company, of which 51 per cent is owned by three members of the Bocchio family (the Bocchio family) and 49 per cent is owned by the AkzoNobel subsidiary, ANCI. Metlac Holding owns 55.56 per cent of the share capital in Metlac and another AkzoNobel subsidiary, Mortar Investments International Limited (Mortar), owns the remaining 44.44 per cent. The governance arrangements of Metlac Holding were set out in the 2007 Formation and Quotaholders Agreement (FQA), which expired on [REDACTED] and are now determined by the Metlac Holding by-laws. The governance arrangements of Metlac were set out in the 2007 Shareholders Agreement (SHA), which expired on [REDACTED] and are now determined by the Metlac by-laws. The contents of these agreements are explained in further detail in Sections 4 and 5 below.
- 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. ICI's shareholding in the Metlac Group was acquired by AkzoNobel when it bought ICI in 2008. Mr Pier Ugo Bocchio (Mr Bocchio) is a founder shareholder of the Metlac Group. He has been managing director and general manager of Metlac since its inception. For further details of the history of the Metlac Group see Appendix D.
- 3.14 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.
 - 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

⁴⁴ AkzoNobel told us that ExCo had issued various documents to give general steering and direction to each of the Business Areas, Business Units and Sub Business Units within the AkzoNobel group. [REDACTED]

⁴⁵ [REDACTED]

⁴⁶ [REDACTED]

- 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.

- 3.15 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. From this one 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 supply coatings for beverage ends or internal spray for beverage cans. The Metlac Group's consolidated 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).
- 3.16 Metlac traditionally focused on selling to customers based in Italy⁴⁷ 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.

Relationship between AkzoNobel and Metlac

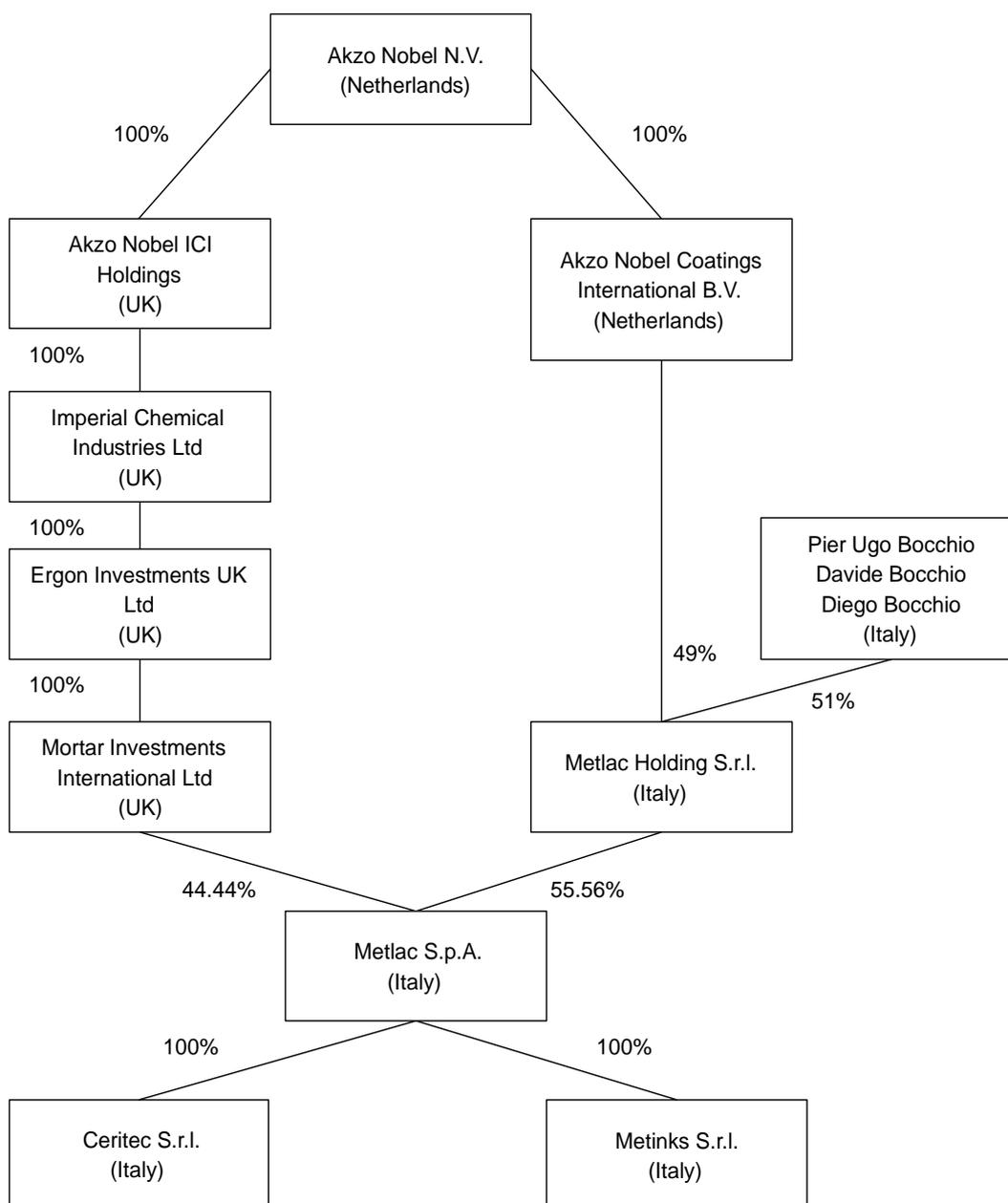
- 3.17 AkzoNobel has a 49 per cent shareholding in Metlac Holding, held through its subsidiary ANCI, which is a holding company for a number of AkzoNobel's coatings entities. AkzoNobel also has a shareholding of 44.44 per cent in Metlac held through its subsidiary Mortar.⁴⁸ The remaining 51 per cent majority shares in Metlac Holding are owned by members of the Bocchio family (Bocchio shares). Metlac Holding owns the remaining 55.56 per cent of shares in Metlac. The shareholding structures of Metlac Holding and Metlac are depicted in Figure 3 below.
- 3.18 ANCI has a call option to buy the Bocchio 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.

⁴⁷ [x]

⁴⁸ 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)).

FIGURE 3

Shareholding structure of Metlac Holding and Metlac



Source: CC.

- 3.19 We received submissions in the name of Metlac in the context of our inquiry. AkzoNobel disputed whether these submissions should be accepted as the views of Metlac because they have not been approved by the full Metlac board. [X] AkzoNobel has also expressed views on [X] and its views regarding the degree of animosity which now exists between it and Mr Bocchio, and therefore the caution with which we should treat submissions made by Mr Bocchio.
- 3.20 As explained in Section 5 below, the Bocchio family control the day-to-day management of Metlac, via their majority board representation. Mr Bocchio has held operational positions within Metlac since its inception in 1986 and consequently has extensive knowledge of the past and future strategy of the company. In this regard we also note that we have spoken with other members of the management team of

Metlac in the course of our inquiry. We are, therefore, satisfied that the submissions we received in the name of Metlac reflected its views. AkzoNobel has also made submissions to us regarding the Metlac business and we have taken those submissions into account in the course of our inquiry. In cases where the submissions of AkzoNobel and Metlac directly conflicted, we have considered their submissions carefully, and where possible in the context of evidence we have received from other sources.

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 ANCI of a call option over the Bocchio shares in Metlac Holding.
- 4.2 The FQA agreed between ICI, the Bocchio family and other third party shareholders when ICI acquired its interest in Metlac Holding in 1997, included put and call options in favour of ICI. A similar arrangement was included in the 2007 FQA between ICI and the Bocchio family (the other third party shareholders having exited). AkzoNobel acquired ICI's rights when it purchased ICI in 2008.
- 4.3 The call option that provided AkzoNobel with the ability to acquire the Bocchio shares was exercisable in the period between [REDACTED] and [REDACTED].
- 4.4 The 2007 FQA provided for a put option in favour of the Bocchio family 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 was not exercised. [REDACTED]⁴⁹
- 4.5 On 23 December 2011, AkzoNobel, after discussions with Mr Bocchio, formally exercised its option to acquire the Bocchio shares in Metlac Holding. [REDACTED] AkzoNobel and Metlac have confirmed that 'antitrust' clearance includes clearance by the CC of the proposed share transfer.
- 4.6 Metlac Holding contacted various competition authorities in early 2012, including the Bundeskartellamt (BKartA) in Germany and the OFT in the UK and completion was suspended pending the review by various competition authorities.
- 4.7 The BKartA and competition authorities in Austria, Cyprus, Brazil, Colombia, Pakistan, Russia and Turkey cleared AkzoNobel's proposed acquisition of Metlac Holding, and we have discussed the case with the BKartA and the Austrian Federal Competition Authority.⁵⁰
- 4.8 The BKartA decision was appealed by Metlac Holding and Mr Bocchio in Germany, on both substantive and procedural grounds. The procedural appeal related to whether Metlac Holding had standing to appeal a BKartA decision. The German Federal Court of Justice has ruled that Metlac Holding, as a party to the notified transaction, does not have standing to appeal the decision, ie only a third party would have standing to appeal. As such, Metlac and Mr Bocchio have withdrawn their appeal on the substantive case.

⁴⁹ [REDACTED]

⁵⁰ AkzoNobel told us that the authorities in Spain and Italy, who were informed about the merger, did not raise any competition concerns.

- 4.9 [REDACTED], the consideration to be paid for the exercise of the call option (ie for the Bocchio shares) was €[REDACTED] million, based on a pre-agreed formula set out in the FQA.⁵¹
- 4.10 [REDACTED]
- 4.11 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 offered interim undertakings to us, which we accepted. These undertakings prevent AkzoNobel from completing the transaction until the CC's inquiry is finally determined.

Rationale for the merger

- 4.12 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, whereas Italy accounts for [REDACTED] per cent of AkzoNobel's EEA sales of metal packaging coatings [REDACTED],⁵² 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

- 4.13 AkzoNobel's estimate of the synergies available to it following the acquisition are set out below:
- AkzoNobel stated that [REDACTED].⁵³
 - AkzoNobel anticipates that [REDACTED].
 - AkzoNobel stated that [REDACTED].
- 4.14 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. These synergies are further considered in Section 9, paragraphs 9.172 to 9.175 and Section 11, which addresses whether the merger would give rise to efficiencies or Relevant Customer Benefits (RCBs).

⁵¹ [REDACTED]

⁵² [REDACTED]

⁵³ [REDACTED] However, we have not been provided with evidence to verify this claim as the evidence we have been provided with on production costs by AkzoNobel and Metlac is not directly comparable.

Alternative options considered by AkzoNobel

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

Relevant merger situation

- 4.16 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.
- 4.17 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.⁵⁴
- 4.18 We are satisfied that both AkzoNobel and its subsidiaries and the Metlac Group are businesses and that their activities constitute enterprises for the purposes of the Act.
- 4.19 The Act provides that enterprises will cease to be distinct if they are brought under common ownership or common control. For the reasons explained in Section 5, we are satisfied that 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 would through wholly owned subsidiaries own 100 per cent of the shares in both Metlac Holding and Metlac.
- 4.20 The Act provides that either the turnover test or the market share test must be met. The turnover test did not apply in this case because the value of the turnover in the UK of Metlac, the ‘enterprise being taken over’ did not exceed £70 million. We therefore considered the share of supply test.
- 4.21 Both Metlac and AkzoNobel supply metal packaging coatings to the UK. We estimated 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 was met.
- 4.22 We therefore concluded that the proposed transaction, if carried into effect, would 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 considered whether the exercise of these rights may allow it to significantly influence the commercial strategy of Metlac thereby influencing Metlac’s ability to compete or the manner in which it competes.

⁵⁴ [Section 23](#) of the Act.

- 5.2 The legal rights of the shareholders which govern the relationship between AkzoNobel, Metlac Holding and Metlac were set out in the FQA, SHA and associated by-laws, referred to in paragraph 3.12 above.⁵⁵ [REDACTED]⁵⁶ AkzoNobel and Metlac told us that in the absence of any new agreement the relationship is governed by the by-laws governing Metlac Holding and Metlac and applicable Italian law. The governance of Metlac is examined in more detail in Appendix E.
- 5.3 [REDACTED]⁵⁷
- 5.4 [REDACTED]
- 5.5 Metlac told us that the Bocchio family had sole control over the Metlac Group and would continue to do so after the expiry of the FQA and SHA.
- 5.6 We found that under the FQA and SHA, AkzoNobel had the right to appoint two out of five directors to the board of Metlac Holding and three out of seven directors to the board of Metlac, through its subsidiaries ANCI and Mortar respectively. The Bocchio family had the right to appoint the majority of directors to Metlac Holding which in turn appointed the majority of directors to Metlac. The Bocchio family thereby controlled the majority of votes of the shareholders and directors in both companies.
- 5.7 [REDACTED]⁵⁸ See further Appendix E, paragraph 10.
- 5.8 [REDACTED]
- 5.9 [REDACTED]⁵⁹ as described in Appendix E, paragraphs 12 to 14, [REDACTED]. AkzoNobel told us that we underestimated the level of control it had over Metlac but did not provide evidence showing that it had in fact influenced the commercial strategy of Metlac or that it had the ability to do so.
- 5.10 [REDACTED] Metlac provided us with detailed information showing that it has expanded its facilities over the years without any input or consent required from AkzoNobel and without exceeding the gearing ratio.
- 5.11 [REDACTED]
- 5.12 This situation did not change significantly on expiry of the SHA and FQA. Under the by-laws, the Bocchio family retained control of both boards. [REDACTED] For the reasons set out in paragraph 5.10 we are satisfied that the requirement of the consent of AkzoNobel to expenditure in excess of the gearing ratio will not significantly constrain Metlac's ability to expand in the foreseeable future.
- 5.13 We found that the current Metlac governance arrangements will change to an extent by 2014 [REDACTED] (see paragraph 26 of Appendix E).⁶⁰ [REDACTED] (see Appendix E, paragraphs 26 to 30). [REDACTED] (see paragraphs 6.33 to 6.36). The management of Metlac may therefore become more time consuming. Following 2014, AkzoNobel told us that, if it did not acquire full control of Metlac, [REDACTED].

⁵⁵ The FQA referred 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 set 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 its rights passed to AkzoNobel when it acquired ICI and the ICI entity that was party to the SHA.

⁵⁶ [REDACTED]

⁵⁷ [REDACTED]

⁵⁸ In this context a 'supermajority' vote refers to any matter which requires the consent of both AkzoNobel and Metlac directors due to the number of directors required to consent to it.

⁵⁹ [REDACTED]

⁶⁰ [REDACTED]

- 5.14 [REDACTED] We consider further this unwieldy governance arrangement and its consequences for Metlac in paragraphs 6.27 to 6.38 of our discussion of the counterfactual.
- 5.15 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 and that this will not change in the event that AkzoNobel is not able to complete the exercise of its option. 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.⁶¹
- 5.16 A move from AkzoNobel's current level of ownership to 100 per cent ownership of the shares in Metlac Holding and Metlac, and consequently 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'.⁶²

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 its 44.44 per cent stake in Metlac and the Bocchio family would continue to own their 51 per cent interest in Metlac Holding.
- 6.3 We noted that AkzoNobel's Executive Committee considered a number of alternative options to the proposed transaction, as set out in the Acquisition Request (see paragraph 4.15 above) as follows:
- *Do nothing*: [REDACTED]. The Acquisition Request therefore rejected the 'do nothing' option.
 - *Sell AkzoNobel's shareholding* [REDACTED]: The Acquisition Request rejected this possibility as being inconsistent with the overall strategy for AkzoNobel, [REDACTED].
- 6.4 [REDACTED]
- 6.5 [REDACTED]
- 6.6 AkzoNobel told us that [REDACTED].
- 6.7 [REDACTED]⁶³

⁶¹ In response to our post-provisional findings economic working paper, AkzoNobel submitted that whilst ANPG and Metlac compete independently, we have not taken account of the level of competition between AkzoNobel (as a corporate group) and Metlac, [REDACTED].

⁶² *Merger Assessment Guidelines, September 2010, CC2 (Revised)*, paragraph 4.3.1.

⁶³ [REDACTED]

- 6.8 AkzoNobel stated that [REDACTED]. In addition AkzoNobel told us that Mr Bocchio presents himself as the focal point of Metlac and governance would therefore become progressively more difficult in the absence of a succession plan.
- 6.9 AkzoNobel referred us to the site report an AkzoNobel employee had prepared regarding the Metlac Bosco Marengo site in 2010, which identified a number of concerns including the difficulty of increasing the capacity of the site. AkzoNobel told us that the site was considered to be at 'risk of significant accident' by the local authority in Alessandria [REDACTED].

Metlac's view of the counterfactual

- 6.10 Metlac told us that if the transaction did not proceed, the status quo would prevail and 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.
- 6.11 [REDACTED]⁶⁴
- 6.12 Metlac told us that it expected significant growth [REDACTED], with a productive output exceeding [REDACTED] kt by 2016, representing total turnover well above €[REDACTED] million. Metlac told us that its sales to customers in the UK continued to grow, from €[REDACTED] million in 2011, as a whole, to €[REDACTED] million for the period 1 January to 30 November 2012. Metlac estimated that its UK sales would reach €[REDACTED] million in 2012 and are forecast to double to €[REDACTED] million in 2013.
- 6.13 [REDACTED]:
- [REDACTED] During this period there will be no change to the current governance structure and so the Bocchio family will continue to exercise control over Metlac Holding and consequently Metlac by having the ability to appoint the majority of directors on both boards. The current management of Metlac will remain unchanged.
 - [REDACTED]⁶⁵ Mr Bocchio will continue to act as General Manager with certain authorities deriving from the Board resolution appointing him to that position. In addition Metlac told us that the Board would be able to delegate specific powers to Mr Bocchio as general manager allowing him to continue to act largely as he does currently. Mr Bocchio's employment as General Manager and the scope of his powers when operating in that capacity cannot be terminated without a majority vote of the Metlac Board.
 - [REDACTED]
- 6.14 Metlac told us that the Bosco Marengo site was not at risk of accident as AkzoNobel had suggested but is in fact constructed to the highest safety standards (Metlac told us that the words AkzoNobel referred to describe the level of equipment needed at a certain category of site according to the Seveso Directive). In addition Metlac told us that it had never experienced difficulties in extending parking at the site, and has in fact recently extended its parking area.

⁶⁴ [REDACTED]

⁶⁵ Mr Bocchio cannot be appointed as Metlac's Managing Director without the agreement of the AkzoNobel Directors (see Article 30.3(s) of Metlac's by-laws).

Our assessment

- 6.15 The counterfactual is the competitive situation without the merger. As our guidance notes, the description of the counterfactual is affected by the extent to which events or circumstances and their consequences are foreseeable, enabling us to predict with some confidence. The foreseeable period can sometimes be relatively short.⁶⁶ The guidance also states that we will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to us and the extent of our ability to foresee future developments; we seek to avoid importing into our assessment any spurious claims to accurate prediction or foresight. Given that the counterfactual incorporates only those elements of scenarios that are foreseeable, it will not in general be necessary for us to make finely balanced judgments about what is and what is not the counterfactual.⁶⁷
- 6.16 Both AkzoNobel and Metlac referred us to a number of factors relating to the shareholding, management and governance arrangements of Metlac with the implication that these were relevant to our consideration of the competitive strength of Metlac in the counterfactual. As we have noted, Metlac suggested that we consider the counterfactual in three stages. We did not think it necessary to follow that approach. However in formulating the scenarios for consideration, we took into account the temporal aspects, which we discuss below.

Period for assessment of the counterfactual

- 6.17 We considered the time period over which we should assess the counterfactual. In this instance it appeared to be appropriate to look both at changes occurring post [REDACTED] and also to changes which may occur by mid-2014, although both parties acknowledge it is not currently clear to them what will occur then. [REDACTED], the governance arrangements under the by-laws do not give AkzoNobel any enhanced rights to influence the corporate policy of Metlac (as explained in paragraph 5.12 and Appendix E, paragraphs 26 to 31). Approval of the operational budget remains a matter requiring a simple majority vote of the board which will remain under the control of the Bocchio family.

- 6.18 In 2014 the current mandate of Mr Bocchio as Managing Director will expire.⁶⁸ [REDACTED]⁶⁹

- 6.19 [REDACTED]

Assessment of counterfactual scenarios

- 6.20 In this case, we identified three possible counterfactual scenarios for consideration having regard to the various factors drawn to our attention:
- AkzoNobel remains as a shareholder of Metlac Holding at a similar level of shareholding and similar level of support/engagement in the business as it currently has.

⁶⁶ CC2, paragraph 4.3.2.

⁶⁷ CC2, paragraph 4.3.6.

⁶⁸ As noted in Appendix E (the first footnote to paragraph 26), this could occur earlier if two directors were to resign from the board of the company, which would cause the entire board to resign simultaneously.

⁶⁹ [REDACTED]

- AkzoNobel remains as a shareholder at the same shareholding level as it currently has and opposes decisions made by Mr Bocchio and Metlac's management team, as a result of which Metlac might be a less effective competitor in the market.
- AkzoNobel seeks an exit from its shareholding and sells its shares. The Bocchio family appears to be the most likely buyer in this outcome.

AkzoNobel retains its current shareholding and supports Metlac management

- 6.21 AkzoNobel currently ultimately receives the benefit of [REDACTED] per cent of Metlac's dividends and holds a substantial albeit minority shareholding in Metlac Holding (49 per cent) and Metlac (44.44 per cent). However, as we note in Section 5 and Appendix E, [REDACTED].
- 6.22 Although remaining as a shareholder (the status quo) may not be attractive to AkzoNobel ([REDACTED]), AkzoNobel would continue to receive dividends and benefit from any increase in the value of Metlac.
- 6.23 AkzoNobel would also benefit from any growth of or innovation by Metlac (as it does presently). Metlac has provided us with estimates of its future growth, forecasting significant growth over the next five years, although AkzoNobel has questioned whether that growth is sustainable.
- 6.24 [REDACTED]
- 6.25 Although Metlac's growth projections appear optimistic, we consider it is likely that Metlac will continue its current strategy and continue to grow, albeit at a lower rate than Metlac's business plans forecast. As noted in paragraphs 5.10 and 5.12 above, we are satisfied that the requirement of the consent of AkzoNobel to any action which would cause the gearing ratio to exceed the ratio specified in its by-laws will not significantly constrain Metlac's ability to expand in the foreseeable future.
- 6.26 We believe that AkzoNobel has strong incentives to retain the value of Metlac and to continue to benefit from its growth and profitability. We therefore consider that the status quo is a likely counterfactual.

AkzoNobel retains its current shareholding and opposes Metlac management

- 6.27 There is now some animosity between Metlac and AkzoNobel and in various submissions since we published our provisional findings, AkzoNobel told us that it would seek to exert further influence over Metlac than it currently did and that [REDACTED]. We therefore considered in the second counterfactual scenario the extent to which AkzoNobel is likely to be supportive of Metlac management.
- 6.28 In its response hearing we were told by AkzoNobel that the impact of AkzoNobel enforcing its legal rights more vigorously would be that [REDACTED]. Its view was that the counterfactual scenario we proposed in our provisional findings in which Metlac is slightly slowed down was too positive.⁷⁰
- 6.29 In our view, remaining as a shareholder but opposing the management of Metlac determined by the Bocchio shareholders would not appear to offer financial benefits

⁷⁰ AkzoNobel repeated this submission in response to our post-provisional findings economic working paper, noting that it has [REDACTED].

to AkzoNobel. Although it may be possible that AkzoNobel could attempt to undermine the performance of Metlac it does not appear that it would have an incentive do so.

- 6.30 The decision as to whether it is in AkzoNobel's interests to support the management of Metlac will largely 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 less effective 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.⁷¹ AkzoNobel told us⁷² that its continuing goal as shareholder of Metlac and Metlac Holding is to protect its asset and that it will support decisions of the management of Metlac if these are, in the opinion of AkzoNobel, the best ones for Metlac.
- 6.31 Until Mr Bocchio is removed as Managing Director, AkzoNobel will have little ability to affect the strategy of Metlac (see paragraphs 5.6 to 5.12 above and Appendix E, paragraphs 2 to 25) but at that stage AkzoNobel will need to make a commercial decision on the extent to which it wishes to support Metlac's management.
- 6.32 Although it might initially be inclined to oppose the Bocchio shareholders in setting a structure for the management of Metlac, we believe that it is possible that AkzoNobel will decide to continue to interact with Metlac largely as it does currently and for largely the same reasons (Mr Bocchio is a successful manager of Metlac and AkzoNobel has told us that as the shareholder/manager he 'operated the business best when left to his own devices without interference from above'). Opposing decisions taken by the management of Metlac and engaging in lengthy arbitration proceedings in Italy will be expensive for all parties and AkzoNobel will bear a large share of the ultimate cost. In addition, as explained in paragraphs 5.12 to 5.15 above and Appendix E, paragraphs 26 to 31, although there is some uncertainty to Metlac's governance arrangements following the removal of Mr Bocchio as Managing Director, the Bocchio family will continue to control the day to day commercial strategy of Metlac, although it may be via the board rather than through management personnel.
- 6.33 [REDACTED] (as explained in Appendix E). We have considered how this could potentially change if the parties were unable to agree on the appointment of a new Managing Director and a wide range of commercial decisions regarding Metlac needed to be made at board level. AkzoNobel has told us that: [REDACTED]. However, it has also told us that [REDACTED].
- 6.34 [REDACTED] This is consistent with other evidence we have received from AkzoNobel.
- 6.35 Metlac told us that it had never made commercially sensitive Metlac information available to the AkzoNobel directors and that the SHA specifically provided in Article 3.1(g) that the Business Plan should not contain sensitive or strategic information useful to a competitor. Metlac has told us that, following the expiry of the SHA, AkzoNobel's use of its minority participation to affect the commercial conduct of a competitor and obtain commercially sensitive information could also amount to a breach of Article 101 TFEU.

⁷¹ Metlac paid out €[REDACTED] million in dividends to shareholders in 2011 and this has been increasing slowly over the years. AkzoNobel ultimately receives almost [REDACTED] per cent of this, ie approximately €[REDACTED] million. [REDACTED]

⁷² [Response to our provisional findings](#), Annex 2, comment in paragraph 6.16.

- 6.36 In our view, if AkzoNobel were to remove this safeguard and attempt to share confidential Metlac information within ANPG this would be strongly resisted by Metlac, and that this would be very likely to end in litigation by Metlac against AkzoNobel or individual AkzoNobel-appointed directors of Metlac.
- 6.37 Apart from slowing down the operation of Metlac via litigation and board disputes, as mentioned in paragraph 6.28 above, the manner in which AkzoNobel will seek to enforce a more 'hands-on' approach, particularly following the end of Mr Bocchio's term as Managing Director is insufficiently foreseeable for us to include in the counterfactual. As noted in paragraphs 5.14 and 5.15, the Bocchio family would still control Metlac's commercial strategy via their simple majority voting rights on the board. [REDACTED] The CC will typically incorporate into the counterfactual only those aspects of scenarios that appear likely on the basis of the facts available to it and the extent of its ability to foresee future developments, as outlined in paragraph 6.15.
- 6.38 Even if AkzoNobel wanted to remain as a shareholder and attempted to oppose the management of Metlac, as explained in Section 5 there appears to be limited ability for it to do so. We therefore believe that while AkzoNobel remains as a shareholder it would not act in opposition to the management of Metlac.

AkzoNobel sells its stake in Metlac

- 6.39 [REDACTED]
- 6.40 The Acquisition Request noted that a sale to [REDACTED] would provide a cash exit but that in all likelihood Metlac would be on-sold to a competitor. In our view the same reasons that make holding this shareholding unattractive to AkzoNobel compared with the exercise of the call option may deter a third party buyer: [REDACTED]. In our view, this does not rule out the possibility that AkzoNobel could at some stage decide to sell the shareholding.
- 6.41 [REDACTED]
- 6.42 The by-laws contained pre-emption rights and accordingly both parties would 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.
- 6.43 [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]
- 6.44 [REDACTED] This is because [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.
- 6.45 In our view, it is therefore possible that AkzoNobel may decide to sell its shares in Metlac and in Metlac Holding. If it does so it is likely that the Bocchio family would offer to buy them.

Conclusion

- 6.46 In summary, we have considered three possible counterfactual scenarios: AkzoNobel retaining its shareholding with a similar level of support/engagement in the business as it currently has; AkzoNobel retaining its shareholding and opposing decisions by

Mr Bocchio and the management of Metlac; and AkzoNobel selling its shareholding in Metlac Holding to a third party or to the Bocchio family.

- 6.47 [✂] In the event that it did sell its shares, it is likely that Mr Bocchio would offer to buy them. While we recognize that sale by AkzoNobel is a possibility, we do not, based on the evidence, consider that it is the most likely in the foreseeable future.
- 6.48 We consider that the most likely counterfactual is that AkzoNobel continues to hold its shares in Metlac Holding and Metlac. 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.
- 6.49 We consider that Metlac would continue to be a successful company. It is possible that disagreements between its shareholders will result in more cumbersome governance arrangements. However, we see no reason to believe that it would not continue with its current business strategy [✂].
- 6.50 We have therefore used the status quo for our counterfactual analysis.

7. Market definition

- 7.1 In this section we set out our findings on the relevant markets. The purpose of market definition in merger analysis is to provide a framework for the analysis of competitive effects.⁷³
- 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. As noted in Section 2, the range of metal packaging coatings specifications used in the industry is broad, reflecting the fact that many products are developed specifically for individual customer end-use requirements. However, product categories can be segmented by end-use, with the technologies in each case well established (albeit 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). There are four main end-use categories 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.
- 7.4 On the demand side, the numerous different metal packaging coating products are not substitutable from a customer perspective. If the hypothetical monopolist test were applied to any one of these metal packaging coating products (eg the various internal solvent-based (epoxy/phenolic/amino) metal packing coatings suitable for two-piece D&I Food cans produced by different firms, or the various external water-based (polyester/acrylic) metal packaging coating products suitable for two-piece aluminium beverage cans produced by different firms), it would find that customers would not switch to purchasing a different coating product if the hypothetical monopolist were to raise the price of one of the products in the candidate market by approximately 5 per cent.⁷⁴
- 7.5 Whilst markets are generally defined primarily on the basis of demand-side substitution, we may aggregate several narrow relevant markets into one broader market on the basis of supply-side substitution when:
- 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
 - the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.⁷⁵
- 7.6 We have therefore considered the extent to which the metal packaging coating products are substitutable on the supply side.

⁷³ CC2, Section 5.2.

⁷⁴ CC2, paragraphs 5.2.10–5.2.16 describe how the hypothetical monopolist test may be applied.

⁷⁵ CC2, paragraph 5.2.17.

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. AkzoNobel said that the blending process was similar across all segments and converting a production line to produce a different segment of coatings was straightforward and not particularly costly as batch to batch switching is the norm. In addition, regulatory requirements were broadly the same for the internal (food contact) coatings used in various metal packaging products and it is only the testing protocols which might differ between segments depending on the contents of the final product—a factor that distinguished internal from external coatings. AkzoNobel also submitted that the different qualities of coatings indicated that there may be as many distinctions between food and non-food contact coatings (ie internal and external coatings) as there are between the B&B and FCG segments and so one should not combine food (for example) into a single category when analysing the sub-segments within FCG.
- 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 It appeared to us that there are some important similarities on the supply side between many products in that many products can be made using the same equipment, or after modest modifications to that equipment (with the exception of B2I) albeit the technical know-how required to produce different coatings may be different.
- 7.10 However, it is our view that the presence of switching costs created by the requirement to qualify each coating can inhibit the expansion of production into a new segment or the ability to shift capacity quickly across segments in response to an increase in demand or a change in competitive conditions in a segment. These considerations inhibit the degree to which supply-side substitution can exercise a timely and sufficient constraint on price increases. The economics of qualification are considered in more detail in paragraphs 8.10 to 8.59. Other factors which may also inhibit supply-side substitution (and result in conditions of competition varying across products) include: access to technological know-how (in particular in relation to B&B and food contact coatings more generally); the need to invest in capital equipment (in particular in relation to B2I); the need to provide technical support and the commercial appetite and reputation of suppliers. We expand on this in Appendix F on barriers to entry/expansion.
- 7.11 Given what we have said about demand-side substitution in paragraph 7.4, qualification costs and other impediments to rapid supply-side substitution give rise to the possibility that the hypothetical monopolist test would be passed in some cases if it were applied to the supply of a given metal packaging coating product to a given customer. Put another way, where qualification time-frames are long and qualification costs are relatively high, it is possible that a monopolist over the supply of a metal coating product *to a given customer* (ie a monopolist at the product-customer level) would be able to raise prices by 5 per cent.
- 7.12 Notwithstanding this observation, we considered that the differences in the conditions of competition between products and across customers can be equally well captured by adopting a more aggregated market definition (ie the B&B and FCG level) and then considered when conducting the analysis of competitive effects. We did not

consider it necessary or useful to aggregate the supply of FCG and B&B coatings due to significant differences in the conditions of competition between FCG and B&B which are described below.

