

COMPETITION COMMISSION ACCEPTANCE OF INTERIM UNDERTAKINGS

In the matter of a reference to the Competition Commission of the anticipated acquisition by Akzo Nobel Coatings International B.V. of Metlac Holding S.r.l.

On 23 May 2012, the Office of Fair Trading (OFT) made a reference to the Competition Commission (CC) under section 33 of the Enterprise Act 2002 (the Act) concerning the anticipated acquisition by Akzo Nobel Coatings International B.V. (ANCI), a subsidiary of Akzo Nobel N.V. (AkzoNobel) of a shareholding in Metlac Holding S.r.l. (Metlac Holding) by exercise of a call option.

The reference has not been finally determined in accordance with section 79(1) of the Act.

On 24 May 2012, the CC advised AkzoNobel that, pursuant to section 78 of the Act, the completion of the transfer of the shares was prohibited without the consent of the CC.

The CC wishes to ensure that no further action is taken pending final determination of the reference which might prejudice or impede the taking of any action by the CC under Part 3 of the Act which might be justified by the CC's decisions on the reference.

Now, pursuant to section 80(2) of the Act for the purpose of preventing pre-emptive action, AkzoNobel hereby gives to the CC and the CC accepts the Undertakings which are set out in Annex A below and accordingly the Undertakings come into force in accordance with section 80(5) of the Act.

Signed by authority of the CC.

Roger Witcomb
Group Chairman
10 July 2012

Interim Undertakings

Anticipated acquisition by Akzo Nobel Coatings International B.V. of Metlac Holding S.r.l.

Undertakings given by Akzo Nobel N.V. to the Competition Commission pursuant to section 80 of the Enterprise Act 2002

- A. Akzo Nobel N.V. (AkzoNobel) acquired Imperial Chemical Industries plc (ICI) in 2008. The European Commission, by a decision of 13 December 2007 (Case No. COMP/M.4779 – *Akzo Nobel / ICI*) cleared this transaction subject to commitments to divest certain assets by the merging parties.
- B. As a result of this transaction, AkzoNobel acquired shareholdings in Metlac Holding S.r.l., (Metlac Holding) and Metlac S.p.A. (Metlac). A subsidiary of AkzoNobel, Akzo Nobel Coatings International B.V (ANCI) acquired a 49 per cent shareholding in Metlac Holding. Another subsidiary of AkzoNobel, Mortar Investments (Mortar), a subsidiary of ICI, already held a 44.44 per cent shareholding in Metlac. Metlac Holding holds the remaining 55.56 per cent of Metlac. Through these shareholdings, AkzoNobel has an indirect economic interest of 71.67 per cent in Metlac.
- C. The remaining 51 per cent of shares in Metlac Holding (the Bocchio shares) are held by individual members of the Bocchio family whose interests are represented by Mr Pier Ugo Bocchio pursuant to clause 1.3 of the Metlac Holding Formation and Quotaholders Agreement of 30 September 2007 (the 2007 Agreement). Mr Pier Ugo Bocchio is also the Managing Director of Metlac, appointed pursuant to clause 5.7 of the Metlac Shareholders' Agreement between Metlac Holding, Metlac and Mortar dated 4 December 2007 ('the Metlac SHA').
- D. The 2007 Agreement contained put and call options regarding the Bocchio shares. Under clause 8.5.1, the Bocchio family acquired a put option to sell the Bocchio shares to AkzoNobel; this put option was exercisable in the three-year period between 1 October 2009 and 30 September 2012, but was not exercised. Under clause 8.5.2, AkzoNobel acquired a call option to acquire the Bocchio shares, exercisable in the period between 1 October 2011 and 30 September 2012. On 23 December 2011, AkzoNobel sent a formal notice in writing to Mr Bocchio exercising this call option (hereafter referred to as 'the Proposed Acquisition').
- E. On 23 May 2012, the Office of Fair Trading (OFT) made a reference to the Competition Commission (CC) under section 33 of the Enterprise Act (the Act) concerning the Proposed Acquisition.
- F. On 24 May 2012, the CC advised AkzoNobel and Metlac Holding that, pursuant to section 78 of the Act, the completion of the sale and transfer of shares was prohibited without the consent of the CC. The reference has not been finally determined in accordance with section 79(1) of the Act.
- G. The CC wishes to ensure that no action is taken pending final determination of the reference which might prejudice the reference or impede the taking of any action by the CC under Part 3 of the Act which might be justified by the CC's decisions on the reference.