Differences between FCG and B&B segments

- 7.13 In what follows we set out the main characteristics of B&B that we consider set it apart from FCG namely:
- the production process;
 - the scale of operation;
 - the number of suppliers; and
 - the size of customers
- *Production*
- 7.14 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, to supply large orders to major downstream customers very quickly. To withstand these different manufacturing processes, B&B coatings have different formulations from FCG coatings. This does not necessarily mean that separate production facilities are required for B&B, although a number of suppliers do use separate production facilities.⁷⁶
- 7.15 Within the B&B segment we noted that there are some important factors that distinguish B2I from B2E and BE. As explained in Section 2, B2I coatings volumes are particularly high and this may affect production facilities, as explained in paragraph 2.46. The manufacture of B2I also requires a reactor in order to bring about a chemical reaction with epoxy resins (to create an intermediate product which is then used as an input to create a coating). 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.⁷⁷
- *Scale of operation*
- 7.16 In contrast to FCG where there are many different types of coatings, there are generally only a few main categories of coatings for B&B (internal (spray for steel or aluminium), external (basecoat for steel or aluminium and overvarnish (generally for aluminium)), rim coatings (for steel or aluminium), and internal and external ends coatings (for steel or aluminium)).

⁷⁶ 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.

⁷⁷ Specifically, B2I coatings must be applied much more thinly than FCG internal coatings—in fact as a spray rather than a coating.

7.17 Also, the volume demanded by customers differs significantly between B&B (in particular B2I) and FCG. Table 2 shows that customers' average monthly volume placed with AkzoNobel for B2I is [X] as large as the average monthly volume for BE and [X] larger than the average monthly volume for B2E which is in turn [X] as large as the average monthly volume for [X] (which has the largest average monthly volume of any of the FCG sub-segments). This will likely have implications for the amount of capacity required for B&B production (particularly B2I) as compared with FCG.

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

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

Source: CC calculations based on AkzoNobel data.

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

7.18 We also noted that, because of the large volume of cans produced by beverage can manufacturers, difficulties in applying coatings that interrupt the entire production process can result in a significant loss of output for the manufacturer. B&B provision tends therefore to be associated with more demanding technical support than generally in FCG and reputation is particularly important.

- *Suppliers*

7.19 The supply of B&B is more concentrated than the supply of FCG. In particular, whilst AkzoNobel, Valspar, PPG and Metlac are all active to some extent in both the B&B and FCG segments a number of the smaller suppliers, including Grace, Salchi, Schekolin and Actega are only active in FCG.⁷⁸ [X] (For more information on B&B and FCG market shares see paragraphs 8.62 to 8.75.)

7.20 Within B&B, only AkzoNobel, Valspar and PPG are active in each of the B2E, B2I and BE segments. Metlac only supplies B2E. As explained in paragraph 7.15, there are specific production factors that distinguish B2I from B2E and BE, which make it more costly for existing suppliers of metal packaging coatings that do not produce B2I to enter this segment.

⁷⁸ We are aware of two small companies (VPL and IPC) which are active in B&B at a low level. See also footnote to paragraph 8.69.

7.21 Within FCG, where there is a very wide range of products, individual producers do not always supply the full range of products across all segments although each major FCG supplier is present in each of the three main segments of FCG.

- *Customers*

7.22 As explained in Section 2, customers tended not to purchase both FCG and B&B products—only Crown and Can-Pack have a significant presence across both segments. Within B&B, there are only four customers who purchase B2I and B2E coatings in the EEA (Rexam, Ball, Crown and Can-Pack). We understand that beverage ends are supplied pre-coated to these four customers in the EEA by aluminium and/or steel manufacturers (eg Hydro, Novelis, Constellium and Elval).

7.23 Within FCG, the customer set is less concentrated (see paragraph 2.17) and there are different customers active across Food, C&C and GL. With respect to Food, the top three customers account for over [51–60] per cent of purchases.⁷⁹ This contrasts with C&C and GL, where the top three customers in each segment accounted for approximately [21–30] and [21–30] per cent of demand, for C&C and GL respectively, by volume.^{80,81}

Summary of product market

7.24 For the reasons described above in relation to the production process, product range and scale of operations, supplier set and customer set, our view is that it was useful to define 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 have acknowledged that there are differences in the conditions of competition between products and across customers within both B&B and FCG (see paragraphs 7.13 to 7.15). When examining the effects of the merger on the supply of B&B and FCG products we have taken into account these differences. We are of the view that our conclusions would not change if narrower product-customer level⁸² markets were defined.

Geographic market

7.26 In what follows we consider the geographic boundaries of the relevant market ie the area over which customers would consider (functionally interchangeable) products manufactured by suppliers located within that area to be substitutes for one another. In doing so we focused upon the impact on UK customers and the boundaries around their choices. We also abstracted from supplier-specific factors (ie those unrelated to location) which might otherwise inhibit switching between them in the short-term (eg the need to qualify their products, technological-know how etc).

7.27 AkzoNobel submitted that the market was at least EEA-wide in scope, if not global because:

⁷⁹ [X] and the share of demand made up by the top three Food customers may therefore be understated.

⁸⁰ CC calculation—see Appendix C, Table 1.

⁸¹ 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 these figures are underestimates.

⁸² That is to say markets based around the supply of a particular metal coatings packaging product to a specific customer.

- the supply of metal packaging coatings generally took place from production facilities across Europe;
- the relevant coatings products were easily transported, and transport costs were low;
- customers typically purchased their requirements for at least the whole of Europe, and neither purchasing preferences nor prices varied significantly across Europe; and
- legal and regulatory requirements for coatings products were primarily based on EU legislation or were highly similar across Europe.

7.28 Metlac submitted that the relevant geographic market was EEA-wide on the basis that:

- a presence in the EEA was required in order to service customers' EEA premises;
- 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;
- there were higher transport costs for exporting products outside the EEA, including custom duties;
- an estimated 99 per cent of European demand for metal packaging coatings was met by coatings produced within the EEA; and
- 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).⁸³

7.29 Notwithstanding the observation that there are local differences between some countries, for example some countries have higher food coatings consumption (Spain) compared with others which have a B&B focus (UK), most parties suggested that there were no differences in customer preferences between UK and other EEA countries that would make it difficult for a supplier based outside the UK (but in the EEA) to serve the UK.⁸⁴

7.30 As noted in paragraph 2.55, technical assistance including regular visits from suppliers, is important for some customers. Whilst some customers (including customers in the UK) 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.⁸⁵ The fact that Metlac supplies support to a number of large and small customers throughout EMEA, including in the UK, from its plant in Italy seemed to show that in many cases this is not necessary.

⁸³ AkzoNobel told us that Metlac was not in a strong position to judge prices in the USA since it was not active in the Americas and said that prices in the USA were actually lower than those in the EEA.

⁸⁴ Diostyl suggested that very few can coatings manufacturers made any distinction between the different countries in Europe.

⁸⁵ Many respondents told us this was not necessary; however, Actega (competitor) told us that customers in the UK preferred suppliers with a strong local presence (including a local manufacturing and/or distribution centre) and Caldicot (small customer) told us that it was important that its suppliers had production facilities and technical support based in the UK.

Summary of geographic market

- 7.31 For the reasons explained in paragraphs 7.26 to 7.30 above, we have 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 appeared 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 concluded that the relevant market is no narrower than EEA-wide.
- 7.32 In our view, 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 showed that, in the main, the dynamics of competition seem generally to occur on an EEA-wide basis and therefore we have concluded that the geographic market is EEA-wide.

Conclusions on market definition

- 7.33 We 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 products and across customers within both B&B and FCG. As such, we have taken into account these differences when examining the effects of the merger. We are of the view that our conclusions would not change if narrower product-customer level⁸⁶ markets were defined.
- 7.34 We concluded that the relevant geographic market is EEA-wide but have focused our analysis on the possible impacts of the merger on customers with operations in the UK.

8. Competition in the metal packaging coatings industry

- 8.1 The following section sets out the evidence we collected on pre-merger competition within the markets for the supply of metal packaging coatings. In particular, we considered the nature and extent of rivalry between AkzoNobel and Metlac and how this compares to rivalry between these firms and their existing competitors. In doing so we considered evidence relating to market structure, market development (growth and innovation), product-customer overlaps, switching and pricing. Section 9 then considers the effect of the merger in the relevant markets in light of these issues.
- 8.2 As explained in Section 5, we found that AkzoNobel has limited rights over Metlac. As such, its 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). Nor have we 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). [✂] We have therefore treated them as independent competitors for purposes of our analysis of pre-merger competition.

⁸⁶ That is to say markets based around the supply of a particular metal coatings packaging product to a specific customer.

- 8.3 Both Metlac and AkzoNobel currently supply metal packaging coatings for B&B and FCG in the UK. The four largest B&B customers in the EEA, who purchased all EEA coatings for B2I and B2E, all have operations in the UK, as do the two large FCG customers who made up nearly [31–40] per cent of EEA coatings demand in the FCG segment. As noted in Section 7, supply is carried out on (at least) an EEA-wide basis and the factors set out below which affect the nature of competition in the supply of metal packaging coatings across the EEA will also apply to the UK. However, it is possible that at any given point in time the suppliers from whom a customer can readily source products will vary across customers (and indeed between their plants) and as such pre-merger competition, and therefore the effect of the merger, will vary by customer. Given our focus is on UK customers, when discussing pre-merger competition between AkzoNobel and Metlac we focused on competition between them for customers with plants located in the UK.

The nature of competition in the metal packaging coatings industry

- 8.4 The market for metal packaging coatings is shaped by the requirements of the metal packaging industry; end-use requirements⁸⁷ give rise to a wide range of different types of metal packaging coatings, which are not substitutable from a customer viewpoint (see Section 7). 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 factors including the following: technological know-how (to innovate and formulate coatings); capacity and efficiency; the ability to provide technical support; reputation; regulation and qualification and the appetite to compete (see Appendix F for further information on some of these factors and Appendix G for a discussion of innovation and product range in the context of these markets).
- 8.5 This implies that the degree to which firms compete with one another will depend upon the ease with which they can supply fully-qualified, functionally equivalent and competitively priced products to each other's customer bases (because this determines the ease with which customers can switch between them). Some suppliers may not have the technical expertise or support, capacity, efficiency, reputation or appetite to compete in certain sub-segments; others will but may need to undergo a regulatory and/or qualification process before they can supply (see below).
- 8.6 As we have explained in Section 2, before a coating can be used on a customers' product line it needs to be tested by the manufacturer and then qualified with the customer. 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 longevity requirements and it is paramount for them that coatings are fit for purpose. 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.
- 8.7 We understand that even in circumstances where the customer already uses the coating on another product line in a different plant or where the coating has been previously used but not for some time at the same plant, the products must undergo a qualification process. Evidence provided to us shows that the time and cost

⁸⁷ For example, the requirement for certain functional and decorative surface properties and/or the need to adhere to specific food contact regulations.

associated with qualification in these circumstances is generally less than in circumstances in which a manufacturer wishes to sell a coating which has only been qualified by another customer in the industry or has not been qualified before at all. (See paragraphs 8.16 to 8.59)

- 8.8 On the other hand we noted that, as set out in paragraph 2.56, packaging manufacturers frequently source from several qualified coatings suppliers to ensure security of supply and preserve competition. We found that a number of customers had a policy of multi-sourcing, especially in the B&B market⁸⁸ (see Table 1 of Appendix H). As noted in paragraph 9.54 [X] told us that it would ideally have three to four suppliers qualified to supply each of its products and that this was a 'comfortable zone' in the procurement field. [X] told us that its policy was to have at least two qualified suppliers for each coating. Switching between suppliers is likely to be substantially easier when both are already qualified for that customer than switching in other cases, as we discuss below in paragraphs 8.54
- 8.9 In what follows, we set out the evidence we have collected on the qualification process and how this affects the degree to which customers can switch between suppliers (see paragraphs 8.16 to 8.49). In doing so, we considered both the timescales and economics of switching. In addition to affecting the extent of pre-merger rivalry, barriers to switching are also relevant to the ability of suppliers to expand their product offerings in a timely manner and therefore to the ability of customers to switch to other suppliers in the event of a post-merger price increase (and we discuss this in Section 9).

The role of qualification in the choice of supplier

- 8.10 A number of parties told us that formal tendering processes and contracts were more common in B&B, for both external and internal coatings. In some cases suppliers may need to go through the qualification process prior to the tender process in order that they can participate, although we have received different views on this. AkzoNobel told us that no B&B customers limited their tender processes only to suppliers which were already qualified to supply the product in question and that customers could run qualification processes in parallel with the tender process (or at any time during the contract period).
- 8.11 However, Rexam told us that pre-qualification was a prerequisite to take part in its tender.
- 8.12 [X] told us that technical qualification took place before any commercial negotiations; that it typically qualified coatings products because it needed them either as a primary or back-up source; and that once technically validated, price/cost/performance were the main drivers for selection.⁸⁹ [X] also said that it allocated products on a plant-by-plant basis, based on the best technical fit for the lines. The competitiveness of the offers and price are also considered as prices/commercial conditions [X].
- 8.13 Ball (which is active in B&B) told us that coating products were qualified by Ball for each location separately and that the criteria used to choose a supplier differed from plant to plant (and were in some cases can-line specific).⁹⁰ It told us that, in each

⁸⁸ See, for example, evidence of multi-sourcing set out in relation to the B&B tenders listed in Table 1 of Appendix H and [X] explained in paragraph 8.175.

⁸⁹ [X] said that service was a given and that poor service would lead to disqualification.

⁹⁰ Ball told us that its locations had different specifications based on, for example, machine type, the age of the plant or line layouts and that the technical product requirements for each plant were therefore highly specific.

case, it took into account six factors when choosing which supplier to purchase from: [REDACTED] and that where a downstream customer had specific technical requirements, these were taken into account by Ball.

- 8.14 Constellium told us that, for the most important lacquers it had two qualified suppliers, and that the decision as to how to award volumes would be based on quality, service level, lead-time and support for new products as well as price.
- 8.15 Afon (which, among other things, coats non-B&B products on a toll-manufactured basis for a number of customers) told us that it purchased all of its coatings but a large proportion of purchases were specified at the instructions of its customers. If its customers had not specified the coating supplier, Afon would choose a supplier for one of its volume products (eg roller coat white) based on price, quality and service. In those circumstances the supplier would already be qualified to supply that product—changes are generally simply minor amendments.

Timing, costs and risk of qualification

- 8.16 We received a wide range of responses on the time frames and costs involved in the qualification process (from a few months to several years depending on the nature of the product, although parties sometimes gave different responses even when discussing products in the same sub-segments). In what follows, we set out our evidence on this matter, and what this evidence implied for the process of competition in this industry.
- 8.17 A number of suppliers indicated that the length of the qualification process would vary by product: AkzoNobel estimated that the process for external coatings took six months or less but that for internal food coatings it could take up to 24 months; 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] to €[REDACTED]; and Valspar stated that the qualification of a new product could take between six months and five years, with GL products sitting at the lower end of that range. It indicated that a food contact product would take at least 18 months, if not more, but that external coatings would take less time. Salchi told us that the development of a new FCG 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.
- 8.18 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. 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’.
- 8.19 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.

- B&B
 - B2E

- 8.20 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 for a de novo product) and different views on the degree to which being qualified at other plants/with other customers shortened the qualification process and hence the time involved in switching.
- 8.21 AkzoNobel indicated that the qualification process for external B&B coatings generally took ‘six months or less’. AkzoNobel also submitted information on the costs customers incur in switching B&B coating suppliers. According to AkzoNobel, this analysis (which described hypothetical price increases required to induce customer switching when switching costs of €[redacted] and €[redacted]) demonstrated that even a very small price increase would be significant enough to justify that customer incurring a relatively high switching cost.⁹¹
- 8.22 We reviewed AkzoNobel’s submission on the price increases necessary to induce qualification of new suppliers and have the following observations:
- Switching costs of €[redacted] to €[redacted] may well be consistent with the costs involved in qualifying a supplier who has been previously qualified, or is qualified elsewhere in the business. However, AkzoNobel’s estimates are for de novo products and seem low compared with what some customers have told us about the costs of qualifying a de novo product (for example, Rexam told us that it would cost €[redacted] to switch an overvarnish or a base-coat spray (see paragraph 8.26)).
 - This calculation did not factor in the risks associated with attempting to qualify and switch to a de novo product. As we explain in paragraph 8.19, products can fail to qualify at all and even if they do, suppliers are exposed to significant risks in the event that there is a failure with the metal packaging coating they use which tends to make them reluctant to switch to products where the reputation is not well established (implying that a large price increase would be required to make them switch).
 - Finally, these figures are not consistent with the price increases customers have told us would be necessary to induce them to switch to de novo products (see paragraphs 8.25 to 8.27).
- 8.23 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.
- 8.24 Ball told us that the cost and time taken to switch between qualified suppliers was minimal but that the cost and time involved in product qualification was significantly more onerous. [redacted]

⁹¹ According to this analysis, and in relation to B2E, if the cost of switching was €[redacted] would switch supplier if prices increased by [redacted] per cent ([redacted] per cent if switching costs were €[redacted]); [redacted] would switch supplier if prices increased by [redacted] per cent ([redacted] per cent if switching costs were €[redacted]); [redacted] would switch supplier if prices increased by [redacted] per cent ([redacted] per cent if switching costs were €[redacted]) and [redacted] would switch supplier if prices increased by [redacted] per cent ([redacted] per cent if switching costs were €[redacted]).

- 8.25 When asked about the switching process associated with its two top B2E products in terms of purchases in the UK,⁹² Ball told us that, in both cases, it would take:
- (a) one month to switch to a product if it were already qualified at the plant where it needed to be used;
 - (b) three months to switch a product which had either been qualified by someone in the industry or at a different plant in the Ball Group;
 - (c) six to nine months to switch (including qualification) to a product that had never been qualified before; and
 - (d) that its answers would not vary significantly between products within the B2E segment, nor depend on the number of plants at which switching would take place. Ball also told us that, in addition to the physical switch time as captured above, it would serve notice on the supplier and run down stocks from the incumbent before switching and that this would take around [REDACTED] for lower volume products and [REDACTED] for bulk volume products.
- 8.26 Rexam, on the other hand, 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. Rexam told us that switching time and costs would apply to the B2E sub-segment as follows (for switching all of Rexam's requirements):
- Overvarnish will take [REDACTED] to switch supplier, including the period of qualification. The cost to switch would be approximately €[REDACTED]⁹³ and would involve [REDACTED] people and we would need to alter [REDACTED] machines ([REDACTED]). Base coat spray would take approximately [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 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.
- 8.27 When asked about the switching process associated with its two top B2E products in terms of purchases in the UK,⁹⁴ Rexam told us that it would take:
- (a) [REDACTED] to switch to a product if it had previously been qualified (over two years ago) at the plant where it needed to be used;
 - (b) [REDACTED] in the case of white basecoat and [REDACTED] in the case of overvarnish to switch to a product which had been qualified at a different plant in the Rexam Group (assuming it managed to qualify);
 - (c) [REDACTED] to switch a product which had been qualified by someone in the industry (assuming it managed to qualify);
 - (d) [REDACTED] to switch (including qualification) to a product that had never been qualified before (assuming it managed to qualify); and

⁹² [REDACTED]

⁹³ Rexam told us that the cost of qualification for only one plant would be around £[REDACTED] but it also told us that switching supply at just one plant was unusual.

⁹⁴ White basecoat and overvarnish.

(e) in all cases, Rexam told us that existing suppliers would need to increase price by [REDACTED] per cent in the case of white basecoat on Aluminium, and [REDACTED] per cent in the case of overvarnish, before Rexam would switch. (However, Rexam said that its responses assumed qualification would actually occur and reflected the fact that [REDACTED]). Rexam said that [REDACTED].⁹⁵

- 8.28 One customer ([REDACTED]) said that a switch from one supplier to another, [REDACTED] could in some circumstances be time- and resource-consuming. [REDACTED]
- 8.29 [REDACTED] told us that to qualify a product that was already in use elsewhere in the industry was relatively cheap and the timing could be as short as one week and that timing was driven by the customer. [REDACTED] said that, in the case of a completely new coating, with a significantly different chemical composition, the timings and test procedures would be much longer (between 6 months and two years in relation to B2E).

- *B2I*

- 8.30 Although Metlac is not currently present in B2I, given its plans to enter this segment we also considered qualification requirements in B2I. In relation to B2I, AkzoNobel told us that the qualification process 'can last between 6 to 12 months'. AkzoNobel also 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, and similar to costs for testing a new internal food coating (see paragraph 8.33 below). Costs for testing products which were not new were somewhat lower (AkzoNobel estimated that the costs for customers were approximately €[REDACTED] for a B2I product and €[REDACTED] for an external coating for a two-piece can).
- 8.31 This view was not supported by the can manufacturers. Ball noted that switching to a non-approved spray would take a minimum of three years due to pack tests and customer approvals. Rexam told us that qualifying new products in the internal spray segment was both costly and time-consuming. [REDACTED] cited the example of [REDACTED], which had spent the last [REDACTED] trying to qualify its inside spray with [REDACTED] without success. [REDACTED] Rexam told us that 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.
- 8.32 Valspar stated that the qualification procedure for a B2I coating could take between one and three years.

- *FCG*

- 8.33 AkzoNobel submitted estimates of testing costs for products which were borne by customers, which indicated that testing a new external FCG product cost approximately €[REDACTED] and costs for testing a new internal food coating were approximately €[REDACTED]. Costs for testing products which were not new were somewhat lower (€[REDACTED] for an internal coating for a three-piece food can).

⁹⁵ Rexam also told us that its answers assumed switching supply at no more than [REDACTED] plants ([REDACTED] per cent of the total). Rexam said that for risk mitigation purposes it applied, where possible, [REDACTED] a main supplier and a back-up supplier. Rexam said that it would not deliberately only switch the UK plants in isolation without having an unusual set of circumstances.

- 8.34 We sought information from customers on the times it would take to switch in various qualification scenarios and the price rise that would be required to incentivize a switch. [X] 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 qualifying an internal lacquer with Metlac for [X] which took 48 months).
- 8.35 When asked about the switching process associated with two Food internal products,⁹⁶ [X] told us that it would take:
- (a) three months to switch to a product that had already been qualified at the plant where it needed to be used [X];
 - (b) 12+ months to switch to a product which had been qualified at a different plant in the [X] group [X] and 18 to 24+ months in the case of [X]; and
 - (c) 18 to 24+ months to switch to a product which had been qualified by someone else in the industry in the case of [X] and 24 to 36+ months in the case of [X].
- 8.36 [X] told us that its response to this question would vary between products in the same segments and between products in different segments. [X] also stated that it would take one year to 18 months to qualify an internal product if a supplier was already qualified [X]; three to four years if it had never qualified that product with [X]; and that to qualify an external product would take 18 months.
- 8.37 [X]
- 8.38 [X]
- 8.39 When asked about the costs and time involved in switching supplier of food coatings, [X] told us that there was no straightforward answer as the extent of testing would depend on the specific foodstuff and the required shelf-life of the canned product. It said that the whole procedure typically would take two to three years (or longer). [X] said that costs to [X] would include manufacturing costs (lost production) and R&D costs (sample evaluation, extended shelf-life testing with regular examinations). [X] also said that increasingly with novel chemistries, approval has to be obtained through the Food Contact Notification process which is both time-consuming and costly. [X] also told us that it could take 12 to 15 months to qualify a new product, and three to six months longer for internal coatings.
- 8.40 [X]⁹⁷
- 8.41 [X]^{98,99}
- 8.42 When asked about the switching process associated with its two top C&C external products in terms of purchases,¹⁰⁰ Guala told us that it would in both cases take:
- (a) 20 to 30 days to switch to a product that had already been qualified at the plant where it needed to be used and that existing suppliers would need to increase price by [X] per cent before Guala would switch;

⁹⁶ [X]
⁹⁷ [X]
⁹⁸ [X]
⁹⁹ [X]
¹⁰⁰ [X]

- (b) 12 to 24 months to switch to a product which had been qualified at a different plant in the Guala Group and that existing suppliers would need to increase price by [REDACTED] per cent before Guala would switch;¹⁰¹
- (c) 18 to 24 months to switch to a product which had been qualified by someone in the industry and that existing suppliers would need to increase price by at least [REDACTED] per cent before Guala would switch; and
- (d) at least 24 months to switch to a product which had never been qualified before and that existing suppliers would need to increase price by at least [REDACTED] per cent before Guala would switch.
- 8.43 Guala noted that it had answered the price increase questions on a hypothetical basis and that in practice it might have to accept higher price increases in Italy if [REDACTED] remained small and unable to expand capacity.
- 8.44 Guala also told us that, compared with the estimates it provided in relation to C&C external (see paragraph 8.42, the total time taken to switch for internal C&C coatings might be up to 12 months longer and that the amount by which an existing supplier would need to increase price before it would switch might also be higher by another [REDACTED] per cent. Guala also told us that the main cost of switching was represented by the reduction in efficiency of the production and productivity during the tests, the work of at least one employee in each plant to follow the qualification process, as well as costs for approval by its own customers. Guala estimated that the costs of switching to Metlac would be approximately €[REDACTED] for each plant for all the four products they require, and that these costs would be higher if it switched to another supplier.
- 8.45 Caldicot told us that the process of qualifying an internal coating involved gaining its process approval as well as going through the end-user change programme which included shelf life tests and that the overall process could take 12 months. UCP told us that, assuming the potential supplier already had achieved FDA approval, and that the trials were successful the first time around, it might cost around £[REDACTED] to go through the process necessary to qualify an internal C&C coating with it and that this was made up of trial time on the coating line and closure presses, aluminium consumed, print technician and quality control time and attendance at customer line trials.
- 8.46 In relation to Food and C&C products, Silgan told us that certification and qualification could be costly and time-consuming (two to four years). [REDACTED] told us that it would take at least one year for C&C internal coatings but less for C&C external, while Hydro said that the qualification process took in general about 6 to 24 months.
- 8.47 In relation to FCG, Afon told us that the cost to qualify products could vary. Afon said that a controlled trial might cost £2,000 to £3,000 (although for some products it would be £4,000 to £5,000). Afon told us that it did work to quantify the time costs as it carried out trials for some of its customers. Afon said that it was currently trialling a [REDACTED] product for [REDACTED] [a major customer] at the cost of £8,500.
- 8.48 [REDACTED]. However, AkzoNobel emphasized that the barrier of customer certification was lower in relation to GL products, which would be an entry point to the FCG market, from where a business could expand into external coatings for caps and closures and food cans prior to entering the market for internal coatings.

¹⁰¹ [REDACTED]

8.49 In relation to GL, Diostyl told us that it took around six months between it setting up the business and delivering its first order to customers but noted that this was possible because: it had previous knowledge of the industry [X]: it chose to enter the GL segment first where the time taken to qualify a product was shorter than for food contact coatings; and it had received support from customers to enter the market with a new product offering.

Conclusion on the qualification process and the implications for the nature of competition

8.50 We have received a range of views on the precise costs, risks and timing associated with the qualification process involved in switching suppliers including different views from customers and suppliers as to qualification costs for the same or similar products (which reflect differences in the specific product being switched, the operational constraints of each production line and the qualification processes operated by different customers). Nevertheless, some common themes emerge.

8.51 Firstly, with the exception of GL, there are relatively long time frames associated with switching to a previously unqualified (de novo) product. These costs vary between market segments with qualification of previously unqualified products taking longer for B&B products and coatings in the Food and C&C segments which come into contact with food (ie internal coatings). 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.

8.52 Secondly, that across these sub-segments where qualification timeframes for de novo products are relatively long (B&B, Food internal, C&C internal and to some degree Food external and C&C external), the qualification process is reasonably short for products which are already qualified at a plant within the customers' group (as compared to de novo products). This suggests that suppliers which have products qualified at different plants in the same customer group may be capable of exerting a constraint on one another, (although not as strong as the constraint exerted when they are both qualified to supply the same product at the same plant). We note that this is broadly consistent with the evidence received from [X] customers ([X]) which told us that they would be prepared to switch to a product qualified somewhere else in the group if prices increased by 5 to 10 per cent.¹⁰²

8.53 Thirdly, there is also some evidence to suggest that the qualification process is reasonably rapid if the product has already been qualified in the industry, although the evidence on this matter is mixed. Whilst [X] said that they would require price increases of 10 per cent (or more) to switch (ie in the case of [X] the same as the price increase required to switch to a de novo product), [X] suggested that it would be prepared to switch to such an option (or indeed a de novo product) if prices increased by 5 or more per cent and [X] response suggested that the constraint from being able to switch to a product qualified somewhere in the industry was as good as that offered by being able to switch to a product qualified somewhere in the group (although, as before, we have approached the responses in relation to hypothetical price increases with some caution).

8.54 In summary, whilst switching costs associated with qualification inhibit to some degree customers' ability to switch to suppliers which are not yet qualified to supply the plant in question, the evidence we received showed that a supplier would still provide a constraint on a competing supplier if they were qualified to supply the same

¹⁰² We acknowledge that there is some uncertainty as to how customers have estimated these figures. We have therefore considered the absolute values with some caution.

product to the same customer at another one of its plants (albeit a weaker constraint compared with if they were both qualified to supply the same plant). We also did not rule out the possibility that suppliers that offer the same product to someone in the industry may also represent a constraint (because qualification costs for these suppliers may be lower but also because once a coatings manufacturer has qualified its products with one customer, this may encourage other customers to seek to qualify their products in the same way, ie qualification with one customer helps build reputation in the industry, which is important to enable further expansion). These findings were relevant to both analysis of pre-merger competitive rivalry and the level of barriers to entry and expansion that qualification would represent post-merger (see Appendix F).

- 8.55 Given the uncertainties about the degree to which suppliers who have functionally equivalent products (ie the same product) qualified somewhere in the industry (but not with the same customer) may be capable of exerting a constraint on one another, we have tended to focus upon the following when assessing pre-merger competition:
- competition between firms that are qualified to supply the same product to the same plant ('Type I competition'); and
 - competition between firms that are qualified to supply the same product to the same customer on the basis that this ability to enter relatively quickly may limit the degree to which incumbents can increase price, or at least materially shorten the time horizon over which price increases could be sustained ('Type II competition').
- 8.56 In adopting this approach we recognized that we may, in some cases, understate the extent of pre-merger competition between the parties. For example, our focus on Types I and II competition does not reflect cases in which suppliers are qualified for a product in the industry but not to the relevant customer or cases in which they are qualified with a similar product and therefore have a reputation in that sub-segment.
- 8.57 AkzoNobel said that since there is no clear consensus as to the length of time or the average cost of qualification, and without further analysis into the cause of the disparity between customers' comments, it is not possible to rely on third party responses as to the timing and costs of qualification in order to conclude on the level of constraint imposed by qualification time and cost.
- 8.58 We accepted that we received different views on the precise costs, risks and timing associated with the qualification process involved in switching suppliers, but we considered it more likely to reflect differences in the product being switched and the operational constraints of each production line rather than a 'lack of clear consensus' on a homogenous process. However, we note that the majority of responses suggested that the period of qualification is significant enough to be a factor in their consideration of switching.
- 8.59 In any case, when it comes to evaluating the degree to which suppliers can respond to any post-merger price increases, we have looked beyond those suppliers with qualified products and have considered the evidence on qualification times with some caution in evaluating whether they could respond in a timely manner.

Pre-merger competition in the metal packaging coatings industry

Background—structure of the industry

- 8.60 In what follows we describe the main suppliers in the metal packaging coatings industry and summarize which segments they are active in and how they compare with one another in terms of size in both the EEA and the UK.
- 8.61 As described in Section 2, a large proportion of metal packaging coatings are supplied in the EEA by 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. Some of these small suppliers have entered the market over the last decade, mainly in the FCG market although there are examples of entry also in the B&B market (eg VPL).¹⁰³ In the UK the picture is somewhat different: AkzoNobel is by far the largest supplier, followed by Valspar. PPG and Metlac have a more limited presence, as do the smaller suppliers.
- 8.62 AkzoNobel and Metlac have provided estimates for their market shares in the EEA and in various segments. We have made our own calculation of market share estimates as set out in Table 3 below, which showed that 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. In comparison with 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) by volume than to the smaller players, none of which has more than a [0–10] per cent share, by volume, of the total market.
- 8.63 Our market share calculations also show the merging 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 I. Further details of EEA market shares of suppliers of metal packaging coatings, including in the main segments of the relevant markets, are set out in Tables 5 to 8 below, and Tables 9 to 14 set out UK market shares.
- 8.64 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 market shares.¹⁰⁴ We are of the view that using this information, rather than actual figures from all parties in the industry, did not make any difference to our final conclusion. 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 [x] per cent) except in the GL segment, where the difference was approximately [x] per cent by volume and [x] per cent by value. [x]

¹⁰³ See paragraphs 8 to 12 in Appendix F.

¹⁰⁴ 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 by value could be apportioned as follows: [x] per cent GL, [x] per cent C&C and [x] per cent Food.

TABLE 3 Market shares by volume in the EEA, 2011

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

Source: CC estimates.

TABLE 4 Market shares by value in the EEA, 2011

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

Source: CC estimates.

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

8.66 Of the smaller suppliers listed in the market share tables:

- 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 (C&C), with a minimal presence in the other segments of the market.
- Actega is a German manufacturer of FCG coatings. 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.
- Schekolin is a Liechtenstein-based coatings manufacturer with a focus on higher-value, speciality products.
- 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.

- Salchi is an Italian manufacturer, founded in 1994. The business focuses on FCG coatings. In 2010/11, Salchi expanded its offering outside Italy through the acquisition of the packaging coatings business of Rembrandtin.
- None of these smaller suppliers produces coatings for beverage cans.

8.67 We are also aware of several other smaller coatings manufacturers active in the markets,¹⁰⁵ 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, and recent entrant to metal packaging coatings for certain types of powder coatings; and
- IPC Company Limited (IPC)—a producer of B2E coatings manufactured via a toll-manufacturing arrangement.

8.68 Tables 3 and 4 show 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.

8.69 Tables 5 and 6 show the suppliers' shares in the segments of the B&B market and show that Metlac is not currently active in B2I or BE. In B2E in the EEA, however, Metlac is actually larger than AkzoNobel in volume terms (second only to Valspar) but similar in size to AkzoNobel and PPG in value terms (who are all smaller than Valspar). The data also shows that smaller suppliers do not have a significant presence in B&B (less than 10 per cent in B2E and are not active in B2I or BE). We are aware of two companies (VPL and IPC) that are active in B&B at a low level.¹⁰⁶

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	[X]	[11–20]	[X]	[61–70]	[X]	[11–20]	[X]	[41–50]
Metlac	[X]	[21–30]	[X]	[0]	[X]	[0]	[X]	[0–10]
Combined	[X]	[41–50]	[X]	[61–70]	[X]	[11–20]	[X]	[51–60]
Valspar	[X]	[31–40]	[X]	[21–30]	[X]	[31–40]	[X]	[21–30]
PPG	[X]	[11–20]	[X]	[0–10]	[X]	[51–60]	[X]	[11–20]
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.

¹⁰⁵ We assume these are reflected in 'Others'. See paragraph 8.64.

¹⁰⁶ AkzoNobel also told us that there were other small suppliers in B2E, namely Schekolin, INX International and Mankiewicz. However, in response to our questionnaire, Schekolin submitted that at least in the last three years it did not make any sales of B&B coatings. We were unable to confirm whether INX International and Mankiewicz are actually active in B&B. In any case, none of these companies were mentioned to us by any of the four B2E UK customers.

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	[€]	[11–20]	[€]	[51–60]	[€]	[11–20]	[€]	[31–40]
Metlac	[€]	[11–20]	[€]	[0]	[€]	[0]	[€]	[0–10]
Combined	[€]	[31–40]	[€]	[51–60]	[€]	[11–20]	[€]	[41–50]
Valspar	[€]	[31–40]	[€]	[21–30]	[€]	[31–40]	[€]	[31–40]
PPG	[€]	[11–20]	[€]	[0–10]	[€]	[41–50]	[€]	[21–30]
Others	[€]	[0–10]	[€]	[0]	[€]	[0]	[€]	[0–10]
Total	[€]	100.0						

Source: CC estimates.

8.70 As Tables 7 and 8 show, in the EEA 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. We also note that the smaller suppliers account for a larger share of sales in all three segments of FCG, and particularly GL, than they do in the segments of B&B. [~~€~~] The combined share (by volume) of suppliers other than AkzoNobel, Valspar, PPG and Metlac is [11–20] per cent in Food, [21–30] per cent in C&C and [31–40] per cent in GL. Grace and Actega are not present in B&B. Companies other than those named in the tables above which comprise, by volume, approximately [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 (although this is not the case in relation to the UK (see paragraph 9.97)).¹⁰⁷

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	[€]	[31–40]	[€]	[11–20]	[€]	[21–30]	[€]	[21–30]
Metlac	[€]	[21–30]	[€]	[21–30]	[€]	[11–20]	[€]	[11–20]
Combined	[€]	[51–60]	[€]	[31–40]	[€]	[31–40]	[€]	[31–40]
Valspar	[€]	[11–20]	[€]	[21–30]	[€]	[0–10]	[€]	[11–20]
PPG	[€]	[0–10]	[€]	[11–20]	[€]	[21–30]	[€]	[11–20]
Grace	[€]	[0–10]						
Actega	[€]	[0–10]	[€]	[11–20]	[€]	[0–10]	[€]	[0–10]
Schekolin	[€]	[0–10]	[€]	[0–10]	[€]	[0]	[€]	[0–10]
Others	[€]	[0–10]	[€]	[0–10]	[€]	[21–30]	[€]	[0–10]
Total	[€]	100.0						

Source: CC estimates.

¹⁰⁷ See Appendix F for a list of exits from the industry, all of which were in the form of purchases by other suppliers.

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.

8.71 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 (although this will tend to mask differences at the sub-segment and product level).

8.72 In the UK we observed that AkzoNobel is also the largest supplier of metal packaging coatings in the UK, with Valspar being the next largest supplier followed by PPG. Metlac is the fourth largest supplier with a share (as of 2011) of [0–10] per cent by volume and [0–10] per cent by value. The combined market share of the merging parties in the UK (as of 2011) is [61–70] per cent by volume ([51–60] per cent by value) which is [significantly] higher than the next largest supplier (Valspar). Our estimates of the UK market shares in 2011 are set out in Tables 9 and 10 below.¹⁰⁸

TABLE 9 Market shares by volume in the UK, 2011

Supplier	B&B		FCG		Total	
	kt	%	kt	%	kt	%
AkzoNobel	[X]	[61–70]	[X]	[51–60]	[X]	[61–70]
Metlac	[X]	[0–10]	[X]	[0–10]	[X]	[0–10]
Combined	[X]	[61–70]	[X]	[51–60]	[X]	[61–70]
Valspar	[X]	[21–30]	[X]	[0–10]	[X]	[21–30]
PPG	[X]	[0–10]	[X]	[11–20]	[X]	[0–10]
Grace	[X]	[0]	[X]	[0–10]	[X]	[0–10]
Actega	[X]	[0]	[X]	[0–10]	[X]	[0–10]
Schekolin	[X]	[0]	[X]	[0–10]	[X]	[0–10]
Others	[X]	[0]	[X]	[11–20]	[X]	[0–10]
Total	[X]	100.0	[X]	100.0	[X]	100.0

Source: CC estimates.

¹⁰⁸ Market shares for 2009 and 2010 are provided in Appendix C.

TABLE 10 Market shares by value in the UK, 2011

Supplier	B&B		FCG		Total	
	€m	%	€m	%	€m	%
AkzoNobel	[€]	[51–60]	[€]	[41–50]	[€]	[51–60]
Metlac	[€]	[0–10]	[€]	[0–10]	[€]	[0–10]
Combined	[€]	[61–70]	[€]	[41–50]	[€]	[51–60]
Valspar	[€]	[31–40]	[€]	[11–20]	[€]	[21–30]
PPG	[€]	[0–10]	[€]	[11–20]	[€]	[11–20]
Grace	[€]	[0]	[€]	[0–10]	[€]	[0–10]
Actega	[€]	[0]	[€]	[0–10]	[€]	[0–10]
Schekolin	[€]	[0]	[€]	[0–10]	[€]	[0–10]
Others	[€]	[0]	[€]	[61–20]	[€]	[0–10]
Total	[€]	100.0	[€]	100.0	[€]	100.0

Source: CC estimates.

8.73 As per the EEA, concentration differs across the markets with the sales of the four largest players accounting for 100 per cent of the B&B market, compared with [81–90] per cent of the FCG market.

8.74 Tables 11 and 12 below show the suppliers' shares in the segments of the B&B market.¹⁰⁹ Metlac is the third largest supplier in B2E with a share of [11–20] per cent (by volume) which makes it significantly smaller than AkzoNobel and Valspar but larger than PPG.

TABLE 11 Market shares by volume in the UK in B&B, B2E and B2I, 2011

Supplier	B2E		B2I		Total B&B	
	kt	%	kt	%	kt	%
AkzoNobel	[kt]	[31–40]	[kt]	[71–80]	[kt]	[61–70]
Metlac	[kt]	[11–20]	[kt]	[0]	[kt]	[0–10]
Combined	[kt]	[51–60]	[kt]	[71–80]	[kt]	[61–70]
Valspar	[kt]	[31–40]	[kt]	[21–30]	[kt]	[21–30]
PPG	[kt]	[0–10]	[kt]	[0–10]	[kt]	[0–10]
Total	[kt]	100.0	[kt]	100.0	[kt]	100.0

Source: CC estimates.

TABLE 12 Market shares by value in the UK, 2011, in B&B, B2E and B2I

Supplier	B2E		B2I		Total B&B	
	€m	%	€m	%	€m	%
AkzoNobel	[€]	[41–50]	[€]	[71–80]	[€]	[51–60]
Metlac	[€]	[11–20]	[€]	[0]	[€]	[0–10]
Combined	[€]	[51–60]	[€]	[71–80]	[€]	[61–70]
Valspar	[€]	[31–40]	[€]	[21–30]	[€]	[31–40]
PPG	[€]	[0–10]	[€]	[0–10]	[€]	[0–10]
Total	[€]	100.0	[€]	100.0	[€]	100.0

Source: CC estimates.

8.75 Metlac's current presence in the UK in the FCG segments is more limited. AkzoNobel has a significant presence in all segments, especially Food and C&C. Tables 13 and 14 show that Metlac's share in the Food segment is less than [0–10] per cent (both volume and value) and just [0–10] per cent in GL by volume ([0–10] per cent by value). The presence of Metlac is more significant in C&C (at least in volume terms), where it has a share of [0–10] per cent ([0–10] per cent by value).

¹⁰⁹ The information we have show no sales of BE coatings in the UK in the period 2009 to 2011. However, as noted in paragraph 2.26 [~~€~~].

TABLE 13 Market shares by volume in FCG segments in the UK, 2011

Supplier	Food		C&C		GL		Total FCG	
	kt	%	kt	%	kt	%	kt	%
AkzoNobel	[x]	[71–80]	[x]	[41–50]	[x]	[21–30]	[x]	[51–60]
Metlac	[x]	[0–10]	[x]	[0–10]	[x]	[0–10]	[x]	[0–10]
Combined	[x]	[71–80]	[x]	[51–60]	[x]	[61–30]	[x]	[51–60]
Valspar	[x]	[0–10]	[x]	[31–40]	[x]	[0–10]	[x]	[0–10]
PPG	[x]	[0–10]	[x]	[0–10]	[x]	[21–30]	[x]	[11–20]
Grace	[x]	[0–10]	[x]	[0]	[x]	[0]	[x]	[0–10]
Actega	[x]	[0–10]	[x]	[11–20]	[x]	[0–10]	[x]	[0–10]
Schekolin	[x]	[0–10]	[x]	[0]	[x]	[0]	[x]	[0–10]
Others	[x]	[0–10]	[x]	[0]	[x]	[31–40]	[x]	[11–20]
Total	[x]	100.0	[x]	100.0	[x]	100.0	[x]	100.0

Source: CC estimates.

TABLE 14 Market shares by value in FCG segments in the UK, 2011

Supplier	Food		C&C		GL		Total FCG	
	€m	%	€m	%	€m	%	€m	%
AkzoNobel	[x]	[61–70]	[x]	[41–50]	[x]	[21–30]	[x]	[41–50]
Metlac	[x]	[0–10]	[x]	[0–10]	[x]	[0–10]	[x]	[0–10]
Combined	[x]	[61–70]	[x]	[51–60]	[x]	[31–40]	[x]	[41–50]
Valspar	[x]	[0–10]	[x]	[31–40]	[x]	[11–20]	[x]	[11–20]
PPG	[x]	[11–20]	[x]	[0–10]	[x]	[21–30]	[x]	[11–20]
Grace	[x]	[0–10]	[x]	[0]	[x]	[0]	[x]	[0–10]
Actega	[x]	[0–10]	[x]	[0–10]	[x]	[0–10]	[x]	[0–10]
Schekolin	[x]	[0–10]	[x]	[0]	[x]	[0]	[x]	[0–10]
Others	[x]	[0–10]	[x]	[0]	[x]	[21–30]	[x]	[11–20]
Total	[x]	100.0	[x]	100.0	[x]	100.0	[x]	100.0

Source: CC estimates.

The development of the industry

- 8.76 Our understanding is that the positions of suppliers in metal packaging coatings reflect growth and success that 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.
- 8.77 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 has experienced growth of 12 per cent by volume and the FCG market growth of 9 per cent.
- 8.78 Reviewing suppliers' growth in the EEA by volume across all the segments, both Metlac and AkzoNobel grew more than their competitors between 2009 and 2011, with growth over the period of [x] ([21–30] per cent) and [x] kt ([31–40] per cent) respectively. PPG's sales have [x] over the three years while Valspar's sales have fallen by [x] kt ([0–10] per cent). However, to some extent, this masks different trends at the segment level.
- 8.79 In the B&B market AkzoNobel has grown the fastest over the past three years by [x] kt ([41–50] per cent), Metlac has grown the second fastest by [x] kt ([11–20] per cent) whereas Valspar's sales have shrunk by [x] kt ([11–20] per cent) in the past three years and PPG's level of sales have [x]. Within the B2E segment, and over the past three years, AkzoNobel, Valspar and Metlac have all grown significantly while PPG has shrunk.

8.80 In the FCG market, Metlac is the supplier that has grown the most over the past three years, by [REDACTED] kt ([21–30] per cent). AkzoNobel’s volume sales have grown by [REDACTED] kt ([0–10] per cent), Valspar’s by [REDACTED] kt ([11–20] per cent) and PPG’s sales [REDACTED]. Of the smaller players, Actega has increased by [REDACTED] kt ([11–20] per cent), Grace by [REDACTED] kt ([11–20] per cent), Schekolin by [REDACTED] kt ([0–10] per cent) and the remaining suppliers altogether have lost [REDACTED] kt ([11–20] per cent). We also note that Metlac’s growth has been systematically higher than the market in all segments in which it currently operates (Food, C&C and GL) albeit that some suppliers have grown faster in certain segments¹¹⁰ and that the growth of the other suppliers has varied across segments in particular:

- AkzoNobel has grown in [REDACTED] but it has lost sales in [REDACTED].
- Valspar’s growth is higher than the market in [REDACTED] but its sales have fallen in [REDACTED].
- PPG has grown in [REDACTED] but it has shrunk in [REDACTED].
- Grace’s growth has been primarily in the [REDACTED] sector.
- Actega has grown in [REDACTED] but has lost sales in [REDACTED].
- Finally, Schekolin has experienced growth in [REDACTED] but has shrunk in [REDACTED].¹¹¹

8.81 The analysis above indicates that Metlac has grown significantly in the last few years across all main segments where it is active. Other suppliers, including AkzoNobel, Valspar and PPG, have grown as much as (or more than) Metlac in some segments (over the three-year period we considered), notably AkzoNobel and Valspar in B2E, but their growth pattern varies significantly across segments. Growth by AkzoNobel, Valspar and Grace in some segments may also reflect their acquisitions of other small coatings suppliers (see Appendix F, paragraph 27).

8.82 However, particularly 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.

8.83 We considered data we had received covering a longer period for AkzoNobel and Metlac which, as such, provided a more robust indication of growth over time, as it reflects wins and losses of major contracts in the past five years. [REDACTED] Details of sales by AkzoNobel and Metlac over a five-year period are set out in Tables 15 and 16 below. A comparison of parts (a) and (b) of Table 16 shows that virtually all of the increase in sales achieved by Metlac over this period had been in sales to EEA customers outside Italy where volumes have increased at a compound rate of [21–30] per cent a year.

¹¹⁰ [REDACTED]

¹¹¹ We also note that part of suppliers’ growth may not reflect organic growth as it was the result of mergers and acquisitions occurred in recent years, notably AkzoNobel’s acquisition of Lindgens (2010), Valspar’s acquisition of DIC (2010) and Salchi’s acquisition of Rembrandtin (2010).

TABLE 15 EEA sales volumes by AkzoNobel, 2007 to 2011

Year	B&B			FCG			Total
	B2I	B2E	BE	C&C	Food	GL	
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 16 EEA sales by Metlac, 2007 to 2011

Year	B&B		FCG		Total
	B2E	C&C	Food	GL	
<i>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>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.

8.84 To date, competition in the FCG market between AkzoNobel and Metlac has been confined to markets outside Italy, [X]. In comparing the two firms' performance in recent years, we have therefore considered the relative growth of Metlac's volumes across the EEA and in various segments (Table 16 part (a)); its growth outside of Italy (Table 16 part (b)) and AkzoNobel's growth across the EEA. On this basis, Metlac's non-Italian EEA volumes have been increasing strongly in each main product segment (with the exception of BE and B2I) since 2007 ([X] kt in B2E, [X] kt per cent in Food, [X] kt per cent in C&C and [X] kt per cent in GL). In contrast, AkzoNobel's sales volumes have shown small increases in B2E, Food and GL, and have declined in BE and C&C (although its sales in B2I have increased significantly).

UK growth

8.85 We also considered growth patterns in supply of metal packaging coatings in the UK in recent years. Metlac entered the B2E segment in the UK in 2008 and since then its sales have grown by [X]kt (from [X]kt in 2008 to [X]kt in 2011). Metlac entered the FCG market in the UK one year later (in 2009) and its sales have grown year-on-year, though they are still rather limited. Metlac has submitted to us that the smaller suppliers have shown a pattern of exiting the FCG market in the UK over the same period, which we consider further in Section 9.

Conclusion

- 8.86 In summary, Metlac has grown rapidly in all B&B and FCG segments in which it is active, especially in sales outside Italy where it competes most directly with AkzoNobel. In relation to B2E (and the EEA), whilst AkzoNobel and Valspar have grown over the last three years, over a five-year period AkzoNobel [REDACTED]. In relation to FCG, Metlac has grown faster than any other supplier over the last three years, although some suppliers have grown faster in specific segments (eg Valspar in [REDACTED] and AkzoNobel in [REDACTED]).
- 8.87 We also noted that Actega and Grace, (the two largest suppliers apart from AkzoNobel, Valspar, PPG and Metlac), have been active in the FCG market for some decades. Whilst they have achieved EEA volume shares comparable with some of the larger suppliers in some of the segments,¹¹² they still have not expanded their shares above [0–10] per cent in FCG overall or used their positions with customers in this market to enter the B&B segment.

The extent of current competition between AkzoNobel and Metlac vs others

- 8.88 AkzoNobel submitted that Metlac was not its closest competitor and that their product ranges were largely complementary.¹¹³ Metlac, on the other hand, has stated that AkzoNobel is its closest competitor.¹¹⁴
- 8.89 In our provisional findings, we 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.
- 8.90 AkzoNobel submitted to us in response to our provisional findings that we needed to further consider the differences between products at a sub-segment level (eg Food internal, Food external) in order to reflect the different qualification standards for food-contact coatings and the effect of this on competition. AkzoNobel also submitted to us that any finding that most segments of the metal packaging coatings industry are characterized by significant customer switching costs (caused by the need to qualify additional suppliers) implied that it is only where customers that have qualified both AkzoNobel and Metlac for the supply of products for the same end use that those customers might potentially be adversely affected by the proposed transaction.
- 8.91 We reviewed how we had analysed the extent of competition between AkzoNobel and Metlac and requested further information from customers to assist our understanding of the effect of qualification requirements on competition (as explained in paragraphs 8.10 to 8.59 above). Based on our understanding of this information, we determined that it was necessary to analyse competition between Metlac and AkzoNobel at a lower level of disaggregation, that is (i) where they were both qualified to supply functionally equivalent products to the same customer at the same plant (Type I competition) and (ii) where they were both qualified to supply functionally equivalent products to the same customer in the EEA (Type II competition) in order to understand the extent to which they competed pre-merger

¹¹² [REDACTED].

¹¹³ However, we note that AkzoNobel's Acquisition Request acknowledges:

- In relation to beverage externals, [REDACTED].
- In relation to product technologies, [REDACTED].

¹¹⁴ 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.

(although as we discuss in paragraphs 9.116 and 9.156 this can change over time and there are reasons to believe that the extent of overlap between AkzoNobel and Metlac is likely to increase absent the merger). Our revised analysis was therefore at a more disaggregated product level than in our provisional findings.

- 8.92 Our only significant source of information across the market regarding competition for supply of metal packaging coatings at this level of disaggregation was AkzoNobel's MIS database, which is described in paragraph 8.94 below. As a starting point for our analysis on the scope of rivalry between AkzoNobel and Metlac we therefore used the MIS database to identify where Type I and Type II competition (as defined in more detail in paragraph 8.55 above) occurs between them.
- 8.93 In what follows we explain what inferences we draw from this on the strength of pre-merger competition between AkzoNobel and Metlac. We briefly discuss how this might be expected to change under 'future developments' below (see paragraphs 8.203 to 8.220). 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 might be more likely to result in unilateral effects (see our guidelines, paragraphs 5.4.5 and 5.4.12).

Measuring pre-merger competition on the basis of customer/product overlap

AkzoNobel analysis

- 8.94 AkzoNobel's economic advisers submitted a paper which concluded that 'outside of Italy, Metlac is a minor player that is far less close a competitor to AkzoNobel than Valspar or PPG'. AkzoNobel's analysis was based on data from its 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. AkzoNobel 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. AkzoNobel's analysis showed that on the basis of the AkzoNobel estimates of sales [31–40] 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; that the overlap with PPG was [21–30] per cent and that the overlap with Metlac was only [0–10] per cent (a level of overlap which is much lower than Metlac's market shares). Furthermore, AkzoNobel noted that, in virtually all cases where both AkzoNobel and Metlac supplied a customer, there was at least one additional supplier.
- 8.95 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. 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 (which we discuss below), which is incomplete.
- 8.96 In response to our concern that the results included segments in which Metlac was not active (namely B2I and BE) AkzoNobel repeated the analysis restricting the data to the B2E sub-segment only. This analysis indicated that on the basis of the AkzoNobel estimates of sales in the B2E sub-segment, [31–40] per cent of the total volumes sold across all segments were for customers that were supplied by both

AkzoNobel and PPG at some point for a common product at a given production facility; that the overlap with Valspar was [X] per cent and that the overlap with Metlac was [X] per cent. AkzoNobel submitted that this demonstrated that, even in this narrowly chosen sub-segment, customers that have used AkzoNobel and either PPG or Valspar over the period for significantly more volumes than those that had used AkzoNobel and Metlac. AkzoNobel also said that it was noteworthy that only [X] per cent of volumes were supplied by AkzoNobel and Metlac only.

CC analysis

- 8.97 It seemed to us that the above analysis was capable of providing an indication of the proportion of sales over which we might expect rivalry between AkzoNobel and Metlac to be particularly strong, because they are both qualified or able easily to qualify. In other words, we consider this analysis is a useful tool to help identify where the merger might remove the direct constraint that one party places on the other, as opposed to as an indicator of the comparative ‘closeness of competition’ at a high level of aggregation between the merging parties compared to other firms. We discuss this point further in paragraph 26 of Appendix J which further explains how these calculations were made and comments on the accuracy of the AkzoNobel MIS database from which these results are drawn. To examine the overlaps between AkzoNobel and Metlac at the level of aggregation summarized in paragraph 8.94 above and based on the MIS database, we extended AkzoNobel’s analysis to cover FCG as well as B2E. The results are set out in Table 17 below (these reflect the degree of ‘Type I’ competition and are calculated by summing the sales associated with any product that both Metlac and Akzo have supplied to the same customers in the same country in the EEA between 2006 and 2011, and dividing by the total sales of all products in the relevant sub-segment).

TABLE 17 AkzoNobel/Metlac overlap in the EEA, 2006 to 2011

Overlap MIS (EEA excl Italy)		Metlac/ AkzoNobel overlap %
Food	Int	[0–10]
Food	Ext	[0–10]
Closures	Int	[0–10]
Closures	Ext	[21–30]
General Line	Int	[0–10]
General Line	Ext	[0–10]
B2E	Ext	[21–30]
Total		[0–10]*
All market but for BE and B2I		[0–10]

Source: CC’s calculation on the MIS database.

*This differs from the [0-10] per cent figure mentioned in paragraph 8.94. AkzoNobel’s figure was calculated by excluding all customer/product combinations for which there was no supply in 2011. We have instead carried out the analysis over the entire dataset as in AkzoNobel’s initial economic submission. Also, we aggregated sales of customers (as well as suppliers) that appear as different entities in the MIS database but are under common ownership.

- 8.98 Metlac’s overlap with AkzoNobel was highest in B2E ([21–30] per cent)¹¹⁵ and it was also significant in C&C external ([21–30] per cent). The overlap was considerably lower in other sub-segments, especially in Food external where it amounts to only [0–10] per cent. Over the entire metal packaging coatings sector (excluding BE and B2I where Metlac is currently not active) the overlap is [0–10] per cent.

¹¹⁵ This differs from the [21-30] per cent figure mentioned in paragraph 8.96.

TABLE 18 AkzoNobel/Metlac overlap in the UK, 2006 to 2011

Overlap MIS (EEA excl Italy)		Metlac/ AkzoNobel overlap %	Additional qualified supplier(s)
Food	Int	[0–10]	
Food	Ext	[0–10]	
Closures	Int	[0–10]	
Closures	Ext	[0–10]	[One supplier]
General Line	Int	[0–10]	
General Line	Ext	[0–10]	
B2E	Ext	[21–30]	[One supplier]
Total		[0–10]	
All market but for BE and B2I		[0–10]	

Source: CC's calculation on the MIS database.

8.99 According to the MIS database, and as described in Table 18 above, there are three instances of overlap in the UK: two involved [X] for the supply of C&C external^{116,117} and GL external coatings,¹¹⁸ and one related to [X] for B2E coatings.¹¹⁹ When weighted by volume, these overlaps accounted for [0–10] per cent of the total UK market (excluding BE and B2I). At sub-segment level in the UK, the weighted overlap is [0–10] per cent in C&C external, [0–10] per cent in GL external and [21–30] per cent in B2E (see Table 18 above). [X] is also qualified where Metlac and AkzoNobel overlaps in the supply of C&C external coatings to [X], and [X] is qualified with [X] for the supply of the B2E coatings in the UK along with Metlac and AkzoNobel. There are [X] additional qualified suppliers (or at least none that had supplied volumes in the period 2006 to 2011) in relation to the remaining instance of overlap (GL external to [X]).

8.100 However, we considered that there were three reasons why the figures generated by this analysis would understate the proportion of sales over which pre-merger competition between AkzoNobel and Metlac might be strong:

- The MIS dataset, in focusing upon actual supply, inevitably fails to account for cases in which Metlac was qualified to supply but has not yet made any sales (see paragraphs 8.101 to 8.102).
- The MIS dataset is inaccurate in some respects as it fails to capture instances where Metlac supplies to a particular product line, as explained in Appendix J (see paragraphs 8.103 to 8.105).¹²⁰
- By defining overlaps only in cases where AkzoNobel and Metlac have supplied the same customer in the same country (as a proxy for same plant) with the same product (see paragraphs 8.106 to 8.115), it fails to capture the constraint which they may place on one another by virtue of being able to qualify relatively rapidly (ie Type II competition).
- The MIS dataset records supply between 2006 to 2011 and therefore fails to capture recent developments (see paragraphs 8.116 to 8.118)

¹¹⁶ [X]
¹¹⁷ [X]
¹¹⁸ [X]
¹¹⁹ [X]

¹²⁰ The MIS database therefore significantly understates Metlac's sales.

Omission of cases where firms are qualified but have not supplied

- 8.101 As noted, the MIS data generally did not capture a situation where a customer may have other suppliers who are qualified to provide a product for a particular line but has not bought from that supplier during the relevant period. AkzoNobel submitted to us that 'although this statement is factually correct, in practice it is not at all common'. [REDACTED]
- 8.102 This understanding was supported by a number of customers who told us that it was rare to be in the position of never having been supplied by a supplier who was qualified to supply ([REDACTED]). However, Metlac provided a number of examples to us in relation to its largest customers where it was qualified to supply but had not to date supplied: at eight plants supplied by AkzoNobel (of which four were in the UK), Metlac was also approved to supply although it had not supplied to date (two B&B externals to [REDACTED]; six FCG to [REDACTED]); whilst at a further 17 plants (of which three are in the UK) owned either by [REDACTED], which were already supplied by both Metlac and AkzoNobel, Metlac had achieved customer approval to supply additional products to those which it had sold to date. None of these instances of competitive interaction would be captured in the MIS database. While we acknowledged that in principle the same situation may apply equally to other suppliers as to Metlac, this does not undermine the fact that failing to account for these occurrences could have led us to understate the number of cases in which the merging parties placed a direct and immediate constraint on each other.

Accuracy of sales recorded in MIS

- 8.103 We noted in paragraph 8.81 of our provisional findings¹²¹ that: 'This database reflects AkzoNobel's estimates of customer's supply requirements and supplies, by factory and product line. We were unable to confirm the accuracy of AkzoNobel's estimates across all locations or products. 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. There were substantial differences between volumes in the two databases (sometimes in the order of [REDACTED] the volume which was stated as having been supplied); some customer-plant pairs shown in the MIS database as not served by Metlac were actually supplied by Metlac; and some customer-plant pairs shown as supplied by Metlac in the MIS database were not actually supplied by Metlac (sometimes not for the particular product, sometimes not at all)'. Following our provisional findings,¹²² we further reviewed the accuracy of the MIS database and carried out a comparison of all Metlac-related information in the MIS database compared with the Metlac customer transaction database, at the level of customer/location/sub-segment, as set out in Appendix J.
- 8.104 We could not assess the accuracy of the MIS database at the product line level because Metlac's customer transaction databases use a different classification of products which makes it difficult to unambiguously match the two databases. However, we further explored the accuracy of the MIS database by carrying out a full comparison between the two databases at sub-segment level (B2E, Food, C&C and

¹²¹ www.competition-commission.org.uk/our-work/akzo-nobel-metlac.

¹²² www.competition-commission.org.uk/our-work/akzo-nobel-metlac.

GL), ie within each segment we have considered internal and external coatings separately.^{123,124}

8.105 The MIS database included [redacted] combinations of customer, location and sub-segment. According to the data contained in the MIS, Metlac overlapped with AkzoNobel in [redacted] combinations. This corresponded to a total volume purchased by customers in the period 2007 to 2011 of [redacted] kt ([redacted] per cent of the volume of the total market). When Metlac's actual data were used, there were [redacted] combinations where both Metlac and AkzoNobel has supplied volume at some point between 2007 and 2011. Customer/location/sub-segment combinations that were supplied by both AkzoNobel and Metlac accounted for [redacted] kt ([redacted] per cent of the total market). The MIS database correctly identified [redacted] of these combinations but it failed to account for [redacted] instances (while it includes [redacted] cases where no overlap has actually occurred to date), although we acknowledged that not all of the [redacted] cases mentioned above necessarily qualified as situations in which both Metlac and AkzoNobel are qualified to supply the same product to a given customer in a given location. For example, in relation to FCG in the UK, we are aware of the following cases in which Metlac is supplying, or is qualified to supply that are not captured by MIS: (i) [redacted]. Yet, we cannot confirm if these reflect actual instances of overlap.

Overly narrow definition of product overlap

8.106 As we have explained above, by defining overlaps only in cases where AkzoNobel and Metlac have supplied the same customer in the same country (as a proxy for plant) with the same product, the MIS analysis as conducted by AkzoNobel's economic advisers fails to capture the constraint which they may place on one another by virtue of being able to qualify relatively rapidly. As set out in our discussion of the nature of competition in this industry and qualification (outlined in paragraphs 8.4 to 8.59), there is evidence to suggest that being qualified to supply a product to a plant within the customer's group can mean that the time taken to qualify is lower and it seems likely that the risks of failing to qualify are also lower (albeit not eliminated). Therefore, in our view AkzoNobel and Metlac are also likely to provide a competitive constraint on one another in situations where both are qualified for a particular product for a particular customer somewhere in the EEA (Type II competition as set out in paragraph 8.55).

8.107 To assess the extent of this additional constraint, we have estimated the overlap between AkzoNobel and Metlac under the hypothesis that when they both supply a given customer with a specific product, although at different plants, this accounts for an instance of overlap (hereafter 'augmented overlap'). The augmented overlap captures both Type I and Type II competition.

8.108 The weighted (by volume) 'augmented' overlap between AkzoNobel and Metlac has been calculated as follows:

- we identify every combination of customer and product in the UK that has been supplied in the period 2006 to 2011, according to the MIS;
- among these we identify the combinations of product and customer where both Metlac and AkzoNobel have supplied the same customer with the same product

¹²³ We followed AkzoNobel's approach and aggregated customers' plants at country level. Also, we have not considered Italy, as it was excluded from AkzoNobel's analysis. Finally, we consider the period 2007 to 2011 as the customer transaction database does not contain information on Metlac's 2006 transactions.

¹²⁴ A more detailed discussion of our assessment of the MIS's accuracy is provided in Appendix J.

(at some point in time between 2006 to 2011) somewhere across the EEA according to the MIS, and classify these as ‘augmented overlaps’; and

- to establish what proportion of UK sales these augmented overlaps represent we sum the total UK sales associated with each overlap (ie purchased in the UK by the relevant customer) and divide the resulting figure by the total volume supplied in the sub-segment in the UK in the period 2006 to 2011.