Now for the purpose of preventing pre-emptive action AkzoNobel hereby gives to the CC the following Undertakings pursuant to section 80(2) of the Act:

Management of the Metlac business until determination of proceedings

1. Except with the prior written consent of the CC, AkzoNobel undertakes that it will not during the specified period take any action (including concerning the call option) which might prejudice the reference to the CC or impede the taking of any action under the Act by the CC or by any party which may be justified by the CC's decisions on the reference, including any action by AkzoNobel or ANPG which would:
 - (a) lead to the further integration of the Metlac business with all or any part of the AkzoNobel business;
 - (b) transfer the ownership of the Metlac business; or
 - (c) otherwise impair the ability of the Metlac business to compete independently in any markets affected by the proposed acquisition.
2. Without prejudice to the generality of paragraph 1 and, except with the prior written consent of the CC, AkzoNobel undertakes during the specified period:
 - (a) to procure that the ANPG business will continue to be carried on separately from the Metlac business and Metlac's separate sales or brand identity is to be maintained;
 - (b) to use all reasonable endeavours to procure that the Metlac business is to be maintained as a going concern and Metlac continues to trade in the ordinary course of business, without prejudice to the possibility of ANPG continuing to supply products to Metlac in the ordinary course of business;
 - (c) to procure that the customer and supplier lists of the ANPG business will continue to be operated and updated separately from the Metlac business and ANPG will not negotiate on behalf of the Metlac business;
 - (d) to procure that all existing contracts awarded to the ANPG business will continue to be serviced by the ANPG business;
 - (e) to procure that no Key Staff will be transferred between the Metlac business and AkzoNobel;
 - (f) to use all reasonable endeavours to procure that no confidential information relating to the Metlac business, shall pass, directly or indirectly, from Metlac (or any of its employees, directors, agents, subsidiaries or affiliates) to AkzoNobel or the ANPG business (or any of its employees, directors, agents or affiliates) but not so as to prevent any of the directors of Metlac Holding or Metlac appointed by AkzoNobel (or any of its subsidiaries) from fulfilling their fiduciary and other duties, obligations and rights in their capacities as directors;
 - (g) to procure that no Confidential Information relating to the ANPG business shall pass, directly or indirectly, from the ANPG business (or any of its employees, directors, agents, subsidiaries or affiliates) to the Metlac business (or any of its employees, directors, agents, subsidiaries or affiliates);
 - (h) to procure that a copy of the compliance statement required by paragraph 3 is provided to the CC no later than the first working day of each month; and

- (i) not to exercise its right to appoint a General Manager of Metlac in accordance with clause 5.8.2 of the Metlac SHA and clause 8.5.3.7 of the 2007 agreement.

Compliance

3. AkzoNobel undertakes to comply with these Undertakings.
4. AkzoNobel shall commence forthwith to provide to the CC such information or statement of compliance as the CC may from time to time require for the purposes of monitoring compliance by AkzoNobel with these Undertakings. In particular, on giving of these Undertakings a Director of AkzoNobel shall provide a statement to the CC confirming compliance with these Undertakings in the form set out in Appendix 1 to these Undertakings.
5. AkzoNobel shall comply with such written directions as the CC may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings.

Interpretation

6. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.

7. For the purposes of these Undertakings:

'the Act' means the Enterprise Act 2002;

'ANPG' and **'the ANPG business'** means the business and interests of AkzoNobel in relation to metal packaging coatings, and includes Akzo Nobel Coatings International B.V., Arnhem (the Netherlands) but does not include its interest in Metlac Holding and Metlac;

'business' has the meaning given by section 129(1) and (3) of the Act;

'business secrets' includes trade secrets, formulae and processes, accounts, financial or trading information;

'the CC' means the Competition Commission;

'confidential information' means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature;

'the decisions' means the decisions of the CC on the questions which it is required to answer by virtue of section 36 of the Act;

'in the ordinary course of business' means the usual and necessary activities connected to the day-to-day conduct and maintenance of the business as a going concern and, for the avoidance of doubt, does not include one-off or infrequent transactions;

'key staff' means members of staff of the Metlac business or of ANPG who are important to the operation of the respective businesses;

'the Metlac business' means any business carried on by Metlac Holding S.r.l., or Metlac S.p.A., or any other subsidiary or holding company within the Metlac group, including but not limited to Ceritec S.r.l. and Metlinks S.r.l.;

'the OFT' means the Office of Fair Trading;

'the specified period' means the period beginning on the date of these Undertakings and terminating at the end of the period specified in section 80(7) or (8) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

In these Undertakings unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF AKZO NOBEL N.V.

Signature

Signature

Name

Name

Title

Title

Date

Date

(Director)

(Director)

Compliance Statement

I [*insert name*] confirm on behalf of AkzoNobel that:

- (a) AkzoNobel including the ANPG business has complied with the Undertakings given by it and accepted by the CC on [*insert date*] ('the Undertakings') in the period from [*insert date*] to [*insert date*].
- (b) No action has been taken by AkzoNobel in the period from [*insert date*] to [*insert date*] that will impede the taking of any action by the CC which may be justified by its decision on the reference.
- (c) No key staff have been transferred between Metlac and AkzoNobel.
- (d) No confidential information relating to the Metlac business, has passed, directly or indirectly, from the Metlac business (or any of its employees, directors, agents or affiliates) to AkzoNobel or the ANPG business (or any of its employees, directors, agents or affiliates), except to allow any of the directors of Metlac Holding or Metlac appointed by AkzoNobel (or any of its subsidiaries) to fulfil their fiduciary and other duties, obligations and rights in their capacities as directors.
- (e) AkzoNobel and its subsidiaries remain in full compliance with the Undertakings.

Interpretation

Words and terms used in this Compliance Statement have the same meaning as those used in the Undertakings unless otherwise defined.

FOR AND ON BEHALF OF AKZO NOBEL N.V.

Signature

Name

Title

Date

(Director)