8.109 Table 19 below presents the results of the ‘augmented’ overlap analysis according to the MIS database. The table also indicates the number and the identity of the additional qualified suppliers when Metlac and AkzoNobel overlap (as well as the weighted overlap depending on the number of additional qualified suppliers).

TABLE 19 AkzoNobel/Metlac overlap in the UK, 2006 to 2011—augmented overlap

		Overlap Metlac/ AkzoNobel %	Additional suppliers where Metlac and AkzoNobel overlap (augmented overlap) (%)						Additional suppliers' identity*
			0	1	2	3	4	5	
Food int	[REDACTED]	[0–10]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[At least six other suppliers]
Food ext	[REDACTED]	[0–10]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[At least three other suppliers]
C&C int	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
C&C ext	[REDACTED]	[11–20]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[Two suppliers]
GL int	[REDACTED]	[0–10]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[Four suppliers]
GL ext	[REDACTED]	[21–30]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[At least three other suppliers]
B2E	[REDACTED]	[41–50]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[Two suppliers]
Total	[REDACTED]	[0–10]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Total excl BE & B2I	[REDACTED]	[21–30]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
FCG	[REDACTED]	[0–10]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

Source: CC's calculation on the MIS database.

*It is possible that there may be other suppliers qualified for these particular products but, for the reasons set out in paragraphs 8.101 to 8.102, the MIS database does not capture instances where suppliers are qualified to supply but has not supplied the particular coating to that customer.

8.110 We identified [REDACTED] instances of the augmented overlap, [REDACTED] in B2E, [REDACTED] in Food ([REDACTED] external and [REDACTED] internal), [REDACTED] in C&C external and [REDACTED] in GL external ([REDACTED] for internal and [REDACTED] for external). The overlap between the parties on this basis is [41–50] per cent in B2E, [0–10] per cent in Food internal, [0–10] per cent in Food external, [11–20] per cent in C&C external, [0–10] per cent in GL internal and [21–30] per cent in GL external. There is no overlap in C&C internal. The overlap over the entire UK metal packaging coatings sector (excluding B2I and BE where Metlac is currently not active) amounts to [21–30] per cent ([0–10] per cent in the FCG market).

8.111 The [REDACTED] overlaps in B2E refer to coatings for two-piece aluminium cans purchased by [REDACTED]. We note that in both cases [REDACTED] as well as [REDACTED] supply [REDACTED] with a similar product (although not necessarily at the same plant). We are aware that [REDACTED].¹²⁵

8.112 In Food, the augmented overlaps relate to [REDACTED] and [REDACTED]. [REDACTED] is active on [REDACTED] these overlaps, while [REDACTED] and [REDACTED] are active in relation to the [REDACTED]. Other suppliers which have also been active on the overlaps include [REDACTED] and [REDACTED]. In C&C external, we identified [REDACTED] of augmented overlap, [REDACTED] concerning [REDACTED] for a [REDACTED]. [REDACTED] and [REDACTED] are also active on these overlaps. The overlap in GL internal refers to a [REDACTED] to [REDACTED] with [REDACTED] and [REDACTED] also active. Finally, in GL external there are [REDACTED] of overlap [REDACTED]

¹²⁵ We also note that Metlac is qualified to supply [REDACTED] with a B&B (B2E) product in [REDACTED] but we have been unable to verify whether this is a Type II overlap.

concerning [redacted] to [redacted]. In [redacted] of these cases [redacted] and [redacted] are also active whereas in [redacted] no other supplier apart from Metlac and AkzoNobel has been active.

- 8.113 AkzoNobel said that our approach of applying augmented overlaps instead of actual overlaps (at a certain can-making facility) failed to account for differences in technology at different can-making lines even of the same customer.¹²⁶ They said that, as a result, the augmented overlap as calculated by us did not represent the most direct competitive constraint and that it believed that overlaps should be calculated on a country level. Notwithstanding this comment, AkzoNobel said that, even if they applied our methodology of augmented overlaps, it would confirm the conclusions of their initial analysis of the MIS database namely that PPG and Valspar provide significantly more important competitive constraints on AkzoNobel than Metlac. On this point, AkzoNobel submitted analysis that demonstrated that, while the proportion of UK sales associated with the AkzoNobel/Metlac overlap in the B2E segment is only [redacted] per cent, the overlap on the same augmented overlaps basis is [redacted] per cent and [redacted] per cent in the AkzoNobel/PPG and AkzoNobel/Valspar overlaps respectively. According to AkzoNobel the results clearly show that PPG and Valspar exert a much more important competitive constraint on AkzoNobel, concerning sales in the UK.
- 8.114 On their first point, we accept that the Type II competition captured by our augmented overlaps is likely to be weaker than the Type I competition measured by looking solely at cases where AkzoNobel and Metlac overlap to supply the same customer with the same product in the same country¹²⁷ (which as we have explained is a proxy for looking at cases where they overlap to supply the same customer with the same product at the same plant/on the same plant-line). However, as discussed in paragraphs 8.50 to 8.59, the evidence we have collected on qualification suggests that suppliers who have products qualified at different plants in the same customer group are likely to exert a constraint on one another. Indeed evidence from several large customers suggests that they would be prepared to qualify and switch to such a product if prices increased by 5 to 10 per cent (see paragraph 8.52) (albeit we may not be able to put too much weight on the precise absolute value of these price increases).
- 8.115 On their second point, we note that the price that customers pay for a particular product depends on the strength of competition between the set of suppliers that can easily supply their plant(s) with the product in question.¹²⁸ This implies that where AkzoNobel and Metlac overlap to supply a specific customer with a specific product there may be a loss of competition resulting from the merger notwithstanding the fact that there may be many other product-customer combinations on which AkzoNobel and PPG and AkzoNobel or Valspar are both active. Put another way, the fact that AkzoNobel overlaps with PPG and Valspar in aggregate more frequently than it overlaps with Metlac does not have direct implications for whether or not PPG and Valspar will constrain the merging parties on the AkzoNobel/Metlac overlaps: to establish whether this is the case we need to understand whether Valspar and PPG are active on the AkzoNobel/Metlac overlaps, and what role they play where they are active (we discuss this in paragraphs 8.127 to 8.168 below).

¹²⁶ In this context they cited the evidence of Ball, which told us that coating products were qualified by it for each location separately and in some cases were can-line specific. See paragraph 8.13.

¹²⁷ See paragraph 8.52.

¹²⁸ This means that the constraint on AkzoNobel in relation to each of the product-customer-plants that it supplies will depend upon who else is able to supply the same product to the same customer to the same plant with ease, ie who else is active at this disaggregated level.

Omission of recent developments

8.116 The MIS database does not include data from 2012 (for further information on the scope of the MIS database, see Appendix J). As such, it does not reflect the most recent competitive conduct of either AkzoNobel, Metlac or any other suppliers. Given Metlac's pattern of growth (described in paragraphs 8.76 to 8.87), we consider that missing data in relation to the most recent year is likely to be particularly significant. We have therefore sought to reflect in our analysis information on the more recent developments relating to Metlac (but only if we were able to confirm with customers that these developments (whether they related to supply arrangements or qualifications to supply) were for products that AkzoNobel had also been qualified to supply or actually supplied by in the EEA).

8.117 In relation to B2E in the UK, we understand that [REDACTED]¹²⁹ this therefore constitutes a further instance of a Type I overlap between AkzoNobel and Metlac.

8.118 In relation to FCG, we are aware of two further overlaps:

[REDACTED]

Conclusion on extent of product overlap, based on the MIS database

8.119 Overall, this analysis indicates that a significant proportion of UK sales in B2E and FCG have been exposed to some form of rivalry between AkzoNobel and Metlac, whether because they have both been qualified to supply the same plant with the same product (Type I competition) or because they are both qualified to supply the same customer with the same product (Type II competition), and can therefore be expected to exert a meaningful constraint because they can be relatively rapidly qualified.

8.120 We noted that (i) for a large proportion of these B&B and FCG product lines, either PPG or Valspar or both are also qualified to supply (the plant or the customer), and (ii) in the FCG segments, in general, other suppliers are qualified to supply too. These suppliers may then be exerting a constraint. In what follows we consider the extent to which Metlac is a significant competitive force, in particular among the four largest suppliers. In doing so, we considered the extent to which Metlac is one of the lowest-priced suppliers because it is more likely that unilateral effects will arise when this is the case.

Pricing and bidding market

8.121 AkzoNobel submitted that the CC failed to take into account the bidding nature of the competition in the B2E segment. AkzoNobel submitted that unilateral effects arise in markets characterized by bidding competition if the merging parties win the majority of tender contests and when one merging party wins, the other tends to be the runner-up (ie when Metlac wins, AkzoNobel is the runner-up and *vice versa*). No unilateral effects can arise in such a model when Metlac (or AkzoNobel) wins and either Valspar or PPG tends to be the runner-up. Therefore, the economic assessment of the likelihood of unilateral effects requires analysing whether in situations where AkzoNobel wins, Metlac is the next lowest price supplier and *vice versa*.

¹²⁹ [REDACTED].

8.122 We noted that there is an additional element of the competition in the B2E segment that has to be considered. As acknowledged by AkzoNobel, B2E customers tend to multi-source, mainly for security and commercial reasons. Put another way, they do not source their entire requirement from a single supplier, even if it charges the lowest price. As a consequence, individual tenders in B2E are not in the format ‘winner takes all’ but even the second, or the third, and in some cases the fourth bidder, may expect to win some share of the customer requirement.

8.123 This multi-sourcing feature of the market has several implications:

- the competition in a tender extends beyond the best price supplier and the runner-up. Bidders compete also to become the second, or the third, supplier. The merger can therefore affect also the incentive of the merging parties to compete when, for instance, Metlac is the second cheapest and AkzoNobel is the third cheapest, or vice versa; and
- a price increase by one of the suppliers that results in the loss of volume by that supplier may trigger a volume reallocation across all the remaining suppliers, and not only to the closest suppliers (in terms of prices or other factors). Therefore the internalization of consumer substitution, which may give rise to the incentive to increase prices after the merger, does not necessarily require that the merging parties are next lowest price compared with each other as some sales would likely be diverted between AkzoNobel and Metlac post-merger even if they were not the closest bidders.¹³⁰

8.124 We therefore considered it appropriate to examine whether Metlac tends to be one of the lowest-price competitors and did not limit ourselves to the specific outcomes highlighted by AkzoNobel.

8.125 AkzoNobel also submitted that we failed to explain why Valspar and PPG would have incentives to follow a hypothesized price increase when that hypothesized price increase would not be observable until after the contract has been awarded. In this regard, we noted that the bidding process usually entails several rounds of negotiations where customers give the possibility to suppliers to revisit their bids. For instance:

- [REDACTED];
- [REDACTED] told us that there could be several rounds of negotiations before a price is agreed.

8.126 In relation to [REDACTED] and [REDACTED], AkzoNobel submitted evidence showing that negotiations, even when customers did not rely on formal tender processes, involved several interactions between the customers and the potential suppliers. We also note that:

- Rexam submitted that ‘during the process suppliers are informed as to whether their prices are competitive or not’ (though the identity of the bidders is not disclosed).
- Actega confirmed this view stating that ‘during the negotiation process with our customers we might be faced with indications about the competitiveness of our

¹³⁰ We note, for example, that Rexam told the BKartA that ‘since the entry of Metlac, Valspar, AkzoNobel and PPG have lost nearly all of their supplies to Rexam on the products that Metlac can produce, although to ensure a choice in supply, we have had to contract at higher prices with them. [REDACTED]’. This supports the view that multi-sourcing drives competition also for the position of second (or third) supplier.

offer in comparison to our direct competitors but not with any details as listed above’.

- Along a similar line, Valspar told us that ‘[c]ustomers routinely advise whether and to what extent our competitors’ pricing may be lower than Valspar pricing’.
- In our view, the price negotiations, although not fully transparent (as offers submitted by competitors are not disclosed) permit suppliers to adjust their expectations and consequently their bidding behaviour based on the information they received from the customers on the relative economic value of the supplier’s offer compared with that of its competitors. The non-merging parties can have an incentive to follow a price rise by the merged entity as long as they manage to secure a share of the business in any event.

Analysis of whether Metlac has been a significant competitive force

8.127 A number of customers told us that Metlac is a particularly aggressive competitor on price compared with the other larger competitors (AkzoNobel, Valspar, PPG) and that this is not at the expense of product quality or service (see also Appendix G, paragraph 3 to 20. If so, this would suggest that Metlac might be expected to provide an important constraint in cases where it overlaps (as per our above definitions) with any combination of AkzoNobel, Valspar and PPG.

8.128 In what follows (and in Appendix K) we set out:

- the customer views we have collected on whether Metlac is an aggressive competitor on price;
- our analysis of how Metlac’s prices compare to other suppliers;
- our analysis of the extent to which customers have actually switched to Metlac and/or used the ability to switch to Metlac to extract lower prices; and
- our analysis as to whether any lower prices are likely to be sustainable going forward.

Customer views

8.129 We have received evidence from customers that 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.

8.130 As part of its investigation into the AkzoNobel/Metlac concentration, 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]¹³¹ (which together make up over 81 to 90 per cent of the B&B purchases and approximately 41 to 50 per cent of FCG purchases¹³²) and across these responses, the majority of customers believed that there was relatively little competition between AkzoNobel,

¹³¹ These responses were submitted either to the OFT or the CC by the relevant customers. Other customers declined to provide us with copies of their responses to the BKartA questionnaire.

¹³² See Appendix C, Table 1.

PPG and Valspar on price and that these suppliers tended to adopt similar pricing and commercial strategies. In particular:

- Seven out of 11 respondents were of the view that there was relatively little price competition between the three suppliers (ie AkzoNobel, Valspar and PPG). (These respondents represented customers that purchase 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]) was the only customer that did not raise concerns, saying that the competition between the three suppliers was 'healthy'.

8.131 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'.

8.132 A number of additional companies ([REDACTED]) noted to us the lack of competitiveness of the three large suppliers, particularly in relation to price.

8.133 One customer ([REDACTED]) said that before Metlac's entry into B2E supply 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'.

8.134 Customers ([REDACTED]) have confirmed to us the view expressed in the responses to the BKartA, ie historically PPG and Valspar have not been strong competitors to AkzoNobel and customers do not believe they exert a strong constraint (and would not therefore expect them to exert a strong competitive constraint after the merger). More specifically:

- 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.
- 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'.
- 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.
- In response to the question, whether 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 'I do not see PPG and Valspar rushing headlong into the market with the best offers we have seen for the last five years. That just would not happen'. It added that it would like

to shift business from AkzoNobel to Valspar in response to the AkzoNobel threat to raise its prices in Europe, but it was not able to get better pricing from Valspar.

8.135 We also examined responses to our market questionnaires from major customers (this overlaps but extends the customer base with whom we had oral hearings) and from small customers (although the response rate of this group was lower than the group of large customers). Of the 14 customers that were supplied by Metlac, only one customer, [REDACTED], stated that it did not see Metlac as a low-priced supplier. Responses from four customers were unclear.

8.136 Diostyl, a small coatings supplier, 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.

CC analysis of Metlac's prices

8.137 We received pricing information from multiple sources and carried out analyses of the following pricing information:

(a) data submitted by customers to the BKartA (and subsequently to the OFT and CC) on the prices of the five most important (in terms of purchased volumes) packaging coatings purchased by customers; and

(b) price comparison on a sample of products selected by AkzoNobel and Metlac.

8.138 In the context of its review of the effects of the proposed merger in Germany the BKartA asked customers 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.¹³³ Eleven customers provided us with their responses to the BKartA's pricing question, of which seven ([REDACTED]) were supplied by Metlac for at least one of their five most important packaging coatings (and we were therefore in a position to compare their prices).

8.139 AkzoNobel submitted that by dismissing customers who do not purchase from Metlac, we likely failed to 'take into account information from customers who had received offers from Metlac, but had selected an alternative supplier, potentially as a result of that supplier being cheaper'. We acknowledge that, in principle, this might be the case. We do not know whether any of the four customers ([REDACTED]), that have not used Metlac as a supplier for their five most important packaging coatings received price quotations from Metlac but did not accept Metlac's offers because Metlac's offers were not competitive. However, we note that of these customers, [REDACTED] pointed to Metlac's lower pricing as a barrier to unilateral price increases by the industry and [REDACTED] mentioned Metlac's cost efficiency, moderate pricing strategy and stable quality as a competitive advantage it had over other suppliers, which would indicate that these two companies were unlikely to have received uncompetitive pricing offers from Metlac.

¹³³ 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.' [REDACTED] provided price information in a similar format but in response to a different question (Q.H3): 'Please describe the price setting process. Please indicate how many rounds of negotiations take place. Please state which components (energy costs, raw material prices, personnel expenses, costs of development etc.) influence the setting of prices and which in your view are the most relevant.'

- 8.140 These customers' responses are summarized in Appendix K.¹³⁴ We do not have access to the full set of customer responses from the BKartA. However, we estimated that these customers represent [41–50] 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.
- 8.141 In relation to B2E, for the [X] customers for which we have information ([X]¹³⁵) for a set of specific products Metlac was the lowest-priced provider in [X] of [X] instances¹³⁶ with a price advantage ranging between 1 and 25 per cent (in [X] instances the price advantage was larger than 10 per cent). On [X] it was the lowest-priced provider alongside PPG and in [X] instances it was not the lowest-priced provider (in [X] instances AkzoNobel was the lowest-priced supplier). 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 [X] Metlac's price advantage was over 10 per cent).
- 8.142 In relation to Food, we reviewed information from [X] purchasers ([X]¹³⁷) for [X] types of products. For [X] products which Metlac supplied AkzoNobel was also a supplier to the same customer at some point in time. Out of [X] instances for which we could run this comparison Metlac was the lowest-priced supplier in [X] instances. Metlac's price advantage ranged between 1 and 23 per cent (in [X] instances the price advantage was over 10 per cent). For the most recent year for which we have data Metlac was the lowest-priced supplier for [X] Food products examined (in [X] instances Metlac's price advantage was over 10 per cent). We noted that when smaller suppliers were also present ([X] out of [X] products), Metlac was the lowest-priced supplier less frequently ([X] out of [X] instances) than when only the three major suppliers competed ([X] out of [X] instances).
- 8.143 In relation to C&C, we reviewed information on pricing provided by [X] customers ([X]¹³⁸) for [X] types of products. For [X] products which Metlac supplied AkzoNobel was also a supplier to the same customer at some point in time. Out of [X] instances for which we could run this comparison Metlac was the lowest-priced supplier in [X] instances. Metlac's price advantage ranged between 1 and 24 per cent (in [X] instances the price advantage was over 10 per cent). 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). When smaller suppliers were present, Metlac was the lowest-priced supplier in [X] out of [X] instances while it was the lowest-priced supplier in [X] out of [X] instances when only the three major suppliers competed.
- 8.144 Overall, this evidence 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 suggested that Metlac had a price advantage especially for the B&B products where it competes and FCG (C&C). For FCG (Food)

¹³⁴ The remaining four 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 [X], who provided similar tables to the other seven customers but did not include Metlac as a supplier.

¹³⁵ [X]

¹³⁶ An 'instance' in this context is a year for which data has been provided.

¹³⁷ For [X], the products considered account roughly for [21–30] per cent of its total purchases in the EEA. For [X] the products considered represent roughly [21–30] per cent of its total purchases in the EEA.

¹³⁸ In terms of total purchases in the EEA these products represent, respectively, [11–20] per cent for [X], [71–80] per cent for [X] and [81–90] per cent for [X].

Metlac showed a strong price advantage overall but less so for the most recent year for which we have data. We noted, however, that when smaller suppliers were also competing, Metlac was the lowest-priced supplier less frequently than when only the three major competitors (AkzoNobel, PPG, Valspar) were present.

Post-provisional findings pricing analysis

- *Review of pricing data*

8.145 In its response to our provisional findings,¹³⁹ AkzoNobel submitted that differences in prices may be due to different levels of performance (in relation to the coating itself, its application and its performance on the production line) in the coatings supplied by various suppliers (even though they are meant for the same end-use) and, therefore, a straight price comparison could be meaningless. To address the issue raised by AkzoNobel we asked the relevant customers for which we had the above pricing information to comment on any technical difference between the coatings supplied by various suppliers.¹⁴⁰ We received responses from [REDACTED].

- (a) [REDACTED] told us that most of Metlac's products had a higher solid content than the other qualified competitors, which could translate in cost savings of up to [0–10] per cent. In relation to [REDACTED]
- (b) As regards Overvarnish and Rim Varnish, [REDACTED] told us that the weight per thousand cans and the service level could be different and, when Metlac was qualified its products were top runners on both these measures. Similar technical differences might affect white basecoat coatings, but it is not clear how Metlac ranks compared to other qualified competitors.
- (c) For three out of the four products (white coating, vinyl varnish and polyester varnish) for which [REDACTED] submitted price information to the BKartA, [REDACTED]. For the remaining product (Internal varnish epoxyphenolic) [REDACTED].
- (d) [REDACTED] responded that technical differences affect the cost of coatings and are therefore taken into consideration in selecting the supplier. However, they did not provide specific information in relation to the products for which they submitted price data to the BKartA. However, [REDACTED] also told us, when asked whether there were aggregation or other reasons why the Metlac products listed in its submission to the BKartA were not in fact the lowest:

No because those prices are current prices. ...we have a database of all of our quotes and market prices and of course, when the prices change it tends to be a percentage up or down on the current price. So, we always have the current price. So, we are not comparing an old Metlac price with a new AkzoNobel price, that would be unfair and making the whole thing opaque. We are comparing current prices. I mean, perhaps we have painted a picture that is a little wrong. It is not like individual transactions. As we said earlier, we do not change very readily, so we are buying from the same guy for nine months, twelve months, two years, ten years, those particular

¹³⁹ www.competition-commission.org.uk/our-work/akzo-nobel-metlac.

¹⁴⁰ We asked the following question: 'You provided information to the BKartA in response to Question H.5. of its Market Questionnaire describing how the prices of your five most important packaging coatings purchased by your company have developed in recent years. For each of these products, please indicate any possible technical difference in terms of quality/performance (can surface per kg of coating, speed at which coatings can be applied, etc.) or level of service that would impact on a price comparison between the different suppliers.'

things. It is not like one month we buy that lacquer and then buy a different lacquer the following month, we do not do that. We do not change lacquers. It is too risky.

8.146 We concluded on the basis of these responses that the pricing data provided by customers was unlikely to be subject to significant product mix issues and that Metlac not only provided lower prices but high quality product, which was in some cases superior to the products offered by its competitors.

- *Price comparison*

8.147 To further explore Metlac's pricing we asked both Metlac and AkzoNobel to select a sample of two-three specific coatings (including the corresponding code as it appears in their customer transaction database) in various segments among their portfolio of products. We then passed on the list of products each party selected to the other party and we asked to identify their own products that are 'functionally equivalent' to those of the other merging party.

8.148 We also asked Valspar and PPG to identify their functionally equivalent products to those selected by AkzoNobel and Metlac and for each of them to provide volumes and values in the EEA for the period 2007 to 2011. Valspar submitted information for 11 products and PPG for 17 products.

8.149 Valspar and PPG pointed out that in a number of cases the product description reported by AkzoNobel in its product list may include several different coatings.¹⁴¹ This did not allow them to identify uniquely the 'functionally equivalent' product and, in addition, it may limit the validity of the price comparison because of product mix issues. For this reason, below we also present the results of the price analysis based only on the product sample selected by Metlac which is not, or is to a lesser extent, affected by a similar problem.

8.150 We collected price information on 26 products:

- three coatings in B2E;
- eight coatings in C&C (four for C&C external and four for C&C internal);
- six coatings in Food (three for Food external and three for Food internal);
- two coating in Food ends external; and
- seven coatings in GL (three for GL external and four for GL internal).

8.151 Using Metlac's and AkzoNobel's transaction databases and the information we have received from Valspar and PPG, we calculated the weighted (by volume) average prices in the EEA over the period 2007 to 2011.

8.152 Based on Table 20 below Metlac's price was the lowest for 15 out of 26 products (58 per cent); AkzoNobel had the lowest price for eight products (31 per cent); PPG's and Valspar's products were the cheapest in, respectively, two cases (8 per cent) and one case (4 per cent). Metlac was the cheapest for [X] B2E coatings, [X] C&C external, [X] C&C internal, [X] Food external, [X] Food internal, [X] Food ends, [X] GL external and [X] GL internal.

¹⁴¹ [X]

8.153 In cases where Metlac was the cheapest supplier, the next best price was [redacted] per cent more expensive. The gap with the next best price was smaller when AkzoNobel or PPG were the cheapest (respectively, [redacted] per cent and [redacted] per cent). [redacted]¹⁴² We obtain similar results if we focus on Metlac's selected products. Metlac is cheaper in more instances than AkzoNobel and PPG (eight out of 12 products) although the difference between Metlac's and the next best price is smaller ([redacted] per cent).

TABLE 20 Price comparison: average price over the period 2007 to 2011

	<i>All selected products</i>		<i>Products selected by Metlac</i>	
	<i>Number of products lowest price</i>	<i>Next best price (in cases where cheapest) %</i>	<i>Number of products lowest price</i>	<i>Next best price (in cases where cheapest) %</i>
AkzoNobel	8	[redacted]	2	[redacted]
Metlac	15	[redacted]	8	[redacted]
PPG	2	[redacted]	2	[redacted]
Valspar	1	[redacted]	0	[redacted]

Source: CC's calculation on data provided by AkzoNobel, Metlac, Valspar and PPG.

8.154 We note that some of selected products were not sold in all years and, therefore, the average price over the period 2007 to 2011 (at least in the EEA) may be influenced by time-varying factors common across suppliers (eg variation in raw material prices).¹⁴³ For this reason we also compared prices focusing solely on 2011 estimates. The results are similar to those obtained looking at the average across the last five years.

8.155 Table 21 below shows that Metlac's price was the lowest for 16 out of 26 products (62 per cent), followed by AkzoNobel for 7 products (27 per cent), Valspar for two products (8 per cent) and PPG for only one product (4 per cent). At segment level, Metlac was the cheapest for [redacted] for B2E coatings, [redacted] for C&C external, [redacted] for C&C internal, [redacted] for Food external, [redacted] for Food internal, [redacted] for Food ends, [redacted] for GL external and [redacted] for GL internal.

8.156 In cases where Metlac's price was the lowest, the next best price was [redacted] per cent more expensive. This figure was [redacted] per cent, [redacted] per cent and [redacted] per cent when, respectively, AkzoNobel, PPG and Valspar were the cheapest. As before, Metlac's prices appear to be lower than AkzoNobel's and PPG's in more instances (nine out of 12 products) if we consider only the products selected by Metlac, though the price difference with the next best price is more limited.

TABLE 21 Price comparison: average price in 2011

	<i>All selected products</i>		<i>Products selected by Metlac</i>	
	<i>Number of products lowest price</i>	<i>Next best price (in cases where cheapest) %</i>	<i>Number of products lowest price</i>	<i>Next best price (in cases where cheapest) %</i>
AkzoNobel	7	[redacted]	1	[redacted]
Metlac	16	[redacted]	9	[redacted]
PPG	1	[redacted]	1	[redacted]
Valspar	2	[redacted]	1	[redacted]

Source: CC's calculation on data provided by AkzoNobel, Metlac, Valspar and PPG.

¹⁴² We note that in some other cases the difference between the cheapest and the next best price is relatively high (greater than 40 per cent) which may raise concerns in relation to the actual comparability of the products selected by the parties.

¹⁴³ AkzoNobel raised a similar point in its response to our post-provisional findings economic working paper, stating that prices charged for a given B2E product will vary over time.

8.157 Due to the different range of products even within a narrow end-use (such as a gold epoxy lacquer for internal three-piece food cans), we cannot be completely confident that our analysis compares exactly similar products. Even within a narrow end-use a company may supply more than one product, priced differently depending on its performance (eg abrasion resistance, special colour features etc) and cost. We also acknowledge, as AkzoNobel submitted, that different customers are very likely to be charged different prices for the same B2E product, and averaging prices across customers might distort the assessment as to who is actually the lowest price supplier of a product. AkzoNobel also submitted that the prices charged for B2E products will vary over time. We have therefore considered very cautiously the results of this part of our price analysis and attached limited weight to it.

8.158 However, we noted that overall the outcome of our analysis is broadly consistent with other evidence that we consider more reliable, namely the comments from customers on Metlac's pricing and the pricing evidence submitted to the BKartA for which, as far as we were able to check, we can be confident that the price figures in general refer to similar products (and that even in cases where interchangeable products have different technical characteristics Metlac's coatings tend to be at least as much performing as those of the competitors). Metlac tends to charge lower prices than its major competitors (AkzoNobel, PPG and Valspar), although not in all cases. We did not receive any evidence to indicate that Metlac's products are inferior to those of its competitors (ie such that Metlac would need to price lower in order to sell its products) and the information received on its general innovativeness led us to conclude that it is likely to be able to continue to offer high-quality products in the future (see Appendix G).

8.159 AkzoNobel submitted that if Metlac were actually a low price supplier it 'ought to be approaching a 100 per cent market share in each defined segment' where it is active, while in reality Metlac accounts for less than [redacted] per cent in B2E in value terms and has no sales in B2I and BE. AkzoNobel also submitted that a strategy by Metlac which involved supplying at lower margins than competitors without the benefit of significant expansion would be inconsistent with basic economic theory.

8.160 We first note that in B2E Metlac is currently the second supplier in the EEA in volume terms with a market share of [21–30] per cent by volume, higher than AkzoNobel's and PPG's, and that over a few years it increased its sales four-fold, from less than [redacted] kt (in 2007) to [redacted] kt. This represents, in our view, a significant expansion. We do not agree with AkzoNobel that Metlac's share should be approaching 100 per cent if it were a low price competitor. In our view Metlac's growth is consistent with a supplier competing aggressively in an industry that has a number of specific features that can curb attempts to grow rapidly:

- Qualification, especially when it involves new customers or new products, may limit the speed of expansion as it is seen by some customers as time-consuming and costly (see paragraphs 8.10 – 8.59).
- In any case, reputation in terms of quality, service and security of supply plays a critical role in B2E, and more generally in B&B. For example, [redacted].
- Given that customers adopt a multi-sourcing policy for commercial and security reasons, a low price supplier is not expected to win 100 per cent of the supply to a customer/product even when it is already qualified (see paragraph 8.122).
- There is evidence (see below) 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.

- While Metlac has some spare capacity (as set out in Appendix L), we do not think that it would be able to absorb the entire market/segment demand in the short term.

8.161 We also note that, when asked why it did not manage to gain a larger market share despite its low pricing policy, Metlac told us that 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.

GFK survey

8.162 In response to our post-provisional-findings working paper, AkzoNobel submitted that our conclusions on the role of Metlac ought to be fundamentally re-assessed in light of the substantial evidence in the GFK survey that confirmed that Metlac was not generally regarded by customers as being innovative, high quality or uniquely low price.¹⁴⁴

8.163 The results of the GFK survey as to the attractiveness of each supplier in relation to each factor are set out in Table 22 below.¹⁴⁵

TABLE 22 **Survey results as to the attractiveness of each supplier in relation to each factor**

Percentage of respondents who identified named company as particularly attractive in terms of that factor

	<i>Innovation</i>	<i>Responsive-ness</i>	<i>Price</i>	<i>Product quality & consistency</i>	<i>Reputation</i>	<i>Service quality</i>
Actega	4	13	-	13	-	4
AkzoNobel	35	39	26	57	65	65
Diosyl	-	-	4	-	-	-
Grace	4	9	17	13	17	13
Metlac	9	17	26	17	17	22
PPG	30	26	17	39	26	35
Salchi	-	-	13	-	-	-
Schekolin	4	9	-	4	4	9
Valspar	35	13	9	39	30	35
Other	9	17	22	26	17	22
None	22	17	22	9	22	13

Source: GFK customer survey (15 November 2012).

8.164 In relation to these results, AkzoNobel emphasized that:

- in no category was Metlac identified as the most attractive supplier (although it was identified as joint top with AkzoNobel in relation to price);
- in relation to product quality and consistency (which AkzoNobel emphasized was the most important competitive factor identified by respondents to the survey), Metlac gained only 17 per cent of responses and in relation to service quality, Metlac gained only 22 per cent: AkzoNobel contrasted this with Valspar and PPG who both received 39 per cent in relation to product quality and consistency and 35 per cent in relation to service quality; and

¹⁴⁴ AkzoNobel also submitted that GFK's survey results concur with the findings of [§] and with the conclusions of the BKartA.

¹⁴⁵ The GFK survey asked each customer to identify which if any suppliers were particularly attractive for each factor identified (innovation, responsiveness, price, product quality and consistency, reputation and service quality).

- in relation to innovation, only 17 per cent of respondents mentioned Metlac in relation to innovation.

8.165 We explain in paragraph 9.51 that we are unable to attach any weight to any results from these survey results relating specifically to B2E because it seems unlikely that either of the two customers classified as purchasing B2E are significant customers in an EEA or UK context (if they are indeed B2E customers at all).¹⁴⁶ More generally we note that of the 23 customers who responded to the survey [redacted]. However, in the context of the FCG market where there are many different products and a number of different suppliers, we are not confident that many of the respondents would have had dealings with Metlac and note that only four customers indicated that they had been supplied by Metlac. This would be consistent with a large number of customers having little interaction with Metlac (although it could equally be consistent with customers having had interactions with Metlac but having not pursued a supply relationship with them, reflecting switching costs or Metlac's product offering.)

8.166 In any case we were not persuaded that these results are inconsistent with our findings (see paragraph 8.164 in that they seem to indicate that Metlac is considered to be a low priced competitor. Whilst some of the largest three companies are more frequently identified as being 'particularly attractive' in terms of innovation; responsiveness; quality; reputation and service quality, there is nothing in these results that suggests Metlac scores badly on these measures in such a way that this would indicate that Metlac are offering a low price at the expense of other factors. Indeed customer testimony suggests that this is not the case, as set out in Appendix G.

Conclusion on pricing

8.167 Overall, the pricing evidence we have received, as set out in paragraphs 8.129 to 8.161 above indicates that in the large majority of instances for which we have data Metlac was the lowest-priced supplier for products in both the B&B and FCG markets, which is consistent with customer testimony set out in 8.129 to 8.136 and Appendix K that Metlac is often the lowest price supplier. We attach limited weight to the further pricing work we carried out post-provisional findings, but note that it was consistent with the view that Metlac is a low-priced competitor in both B&B and FCG.

8.168 While we observed that Metlac is not always the lowest price supplier, for a number of products and customers Metlac has been charging prices lower than its competitors. We received evidence (see paragraphs 8.187 and 8.192 below) that Metlac has been used by a number of customers to extract lower prices from the competitors which suggests that even when it was not ultimately the lowest-priced supplier, Metlac may have nonetheless constrained the prices strategies of other suppliers. Also, given that customers tend to multi-source, especially in B2E, customers may have benefitted from Metlac's pricing even in cases where Metlac was among the two (or three) lowest suppliers that were selected (although not the lowest).

Evidence on actual switching to and/or using Metlac pricing to extract lower prices

8.169 We 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. Sometimes this constraint will show up in switching data

¹⁴⁶ AkzoNobel acknowledged that none of the four major B2E customers responded to the GFK Survey and, consequently, the survey was of limited use for the analysis of the views of customers within the B2E segment in particular.

and on other occasions Metlac's prices may be used to bring down prices of other suppliers, in situations where no switch to Metlac occurs. We therefore looked at both switching data and data on how frequently Metlac is used to extract price reductions.

Switching analysis

8.170 We based our analysis of switching on the following information, which is described in detail in Appendix H:

(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.¹⁴⁷ 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.¹⁴⁸

(b) Information provided by Metlac regarding wins and losses in recent years.

(c) Information submitted by customers regarding switching which has occurred in recent years.

8.171 Whilst we are confident that the evidence on switching in B&B is relatively comprehensive, the information on switching in FCG covers a relatively small proportion of supply, although overall, the evidence indicates that the level of switching is quite low in the FCG market.¹⁴⁹ Therefore, while the evidence presented below on FCG may only account for a relatively small proportion of supply, it may nonetheless account for a larger proportion of the total volumes switched. We have considered the switching evidence in this context.

- *B&B*

8.172 The procurement data provided by AkzoNobel (paragraph 8.170(a)) indicated that Metlac participated in [redacted] of the [redacted] procurement events and was a successful bidder (in that they won business) in all the procurement events in which it participated.

8.173 [redacted] of the [redacted] procurement events were in B&B. Metlac participated in only [redacted] of these.¹⁵⁰ 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

¹⁴⁷ 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.

¹⁴⁸ 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.

¹⁴⁹ 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.'

¹⁵⁰ Metlac would not have participated in procurement events within B&B which involved only B2I and BE.

product that it bid for within the contract).¹⁵¹ AkzoNobel also provided additional tender evidence on B&B formal tenders (see 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.¹⁵² This is consistent with Metlac being a competitive constraint on the other suppliers, when it participates.

8.174 In relation to the B&B market, AkzoNobel provided additional information on recent tenders that partly overlaps but also extends the sample included in the [REDACTED] procurements mentioned above. Metlac participated in [REDACTED] out of these [REDACTED] tenders and won B2E business in each of them. Metlac did not take part in [REDACTED] with which it was not qualified for B2E until recently, and one issued by [REDACTED] for [REDACTED] coatings that Metlac does not currently supply. For [REDACTED] in which Metlac participated and won some business, AkzoNobel was a competitor, along with PPG and Valspar.

8.175 Metlac has been successful [REDACTED]¹⁵³.

8.176 Information submitted by Metlac regarding volumes won between 2009 and 2011 showed that of Metlac's total wins of [REDACTED] tonnes in the B&B market, [REDACTED] tonnes or [REDACTED] per cent were from AkzoNobel.

8.177 The above switching information set out in paragraphs 8.172 to 8.176, together with AkzoNobel's statement that it has [REDACTED] to Metlac, show that Metlac competes effectively for business with AkzoNobel, Valspar and PPG in the B2E segment of the B&B market.

- *FCG*

8.178 [REDACTED] of the [REDACTED] procurement events that AkzoNobel told us about were in FCG. In FCG, Metlac participated in [REDACTED] events ([REDACTED] per cent of the total) and won some business [REDACTED] of which AkzoNobel also participated. AkzoNobel was a successful bidder in 11 of the [REDACTED] procurement events (it participated in 38 of these events). Smaller players participated in 27 events and at least one smaller player was successful in winning some business in 17 of these FCG procurement events. A more detailed analysis of this information is set out in Appendix H.

8.179 We also reviewed a small sample of switching data on FCG provided to the BKartA. Of the 11 customers' responses to the BKartA which we were provided with, only five companies provided information ([REDACTED]). In addition, [REDACTED] provided information to us in a similar format.¹⁵⁴ Some of these customers have metal packaging coating plants in the UK. This data showed that Metlac won approximately [REDACTED] kt out of the [REDACTED] kt or 60 per cent which were switched by [REDACTED] in the FCG market for the years 2009/10 and 2010/11. [REDACTED] of 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.

8.180 We noted however that we cannot be confident that this data reflects a significant proportion of the switches that occurred in FCG as the customers were not asked to provide information on all volumes they had switched, but only changes of at least 10

¹⁵¹ Of the [REDACTED] procurement events in B&B, [REDACTED] were exclusively for BE or B2I coatings which Metlac does not produce.

¹⁵² AkzoNobel, Valspar, PPG and Metlac were the only competitors in B&B.

¹⁵³ [REDACTED]

¹⁵⁴ Some of this switching data was originally provided to the BKartA. See Appendix H for details.

per cent compared with the previous year or changes of at least 20 per cent over the entire period.

- 8.181 Information submitted by Metlac regarding volumes won between 2009 and 2011 showed that of Metlac's total wins in the FCG market [X] per cent were from AkzoNobel. This is only a sample of switching events that occurred in FCG, and may not reflect switching across the entire FCG market. We are unable to identify whether this switching information overlaps with the [X] procurement events in FCG identified by AkzoNobel and described above.
- 8.182 The FCG switching information set out in paragraphs 8.178 to 8.181 shows evidence of Metlac winning business where it competes and winning a significant proportion of this business from AkzoNobel. However, given that this only accounts for a small proportion of FCG supply we cannot be confident that Metlac provides the same level of constraint across all the FCG products where it is active.

Conclusions on procurement and switching data

- 8.183 In our view the procurement and tender data set out demonstrates that Metlac competes effectively for business in both the B&B and FCG markets. It also shows evidence of Metlac competing against AkzoNobel in both markets—around [X] per cent of Metlac's total wins came from AkzoNobel in the period 2009 to 2011, according to the switching information provided by Metlac.
- 8.184 Given the relatively low proportion of demand represented by the FCG information in particular we cannot draw strong conclusions on the degree to which Metlac competes aggressively across all of the segments in which it is active. We note that this evidence has been provided by customers with facilities across the EEA, including significant customers for metal packaging coatings in the UK.
- 8.185 We note that Metlac has not participated in all of the tenders on which we have data and have considered whether this was inconsistent with the notion that Metlac is an aggressive competitor on price. On balance, we considered that it was not: in many cases Metlac may not have participated because it was not active in the segment (eg in B2I and BE) or not qualified to supply the products (in segments where it is active).
- 8.186 The procurement data also provides evidence that smaller suppliers participate and win in a significant number of the FCG procurement events.

Using Metlac to extract lower prices

- 8.187 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 successfully to 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.¹⁵⁵

¹⁵⁵ 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

- 8.188 Of the 20 respondents, nine customers (of which two are active in B&B) claimed to have been using Metlac's low prices or quotes of low prices to lower the prices of the other suppliers; one customer 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. One further customer ([REDACTED]) when asked if it used Metlac's pricing as a stick stated: 'As far as your question is concerned our experience is that overall Metlac's lower pricing acts as a barrier against unilateral price increases by the industry.' This customer also noted that 'we did not use Metlac prices to lower competitors' prices. When there is another competitor with good prices it is logical that competition keeps prices at a lower level'.
- 8.189 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.
- 8.190 Three customers ([REDACTED]) 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 kept the supply contract. For the three customers these contracts related to significant proportions of their business in the relevant period, as shown in Appendix K. 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]).
- 8.191 In summary, the evidence indicated that some B&B and FCG 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 or to the same extent.
- 8.192 There is also 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 (who then may have retained the business). The fact that other suppliers have responded to Metlac's lower prices in order to retain the business, may provide an additional explanation as to why (i) Metlac's prices do not always end up being the lowest, and (ii) despite being one of the lowest-price suppliers, Metlac has not managed to gain even more market share (paragraph 8.160).

Sustainability of low pricing

- 8.193 We have considered whether this strategy of low pricing by Metlac is sustainable. We begin by noting that, in contrast with other leading suppliers, Metlac has successfully sought to expand its share of EEA markets outside of Italy. To do so it has been willing to compete more aggressively on price than other leading suppliers, as evidenced by the data on pricing above (see paragraphs 8.137 to 8.158), whilst maintaining a reputation for high quality. We see no reason to believe that Metlac intends to alter the policies which have driven its expansion.

pricing as we specifically asked customers to identify where they used other suppliers' prices as a 'stick' more than they used Metlac's prices in this manner, as shown by the responses in paragraph 8.188.

- 8.194 We also note that Metlac increased its revenues (net of rebates) from €[redacted] million in 2007 to €[redacted] 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 €[redacted] million to €[redacted] million with the result that its EBITDA margin as a percentage of net sales increased from [redacted] per cent to [redacted] per cent. As shown in Appendix M, its margins are positive in relation to all coatings segments it supplies.
- 8.195 Metlac told us that in some instances the low pricing might be used as an incentive to persuade a supplier to switch to it (although Metlac also told us that it kept its prices low once it had established a relationship with a customer and also in situations when it was the sole supplier qualified to supply a specific technology/product because otherwise it would give an incentive to the customer to involve and qualify other suppliers for the same product). 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. Metlac submitted that its automated system of production ensured the perfect dosage of the mixture and minimized possible errors. Combined with the fact that it required fewer employees, it submitted that it had a lower variable cost base than its competitors. Metlac said these factors allowed it to offer highly competitive terms and have a wider margin to manoeuvre on pricing than its competitors. [redacted]
- 8.196 We have not been able to compare cost information for AkzoNobel and Metlac; however, we note that there is a general industry perception that Metlac is a low-cost producer. [redacted]
- 8.197 As indicated by the customer comments set out in paragraphs 8.129 and 8.136 above, customers have not indicated that AkzoNobel, PPG or Valspar is a low-priced supplier and we have not received evidence that either is a low-cost producer.
- 8.198 AkzoNobel submitted that there is no evidence to support the view that Metlac is a uniquely low cost supplier of B2E products. They also said that to reach such a view we would have needed to conduct a detailed analysis of the costs of Metlac, AkzoNobel, PPG and Valspar, but that we had not done so.
- 8.199 AkzoNobel also told us that:
- The general industry perception to which we had referred (see paragraph 8.196) was indeed only a perception since the wider industry had no insight into Metlac's production costs at the Bosco Marengo site and that its understanding was that the Bosco Marengo site actually had higher production costs than AkzoNobel's sites at [redacted].
 - In contrast to the assertion referenced in paragraph 8.195, the technology used at Bosco Marengo was not particular or unique to Metlac and indeed may be less sophisticated than the Vilafranca system in some respects.¹⁵⁶ AkzoNobel also said that since the alleged level of innovation at Bosco Marengo was a key factor for the CC in finding that Metlac was in some way 'novel' or 'low-priced' in its production, and because Mr Bocchio was still refusing to permit AkzoNobel to have access to the Bosco Marengo plant, the CC ought to use its powers in order to verify Metlac's claims of superior or novel automation.

¹⁵⁶ On this AkzoNobel said that, as at Bosco Marengo, AkzoNobel's operators at Vilafranca use handheld terminals, or pendants, to follow the production process through each recipe step and to identify the raw material to be used and the fixed or portable vessel into which the materials are to be added and this system also warns of any potential mistakes before they happen. [redacted]

- That the selected references to AkzoNobel's Rexam presentations in the working paper (see paragraph 8.196) lack context and are also references to Rexam's 'perception' of Metlac being low cost and not a reference to any actual production efficiencies within the Bosco Marengo site.

8.200 It is true that we do not generally know on what basis firms have formed the view that Metlac is a low-cost competitor and therefore we cannot be confident that their view is well-informed. We do, however, note that AkzoNobel, which is party to some limited information about the costs incurred at Bosco Marengo, has noted in some of its own internal documents that [REDACTED]:

(a) In a board paper dated July 2011, and in the context of recommending the buyout of Metlac, AkzoNobel noted that:

[REDACTED]

(b) [REDACTED]

8.201 In any case, having a lower cost base is not the only reason why Metlac might offer lower prices than the other major suppliers: where Metlac offers lower prices it may do so simply because it competes more aggressively than AkzoNobel, PPG and Valspar, which could reflect the different pricing strategies it pursues as a smaller player in this sector.

8.202 Our view based on our analysis of pricing, switching and customer evidence is that, where Metlac is active, it tended to compete aggressively on price. In contrast, we have been told by customers that Valspar and PPG do not appear to compete particularly aggressively on price with AkzoNobel or with each other (see paragraphs 8.129 to 8.136. Where Metlac sought to compete for customers, it was often successful, as shown by the switching and procurement information set out in Appendix H. Overall, this is consistent with the evidence on growth which shows that Metlac has grown significantly, and consistently across all segments, over the last years. We have no reason to believe that Metlac's low pricing is not sustainable (see paragraph 8.194 and Appendix M).

Future developments

8.203 In this section we consider what will happen in the future in relation to Metlac's growth. There is evidence to suggest that Metlac will continue to grow significantly in the future, in B2E and FCG but also in the B&B segment more generally where there may also be scope for significant change as a result of the introduction of BPA-NI products (we discuss this, and the implications it has for the impact of the merger, in Section 9).

8.204 Innovation is 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 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. We were told that Metlac was a recognized innovator both generally and also, more specifically, in relation to development of BPA-NI products which if correct, raises the possibility that Metlac could end up being a strong competitor in segments affected by the move towards BPA-NI.

8.205 Information from customers showed that Metlac is well placed with respect to BPA-NI development.

- 8.206 There are some indicators that AkzoNobel may regard Metlac's innovativeness in a positive light—although AkzoNobel does not agree that Metlac is particularly innovative:
- AkzoNobel indicated to us that [REDACTED]:
[REDACTED]
 - [REDACTED]¹⁵⁷
 - See also the quote in paragraph 8.196 from [REDACTED].
- 8.207 One third party indicated that Metlac's R&D would be a rationale for AkzoNobel's purchase of Metlac. Appendix G 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.
- 8.208 Against this background of scope for growth in BPA-NI and more generally, we have examined Metlac's growth forecasts and compared these with AkzoNobel's forecasts [REDACTED]. An examination of these forecasts was set out in Appendix L.
- 8.209 Metlac told us that it expected an annual average growth of [REDACTED].
- 8.210 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.
- 8.211 [REDACTED]
- 8.212 [REDACTED] has approached Metlac regarding a UV varnish for GL applications; [REDACTED] has invited Metlac to [REDACTED] coatings to it, of which €[REDACTED] million in value would be supplied to its UK plant; [REDACTED] has approached Metlac to supply [REDACTED] in the UK [REDACTED].
- 8.213 Metlac has also provided us with recent examples of growth in its UK business and forecasts that its UK sales will be €[REDACTED] million for the year ending December 2012, compared with €[REDACTED] million in 2011. Metlac's UK sales for the period 1 January to 31 October 2012 were already €[REDACTED] million.
- 8.214 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.
- 8.215 Despite these indications of customers' willingness to expand purchases from Metlac, we consider that [REDACTED]. Notwithstanding this comment, it is our view that, in the absence of the merger, Metlac would continue to increase its sales to EEA and UK customers and that it will continue to increase its market share.
- 8.216 [REDACTED]
- 8.217 In relation to Metlac's past growth, AkzoNobel submitted [REDACTED].

¹⁵⁷ See Appendix G for further details.

- 8.218 We do not consider this argument to be valid for a number of reasons [✂].
- 8.219 We have analysed Metlac's financial information to assess whether Metlac's profitability has in fact decreased in the past five years, as set out in paragraph 8.194 above, and found that its growth does not appear to have occurred at the expense of its profitability.
- 8.220 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. Customers have told us that they are interested in growing their spend with Metlac (whether or not the industry converts to BPA-NI). We believe that future growth by Metlac is likely and that Metlac would continue to increase its market share, mainly at the expense of AkzoNobel, PPG and Valspar and that in order to do so it would continue to price aggressively.

Conclusion

- 8.221 In our view, the qualification costs associated with switching inhibit the degree to which certain suppliers can be considered alternatives to one another. As a result, in relation to products where qualification costs are high, we would expect competition to be strongest between firms that are both already qualified to supply the same (by which we mean functionally equivalent) product to the same plant. However, we would also expect there to be competition (albeit somewhat weaker) between firms that are both already qualified to supply the same product to the same customer, and we did not rule out the possibility that there is some competition between firms that offer the same product to someone in the industry.
- 8.222 For purposes of evaluating pre-merger competition we have focused upon the first two of these, that is:
- competition between firms that are qualified to supply the same product to the same plant (Type I competition); and
 - competition between firms that are qualified to supply the same product to the same customer (this ability to enter relatively may limit the degree to which incumbents can increase price, or at least materially shorten the time horizon over which price increases could be sustained) (Type II competition).
- 8.223 We have used AkzoNobel's MIS database to identify where competition of these types occurs.
- 8.224 Overall, this analysis indicated that a significant proportion of UK sales in B2E and FCG have been exposed to rivalry between AkzoNobel and Metlac, whether this is because they have both been qualified to supply the same plant with the same product or because they are both qualified to supply the same customer with the same product, and can therefore be expected to exert a meaningful constraint because they can be relatively rapidly qualified.
- 8.225 Where Metlac was active the majority of customers have indicated that Metlac was an aggressive competitor on price, and our pricing analysis and analysis of switching/occasions where customers threaten to switch was broadly consistent with this. In particular we found that:
- In B&B, tender data covering a large proportion of purchasing in the market for recent years showed Metlac increasing its sales of B2E (at the expense of

AkzoNobel). Information from [X] indicated that Metlac offers low B2E prices compared with the other suppliers.

- In relation to FCG there was a range of large and small suppliers, and Metlac generally offered low prices, which a number of customers submitted they used to bring down the offers of other suppliers. This was consistent with the observation that Metlac and some smaller suppliers had grown in this market in recent years.

8.226 We noted that this evidence had been provided by customers with facilities across the EEA, including significant customers for metal packaging coatings in the UK.

8.227 In our view where Metlac is active it 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. Its ability to provide nimble, innovative products and service is highly valued by customers, including those customers that make up a large proportion of industry demand in the EEA and the UK.

8.228 We also note that in relation to 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.

8.229 The evidence provided to us did not allow us to build up a complete picture of pricing or switching in the relevant markets. We acknowledged that our understanding of these markets was therefore based on this partial data and we placed significant weight on the views of customers, including 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 whom were also the key customers for metal packaging coatings in the UK.

8.230 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

Unilateral effects analysis

- 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 focusing on the B2E and FCG products for which AkzoNobel and Metlac overlap (ie both supply to the same customer). When evaluating the loss of actual competition, we considered it appropriate to assess whether the merger would result in a loss of competition by virtue of removing rivalry between companies that are qualified to supply the same product to the same plant (Type I competition) and by virtue of removing rivalry between companies that are qualified to supply the same product to the same customer (Type II competition) (see paragraph 8.55); and
 - (b) loss of potential competition in the supply of metal packing coatings, focusing in particular on the areas where Metlac is expected to grow and may therefore overlap with AkzoNobel in the future (including in B2I and BE where Metlac is not currently active).
- 9.2 In what follows, we first set out our analysis of the likely effect of the merger on both B&B coatings and FCG coatings due to any loss of actual competition and then we consider the likely effects of the merger in B&B and FCG due to any loss of potential competition. In doing so, we focus upon the impact of the transaction on metal packaging coatings supply in the UK (although we have taken into account evidence from the wider EEA in so far as it informed us of the likely impact of the merger in the UK). Both Metlac and AkzoNobel currently supply metal packaging coatings for B&B and FCG in the UK and whilst Metlac sales in the UK are small, particularly in the FCG segment, they are growing.
- 9.3 In assessing the impact of the merger, we have been mindful of the following observations (which we have discussed in more detail in Section 8).
- 9.4 First, we noted that Metlac has grown in the EEA 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 L. In FCG, various smaller suppliers have been in the market for some time but have not grown their market shares to the same extent as Metlac (although some have grown in specific segments). In the B&B market, where the level of supplier concentration was particularly high, only a few smaller companies were active and none have grown to the extent that Metlac has. 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. We believe that this business model is different from that of other small suppliers in the industry and some customers have told us that it is not one which can be quickly replicated.
- 9.5 We consider that this second point is particularly relevant to our assessment and note that paragraphs 5.4.5 and 5.4.12 of our guidelines state:¹⁵⁸

¹⁵⁸ 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.

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 Secondly, a significant proportion of large and small customers that provided us with evidence indicated that they had significant concerns about the transaction. They commented on the particular dynamic, competitive force that Metlac brought to the markets, which they saw 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.
- 9.7 Finally, we note that this is an unusual situation in that AkzoNobel's incentives to remove Metlac could potentially be dampened by the fact that it currently receives dividends from its shareholding in Metlac. However, as explained in paragraph 8.2, 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.

Loss of actual competition—B&B

- 9.8 As noted in paragraph 8.69 Metlac is not currently active in B2I or BE. We considered the extent to which the removal of Metlac as a significant competitive force in the B2E segment would affect competition in the B&B market. In our view, the B2E segment is a substantial part of the B&B market as it accounts for 24 to 36 per cent of sales in the B&B market in the UK.
- 9.9 In our view, any likely effects of a loss in rivalry would be in relation to price and non-price aspects such as product innovation. We note that product quality is also important to customers but we consider that there is limited scope for the merging parties to reduce their product quality due to the stringent reliability requirements of the B&B market.
- 9.10 For the reasons set out in Section 8, we consider that AkzoNobel and Metlac compete to supply B2E coatings to customers. In particular, we note that in the UK:
- (a) Cases in which AkzoNobel and Metlac have both supplied, and are therefore likely to be qualified to supply, the same B2E product to the same customer (in the UK) represent [21–30] per cent of B2E volumes purchased in the UK (see paragraph 8.99 and there are reasons to consider that this understates the true level of this type of overlap (see paragraph 8.100(a) and (b))).
 - (b) Cases in which either AkzoNobel or Metlac has supplied in the UK and the other has supplied elsewhere in the EEA, and are therefore likely to be qualified to supply, the same B2E product to the same customer across the EEA represent [41–50] per cent of UK sales (and again there may be reasons to consider that this understates the level of overlap (see paragraph 8.100(a) and (b))).
- 9.11 It is generally the case that Valspar and PPG were also active on both types of overlap we have identified (see Tables 18 and 19 in Section 8). 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. Against the background of our evidence that Metlac tends to price aggressively in areas where it is active, we have considered whether removal of this constraint would result in a significantly lower level of competition in the market, given the presence of PPG and Valspar.

- 9.12 Whilst customers have indicated that in the event of a price increase by AkzoNobel/Metlac post-merger they could switch to Valspar and PPG (for B&B more generally), we are of the view that it is unlikely that Valspar and PPG would replicate the constraint that Metlac currently provides in relation to B2E because they do not compete as aggressively on price as Metlac (as outlined in paragraphs 8.127 to 8.161).
- 9.13 In relation to B2E supply, the customers that could be most directly affected are [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].
- 9.14 In summary, based on the evidence we have collected, we believe that Valspar and PPG have not competed vigorously on price in relation to B2E in the way that Metlac has done (see paragraphs 8.129 to 8.136). As explained in paragraphs 8.127 to 8.161, 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, in the absence of a supply-side response from any other suppliers, which we discuss next.

Market entry/expansion

- 9.15 In addition to the direct constraint represented by suppliers already qualified (ie PPG and Valspar), we have considered two additional sources of constraint that may prevent an SLC in cases where Metlac and AkzoNobel are qualified: (a) expansion by other suppliers already active in B2E (though they are not yet qualified to supply the product-customer pair that AkzoNobel and Metlac overlap on) and (b) entry by suppliers that are not yet active in B2E via either a de novo entry (ie a company with no presence in the metal coatings sector) or a supplier present in other segments/markets of the metal coatings sector.
- 9.16 This section sets out our conclusions in relation to whether any expansion or entry would be timely, likely and sufficient to counter any post-merger price increase or other worsening of the offer.

Expansion by suppliers already active in B2E

- 9.17 As noted in Section 8, we understand that there are two smaller suppliers who are already active in the B2E segment: VPL and IPC. Both companies toll manufacture via an organization in Germany (demonstrating the credibility of this option for some customers as a low capital means of entry into the segment, at least for niche products). One B&B customer ([REDACTED]) told us that it was not aware of these suppliers.
- 9.18 We understand that [REDACTED] has recently entered the B2E segment, and that it is [REDACTED]. We understand that [REDACTED] supplies [REDACTED] with a B2E product and is under qualification for some other B2E products.
- 9.19 We understand that [REDACTED] is a supplier to [REDACTED] and does not [REDACTED] with other customers. [REDACTED]. [REDACTED] told us that [REDACTED] supplied it with products in [REDACTED] where it had a [REDACTED] produc-

tion application requirement. [REDACTED] had been successful in giving it materials that adapted themselves to that particular process. [REDACTED] told us that [REDACTED] essentially provided it with niche metal coatings products.

- 9.20 We noted that there are likely to be obstacles that make it difficult to expand and supply customers on a large scale, even for those suppliers that are already active in B2E.
- 9.21 First, the average monthly volume demanded by customers of B&B coatings is significantly higher than for FCG coatings and this has implications for the scale of operation needed to supply B&B products (see Section 7). While there are some niche products, the vast majority of the B2E production involves commoditized coatings with few customers demanding large volumes. We have been told that the use of toll manufacturing for external B&B coatings was a profitable means of operating and of expanding capacity to meet increasing demands. However, we received conflicting evidence as to whether toll manufacturing can be a long-term viable option to operate in the segment. Two customers ([REDACTED]) submitted that they had no concern in relation to such arrangements. By contrast, one customer ([REDACTED]) told us that toll manufacturing presented problems and risks and it would only purchase products produced via toll manufacturers in extreme circumstances and for a short period of time. Also, the larger volumes of certain products required by can manufacturers might result in economies from in-house production that might not be captured if toll manufacturing were used, which may make it difficult for suppliers reliant on toll-manufacturing to scale up.
- 9.22 Second, because of the large volume of cans produced by beverage can manufacturers, difficulties in applying coatings can interrupt the entire production process and result in a significant loss of output for the manufacturer. B&B provision tends therefore to be associated with more demanding technical support than generally in FCG. For example, Salchi mentioned the need to provide round-the-clock assistance as a major reason why it did not currently plan to enter B2E (see Appendix F, paragraph 54) and this may well limit the degree to which smaller companies already active in B2E can scale up.
- 9.23 Thirdly, for the same reason, security of supply and reliability are major concerns for customers and suppliers need to build up reputation before being awarded with significant shares of the customers' demand. For instance, one customer ([REDACTED]) told us that, although Metlac had been ready for many years, it took two to five years of internal argument to get behind Metlac.
- 9.24 It is therefore not clear whether [REDACTED] would be willing and capable to replicate the scale that Metlac has achieved in a sufficiently timely fashion. On this, we note that:
- (a) [REDACTED] has only recently entered the segment and according to [REDACTED] is not interested in supplying on a large scale. On the basis of its experience to date, [REDACTED] told us that it would take at least [REDACTED] to develop [REDACTED] capabilities. In relation to [REDACTED], [REDACTED] told us that it had not made decisions regarding the volumes of coatings that it would purchase from [REDACTED] and it did not know when these volumes would be available from [REDACTED] (because it was not yet qualified for some coatings and the tender process was ongoing).
- (b) Whilst [REDACTED] told us that it was forecast to grow by [REDACTED] tonnes in the next [REDACTED] years ([REDACTED] per cent of which is in beverage coatings),¹⁵⁹ to date it has only been

¹⁵⁹ These seem to be optimistic.

working with [REDACTED], which suggests that it has not managed to gain or is not yet interested in gaining business from other customers. We also note that [REDACTED] told us that [REDACTED] essentially provided it with niche metal coatings products.

- 9.25 We also noted that in order to provide a constraint post-merger on the products where AkzoNobel and Metlac overlap, suppliers already active in B2E, such as IPC and VPL, would need to go through a qualification process. We have been told by some parties that being already active in a segment can represent an advantage in reputational terms, making the customer more willing to undertake the qualification. It may well be that, in some circumstances, the qualification process might be easier if the product to be qualified is similar to a product that the supplier has already qualified in the market. However, while qualification for suppliers who are already active in B2E may be less onerous compared with de novo entry or expansion from other markets or segment of the metal coating industry, it still appears to be relatively costly and time-consuming in some circumstances, which raises questions about how quickly IPC or VPL could respond, in the event that customers were prepared to switch to them, so as to provide a constraint on the merging parties.
- 9.26 On this, [REDACTED] told us that it would take more than three years to switch to a product that had never been qualified before. [REDACTED] said that, in the case of a completely new coating, switching would take between [REDACTED] and [REDACTED]. Ball told us that the cost and time involved in product qualification could be onerous and mentioned its experience [REDACTED].
- 9.27 We therefore consider it unlikely that suppliers already active in the B2E segment would be able to expand to a sufficient scale in a timely manner to constrain the merged entity, either independently or via customer sponsorship (see paragraphs 9.28 to 9.35 below).

Entry by suppliers that are not yet active in B2E

- 9.28 We noted that since 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 FCG coatings and B2E and available capacity would be applicable across the types (although we note that some 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 because of having spare capacity).¹⁶⁰
- 9.29 We noted that there are likely to be obstacles to entering B2E, even for those suppliers that are already active in FCG¹⁶¹ (and we discuss these in more detail in Appendix F) in particular:
- (a) the need for technical know-how is likely to limit the degree to which companies currently active in FCG (or not yet in metal packing coating) are able and willing to enter the B2E segment; it may require significant expertise and investment in technology to successfully develop such a product if a company has not supplied a B2E product before;

¹⁶⁰ 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.

¹⁶¹ We also note that entry by de novo operators is likely to involve a significant capital investment (unless they are already involved in producing coatings for other sectors).

- (b) difficulties in achieving economies of scale may undermine the attractiveness of entry and where toll manufacturing is relied upon, this may also be unsuitable as a long-term solution from the point of view of (at least some) customers (in this respect we noted that all the four major suppliers in B2E have their own plants);
- (c) the need to provide extensive ('round the clock') technical support represents an additional cost that companies currently active in FCG (or not yet in metal packing coating) would face to enter the B2E segment; and
- (d) the need to develop a reputation for technical quality and supply reliability may also limit the degree to which companies currently active in FCG (or not yet in metal packing coating) are able and willing to enter the B2E segment; it may delay expansion and the achievement of the economies of scale that allow to operate profitably in the market.
- 9.30 We also noted that the qualification process may delay how quickly a customer could switch to a new supplier and it also involves some degree of uncertainty. On this we noted that Rexam told us that [REDACTED] and that it had been trying to qualify two products with [REDACTED] for two years, both of which were in qualification.
- 9.31 We did not receive evidence that any suppliers have plans to enter B2E, including those that are already active in FCG. Salchi told us that it was not currently considering entry into B&B because of the round-the-clock support required to assist clients in this sector, even though it did not rule out entry into the beer and beverage external coatings sector in the future, depending on market opportunities. Grace [currently believed that the sector was relatively unattractive].
- 9.32 [REDACTED] told us that a number of suppliers were not interested in entering the B&B segment, which we note would include B2E, including Grace and Actega. [REDACTED] told us that Schekolin did not have beverage coatings in its product portfolio. Schekolin confirmed that it did not supply B&B coatings and told us that B&B prices were very low and mainly stable and that was why it was not active in this field (which suggested it does not believe it is able to exploit economies of scale to the same degree as larger companies).¹⁶²
- 9.33 We noted that customers have a history of sponsoring suppliers in the external beverage can-coating segment. [REDACTED] Rexam supported the development of Metlac's business outside Italy, both because Metlac offered more innovative products and because Metlac offered more competitive prices and contract terms 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].¹⁶³
- 9.34 Yet some customers indicated that while they would work with suppliers to assist entry or expansion, the smaller suppliers may not be willing or able to scale up to meet their needs (see paragraphs 8.23 to 8.25). [REDACTED] stated that whilst it would be able to support another entrant and/or expanding company the way it had done with Metlac, the process would take a long time and [REDACTED]. [REDACTED] said that there were a few very small niche suppliers in B2E which they were working with but scaling them up would be difficult, expensive, time-consuming and potentially risky (in that one of the other suppliers could absorb them). [REDACTED] told us that beverage external was one of the largest volume markets so it would not attempt to develop the smaller suppliers

¹⁶² Schekolin told us that its key selling arguments are technological advantage, flexibility in order size, customer tailored products and fast reaction time. However, it said that for some products the main factors on which parties compete is price and for those products it has a low chance of being successful.

¹⁶³ [REDACTED]

for those products. [X] said that the smaller suppliers lacked the necessary capacity and so it would not want to fragment supply among the minor players. Against this background we noted that to date Metlac is the only example of a supplier which has managed to enter B2E in recent years and expand to a scale comparable to AkzoNobel, PPG and Valspar.

- 9.35 In our view it is unlikely that, in the foreseeable future, there would be entry into B2E on a sufficient scale to constrain the merged entity.

Countervailing buyer power in B2E

- 9.36 AkzoNobel told us that large customers had buyer power to sponsor entry or expansion by existing suppliers in the market.
- 9.37 We have considered in the above section whether customers would have the ability to counter any merger effects by sponsoring entry or expansion. We concluded that whilst customer-sponsored entry/expansion has occurred in the past in both the B&B and FCG markets, sponsored entry or expansion in B2E to a scale likely to constrain the merged entity is unlikely to occur in a timely manner to offset any harm from the merger.
- 9.38 We also considered whether buyer power more generally (independently of sponsoring entry or expansion) might constrain the merged entity in the B&B market, specifically in the B2E segment. On this, we noted that buyer size is an important determinant of countervailing buyer power¹⁶⁴ and that just four customers (Ball, Can-Pack, Crown and Rexam) account for almost all purchases in the B2E segment and all B2E purchases in the UK. Our analysis of buyer size in Appendix C indicates that some individual customers in B2E purchased a substantial proportion of both individual suppliers' volumes and the entire market's total sales volume, which in turn gives rise to the possibility that losing the purchases of any one of these big customers (in the event that it could switch) would represent a substantial loss for an individual supplier (although we noted that that depends to some extent on whether a supplier can switch capacity to produce another product which generates similar returns).
- 9.39 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 that were not certified within a relatively short time frame at low cost.
- 9.40 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 raise prices unilaterally post-merger.¹⁶⁵
- 9.41 Metlac on the other hand submitted that customers' negotiating power would be significantly reduced post-transaction due to the reduction in the number of suppliers

¹⁶⁴ Because a supplier may not find it profitable to increase prices if it expects to lose large volumes of purchases because one of its large customers is able to switch to other suppliers

¹⁶⁵ 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.

and the fact that it would typically be less costly to accept a price rise than to qualify a new supplier.

9.42 We asked customers about the extent to which bargaining power lies with them or their suppliers; how it varies by product category or sub-segment; and how the merger would be likely to affect it. More generally, we asked what effects they expected the merger to have for their companies.¹⁶⁶ AkzoNobel commented that asking customers directly whether they had bargaining power resulted in responses which were likely to be affected by the way in which the question was phrased in order to suggest that customers were not in a strong position and therefore the question posed by us was not suitable for determining buyer power in the market. We think customers are reasonably well placed to understand how the merger may affect changes in their negotiating strength.

9.43 Of the four customers active in B2E:

(a) [X] told us that when it dealt with AkzoNobel, PPG and Valspar, the bargaining power lay with the supplier, but that, since Metlac's emergence, [X] was no longer obliged to accept those terms as there was an alternative supplier willing to negotiate (Metlac). [X] told us that, in B2I (a product that Metlac did not currently supply), negotiating with the three major suppliers was much more difficult as they were less willing to deviate from their standard terms, if at all. [X] also believed that the merger was likely to impact seriously upon [X] bargaining power and it noted that [X]. Subsequent to our provisional findings,¹⁶⁷ we asked [X] to explain why it could not use its bargaining power to ensure that prices did not increase as a result of the merger, and it told us that although AkzoNobel, PPG and Valspar did compete, they offered very similar prices which were at a higher general level than Metlac's.

(b) [X] told us that only competition triggered competitive offers and only Metlac as a global supplier provided spontaneously competitive prices. It noted that due to a wide range of coatings being offered by suppliers, which some suppliers were rationalizing, and suppliers holding the information regarding raw material pricing and the price of BPA-NI technology, a number of factors which determined bargaining power rested in the suppliers' hands. [X] said that the merger would reduce its bargaining power because of the loss of generally the most aggressive competitor (which would reduce its choice of supplier and/or solutions for BPA-NI coatings).

(c) [X] told us that it considered it had more bargaining power in relation to B&B products than in the case of other product categories. It said that the merger would reduce its bargaining power because there would be fewer suppliers on the market and that smaller suppliers like Metlac offered competitive prices and were more adaptable to the current market situation. [X]

(d) [X] told us that bargaining power varied by sub-category and depended upon the technology and available approved suppliers by location. It said that it did not consider that the merger would affect its bargaining power as it would still have three approved suppliers of overvarnish.¹⁶⁸

¹⁶⁶ The last part of the question, ie the effects of the merger on the company, addresses the issue of buyer power in an indirect way.

¹⁶⁷ www.competition-commission.org.uk/our-work/akzo-nobel-metlac.

¹⁶⁸ [X] said that it would have three approved suppliers of overvarnish in 2013 and had a further supplier involved in a qualification process.

- 9.44 Subsequent to our provisional findings,¹⁶⁹ AkzoNobel submitted evidence relating to recent B&B procurement negotiations (involving [X]) and submitted that, between them, this evidence:
- (a) showed the degree to which procurement negotiations were structured in favour of the major can manufacturers and how extensive their options were;
 - (b) showed that the major can manufacturers were ready and able to seek alternative suppliers, when faced by any attempted deterioration in competitive offering; and
 - (c) provided a number of situations where customers had switched supply away from AkzoNobel to alternative suppliers when AkzoNobel did not meet the revised requirements imposed by customers.
- 9.45 Many of these procurement negotiations related to B2I. AkzoNobel submitted that the tender process and examples of customers flexing their considerable buyer power (including in segments in which Metlac was not active, such as the supply of B2I coatings) showed the extent of countervailing power that they enjoyed. AkzoNobel also said that this countervailing power existed irrespective of Metlac's presence in the market—since these customers certainly did not rely on Metlac in any way—and was more than sufficient to constrain and defeat any attempt by the merged AkzoNobel/Metlac entity to reduce its competitive offer post-merger.
- 9.46 We have seen an example of switching between AkzoNobel and Valspar in the B2I segment of the B&B market, as evidenced by the large switch in volume from [X]. More generally we accept that customers can and do use the ability to switch between AkzoNobel, PPG and Valspar in order to secure better terms. However, in our view Metlac is an important 'outside option', by virtue of the lower prices it charges and its innovative nature, that customers currently rely on in their negotiations with B2E suppliers to extract better terms. In other words, whilst we are not claiming that these customers have no buyer power, we believe that, for the reasons explained in paragraphs 8.121 to 8.161 the removal of Metlac would decrease these customers' buyer power and result in them paying higher prices for B2E products.
- 9.47 In relation to AkzoNobel's use of the B2I segment (where Metlac is not currently active), to demonstrate customers' ability to defeat post-merger price increases, we note that [X] told us that it considered that the B2E segment was significantly more competitive in respect of price compared with B2I precisely because Metlac competed in the B2E marketplace (because its presence resulted in a stronger bargaining position).
- 9.48 In response to our post-provisional-findings economic working paper, AkzoNobel said that our dismissal of the evidence of the B2I segment (which involved the same customers and the same suppliers as would exist post-merger) had not been justified by us and could not be supported by the facts. AkzoNobel said that since it, Valspar and PPG were willing and able to compete strongly for market shares in the B2I segment without Metlac acting as a unique competitive constraint, our view that Metlac was required to ensure such competition in the B2E segment was not sustainable in the absence of any credible supporting evidence.
- 9.49 On this point, as noted in paragraph 9.43, it is [X] view that [X].^{170,171}

¹⁶⁹ www.competition-commission.org.uk/our-work/akzo-nobel-metlac.

¹⁷⁰ [X] told us that '[X] 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, to actually they opened it up for us. [X]'.

- 9.50 AkzoNobel also said that, according to the survey conducted by GfK NOP, all B2E, B2I and BE customers (and the vast majority of FCG customers) indicated that they would switch to an alternative supplier if AkzoNobel were to raise prices by 5 per cent and that, when asked who those customers would switch to, no customer mentioned Metlac. AkzoNobel submitted that this provided further evidence that customers had the ability and appetite to exert significant buyer power in order to constrain their coating suppliers, and any attempt by the merged entity to increase prices would not be profitable.
- 9.51 We do not consider that any weight can be attached to this evidence for several reasons. Of the 23 companies that responded to the survey (107 were approached), just two indicated that their organization purchased B2E products and therefore formed the sample for the question in relation to B2E. Moreover, given that: [REDACTED],¹⁷² we have some reservations about whether the classification of these two customers as B2E customers is correct: at the least, it seems unlikely that they are significant customers in either an EEA or UK context.
- 9.52 In any case, we note that neither of these companies had purchased from (or qualified) Metlac, and that when asked who they would switch to in the event of a 5 per cent increase in the price AkzoNobel charged for B2E products, one named 'other' and the other said that it did not know/was not sure, ie there was equally no mention of PPG or Valspar.
- 9.53 In arriving at our views on buyer power in B2E, we also noted that [REDACTED] of the four large customers active in B2E submitted that the merger would have negative consequences for their business. Of these, one customer submitted evidence that it currently used Metlac pricing to constrain pricing of other companies in B2E.
- 9.54 [REDACTED] customer did not have concerns about the merger. In response to our questionnaire, [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]:

[REDACTED] Metlac is the only major supplier specialized in packaging coatings. The other big three have other divisions. Metlac has played a crucial role during the last year to keep competition on this market. Without them, nothing would have prevented the other big player to follow the trend initiated by Valspar. [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

¹⁷¹ We noted that, since 2010, [REDACTED]. However, it seemed to us that this could tell us little, if anything, about the degree of competition that it faces in these segments. [REDACTED] We also note that AkzoNobel's economic advisers submitted that interpretation of contribution margin data at the segment level was difficult due to the presence of significant product mix effects and that the contribution margins within segments varied significantly (even when excluding smaller transactions).

¹⁷² [REDACTED]

[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]

- [REDACTED] was unconcerned by the merger as it used Metlac only 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.

9.55 As discussed above (paragraph 9.35), we are of the view that in B2E sponsored entry or expansion to a scale likely to constrain the merged entity is unlikely to occur in a timely manner to offset any harm from the merger, given how long it took Rexam to sponsor Metlac to enter this segment at scale.

9.56 Given the challenges associated with switching and developing suppliers and the significant concerns raised by [REDACTED] of the four [REDACTED], in our view buyer power is unlikely to be sufficient to counter any potential competitive harm caused by the merger in the B2E segment of the B&B market.

Conclusion on loss of actual competition in B&B market—B2E

9.57 For the reasons set out above, we are of the view that prices sought by suppliers for the B2E products that AkzoNobel and Metlac are currently qualified to supply (in the UK or somewhere in the EEA) are likely to increase post-merger. More specifically, we would expect to see an overall increase in prices sought by suppliers when B2E contracts contested by Metlac are rebid, as Metlac will have been removed as a potential low-price competitor for these contracts. We would also expect a weakening of rivalry in innovation, particularly when AkzoNobel and Metlac are head-to-head in the race to develop new formulations or minor changes to existing products (and this is also relevant to our views in relation to potential competition in B&B) (see Appendix G for more detail on innovation).

9.58 In arriving at our view of the effect of the merger in B2E, we have also taken account of the fact that [REDACTED] of the four customers expressed concern about the effects of the merger, in particular the loss of competitive pricing in the market.

Loss of actual competition—FCG

9.59 We have considered the extent to which the removal of Metlac as a significant competitive force in the FCG market may result in an SLC, noting that the merger would combine the two largest suppliers by volume in the FCG market (in the EEA, although not in the UK (see Table 7 in Section 8)). As with B2E, in our view any likely effects would be in relation to both price and non-price aspects of competition such as innovation.

9.60 Companies in the FCG segment told us:

- ‘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, and it will also reduce innovation'. ([REDACTED].)

- 'Metlac is the only major supplier specialized in Packaging Coatings. The other big three have other divisions. Metlac has played a crucial role during the last year to keep competition on this market. Without them, nothing would have prevented the other big player to follow the trend initiated by Valspar. Facing the Metlac competitive offers, the big three have refrained of doing so and the business retention has been their motivation to make competitive offers.' ([REDACTED].) This company also told us that it was concerned that the merger would lead to product range rationalization in the FCG market and that the most competitive supplier in that market would disappear. It also raised concerns regarding the loss of competition on innovation, particularly in relation to BPA-NI technology. It stated that, more generally in relation to both the FCG and B&B markets.
- '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 example, 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:

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, some 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. Some 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 took place, there would be no competition: AkzoNobel would be the only supplier’. ([REDACTED].)

9.61 In relation to the FCG market, [REDACTED] the large customers that responded to our questionnaire expressed concern about the effects of the merger on competition in the supply of metal packaging coatings.¹⁷³ These customers generally expected a negative impact for their 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 and only purchases General Line coatings, told us that it did not think the merger would have significant effects.

9.62 As we explain in paragraph 8.119, we found that a significant proportion of UK sales in FCG had been exposed to some form of rivalry between AkzoNobel and Metlac, whether because they had both been qualified to supply the same plant with the same product (Type I competition) or because they were both qualified to supply the same customer with the same product (Type II competition). However, we note that the proportion of sales that constitute Type I or Type II overlaps based on the MIS database was lower in all FCG sub-segments than in B2E (and that these sub-segments were also smaller in value terms than the B2E segment in the UK). In particular, in the UK:

- (a) Cases in which AkzoNobel and Metlac had both supplied—based on the MIS database, and were therefore likely to be qualified to supply—the same FCG product to the same customer to the same plant (Type I competition) were relatively less frequent than in B2E representing: [0–10] per cent of the C&C external volumes; [0–10] per cent of the GL external volumes and [0–10] per cent of all other FCG sub-segment volumes purchased in the UK (see paragraph 8.99. However, as in the case of B2E, there are reasons to consider that this potentially understates the true level of this type of overlap (see paragraph 8.100(a) and (b)).
- (b) Cases in which AkzoNobel and Metlac had both supplied—based on the MIS database, and were therefore likely to be qualified to supply—the same FCG product to the same customer across the EEA (Type II competition) represented the following percentage of UK sales: [0–10] per cent of Food internal; [0–10] per cent of Food external; [11–20] per cent of C&C external; [0–10] per cent of GL internal; and [21–30] per cent of GL external (there was no overlap in C&C internal) (and again there may be reasons to consider that this understates the level of overlap (see paragraph 8.100(a) and (b))).

¹⁷³ 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.

- 9.63 As in B2E, we have noted that it is generally the case that either Valspar or PPG or both were also active on both types of overlap we identified (see Tables 18 and 19 in Section 8) and so we considered the extent to which Valspar and PPG would be likely to constrain the merged entity.
- 9.64 To that end, 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—we discuss the role of the smaller suppliers that are active on the overlaps and smaller suppliers more generally below). While some customers suggested that switching was possible in the case of a price increase, the feasibility of these potential switches was 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.
- 9.65 Two customers ([REDACTED]) provided additional responses to this question and said 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’.
- 9.66 Another customer ([REDACTED]) said that in the event of a price increase by AkzoNobel:
- We would go and despite everything we have said about the smaller guys, we would try and use some of the products that these guys offer to try and take business away from a combined AkzoNobel-Metlac but I do not see PPG and Valspar rushing headlong into the market with the best offers we have seen for the last five years. That just would not happen.
- 9.67 As explained in paragraphs 8.127 to 8.161, the past behaviour of Valspar and PPG did not indicate that they competed aggressively on price with AkzoNobel and Metlac in the FCG market, and we were of the view that this would be unlikely to change post-merger, for the same reasons as explained in paragraph 9.14 in relation to the B2E segment.
- 9.68 However, in contrast to the B2E segment, there was a wide range of smaller suppliers active in FCG, albeit many of these were only present in particular segments or sub-segments of the market.
- 9.69 In contrast to B2E, according to the overlap analysis presented in Table 19 (Section 8) (which relates to the UK, where Metlac is currently a smaller player than it is in the EEA), it was often the case that a number of smaller suppliers are already active alongside the larger competitors (ie PPG and Valspar) on AkzoNobel/Metlac overlaps, ie they were also likely to be already qualified to supply the ‘overlap’ product to the same customer somewhere in the EEA. In particular, according to the MIS database:
- (a) [REDACTED] of the AkzoNobel/Metlac overlaps in Food internal (which represent [0–10] per cent of UK sales of Food internal products) relate to circumstances in which [REDACTED] smaller companies are also qualified to supply an equivalent product to the same customer somewhere in the EEA ([REDACTED]).
- (b) [REDACTED] of the AkzoNobel/Metlac overlaps in Food external ([0–10] per cent of UK sales of Food external products) relate to circumstances in which [REDACTED] also

qualified to supply an equivalent product to the same customer somewhere in the EEA ([REDACTED]).

(c) [REDACTED] of the AkzoNobel/Metlac overlaps in General Line internal ([0–10] per cent of UK sales of General Line internal products) relate to circumstances in which [REDACTED] smaller companies are also qualified to supply an equivalent product to the same customer somewhere in the EEA ([REDACTED]).

(d) [REDACTED] of the AkzoNobel/Metlac overlaps in General Line external (ie [REDACTED] of the [21–30] per cent of UK sales of General Line external products) relate to circumstances in which [REDACTED] also qualified to supply an equivalent product to the same customer somewhere in the EEA ([REDACTED]).

9.70 Given that, according to MIS, in all of the overlaps described in paragraph 9.69(a) to (d) above there are already smaller suppliers qualified to supply the same product to the same customer somewhere in the EEA, it is possible that customers might be able to switch to them to constrain any post-merger price increases. We accepted that there is some uncertainty about how long it would actually take to switch to a product qualified at another plant in the EEA, however the evidence we have collected in relation to qualification (see Section 8) indicated that suppliers with products qualified at other plants are likely constrain the current supplier. We also noted that in most of the overlaps that we identified (ie with the exception of some products in C&C external and General Line external), Metlac was present as a constraint by virtue of being qualified to supply the same product to the same customer somewhere in the EEA (ie like the smaller suppliers that are present on the overlaps it is frequently also representing a ‘Type II’ constraint).

9.71 According to MIS, however, some [0–10] per cent of General Line external volumes purchased in the UK related to an AkzoNobel/Metlac overlap in which [REDACTED] was also qualified ([REDACTED]) and [REDACTED] of the overlaps in C&C external relate to circumstances in which only [REDACTED] are also active. Moreover, given that this analysis is based on MIS which, as discussed in Appendix J, has a tendency to understate the degree of AkzoNobel/Metlac overlaps, we cannot rule out the possibility that there may be more overlaps relating to products supplied to the UK (whether they are Type I or Type II overlaps) than identified above (this may also imply that we have understated the number of smaller suppliers active on the overlaps that we have identified).

9.72 We therefore considered whether customers currently supplied by AkzoNobel and Metlac might be able to switch, or threaten to switch, to smaller companies not yet active on these overlaps. To the extent that they could, because barriers to entry into FCG segments or expansion within FCG segments are relatively low, this would also reinforce our view that customers would be able to switch to alternative suppliers more generally in FCG.

9.73 Against this background, we noted that there were a number of smaller suppliers already active either in the UK or the EEA across each of the FCG sub-segments. According to MIS, in each of the FCG sub-segments, there were at least three smaller suppliers that had already supplied products somewhere in the EEA, as shown in Table 22.

TABLE 22 **Smaller suppliers active in FCG sub-segments**

<i>Sub-segment</i>	<i>Companies active (on the basis of sales made in the UK 2006–2011)</i>	<i>Companies active (on the basis of sales made in the EEA excl Italy 2006–2011)</i>
Food internal	[4 suppliers]	[10 suppliers]
Food external	[3 suppliers]	[7 suppliers]
C&C internal	[2 suppliers]	[8 suppliers]
C&C external	[2 suppliers]	[8 suppliers]
General Line internal	[4 suppliers]	[9 suppliers]
General Line external	[5 suppliers]	[10 suppliers]

Source: MIS dataset.

[30]

- 9.74 In considering whether any of these companies would be able to expand within the sub-segment they were already active in (or whether any other companies might enter the sub-segment), we noted that evidence from the procurement events described in Section 8 suggested that smaller suppliers participate in and win a significant number of the FCG procurement events. In addition, evidence from some of the pricing analysis we described in Section 8 indicated that when smaller suppliers were also competing, Metlac was the lowest-priced supplier less frequently than when only the three major competitors (AkzoNobel, PPG, Valspar) were present.
- 9.75 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 that it would use smaller suppliers where possible to protect against price increases.
- 9.76 To clarify this point, we therefore sent out questionnaires to 39 customers asking: '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.'
- 9.77 Of the 16 FCG customers that responded, nine indicated that while switching to smaller suppliers was possible, it was mostly possible under certain conditions (regarding the product, the quantity, access to raw materials, etc), and in other cases it was not seen as possible at all, indicating that some customers believed that smaller suppliers could only place a limited constraint on the larger suppliers.
- 9.78 We noted that several of the smaller FCG operators in the market have entered and/or expanded into new segments (eg Diostyl and Salchi). Salchi expanded from producing coatings for GL products to producing food contact coatings, supported by the acquisition of a small Italian business in 2002. Diostyl indicated that it had expanded by entering the metal coatings industry through the production of general line products and FCG external coatings, before expanding into internal food coatings. 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.¹⁷⁴
- 9.79 These recent examples of entry and expansion were consistent with the view that barriers to entry in some FCG segments are not high. In relation to barriers to entry/expansion in FCG more generally we noted that:

¹⁷⁴ 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.

- (a) The evidence was mixed as to whether smaller suppliers might have the technical know-how to expand within their segments (to supply products that they have not qualified before) and into other segments.
- (b) Some smaller companies did have spare capacity to accommodate some switching although whether they could exploit the same economies of scale in relation to FCG was less clear (although we have been told that smaller suppliers can be competitive). We also noted that the widespread use of toll manufacturing, both by new entrants and established operators, demonstrated the credibility of this option as a low capital means of entry/expansion within the market, although as in the case of B&B it was not clear whether this would enable suppliers to capture economies of scale to the extent that they exist in FCG.
- (c) Whilst reliability is still very important in FCG (particularly in relation to food contact coatings, but also more generally¹⁷⁵), we considered that customers may be somewhat more willing to take the risk to switch to a new supplier in relation to FCG (particularly external coating products), compared with high-volume B&B products. Notwithstanding this view, we considered that reputation remains important in FCG as well, although we note that many of the smaller suppliers already have a well-established reputation, at least in the segments in which they are active.
- (d) Regulatory requirements on the industry (with the exception of internal food contact coatings) do not create a significant barrier to entry. We noted 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.
- (e) Regarding the qualification process, in relation to internal coatings, a couple of suppliers indicated that the process could be as short as one year in some circumstances (eg in relation to C&C internal ([redacted])), but the majority of customers and suppliers indicated that the process of qualifying a new product would be longer: their responses indicated that it could take anywhere between 18 months ([redacted]) and three to four or five years ([redacted]) depending on the product/circumstances. In relation to external coatings, we were told that the process of qualifying a new product is generally shorter than for an internal product and that it can take anywhere between 12 and 18 months ([redacted]) or as long as 24+ months ([redacted]) depending on the product and the circumstances.

9.80 We also considered whether large customers could sponsor expansion (or entry) into any of these sub-segments. 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 [redacted] regarding entry into the industry, [redacted]. 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 a strategy customers are willing to explore in the FCG market, so long as credible suppliers have the appetite to enter or expand.

9.81 In summary, based on our assessment of the evidence in relation to barriers to entry and expansion into the production of FCG coatings, the availability of additional productive capacity within the FCG market, 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, in particular the

¹⁷⁵ A number of companies indicated that the performance of a coating is the single most important factor to the can manufacturers, followed by technical assistance/customer service and price.

General Line sub-segments. In relation to products within the other segments (Food and C&C), despite the presence of smaller suppliers who supply products within these sub-segments (albeit not in all cases supplying the products to which the overlaps relate), the evidence is less clear-cut both in relation to technological know-how and reputation, as well as the impact on the qualification process, as to whether entry and/or expansion would be sufficiently likely and timely. There is some evidence to suggest that qualification times are sufficiently short (and therefore switching costs sufficiently low) to enable timely entry/expansion in relation to external food and C&C coatings although we cannot be confident of this. Longer qualification times and therefore switching costs in relation to food contact coatings suggested that timely entry/expansion is least likely, in comparison with other sub-segments, in relation to Food internal and C&C internal (although we could not rule out the possibility that it would happen).

- 9.82 Metlac submitted that it was unlikely that smaller suppliers could replace the competitive constraint imposed on AkzoNobel by Metlac in the FCG market.
- 9.83 Metlac contested our characterization of the current overlap between Metlac and AkzoNobel. It submitted that:
- (a) The CC had found that the MIS database contained widespread and fundamental errors in its estimation of supply by competitors and could not therefore be relied upon as a credible basis for assessing overlaps between AkzoNobel, Metlac and other suppliers.
 - (b) The product segmentation in the MIS was not sufficiently granular to support the existence of the product overlaps identified by the CC with respect to smaller suppliers.¹⁷⁶
 - (c) Being qualified and supplying for a customer in a different plant did not ease the qualification process because UK plants were different from those supplied by smaller suppliers in other EEA countries.
- 9.84 On the first and second of these points, we recognized that inaccuracies within MIS were likely to understate the overlaps that AkzoNobel and Metlac competed on. However, the MIS database was the most comprehensive source of information at the product line level that we received. While we accepted that the product level classifications in MIS could in principle aggregate products which were differentiated in terms of end-use, where we checked some specific overlaps with customers they verified that the products covered by these classifications were 'functionally interchangeable' and therefore we are reasonably confident that our analysis is likely to capture meaningful overlaps.
- 9.85 On the third point raised by Metlac, we acknowledged that the constraint exerted when a supplier was qualified to supply the same product at the same plant was stronger compared with a situation in which a supplier was qualified to supply the same product but at a different plant within the customer's group (ie that Type I competition is likely to be stronger than Type II competition). However, the evidence we received from [REDACTED] customers indicated that products that were qualified within the customer's group in general represented a relatively easy and quick alternative to which they could switch.¹⁷⁷ This reasoning implied that smaller suppliers qualified to

¹⁷⁶ On this point, Metlac told us that, in general, smaller suppliers were qualified to supply lower-quality products, mostly based on old technologies, while they seldom sold the products that a customer considered as strategic or most important.

¹⁷⁷ Indeed, it was on this basis that we identified most of the overlaps in FCG since the pre-merger constraint that Metlac was exerting in relation to all of [REDACTED] and [REDACTED] and much of [REDACTED] and [REDACTED] was a Type II constraint.

supply the overlap product to another EEA plant in the customer's group should be capable of exerting a meaningful constraint post-merger. As we have noted in paragraph 9.69, in relation to all the overlaps we identified (except for C&C external, General Line external and possibly C&C internal¹⁷⁸) there was [REDACTED] supplier qualified to supply the overlap product at another EEA plant in the customer's group, and therefore it seems unlikely that there would be unilateral effects in relation to the overlap products within these segments.

9.86 More generally, Metlac also questioned the ability of smaller suppliers to replicate Metlac's competitive constraint after the merger. If correct, this might affect the ability of smaller suppliers to constrain the merging parties in relation to the overlaps where there was not currently a small supplier ([REDACTED]) or their ability to develop and grow to constrain the behaviour of the merged entity. Metlac submitted that:

- (a) None of the smaller suppliers were qualified to sell to the major UK customers,¹⁷⁹ other than for occasional purchases of limited quantities of low-tech or niche products. Metlac submitted that it was therefore unrealistic to expect smaller suppliers to be able to capture any meaningful share of demand now or post-merger.
- (b) Smaller suppliers did not pursue the same low pricing policy as Metlac and might not have sufficient realisable spare capacity to expand.
- (c) Smaller suppliers would not be able to replace the competition on innovation and R&D, particularly in relation to BPA-NI coatings.
- (d) Smaller suppliers would need to undergo lengthy qualification processes which entailed costs to the customer as well as to the supplier before they could expand into new products, or supply to new customers.

9.87 We noted that while some customers seemed to specialize in some segments, we received conflicting evidence as to whether smaller suppliers, when they are active, only sell niche and lower-quality products. On the one hand, the suppliers told us that they sold a broad range of products. Grace told us that for the product categories in which it competed it believed it could supply a broadly similar range of coatings as Metlac and AkzoNobel. Similarly, Actega told us that except for situations when customers had coating systems from AkzoNobel and/or Metlac that were specified by end-users or brand owners, it was in the position to compete in nearly all product categories and regional markets in the EEA. Metlac mentioned the example of UV coatings where it considered itself and AkzoNobel to be the only two players specialized in its production. However, Schekolin also told us that it considered itself strong in UV technology and it believed it had a competitive advantage over the other suppliers. On the other hand, two FCG customers told us that Grace, Actega and Salchi had specific product focuses and those customers had doubts regarding these suppliers' ability to expand supply outside these segments.

9.88 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] In its view, 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]

¹⁷⁸ [REDACTED]

¹⁷⁹ On this, Metlac submitted that there were particular barriers that made it difficult for smaller suppliers to supply very large customers because these customers demanded highly-developed and tailored products, imposed onerous qualification processes and required absolute reliability and the capacity to supply large volumes. Metlac also said that, without regular interaction, it was difficult for smaller suppliers to build up a commercial relationship with the customer.

- 9.89 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’.
- 9.90 AkzoNobel’s 2009–2013 Packaging Coatings Strategy [redacted].
- 9.91 On the pricing policy of smaller suppliers, [redacted]. Whilst there are reasons to consider that Metlac may be better able to offer lower prices than the smaller suppliers, we have not conducted an analysis of the prices charged by smaller suppliers compared with Metlac. We therefore found the evidence to be inconclusive.
- 9.92 In relation to R&D and innovation, we observed that a number of suppliers were developing BPA-NI solutions for FCG coatings, including Grace, Schekolin, Actega, Diostyl and Salchi. Based on the information we collected, we concluded that while Metlac was well-placed in respect of the development of BPA-NI products in FCG, smaller suppliers were also developing BPA-NI products (see paragraphs 9.87 to 9.91 and Appendix G).
- 9.93 Metlac also told us that our analysis did not adequately recognize the extent to which Metlac’s presence in the FCG market had grown and continued to grow.¹⁸⁰ Based on the information contained in the MIS database, Metlac’s economic advisers also submitted an analysis of past entry/expansion in the UK, suggesting that: [redacted].
- 9.94 We noted that their exit analysis was based on the assumption that if a supplier had made no sales in recent years, it implied that it had left the market. In our view, the fact that a supplier might not have sold volumes for a few years in the UK did not imply that it was not interested in supplying the UK market and could not represent a constraint on current suppliers.
- 9.95 Second, in relation to the use of the MIS dataset to undertake this analysis, as we noted in Appendix J (see paragraph 13), we are particularly concerned with the capability of the MIS to capture sales in the FCG market (in part because it may be less accurate in capturing sales by small companies to small customers) and we cannot therefore be confident that the information contained in the MIS permits the drawing of a complete and reliable picture of smaller suppliers’ current position in the UK.
- 9.96 We noted that in fact according to the sales data submitted by suppliers (and on which our market share analysis was based), Grace and Actega had a bigger market share (by volume) in the UK than Metlac had in 2011 (see Appendix I, Table 23). In Food, Actega, Schekolin and Grace all had a larger share than Metlac (see Appendix F, Table 25). Actega’s share was bigger than Metlac’s in C&C (see Appendix I, Table 27). In GL, ‘other’ smaller suppliers accounted for more than [redacted] per cent of the segment (see Appendix I, Table 29).

¹⁸⁰ Metlac said that it only began selling FCG products in the UK in 2009 and that, in a market characterized by high switching costs and barriers to entry, its growth in FCG sales in the UK in less than three years had been unprecedented, remarkable and unique.

- 9.97 We also noted that Actega, Schekolin and Grace all increased their share in the UK FCG market in the last three years (and in the case of Grace they grew faster than Metlac). The combined UK FCG market share of these three suppliers moved from [0–10] per cent in 2009 to [0–10] per cent in 2011. Taking into account ‘other’ suppliers, we estimated that the combined market share of the smaller suppliers in FCG increased by ten percentage points between 2009 and 2011 (8 per cent in 2009 to 18 per cent in 2011).¹⁸¹
- 9.98 In summary, the analysis of UK market shares indicated that none of the largest of the small suppliers (Actega, Grace and Schekolin) had left the UK FCG market in recent years but rather they expanded (in the case of Grace at a faster rate than Metlac) and some of them currently have a market share bigger than Metlac. Whilst some customers were doubtful about the ability of smaller suppliers to expand into sub-segments in which they were not present, the smaller suppliers themselves were of the view they were able to provide a range of products.
- 9.99 In conclusion, having regard to the evidence and the reasons set out in paragraphs 9.85, 9.87, 9.91, 9.92 and 9.98 we could not rule out that smaller suppliers would be able to replicate the constraint provided by Metlac in relation to FCG in the UK, particularly given Metlac’s small presence in the UK in supply of FCG.

Buyer power in FCG

- 9.100 As in the case of B&B, AkzoNobel submitted that large customers had buyer power to sponsor entry or expansion by existing suppliers in the market (AkzoNobel also submitted that its survey evidence suggested that the vast majority of FCG customers indicated that they would switch if AkzoNobel were to raise prices by 5 per cent).¹⁸²
- 9.101 Metlac 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 that was present would not be sufficient to protect all customers. It stated that this 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. On this point, AkzoNobel’s economic advisers submitted that where buyer power took the form of sponsorship of a new supplier, this would be to the benefit of all customers (although it made this point in the context of B2E).
- 9.102 We have set out our views on the prospects for entry/expansion by smaller suppliers in paragraphs 9.79 to 9.81 above. We are of the view that whilst customer-sponsored entry/expansion is a strategy explored by customers in relation to 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. As discussed in paragraph 9.79(e) and Appendix F, longer qualification times, in particular in relation to food/beverage contact coatings in the Food and C&C segments may mean that expansion may not be sufficiently timely, but we cannot rule it out. We also noted that, in cases where Metlac represented an important pre-merger outside option that could not easily be replicated by smaller suppliers, we would expect the buyer power of customers to fall.

¹⁸¹ The combined market share of the smaller suppliers increased in all segments, by five percentage points in Food, by five percentage points in C&C and by 16 percentage points in GL.

¹⁸² As noted in relation to B&B, we have concerns regarding the reliability of this survey and therefore have not attached significant weight to its conclusions.

- 9.103 In what follows, we consider whether customers in FCG may be able to exercise buyer power more generally. On this point, we note that in FCG, in the UK although [X] account for approximately [51–60] per cent of demand and [81–90] per cent of Food demand, any buyer power used in this segment to constrain the merged entity by switching or threat of switching (as opposed to sponsoring new entry) would not protect smaller customers from any merger effects (although we note that in practice all of our Type I and Type II overlaps relating to the UK involve large customers).
- 9.104 Prior to our provisional findings,¹⁸³ we asked customers about the extent to which bargaining power lies with them or their suppliers, how it varies by product category or sub-segment and how the merger would be likely to affect it (and more generally, what effects they expected the merger to have for their company).
- 9.105 Nine of 18 respondents¹⁸⁴ suggested that they had bargaining power in their relationship with suppliers.¹⁸⁵ In addition, some of these respondents mentioned other factors that they thought affected their bargaining power, including qualification/price adjustment, Metlac's presence, market situation (market expansion/demand decrease), number of suppliers and the customer's yearly turnover. One customer described bargaining power as balanced for it; and two customers claimed that there was no difference in buyer power across segments. Finally, four customers claimed that they did not have any bargaining power and two customers did not answer the question.
- 9.106 The majority of customers that had a business relationship with Metlac (10 of 14) expressed clear concerns that their bargaining power would decrease following the proposed merger. Out of the remaining four customers, one customer was not concerned about the impact of the merger, whereas the remaining three customers did not provide clear responses to this question.
- 9.107 In their responses to the question on the overall impact of the proposed merger on their company, 14 out of 18 respondents expected a negative impact for their own business, mostly in terms of reduced number of suppliers and higher prices but also as a result of less innovation, lower product quality and narrower product range. There is just one customer currently served by Metlac who did not see a concern, while the remaining three customers did not have a business relationship with Metlac.
- 9.108 In an additional question on any other information thought to be relevant for the inquiry, five customers expressed further concern in relation to the merger, emphasizing Metlac's unique role in putting competitive pressure on AkzoNobel, PPG and Valspar and how its disappearance would therefore lead to worsening competitive conditions in the market. The remaining 13 customers did not respond to this question. AkzoNobel submitted that little could be drawn from these statements, given the large number of customers which did not respond to our question.
- 9.109 In relation to the FCG overlaps we have identified which involved [X], we noted that:
- (a) [X] told us that there was some significant buyer power with customers and it was stronger when negotiation was about qualification than when it was about adjusting prices on an ongoing supply arrangement, but that there was also some scope to negotiate prices in an ongoing supply arrangement by threatening the

¹⁸³ www.competition-commission.org.uk/our-work/akzo-nobel-metlac.

¹⁸⁴ A further eight acknowledged receipt of our questionnaire but chose not to respond to it.

¹⁸⁵ Two of the 18 are only active in B&B.

supplier to freeze undergoing qualification processes or to switch orders to other qualified suppliers.

(b) [X] told us that only competition triggered competitive offers and only Metlac as a global supplier provided spontaneously competitive prices (see paragraph 9.43(b) above). However, given that they are active in both B&B and FCG, it is unclear whether this comment was also referring to FCG.

9.110 On balance, we considered that there may be more scope to exercise buyer power in the FCG segment than in the B2E segment because switching to smaller suppliers and/or sponsoring entry/expansion is more credible. Whether they would be able to sponsor entry/expansion will depend on the ability of suppliers to offer substitutable products, and as we acknowledged above, the evidence on this is mixed.

Conclusion on loss of actual competition in FCG market

9.111 We noted Metlac's relatively small presence in FCG in the UK, particularly in relation to Food (see Table 13). We have also noted that, even where Metlac does overlap with AkzoNobel, the merger is likely to have a limited impact in the UK in the [X] and [X] sub-segments, because nearly all customers already have a credible choice of smaller supplier to switch to in the event of a post-merger price increase (who is already qualified to supply them with the product in one of its plants in the EEA and is therefore in the same position as Metlac was pre-merger). Therefore, whilst Valspar and PPG are unlikely to compete vigorously on price to constrain the merged entity, we believe that, in the majority of cases, in the UK, smaller suppliers are likely to be in a reasonably good position to replicate the constraint provided by Metlac in relation to these overlap products in the sub-segments listed above.

9.112 We have noted that there may be some customers who do not currently have the option of switching to a smaller supplier that is already qualified either in the UK or in the EEA (eg some customers purchasing [X] and [X] products and any customers not captured by MIS). In relation to these customers, our evaluation of barriers to expansion and entry suggests that qualification time frames are sufficiently short to enable timely entry/expansion in some segments of the FCG market, in particular the General Line sub-segments. This may also be a possibility for Food and C&C external although, given that the qualification process can be quite long/costly for certain producers/in certain circumstances, we cannot be confident that this is the case.

9.113 Longer qualification times and therefore switching costs in relation to food contact coatings suggested that timely entry/expansion is least likely, in comparison with other sub-segments, in relation to Food internal and C&C internal, were there to be overlaps in this sub-segment (although we cannot rule out the possibility that entry/expansion would happen). We also noted that, unlike expansion of smaller suppliers into B&B, these smaller suppliers may well have a level of technological know-how and reputation with customers in some or all of the relevant FCG sub-segments which makes expansion into a similar product more feasible, particularly if they are already supplying the same or similar products elsewhere in the EEA or to another customer.

9.114 Given the mixed evidence base on the ability of smaller suppliers to enter/expand, due to qualification costs and reputational factors, we did not find that the merger may be expected to result in unilateral effects from the loss of actual competition in the FCG market in the UK.

9.115 We also considered whether there was evidence indicating that AkzoNobel may have interests to reduce its product range if Metlac's constraint was removed after the merger. It would seem conceivable for it to be in AkzoNobel's interests to follow a rationalization process, in particular for those products where AkzoNobel and Metlac overlap. For some customers this may involve having to re-qualify a product, either to secure the supply of the required product or to maintain a multi-sourcing approach. As a consequence some customers may lose an element of choice and/or face switching costs. While this could be the case in B2E where the number of alternative suppliers is limited, in FCG the issue appeared of lesser concern given the fact that in the instances where Metlac and AkzoNobel overlapped there usually existed a number of alternative smaller suppliers (qualified with the same product either at the same plant or somewhere else in the EEA) from which customers could relatively easily source. Overall, we did not expect the merger to result in a significant reduction in the product range available to the customers (see Appendix G).

Loss of potential competition in supply of B&B coatings

9.116 As we set out in paragraphs 8.210 and 8.212, evidence from third parties indicated that there are a number of opportunities for Metlac to become qualified and start supplying customers with additional B2E products, in both the UK and in the EEA. Overall, this evidence suggested that the extent of overlap between Metlac and AkzoNobel would be likely to increase in the future and therefore the constraint that Metlac currently places on AkzoNobel in the overlapping product/customer pairs would extend to additional pairs. We also noted that customers indicated that the B&B market may move towards a requirement for BPA-NI coatings in the future. The evidence provided to us indicated that Metlac, along with AkzoNobel, Valspar and PPG, was developing BPA-NI B&B coatings and we were of the view that a move to BPA-NI B2E coatings would enhance Metlac's ability to further expand its B2E supplies, given its strong position in development of BPA-NI coatings (see Appendix G).

9.117 We were told by Metlac that it intended to strengthen its position in the B&B sector through the development of a BPA-NI¹⁸⁶ B2I coating and that it was planning to enter the BE segment. [✂]

9.118 We have therefore analysed whether unilateral effects may arise from a reduction in potential competition in the B&B market, in particular from the loss of a potential entrant in B2I and BE. We have focused on these segments in part because this is consistent with [✂].

9.119 Potential competition has been considered as 'actual potential competition' in accordance with our guidelines¹⁸⁷ (in contrast to 'actual perceived competition') because we do not consider Metlac's potential entry a current constraint on how companies operate in B2I and BE.

9.120 In what follows, we consider 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.¹⁸⁸

¹⁸⁶ See paragraphs 2.76–2.83 for a description of development of BPA-NI coatings and footnote 31 for a definition of BPA-NI.

¹⁸⁷ CC2, paragraph 5.4.14.

¹⁸⁸ CC2, paragraph 5.4.15.

B2I

- 9.121 We examined whether removal of Metlac as a potential entrant to the market for supply of inside spray would be likely adversely to 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.¹⁸⁹
- 9.122 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.¹⁹⁰ Inside spray is a high-volume segment with more difficult production conditions than for FCG coatings, and therefore higher barriers to entry.
- 9.123 There is currently no legislative requirement for BPA-NI inside spray for beverage cans although, as noted in paragraph 2.77, French legislation is intended to come into effect in January 2015 which will require all food contact coatings in France, including beverage coatings, to be BPA-NI.^{191,192} Although customer demand is driving all suppliers to develop BPA-NI products ([REDACTED]), we understand that 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, although this may change. 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 that 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.
- 9.124 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

- 9.125 There are currently three companies supplying B2I products in the EEA—AkzoNobel, Valspar and PPG—as shown in Table 23. We have received some evidence that PPG's product offering has not been particularly successful in this area.

¹⁸⁹ [REDACTED]

¹⁹⁰ [REDACTED]

¹⁹¹ AkzoNobel stated that the intended legislation had not changed the number of customers looking for BPA-NI solutions, but once a final deadline has been set, French B2I customers will have a greater incentive to find and qualify suppliers (and back-up suppliers) for BPA-NI coatings. The French B&B can production market is self-sufficient and does not require imports of cans from outside of France. Therefore, there is no reason why UK B&B manufacturing facilities will be affected by this legislation.

¹⁹² Metlac told us that since approval of the legislation by the House of Representatives in November, drinks manufacturers [REDACTED] had accelerated their switching to BPA-NI cans [REDACTED].

TABLE 23 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.

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

Metlac as a potential competitor in inside spray

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

9.128 First, it plans to enter only with a BPA-NI product. [REDACTED]

9.129 Whilst there is currently demand for suppliers to develop this product, as the product may be more expensive than BPA B2I it is not clear when customers will actually start purchasing BPA-NI internal spray in large quantities, although this may well be within the next two years due to the recent French law mandating BPA-NI for food and drinks containers.

9.130 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]

9.131 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 will therefore depend on end-customer demand and qualification times. Ball told us that to switch inside spray supplier would take three to six months if switching to another approved supplier and three years to qualify and switch a new supplier. [REDACTED]

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

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

9.134 [REDACTED] However, there are a number of factors [REDACTED] which mean that it is unclear to us when Metlac would be able to enter on a large scale and within what time frame.

9.135 Metlac told us in its response to our provisional findings¹⁹³ that [REDACTED].

9.136 [REDACTED]

9.137 The fourth challenge for Metlac would be if BPA-NI is not mandated by legislation. The French legislation described in paragraphs 2.77 and 9.123 could potentially result in most B&B cans produced in the EEA being BPA-NI in January 2015, ie requiring BPA-NI B2I and also B2E and BE coatings (as any B&B cans supplied into

¹⁹³ www.competition-commission.org.uk/our-work/akzo-nobel-metlac/evidence/responses-to-pfs-and-notice-of-possible-remedies.

France would need to be BPA-NI and manufacturers supply across the EEA from each of the manufacturing facilities). When we spoke to Rexam in late October, it noted that BPA-NI had been in development for a decade and it was still difficult to tell when the industry would move to BPA-NI. If there were no requirement on all parties to supply BPA-NI inside spray, Metlac could only compete with other companies in this segment if its prices were low enough to compete with BPA products. We did not have evidence on the prices for BPA-NI inside sprays compared with current inside sprays, [REDACTED].

- 9.138 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. Metlac provided us with evidence of its catastrophe planning capacity [REDACTED]. Second, AkzoNobel said 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

- 9.139 In relation to BPA-NI product development, [REDACTED].
- 9.140 [REDACTED]
- 9.141 [REDACTED]
- 9.142 Overall, evidence from customers revealed that they regard Metlac highly in terms of product innovation [REDACTED].

Other potential entrants into B2I

- 9.143 We have considered whether there were other potential entrants to this segment and details of this analysis are set out in Appendix F. Based on evidence from the main and third parties, it appeared that entry into the B&B inside spray segment requires significant investment in both developing products and building production facilities with a resin reactor.
- 9.144 Given the need to recover the high fixed-cost base through economies of scale, we found 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).
- 9.145 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 did not consider that entry into this segment or expansion within it (apart from that of Metlac) would be likely within the next two to three years. We also understand that Metlac is the only supplier considering entry into the inside spray segment currently.

BE

- 9.146 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. The segment is split between internal and external coatings, with only two suppliers in each segment. AkzoNobel currently only supplies external beverage ends coatings in the EEA. [REDACTED]

9.147 [REDACTED]¹⁹⁴

9.148 In contrast to B2I, Metlac would face fewer hurdles in producing BE and therefore Metlac's entry is likely. Whether or not its entry would be at a scale sufficient significantly to enhance competition 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 set out above in relation to B2I. However, as noted in relation to B2I above, the recent French legislation may provide a tipping point for demand in this respect, moving BE customers to require BPA-NI BE across the EEA. [REDACTED]

9.149 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. One customer ([REDACTED]) noted that 'the reduction of potential supplier will by trend weaken buyer position'. One customer ([REDACTED]) expected 'less competition, focussing on the big market player'. Another customer ([REDACTED]) did not see the merger affecting it. [REDACTED]

Other potential entrants to BE

9.150 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 (see Appendix F). 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.

9.151 We do note, however, that [REDACTED].¹⁹⁵

Conclusion on loss of potential competition in the supply of B&B coatings

9.152 We are of the view that in the future Metlac is likely to qualify to supply customers with additional products in B2E, in some cases where AkzoNobel is qualified too (see paragraphs 8.210 to 8.211). For this reason, we expected that Metlac would be able to extend its competitive constraint on AkzoNobel on a broader range of product/customer pairs than it currently does. As a consequence, the merger would remove a potential competitor for a number of product/customer pairs.

9.153 We found that if Metlac were to enter the B2I and BE segments, it would [REDACTED].¹⁹⁶ We were also of the view that entry by Metlac is likely. Metlac provided us with evidence of its plans for the B2I segment, [REDACTED]. We also understand that Metlac is the only supplier considering entry into the inside spray segment currently.

9.154 However, we did not believe that such entry into BPA-NI (B2I or BE) will occur very soon. That said, a number of the obstacles to Metlac's entry which we saw have changed somewhat in light of the recent French legislation requiring BPA-NI foodstuff containers by January 2015. However, [REDACTED]. 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 and sufficiently imminent such that its removal would, on its own, give rise to significant unilateral effects in the B&B market.

¹⁹⁴ www.competition-commission.org.uk/our-work/akzo-nobel-metlac/evidence/responses-to-pfs-and-notice-of-possible-remedies.

¹⁹⁵ [REDACTED]

¹⁹⁶ [REDACTED]

9.155 However, we considered that the risk that the merger removes a potential entrant from the B2I and BE segments reinforced our conclusion that the merger will result in unilateral effects in the B&B market.

Loss of potential competition in the supply of FCG coatings

9.156 As in the case of B&B, the evidence we collected indicated that Metlac had been increasingly qualifying new products with the major customers (see paragraphs 8.210 to 8.212). A number of customers told us that they intended, and that they were in the process of, switching part of their coatings demand to Metlac. For example, [REDACTED].

9.157 Against this background, we examined whether the removal of Metlac as an independent supplier in FCG in the UK would result in a loss of potential competition, by virtue of removing a company that would have expanded into additional product lines in the UK in the future. We focused in particular on the prospect that evolution of the industry towards BPA-NI might create opportunities for Metlac to increase its presence, in particular for BPA-NI food contact coatings.

9.158 Many customers are already using BPA free coatings for food products, and we understand that the market for food-contact coatings is rapidly moving towards BPA-NI even in the absence of legislation that mandates its use.

9.159 A major Food customer ([REDACTED]) told us that it was focusing on qualifying BPA-NI products to reconvert all its products in BPA free coatings. Similarly, Guala told us that the move to BPA-NI was forcing it to qualify new products. [REDACTED] told us that it was planning to switch all its human food packaging to BPA-NI coatings by 2015, when the requirement for BPA-NI food contact coatings would come into effect in France. As companies would be unable to import cans containing BPA into France, the requirement would have pan-European implications. As such, [REDACTED] was currently focusing all its qualification efforts on BPA-NI coating cans. It told us that it would like to switch other products (non BPA-NI) to Metlac (as it did with its white internal food coatings), but did not currently have the resources to do so.

9.160 [REDACTED] We noted that Metlac is already producing a number of BPA-NI Food coatings. More than 60 per cent of its production in the Food segment was for BPA-NI products and its customers included [REDACTED].

9.161 We were of the view that this could represent a major change in the industry, requiring customers to go through a widespread requalification process to convert their current portfolio of coatings, and we therefore considered the ability of Metlac and others to compete in relation to BPA-NI products in the future.

9.162 Against this background we considered whether other companies would also be able to expand, in particular by offering a BPA-NI food coatings product, and in doing so replicate the constraint that Metlac would provide in the absence of the merger.

9.163 On this, one customer ([REDACTED]) told us that the BPA-NI introduction on a large scale was likely to level the playing field for smaller suppliers. However, technical expertise and R&D resources would be a key element in evaluating the suppliers that were more likely to succeed in qualifying BPA NI products, and not all suppliers were equal in this respect. [REDACTED] One customer ([REDACTED]) told us that Metlac ranked number one in terms of innovation and BPA-NI products it was developing. One customer ([REDACTED]) told us that it was not easy to find suppliers who had sufficient technological knowledge to supply BPA-NI coatings. It said that it was currently unclear to what extent the smaller suppliers would have the resources to develop competitive BPA-NI products,

although some companies such as Grace and Diostyl (in addition to Metlac) had previously shown strong innovation capabilities.

9.164 [X] told us that Metlac had been particularly innovative in the field of BPA-NI and smaller suppliers' limited R&D capability in BPA-NI would be likely to limit their capacity to compete effectively in the future. [X] told us that it was its policy to have at least two qualified suppliers for each coating, but this may not be possible with the switch to BPA-NI. In [X] view, one of the more significant effects of the merger would be to reduce supplier choice at a time when supplier choice may already be narrowing due to the BPA-NI issue, and the cost impact could be up to 45 per cent for [X] if it was not able to maintain competition among the four largest suppliers. [X] said that Metlac's removal would have particular effects here as Metlac had always been able to offer new BPA-NI products at a lower cost than other competitors. [X] noted that Metlac was able to provide the widest range of BPA-NI food internal products (16, compared with PPG's 9, Valspar's 8, AkzoNobel's 6, Grace's 5 and Actega's 1) and that it 'has a considerable competitive edge over its competitors in terms of higher R&D capabilities and more effective technical services. We also appreciate Metlac for its significant product portfolio of caps and closures coatings, including a wide range of Bisphenol-A coatings'.

9.165 [X] also indicated that the smaller suppliers (apart from Grace) generally did not offer the necessary range of C&C coatings or coatings which met the high technology standards for C&C coatings. It told us that 'Metlac has a considerable competitive edge over its competitors in terms of higher R&D capabilities and more effective technical services. We also appreciate Metlac for its significant product portfolio of caps and closures coatings, including a wide range of BPA coatings'. For this reason, it said that it had switched away from PPG and ICI (AkzoNobel).

9.166 Some customers expressed particular concern about the impact of the merger on BPA-NI development ([X]). One customer ([X]) told us that:

if the merger proceeded, there is a risk that there may be even less *[sic]* suppliers than at present because few players have a sufficiently diversified range of BPA-free coatings, which is very important for caps and closures, and offer coatings having a good performance (once BPA is eliminated, the problem is that coatings have generally a much lower performance). In addition, the incentive to innovate would be significantly reduced.

9.167 Overall, the evidence showed that Metlac is well placed with respect to BPA-NI food contact coatings. As set out above, we received some evidence that some of the smaller suppliers are generally weaker in BPA-NI product development than the biggest four. That said, a number of smaller suppliers are developing BPA-NI products and [X]. One customer ([X]) told us that:

Potential suppliers of internal lacquers BPA NI are practically all major lacquer producers: Valspar, PPG, Akzo Nobel, Metlac, Grace, Salchi, Actega, Schekolin. The bigger ones (1–3) will have the competitive advantage and will probably have more products commercially developed within 1 year's time.

9.168 As such, whilst there may be a time lag before the smaller suppliers can catch up with the larger suppliers in BPA-NI product development, we have not received sufficient evidence to show that they would be unable to provide a credible alternative to Metlac in the event of the merger.

Efficiencies

9.169 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. To form a view that the claimed efficiencies will enhance rivalry so that the merger does not result in an SLC, the CC must expect that the following criteria will be met: (a) the efficiencies must be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger); and (b) the efficiencies must be merger specific, ie a direct consequence of the merger, judged relative to what would happen without it.¹⁹⁷

9.170 AkzoNobel told us that:

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

(b) [✂]

(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.

9.171 AkzoNobel told us that it had [✂].

9.172 There is no evidence that any efficiencies would be sufficiently rivalry enhancing to counteract any adverse impacts on the market resulting from the merger. As set out in paragraph 9.57 above, Metlac acts as a constraint on the prices of AkzoNobel, and if this constraint were removed we would expect prices to increase even if the underlying costs had decreased. Our analysis of whether these efficiencies would be merger specific and whether they would result in relevant customer benefits is set out in Section 11.

Summary

9.173 In summary, we found that the proposed merger may be expected to create unilateral effects in the B&B market from a loss of actual competition. We also found that the proposed merger may be expected to create unilateral effects in the B&B market from a loss of potential competition. Metlac was in the process of becoming qualified to supply customers with additional products in B2E, and we considered it likely that Metlac will place a constraint on AkzoNobel on a larger number of product/customer circumstances in the future. We did not consider that Valspar, PPG and smaller suppliers would constrain the merged entity from raising prices or implementing non-price effects at least in the short to medium term. The merger would also remove a potential entrant from B2I and BE which reinforced our finding 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 this market and that countervailing buyer power was unlikely to be sufficient to counteract the SLC in this market. We did not consider that efficiencies were likely to provide sufficient customer benefits to counteract any adverse merger impacts.

9.174 In relation to the FCG market, notwithstanding that we saw some evidence indicating that the merger might result in unilateral effects, given the mixed evidence base on

¹⁹⁷ CC Guidelines, paragraph 5.7.4.

the ability of smaller suppliers to enter/expand we did not find that the merger may be expected to result in unilateral effects resulting from a loss of actual or potential competition in the FCG market in the UK.

10. Conclusions on the SLC test

- 10.1 We have concluded that the proposed merger may be expected to result in an SLC in the market for supply of metal packaging coatings for B&B in the UK.
- 10.2 Notwithstanding that we have seen evidence showing that the merger may result in unilateral effects in the market for supply of metal packaging coatings for FCG, we did not find that the merger may be expected to result in an SLC in this market in the UK.

11. Remedies

- 11.1 Having concluded that the merger may be expected to result in an SLC, we were required to decide whether action should be taken to remedy, mitigate or prevent the SLC or any adverse effect resulting from the SLC. This section discusses possible remedies to the SLC we identified and its resulting adverse effects.
- 11.2 Section 36 of the Act places a duty on us to decide on three questions concerning remedial action, namely:
- (a) Should we take action to remedy, mitigate or prevent the SLC or any adverse effects resulting or expected to result from the SLC?
 - (b) Should we recommend the taking of action by others, eg Government, regulators and public authorities for the purpose of remedying, mitigating or preventing the SLC or adverse effects resulting or expected to result from the SLC?
 - (c) What action should be taken? We should state the action that should be taken and what that action is designed to address.
- 11.3 The Act requires that, when considering possible remedial actions, we shall 'in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it'.¹⁹⁸ To fulfil this requirement, we will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will then select the least costly remedy that we consider to be effective. We will also seek to ensure that no remedy is disproportionate to the SLC and its adverse effects. In this consideration we may also have regard, in accordance with the Act,¹⁹⁹ to any relevant customer benefits (RCBs) arising from the merger.

Remedy options

- 11.4 Remedies are classified as either structural or behavioural. Structural remedies, such as divestiture or, in the case of an anticipated merger, prohibition are generally one-off measures that seek to restore or maintain the competitive structure of the market through a direct change in market structure. Behavioural remedies are measures that are designed to regulate or constrain the behaviour of merger parties with the aim of restoring the level of competition that would be present absent the transaction.
- 11.5 In merger inquiries, the CC will generally prefer structural remedies to behavioural remedies because:²⁰⁰
- (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source restoring rivalry;
 - (b) behavioural remedies may not be effective and may create significant costly distortions in market outcomes; and
 - (c) structural remedies (unlike behavioural remedies) do not normally require monitoring and enforcement once implemented.

¹⁹⁸ Sections 35(4) and 36(3).

¹⁹⁹ Sections 35(5) and 36(4).

²⁰⁰ See CC8 Merger Remedies: Competition Commission Guidelines, paragraph 2.3.

- 11.6 These factors mean that behavioural remedies are generally subject to higher risks than structural remedies and are therefore less likely to be effective and/or proportionate solutions to an SLC in a merger inquiry.²⁰¹
- 11.7 In our Remedies Notice²⁰² we invited views on the structural remedy of prohibition of completion of the merger. We did not outline other remedies for discussion as we had concerns about effectiveness, cost and/or proportionality affecting the other remedy options we had considered. Nevertheless, we noted that we were willing to consider any practical alternative remedies that parties proposed.

Outline of possible remedy options

- 11.8 In this section we set out the various remedy options that we have considered.

Prohibition

- 11.9 In our Remedies Notice²⁰³ we stated that we were considering prohibition of the transaction as a remedy to prevent the SLC we had provisionally found, and that by prohibition we meant that AkzoNobel (and any of its subsidiaries) would be prohibited from acquiring any additional shares, via exercise of the call option or any other means, in either Metlac Holding or Metlac, or any of their subsidiaries. We did not identify other remedies that would be effective.
- 11.10 We received no evidence that prohibition would not be effective. AkzoNobel submitted that it would be disproportionate and we consider the proportionality of our proposed remedy in paragraphs 11.72 to 11.88 below.
- 11.11 AkzoNobel also submitted that a prohibition remedy would not be enforceable against it, in particular because it does not carry on business in the UK. AkzoNobel thus submitted that the CC cannot make an enforcement order against it. We considered this issue and considered that we were able to make an order against AkzoNobel, if necessary, for the reasons set out in paragraphs 11.89 to 11.100 below. We did not therefore think that a prohibition remedy was ineffective for this reason.
- 11.12 Metlac agreed²⁰⁴ that this would be the only effective and appropriate remedy for the expected SLC. Metlac also stated that it did not believe that there would be any effective remedy other than prohibition.
- 11.13 Prohibition would prevent the SLC we have identified from arising and would therefore be a comprehensive solution to the SLC with no risks as to effectiveness. We therefore concluded that prohibition would be an effective and comprehensive solution. However, we also considered whether there were alternative remedies that might be similarly effective.

²⁰¹ The risks associated with behavioural remedies are identified in detail in paragraph 4.2 of [CC8 Merger Remedies: Competition Commission Guidelines](#).

²⁰² www.competition-commission.org.uk/our-work/akzo-nobel-metlac.

²⁰³ www.competition-commission.org.uk/our-work/akzo-nobel-metlac.

²⁰⁴ www.competition-commission.org.uk/our-work/akzo-nobel-metlac/evidence/responses-to-pfs-and-notice-of-possible-remedies.

Behavioural remedies

- 11.14 In response to our Remedies Notice, in addressing the question of whether there were other alternative remedies that could be effective in addressing the SLC, AkzoNobel²⁰⁵ put forward a high level view of two potential behavioural remedies:
- (a) the first involved reassuring Rexam (and/or other UK customers if appropriate) that the products they are currently sourcing from Metlac will not be discontinued without the customer's prior approval. These reassurances could also extend to products that are currently in development (eg BPA-NI products); and
 - (b) the second involved agreeing to license technologies to an alternative supplier of metal packaging coatings (other than Valspar or PPG) for sale in the UK to the extent that Rexam (and/or other UK customers) identify any specific technologies which are currently owned by Metlac. AkzoNobel told us that such a solution could also be supported by toll manufacturing arrangements for an interim period.
- 11.15 Metlac told us that the two proposed remedies were largely equivalent, as they were simply aimed at guaranteeing the supply of certain products to certain customers either directly by AkzoNobel or indirectly by licensing one or more smaller competitors. Metlac provided us with a number of reasons why they believed these remedies would not address the SLC we had provisionally identified and would therefore not be effective.
- 11.16 We discussed the remedies in the response hearings with AkzoNobel and Metlac and in follow-up questions after the hearings. We were concerned that neither of these remedies would be effective in addressing the SLC we had provisionally identified because neither would address the competitive effect of removing Metlac from the market (including the effect of Metlac as a constraint on AkzoNobel's prices). While AkzoNobel provided only limited details of these options, our initial review indicated that both would have substantial risks in terms of implementation, circumvention and specification.
- 11.17 AkzoNobel did not provide detailed information on these remedies and in its submission dated 22 October 2012 AkzoNobel stated that it would 'not be developing any formal remedies proposals in the remainder of these proceedings'. This was reiterated in its submission dated 28 October, in which it stated that it 'sees no scope at this stage of developing any remedy proposals'. We therefore did not consider these proposals further in the absence of further details on specification and implementation from AkzoNobel.
- 11.18 Following the provisional findings we conducted further economic analysis and on 24 November 2012 we sent to AkzoNobel a working paper setting out this analysis. In the light of our revised findings, we further considered whether a behavioural remedy was appropriate and we noted that in its response to our post-provisional findings economic working paper AkzoNobel had made a brief reference to a behavioural remedy. We explained to AkzoNobel our concerns with the lack of detail in its reference and with the remedy itself.
- 11.19 On 12 December 2012, AkzoNobel made a formal remedy proposal and provided draft undertakings to us on 14 December 2012. In summary AkzoNobel's proposals comprised:²⁰⁶

²⁰⁵ www.competition-commission.org.uk/our-work/akzo-nobel-metlac/evidence/responses-to-pfs-and-notice-of-possible-remedies.

- (a) an undertaking not to reduce the range of B2E products AkzoNobel and Metlac make available to the four B2E customers (in the UK and EEA).²⁰⁷ The lists of coatings would include coatings currently made available by AkzoNobel and Metlac (ie not coatings previously supplied and no longer made available or new coatings currently under development by Metlac or under qualification and not currently made available);
 - (b) an undertaking not to increase the prices at which AkzoNobel and Metlac are currently selling B2E coatings to customers in the UK, from those set out in their existing customer agreements, except to reflect raw material price increases; and
 - (c) An undertaking to license to develop, manufacture, market sell and distribute the Metlac coatings to a third party supplier to facilitate its entry into the B2E segment. The licence would be non-exclusive, but AkzoNobel would undertake not to supply the licensed products to the same customers served by the third party supplier, unless specifically requested to do so by a customer, during the licence term. AkzoNobel would also undertake to toll manufacture the relevant coatings and to provide technical support.
- 11.20 AkzoNobel confirmed that its price cap remedies proposal would apply to the purchase by the four UK B2E customers of any SKUs that their corporate groups currently purchase from the merging parties anywhere in the EEA. It confirmed the terms of the price cap remedies proposal would be as set out in the customers' existing supply arrangements for these products.
- 11.21 AkzoNobel told us that it agreed to use its best endeavours to ensure that it would continue to make available any adjustments to the product formulations reasonably requested by any of the B2E customers within a reasonable time (including, as required, for the purposes of having that coating meet the customer's qualification/ approvals process). In addition, AkzoNobel told us that it agreed to continue Metlac's R&D pipeline to ensure that all coatings (including BPANI products) for supply in the B2E segment, which are under development by Metlac continue to be developed for the purposes of providing either new coatings (not currently supplied by Metlac) and/or an enhanced coatings range to B2E customers. AkzoNobel agreed to make available new or reformulated coatings on terms as reasonably required by each customer on terms that are fair and reasonable, having regard to the terms of the customers' existing contractual agreements, but with pricing to be determined by an independent adjudicator if it could not be agreed between AkzoNobel and the customer.
- 11.22 The licensing element of the remedy appeared to cover a wider range of Metlac B2E products than those set out in the price cap as it would apply to all Metlac B2E products listed in the undertaking, even if these products were not currently supplied to specific customers in the UK or EEA.
- 11.23 AkzoNobel proposed that the remedy should continue until at least 31 December 2015.
- 11.24 We considered this remedy carefully. In doing so we were mindful of the merger remedies guidance (CC8). Paragraph 2.11 of that guidance sets out that:

²⁰⁶ AkzoNobel supplemented this with a submission on 14 December which provided further description of its proposed remedy and a draft set of undertakings which it stated that it would be willing to offer to the CC

²⁰⁷ The relevant coatings would be listed in Schedules to the Undertakings.

Particular types of behavioural remedy such as price caps, supply commitments and service level undertakings control or restrict the outcomes of business processes. These aim to control the adverse effects expected from a merger rather than addressing the source of the SLC. This type of remedy may not only be complex to implement and monitor but may also create significant market distortions.

11.25 The guidance also sets out further considerations in paragraphs 4.28 to 4.31:

4.28 Remedies that control or restrict the outcomes of business processes, such as price caps, supply commitments and service level Undertakings, seek to prevent merging firms from exercising the enhanced market power that they are likely to acquire from a merger. As such, these remedies seek to restrict the adverse effects expected from a merger rather than addressing the source of the SLC.

4.29 In order to overcome specification risk, remedies that control outcomes normally need to specify in significant detail the products or services that are subject to control and the basis of the control, for example, the application of price indices to a price cap. The remedy will generally also need to specify how the control will deal with changes, such as the introduction of new products.

4.30 This class of remedy is subject to several significant disadvantages regarding its effectiveness and cost:

(a) Defining appropriate parameters for the control measure, for example the level of a price cap, may be complex and impractical and the measure may therefore be vulnerable to specification risks. This is especially likely where any of the following conditions apply:

- Pricing in the relevant market is volatile.
- Products or services are differentiated rather than homogeneous.
- Prices are individually negotiated.
- Supply arrangements and products are subject to significant ongoing change.

(b) This class of remedy directly overrides market signals with the result that it may generate substantial distortion risks over time that increase the effective cost of the remedy or reduce its effectiveness. For example, a price cap may deter entry or a supply commitment may discourage product innovation.

(c) The control may be vulnerable to circumvention risks despite the addition of complex preventative provisions. For example, a price cap may be circumvented by a firm reducing the quality of controlled products or restricting the supply of controlled products.

(d) Monitoring and enforcement may be costly and intrusive and may lack effectiveness, especially where the form of remedy is complex.

4.31 In view of these disadvantages the CC will only use remedies that control outcomes where other, more effective, remedies are not feasible or appropriate. In addition, where this class of remedy is employed, it is most likely to be used on a temporary basis unless there is no alternative to a continuing regulatory solution.

11.26 We considered various factors in assessing whether a price cap remedy would be effective. Any remedy package would need to address the full customer set and the range of affected products at a SKU (stock-keeping unit) level. AkzoNobel's customer transaction database identifies [REDACTED] B2E SKUs in the UK and [REDACTED] in the EEA. Metlac's database identifies [REDACTED] and [REDACTED] respectively. We found that Metlac currently acted as a constraint on the prices paid for these products in the UK.

11.27 AkzoNobel's commitment not to raise prices applied to products currently supplied by the parties to specific customers (AkzoNobel said that it could not cap a price on a product that is not sold to a customer as there would not be a pre-existing price). Pricing for supply to customers not yet supplied and supply of new or reformulated products would need to be negotiated between AkzoNobel and the customer, with an appeal to an independent adjudicator if necessary. This is a particular concern as:

(a) each product is different and products change (we noted that AkzoNobel told us that it qualified more than [REDACTED] products a year, of which it estimates no more than [REDACTED] are for use in the B2E segment). Any product variation may produce new SKUs which would not necessarily be covered by the price cap;

(b) the price of each product is individually negotiated and reflected the specific characteristics of that product;

(c) the price cap would not cover products that were previously supplied but not currently supplied and so these would also need adjudication because the historical prices would be of limited assistance in setting the new price.

11.28 It is not possible to set a price cap for products that are not yet developed and it would be difficult to do so once they are developed (as the price of each product is individually negotiated and is specific to both the product and the customer) without fundamentally changing the market, for example by introducing published price lists.

11.29 AkzoNobel told us that since AkzoNobel would commit to maintaining ANPG's and Metlac's existing range of SKUs for so long as there was customer demand for them a customer could always choose to continue to buy the existing SKU at the existing price and if it wished to move to the new SKU, could obtain leverage in any pricing negotiations by threatening to remain with the existing SKU. In our view, this is not a credible threat when customers are required to change their product in order to compete (for example due to downstream customer demand for an improvement or alteration to the coating).

11.30 We do not believe that there is likely to be an entirely new customer in the UK (by which we mean an entirely new B2E factory in the UK). However, the four customers are not all currently supplied with a full range of Metlac products, and the price cap remedy would not address sales to customers not currently served by the parties or

not currently served by the full range of their B2E coatings, or sales to customers currently served by AkzoNobel but not by Metlac. As prices are individually negotiated and are specific to both the product and the customer it would not be possible to determine an appropriate price for a new customer without fundamentally changing the market, for example by introducing published price lists.

- 11.31 The remedy would not address the loss of competition on innovation which we have identified. AkzoNobel noted that 'in the B2E segment, where the coatings are relatively highly commoditised' there are far fewer SKUs than in the FCG market. However, we also understand from AkzoNobel that 'products such as tactile varnish, thermographic inks or glow-in-the dark inks, provide examples of how downstream branded goods suppliers are still interested in [B&B] coatings which enable them to differentiate themselves from their competitors'.²⁰⁸ We have seen examples of innovative B2E coatings (eg tactile Heineken cans) and understand that suppliers compete on factors such as the colouring and abrasion resistance of B2E coatings. The loss of competition on innovation is also important in the context of a BPA-NI future. We have not seen any evidence that smaller suppliers are in a position to innovate to create BPA-NI B2E products, at least in the medium term.
- 11.32 The purpose of the licensing element of the remedy would be to create a new entrant which could supply the current range of Metlac B2E coatings, and by December 2015, replace the constraint of Metlac such that the price cap could be removed. However, we did not believe that this element of the remedy would be effective for the reasons set out in paragraphs 11.33 to 11.36 below.
- 11.33 The licensing element of the remedy proposal would only be effective if it led to a new entrant entering the market and replacing the constraint removed by the merger. We have no evidence that a company would be willing to take on supply on the terms proposed by such a remedy, as it would be reliant on AkzoNobel for its licenses (and possibly toll manufacturing).²⁰⁹ In Appendix F we note that it is unlikely that expansion by existing small suppliers or entry by others would be timely, likely and sufficient to undermine post-merger price increases by the merged entity in the B2E segment.
- 11.34 The licence element of the remedy would not address our concerns over the loss of competition over new products as, although the licensee would obtain a licence to any new coatings developed on the basis of Metlac R&D:
- (a) the licensee would have no access to Metlac's R&D facilities, and would therefore have no control over the R&D strategy being pursued by Metlac; and
 - (b) AkzoNobel will control the R&D strategy and, furthermore, will also be able to sell exactly those coatings which are held by the licensee.

These two factors are likely to combine to reduce the effectiveness of any competition between AkzoNobel and the licensee. For these reasons the remedy would also not address the loss of competition on innovation which we have identified and which we describe more fully above in paragraph 11.31.

²⁰⁸ AkzoNobel told us that neither ANPG nor Metlac currently produce thermographic or glow-in-the-dark inks. However, these are simply examples of technological innovation. See Appendix G, paragraph 7 [§].

²⁰⁹ During the course of our investigation, we did not identify anyone who would be likely to enter the market on these terms and in the shortness of time, we were unable to market test to determine whether there was likely to be such a person.

- 11.35 The licensee would have access to the intellectual property rights²¹⁰ in Metlac Coatings. However, as AkzoNobel has pointed out, Metlac holds few patents and it is not clear that the know-how in Metlac Coatings, when not formalized in intellectual property rights, would be easily transferable to the licensee.
- 11.36 Finally, there would be substantial risks involved in specifying and monitoring the licensing arrangements in order to prevent AkzoNobel avoiding its obligations under the remedy. Although these could largely be addressed, these risks increase the likelihood of the remedy not being effective.
- 11.37 In addition to those elements of the proposed remedy which we are of the view could not be addressed so as to make the remedy effective, we note that we also had a number of concerns with the remedy which we believed could be addressed. These additional issues are set out in paragraphs 11.38 to 11.42 below.
- 11.38 As noted above the proposal did not apply to B2E products which the parties do not currently make available to individual UK customers (either in the UK or to their Groups elsewhere), but across which they compete (eg products where Metlac may have tendered and its pricing may have constrained the pricing of other suppliers, but neither Metlac nor AkzoNobel was a successful bidder). To meet this concern the price cap remedy would need to apply to all B2E products, on the basis that the constraint posed by Metlac relates not only to the products it currently supplies in the UK, but to all product lines where it has potential to supply (see also paragraph 11.30).
- 11.39 The price set out in the remedy would need to be reassessed in light of any changes to the underlying costs. AkzoNobel told us that its multi-year contracts include adjustment mechanisms dealing with this issue. This would be an area which we would expect careful monitoring and enforcement would be required.
- 11.40 AkzoNobel proposed that the remedy should continue until at least 31 December 2015. In fact we would require that the remedy extend for a longer period and may need to be open-ended (even though a remedy such as this becomes less effective the longer it is required to operate) as the remedy is intended to exist until new entry restores the competition lost by the removal of Metlac. There is no reason to believe that new entry would happen by December 2015 and for the reasons we describe in paragraph 11.33, we have no certainty that the remedy would lead to new entry over a longer period.
- 11.41 The remedy would require an ongoing and intensive monitoring and enforcement process to maintain the remedy and also to address the risk that the remedy could be circumvented (for example by minor changes to a product),²¹¹ and it would require the appointment of independent auditors to assess and confirm implementation.²¹²
- 11.42 Although we took the view that each of these issues could individually be addressed, we noted that each increase in the complexity of the remedy would increase the risk of the remedy failing to be effective.

²¹⁰ Appendix G, paragraph 10.

²¹¹ AkzoNobel said that the customers would be able to ensure through negotiation that AkzoNobel is complying fully with its obligations in the undertakings. We disagreed that customers would be able to do this but accept that they would be able to bring non compliance to the attention of the monitor.

²¹² AkzoNobel acknowledged that an independent adjudicator would be required to speedily determine disputes. It suggested that this role could be combined with that of the compliance monitor and said it would be willing to pay for the adjudicator. It also said that if the dual role was not acceptable to the CC it would be prepared to give undertakings for the monitoring to be undertaken by a separate independent trustee.

Evaluation of effectiveness of possible remedies

- 11.43 Prohibition of the transaction would clearly be an effective remedy as the removal of Metlac as an independent competitor was the cause of the SLC which we found. As prohibition would involve no change to the current ownership structure of Metlac it would also appear to be risk-free in terms of its implementation.
- 11.44 The other remedies we considered did not appear likely to be effective in addressing the SLC, and all had substantial risks or costs associated with them.

Cost of remedies and proportionality

- 11.45 Our remedies guidelines explain that having considered the effectiveness of remedy options, the CC will then consider the costs of those remedies that it expects would be effective in addressing the SLC and resulting adverse effects. The CC will seek to select the least costly remedy that it considers will be effective.
- 11.46 We have identified only one effective remedy and that is prohibition of the acquisition by AkzoNobel of additional shares in Metlac or Metlac Holding. Therefore we did not need to perform a comparison between two (or more) effective options.
- 11.47 However, we recognized that it is possible to find only one effective remedy but decide that the costs of that would be disproportionate to the SLC. We therefore considered the costs and benefits of prohibition.
- 11.48 There do not appear to be any costs of implementing the remedy nor any ongoing compliance costs, as the remedy would simply prohibit AkzoNobel from acquiring any additional shares in either Metlac Holding or Metlac. However, if the remedy extinguishes relevant customer benefits arising from the merger then the amount of benefits foregone may be considered to be a relevant cost of the remedy.
- 11.49 AkzoNobel raised a number of RCBs which it submitted would be effective to remedy the SLC. These are considered in paragraphs 11.52 to 11.71 below and Appendix N.
- 11.50 AkzoNobel raised two other arguments regarding proportionality of the remedy. These were that:
- (a) the scale of the SLC and its adverse effects in the UK are minimal; and
- (b) the consequences of prohibition would be disproportionate.
- 11.51 We consider these concerns in paragraphs 11.72 to 11.87, following our analysis of RCBs.

Relevant customer benefits

- 11.52 Having identified the least cost, least intrusive remedy or package of remedies that the CC is confident will be effective, the CC may decide to modify that remedy in order to take account of any RCBs. RCBs are limited by the Act to benefits to relevant customers²¹³ in the form of:

²¹³ Relevant customers are customers at any point in the chain of production and distribution and are therefore not limited to final consumers

(a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom...or

(b) greater innovation in relation to such goods or services'.²¹⁴

11.53 The Act provides that a benefit is only a relevant customer benefit if it would be unlikely to accrue 'without the creation of that situation or a similar lessening of competition'.²¹⁵

11.54 Our merger remedies guidelines (the remedies guidelines)²¹⁶ state that the main parties are 'expected to provide convincing evidence regarding the nature and scale of relevant customer benefits that they claim to result from the merger and to demonstrate that these fall within the Act's definition of such benefits'.²¹⁷

11.55 The remedies guidelines provide an illustration of how the CC might approach efficiency gains as an RCB:²¹⁸

A merger may lead to economies of scale, for example, in production or distribution. But this benefit to the merged firm may not constitute a relevant customer benefit even if the CC is satisfied that this is attributable to the merger. To qualify as a relevant customer benefit, the prospective cost reductions must be expected to result in lower prices (or better quality, service, choice or innovation) than if the merger did not take place. This may not be a reasonable expectation in many instances as the parties may have scope to charge higher prices, or not pass on cost reductions, due to the reduction in competitive pressures resulting from the merger.

11.56 We describe in more detail in Appendix N the evidence we have seen on potential RCBs and our assessment of each. In the following paragraphs we set out the synergies (or efficiencies) submitted by AkzoNobel (AkzoNobel uses both terms) and our conclusions on these.

11.57 We considered two main sources of information as the basis of our assessment:

(a) the acquisition model AkzoNobel had created as part of its assessment of whether it should acquire the remaining shares in Metlac; and

(b) various submissions following our provisional findings and in response to the remedies working paper.

Improvements in the purchasing of raw materials, including savings from the use of resins manufactured in-house

11.58 AkzoNobel submitted that Metlac's raw material purchasing strategy is dictated by its small size and relatively weak purchasing position *vis-à-vis* key raw material suppliers, so the merger will result in savings as a direct result of AkzoNobel's purchasing power, global footprint and existing well-established relationships with raw material suppliers. AkzoNobel stated that raw material costs represented a large proportion of the overall cost base and the effect of the acquisition would therefore be

²¹⁴ Section 30(2) of the Act.

²¹⁵ Section 30(2)b of the Act.

²¹⁶ CC8 Merger Remedies: Competition Commission Guidelines.

²¹⁷ CC8 Merger Remedies: Competition Commission Guidelines, paragraph 1.17.

²¹⁸ CC8 Merger Remedies: Competition Commission Guidelines, paragraph 1.18.

to reduce Metlac's cost base and most of this cost benefit would be readily passed on to customers.

- 11.59 In addition, AkzoNobel told us that following the acquisition it would be able to bring some of the resin manufacture in-house, reducing costs further. It believed that these cost reductions would also be passed on to customers.

Improvements in Metlac's working capital position

- 11.60 AkzoNobel submitted that Metlac currently has high levels of operating working capital due to its inefficient requirement to buy raw materials in bulk in order to leverage its smaller negotiating strength. It believed that following the acquisition it would be able to reduce the amount of unused stock significantly, which in turn would reduce the level of operating working capital and that this reduction should be seen as a variable cost saving (the cost of having capital invested in working capital). This was the largest component of the synergies identified in the acquisition model.

- 11.61 There is likely to be a connection between the level of operating working capital held by Metlac and its ability to buy raw materials cheaply. AkzoNobel stated that we should consider these together as Metlac is only able to achieve low prices for raw materials, because it buys in bulk, thereby raising its working capital requirements.

Enhanced manufacturing efficiencies

- 11.62 AkzoNobel submitted that it would be able to improve the efficiency of the Metlac plant as a result of the acquisition, for example by operating a focused factory model for its production network, which would increase production capacity, reduce transport and shipping costs, improve batch efficiency and concentrate specialization for the development of various types of coating.

Ability to deliver Metlac's products to customers around EEA and the world

- 11.63 AkzoNobel submitted that it would be able to deliver products in the Metlac range to a global network of customers who currently have not had access to them and that these would be supported by AkzoNobel's high levels of technical support around the world in contrast to Metlac's limited ability to provide technical support to customers across the EEA outside of Italy and globally.

Developing an improved product platform, including through enhanced and integrated R&D and product portfolio

- 11.64 AkzoNobel set out several types of benefits that would arise in the areas of research and development such as access to an improved laboratory with analytical support which is not available in Bosco Marengo, regulatory support which Metlac does not currently have the capacity for, achieving critical mass in research, development and innovation and combining product platforms.

Conclusion on RCBs

- 11.65 We have considered in detail the submissions made by AkzoNobel on possible RCBs arising from the transaction.
- 11.66 In assessing the RCBs proposed by AkzoNobel we considered the possible synergies and determined whether the cost saving existed (eg does AkzoNobel have

a cost advantage in buying raw materials); then assessed whether these cost reductions were merger specific (eg could Metlac achieve cost savings without the merger); and, finally assessed whether the benefit of any cost reduction was likely to be passed on to customers, for example through lower prices. To determine that a potential cost saving constitutes an RCB, we need to be convinced that it satisfies each stage of this analysis.

- 11.67 As we have noted earlier, our remedies guidelines state that merger parties will be expected to provide convincing evidence regarding the nature and scale of RCBs and demonstrate that these fall within the Act's definition of such benefits. In addition as we note in paragraph 11.55 the guidelines state that to qualify as a relevant customer benefit, the prospective cost reductions must be expected to result in lower prices (or better quality, service, choice or innovation) than if the merger did not take place.
- 11.68 AkzoNobel has submitted that it would have an incentive to pass on any benefits in order to retain customers. However, our analysis (as set out Section 9) indicates that AkzoNobel's prices are constrained by Metlac and that the removal of Metlac will reduce this constraint. We concluded that we expect prices would be likely to rise (rather than fall) following the acquisition.
- 11.69 AkzoNobel has submitted that the acquisition would lead to cost savings and that most of this benefit would be passed on in order to retain customers. However, even if the acquisition were to reduce the costs AkzoNobel faces, we have seen no evidence that AkzoNobel would be incentivized to pass these cost savings on to its customers following the removal of Metlac as a constraint on its pricing.
- 11.70 Our assessment of RCBs set out in Appendix N and our conclusions are summarized below. We did not find convincing evidence of any potential cost savings in any of the categories proposed by AkzoNobel which were both merger-specific and might be expected to be passed on to customers:
- (a) Raw materials (paragraphs 16 to 36 of Appendix N): the evidence we have seen indicated that Metlac paid less for some of its raw materials than AkzoNobel, and there is certainly no convincing evidence of raw material cost savings arising from the merger. We therefore concluded that there would be no cost saving arising from the merger and so this could not be an RCB.
 - (b) Working capital (paragraphs 37 to 48): we have found that there may be some savings in working capital. However, we concluded that these are not merger-specific and as we note above we saw no evidence that AkzoNobel would pass these on to customers.
 - (c) Enhanced manufacturing efficiencies (paragraphs 49 to 56): we saw no evidence that there would be any such manufacturing efficiency arising from the merger.
 - (d) Ability to deliver Metlac's products globally (paragraphs 57 to 62): we were not in a position to quantify any such benefit and as we note above we saw no evidence that AkzoNobel would pass these on to customers.
 - (e) Improvements to the product platform, including through enhanced and integrated R&D (paragraphs 63 to 77): we have found no evidence that any of these would be expected to arise from the merger.

11.71 Overall therefore we considered that the acquisition would not lead to synergies or efficiency savings (either for Metlac or AkzoNobel) that would qualify as RCBs as defined by our guidelines.

Proportionality

11.72 As part of its submissions on RCBs AkzoNobel proposed two arguments regarding proportionality. Notwithstanding the fact that we have not identified any other effective remedy nor found any costs arising from the prohibition (or RCBs lost by prohibition), we consider these arguments here:

- (a) the scale of the SLC and its adverse effects in the UK are minimal; and
- (b) the consequences of prohibition would be disproportionate.

Scale of SLC and adverse effects in the UK

11.73 AkzoNobel told us that prohibition would be disproportionate because the proposed transaction would have minimal (if any) adverse effects in the UK. Specifically AkzoNobel told us that:

- (a) Metlac's UK sales were €[] in 2011. Its overall sales in the UK accounted for [] per cent of metal packaging coatings sales in the UK;
- (b) Metlac sales were to only four customers in the UK, of which one customer (Rexam) made up 85 per cent; and
- (c) the UK is not a key market for Metlac. It has no UK infrastructure, sales office or technical support in the UK.²¹⁹

11.74 AkzoNobel quoted our remedies guidelines: 'where the CC has jurisdiction over only a small segment of an international merger, the choice of appropriate remedies may be limited significantly by the constraints of extra-territorial enforcement. The desirability of consistency with the approaches adopted by other national competition authorities may add a further constraint to the selection of remedies.' In AkzoNobel's view this appears to acknowledge that it is neither reasonable nor proportionate for the CC to impose a global remedy, which would have extra-territorial effects outside the UK, when the transaction has been cleared by every other competition authority worldwide which has considered it. AkzoNobel told us that this case has been cleared by every other competition authority.

11.75 Finally AkzoNobel drew our attention to the *Draeger Medical/Airshields* case. In that case the CC found that the benefits of reduced costs would not be passed on to customers in the form of lower prices but did not impose a prohibition, instead finding a package of remedies which addressed the adverse effects of the SLC.

11.76 We found that Metlac is an effective competitive force in the supply of metal packaging coatings in the UK and that it acts as a constraint on AkzoNobel's pricing in the B&B market (the B2E segment in particular) in the UK. We found that if AkzoNobel were to acquire the remaining shares in Metlac this would result in an SLC in the market for supply of B&B coatings in the UK. We also found that the effect of this SLC would be an increase in the price of metal packaging coating products in

²¹⁹ In response to our Remedies working paper, Metlac noted that its sales in the UK in 2012 were significantly higher and that [] accounted for [] per cent of its UK sales in 2011 and [] is now its largest UK customer.

the UK and also the removal of a potential entrant into certain segments within the UK.

- 11.77 To understand the scale of the affected markets in the UK, the relevant comparator is not the level of sales Metlac made last year in the UK or indeed this year, but the total level of sales to customers in the UK that Metlac currently supplies or has the potential to supply (noting that there may be some particular products or customers that Metlac could be unable to service).
- 11.78 Metlac has also informed us that it expects its UK revenues in 2012 to be approximately [3] per cent higher than 2011 and that they had already reached €[3] million to November 2012, with €[3] million forecast for 2012.²²⁰
- 11.79 We estimated that the size of the B&B market in the UK was €[3] million in 2011, and within this market the B2E segment had sales of €[3] million in 2011. As explained in section 8, we found that Metlac acts as a constraint over a significant proportion of this segment.
- 11.80 In our judgment an SLC in a UK market of this size and significance is a matter that requires effective remedial action, and we have found no other effective remedy to the SLC in the market for supply of B&B coatings in the UK.
- 11.81 Our decision is made independently of decisions made by other competition authorities and is based on the competitive impact in the UK of this transaction. The quote from our remedies guidelines which AkzoNobel provided in its submission generally refers to consistency of the remedies adopted between authorities. As the CC is the only authority considering remedies, this is not relevant to this case.

Consequences of prohibition would be disproportionate

- 11.82 AkzoNobel proposed that the references to costs in our guidelines must be interpreted more widely than merely direct monetary costs. AkzoNobel was concerned with the following:
- (a) it would lose permanently its right to exercise the call option, and therefore its ability to acquire full control of Metlac; and
 - (b) the costs to customers, particularly in the UK.
- 11.83 As part of our analysis we may consider the loss of benefits to customers and the loss of efficiencies. However, by its nature, merger control may restrict the options available to the companies involved. The cost to companies of losing this ability to merge with or acquire competitors is intrinsic to the merger control regime and is not a relevant cost in our analysis.
- 11.84 We note that in the case *BAA v. Competition Commission*, in his Court of Appeal judgment, Sullivan LJ stated:

Whether a remedy under section 138 of the Act is proportionate must be considered in the context of the statutory scheme as a whole. In accordance with the statutory scheme in the Act, it has been decided that there is an AEC, that action should be taken to remedy it, and that the only effective remedy is a requirement that BAA sells Stansted. That

²²⁰ Metlac also told us that it expects its UK revenues to [3] again in 2013 to €[3] million.

requirement is in the public interest. It is inherent in such a statutory scheme that in order to secure the public interest, BAA will lose its freedom of choice as to whether and when to sell its asset.

11.85 In the same case Sales J also stated, in remarks which were approved by the Court of Appeal:

the divestment requirement imposed by it [the CC] to address that harm will necessarily involve depriving the company of its ordinary freedom of action regarding disposal of that business (that is the very nature of a divestment order or requirement); and provided the company is given an appropriate opportunity to obtain the fair market value of its asset, its interests will have been sufficiently taken into account and protected. Since, in the scenario under analysis, the public interest requires that the company should not continue to own the business and the company is enabled to obtain the fair market value of that business, that requirement satisfies the proportionality test set out in *Tesco plc* and there is no further ground for complaint that the action taken is in any way disproportionate.

11.86 We believe that a similar logic applies in this case. It is inherent in the statutory scheme that parties to a proposed transaction will lose a degree of contractual freedom, but such cost is not disproportionate by reference to the harm that would be caused by allowing the merger to proceed. In addition, as we note in paragraph 11.71, we have not seen any convincing evidence that this transaction would result in any RCBs.

11.87 We are of the view that AkzoNobel NV is carrying on business in the UK within the meaning of section 86(1)(c) of the Act and that making an order would be practicable in this case.

Carrying on business

11.88 We have considered the practicability of making an order when the ultimate parent company causing the merger to occur is AkzoNobel NV. We treat AkzoNobel NV as carrying on business in the UK, pursuant to the Act.

11.89 Furthermore, we have analysed the evidence provided by AkzoNobel NV that described the Group corporate structure, the governance arrangements as well as the operational arrangements.

11.90 We understand that within the AkzoNobel Group there are a number of wholly owned subsidiaries which are incorporated in different countries. We saw sales contracts entered into by some of these companies relating to the supply of metal packaging coatings products in the UK (and correspondence between these companies and their customers) but, in our view, neither the identity of the contracting entity nor the corporate structure reflected how in substance strategic and operational decisions were made within the AkzoNobel Group. We noted that AkzoNobel's business activities, such as its activities in the metal packaging coatings industry are organized by Business Areas (BAs) Business Units (BUs) and Sub Units (SBUs). For example, AkzoNobel's metal packaging coatings business activities were organized by the SBU ANPG, which AkzoNobel told us did not have separate corporate identity as a legal entity (AkzoNobel also told us that the relevant BU did not have separate legal identity). The subsidiaries within the Group sit within these Business Units. [✂]

- 11.91 AkzoNobel told us that depending on the specific activities and customers served, the organization of the SBUs and BUs is either by market or by geography. We noted also that AkzoNobel told us [REDACTED]. We therefore recognized that there was a distinction between the corporate structure of AkzoNobel and the operational structure of the Group.²²¹ In our view these arrangements, which are common among large corporate groups, reflected a structure in which the decision-making is centralized within the Group.
- 11.92 As part of our analysis we also reviewed information supplied by AkzoNobel in relation to its contractual arrangements with customers and suppliers entered into by UK registered companies which it said was carrying on business in the UK (see also footnote to paragraph 11.91): [REDACTED].
- 11.93 These contractual arrangements reflected the situation which we considered was not unusual for a Group structure of a multi-national company. Whilst certain aspects of the contractual arrangements are at subsidiary level, we noted that the purchasing arrangements had significant aspects which were centralized.
- 11.94 We also reviewed the Board minutes of companies AkzoNobel identified as carrying on business in the UK for the year commencing 1 December 2011. Similarly we did not consider these arrangements were unusual for a Group structure of a multi-national company and did not find them determinative when considering whether AkzoNobel NV was carrying on business in the UK.
- 11.95 We considered the organization of the Group and the involvement of AkzoNobel NV to assess the decision-making arrangements within the Group. AkzoNobel told us that AkzoNobel NV has only a peripheral involvement in directing strategy for the UK. As we noted in Section 3 the four members of AkzoNobel NV's Board of Management and the four leaders with functional expertise have responsibility for day to day management of the company the Executive Committee (ExCo). ExCo manages the company's day-to-day operations.²²² [REDACTED]
- 11.96 [REDACTED]
- 11.97 In our view these arrangements show that the participation of AkzoNobel NV through ExCo is extensive and includes the approval of operational decisions. We therefore did not accept that AkzoNobel NV had only a peripheral involvement in directing strategy for the UK.
- 11.98 The arrangements described by AkzoNobel in its submission to us and in the Authority Schedule are complex.²²³ The Group carries out operations in the UK and business operations are part of a SBU, BU and BA. We have observed that AkzoNobel NV has structures in place such that the operations of the Group's various business activities are ultimately controlled by it. While appreciating that there are several steps of upward referral before the functional member of ExCo or AkzoNobel NV takes a decision, the structure in place, in our view, is one in which the operations within the Group are centrally monitored and directed which limits autonomy within the BUs and SBUs in practice. In our view, the organizational structure and arrangements we have described above, including the relevant

²²¹ We also looked at the corporate arrangements of some of the individual companies. AkzoNobel had provided us with a list of companies that they said were carrying on business in the UK. [REDACTED]

²²² AkzoNobel told us that the only person who is a director of any of the companies listed in the previous footnote and a member of the ExCo is Graeme Armstrong, who is on the board of Imperial Chemicals Industries Limited.

²²³ [REDACTED]

business units, is the means through which AkzoNobel NV carries on business, including in the UK.

11.99 We have considered paragraphs 2.23 and 2.24 of our Remedies Guidance, which AkzoNobel drew to our attention, and do not think that these paragraphs presented reasons why we would be unable to take action in this case.

Conclusion on remedies

11.100 We concluded that the only remedy that was likely to be effective was prohibition of the transaction. This would be an effective remedy and would have no associated risks. We have been unable to identify another remedy that would be similarly effective in addressing the adverse effects of the proposed transaction.

11.101 We considered potential RCBs in some detail and tested the assumptions behind them. We found that there were no RCBs that would meet the criteria set out in our guidelines. We also found that there were no costs arising from prohibition.

11.102 We therefore decided that the remedy of prohibition would be a proportionate remedy given the absence of effective alternatives, the benefits of achieving a comprehensive solution to the substantial competition problems, and the absence of any evidence that RCBs would arise from the transaction.

11.103 We therefore concluded that prohibition would be as comprehensive a solution as is reasonable and practicable to the SLC arising from the proposed transaction.

11.104 The CC has the choice of implementing remedies by obtaining undertakings from the relevant merger parties or by making an order.²²⁴ Where possible we prefer to proceed by accepting undertakings. However, if agreement on undertakings is not expected to be forthcoming on a timely basis, we will have recourse to imposing an order.

²²⁴ CC8 Merger Remedies: Competition Commission Guidelines, paragraph 1.26.