

**AKZONOBEL N.V. / METLAC HOLDING Srl  
MERGER INQUIRY**

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**AkzoNobel's Initial Submission to the  
Competition Commission**

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**14 June 2012**

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## OVERVIEW

### *The Transaction*

- 1.1 This transaction arises from arrangements between Imperial Chemical Industries (“**ICI**”) and Metlac which were put in place more than 10 years prior to AkzoNobel’s acquisition of ICI in 2008. As a result of those arrangements, AkzoNobel already holds (i) a substantial minority interest in Metlac SpA (44.44%, with the other 55.56% being held by Metlac Holding Srl (“**Metlac Holding**”)) and (ii) a 49% interest in Metlac Holding. In total, AkzoNobel therefore already holds an indirect 71.67% economic interest in the Metlac business.
- 1.2 The transaction under inquiry concerns the exercise of a call option issued by AkzoNobel Coatings International B.V. (“**ANCI**”) for the acquisition of the remaining 51% of the shares in Metlac Holding in accordance with arrangements agreed at the time of the restructuring of the Metlac JV in 2007, which were based on, and evolved from, the original 1997 agreement entered into by ICI with the founders of Metlac. The aim of these arrangements is, and has been since their inception, the transfer of all of the shares in Metlac to AkzoNobel.
- 1.3 The exercise of AkzoNobel’s call option is currently the subject of a dispute between AkzoNobel and the other shareholders in Metlac Holding, namely Mr Pier Ugo Bocchio (who is also the Managing Director of Metlac SpA) and his two sons. In particular, Mr Bocchio disagrees with the validity of the call option and the valuation mechanism for the Bocchio family’s shares. The nature of that dispute is described in more detail at Part 3 below.
- 1.4 The transfer of the shares which are the subject of the call option is conditional upon the receipt of relevant antitrust approvals. Unconditional approval for the exercise of the call option has been obtained in Germany (following an in-depth investigation by the Bundeskartellamt (“**BKartA**”)), Austria, Cyprus, Brazil, Pakistan and Russia. The only other approval still required (in addition to the Competition Commission (“**CC**”)) is that of the Turkish competition authority.

### *Product Market Definition*

- 1.5 Metal packaging coatings are lacquer coatings applied to packaging products such as cans (2-piece and 3-piece), drums, metal tubes, caps and other closures.<sup>1</sup> Metal packaging products generally have one of four end-uses: the storage of beer and beverages, the storage of food, caps & closures for glass bottles, and “general line”, (for the storage of dry foods and other products, such as chemicals or paint).

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<sup>1</sup> A glossary of the main terms used in the metal packaging coatings market (and in this Submission) is provided at Annex 1.

- 1.6 Packaging coatings are applied for two reasons in particular:
- (i) first, internal coatings are applied to prevent direct contact between the packaging materials and the content of the can, drum or tube;
  - (ii) secondly, external coatings are applied to prepare the outside of the packaging for colour printing, to seal that colour printing and to protect the packaging from the environment.
- 1.7 A basic distinction can therefore be drawn between the different types of coatings: in light of their function, internal coatings are generally subject to higher overall performance criteria and certification requirements. This is particularly the case when the packaging in question is storing foodstuffs.
- 1.8 As a result of these broad points of distinction, the competitive dynamics within the different segments of the packaging coatings market can vary to a degree – whether between coatings for beverage, food or other metal packaging products or between internal or external coatings. A more detailed consideration of the principal product segments in the metal packaging coatings market is provided at Part 6 of this Submission.
- 1.9 Notwithstanding these variations, the European Commission has previously assessed the relevant product market as a single market for metal packaging coatings, due to supply-side substitution factors.<sup>2</sup> In its recent clearance decision in respect of this transaction, the BKartA also found the relevant product market to be that for metal packaging coatings.<sup>3</sup> The OFT in turn “*considered it appropriate to assess the transaction using a product scope no wider than metal packaging coatings*”.<sup>4</sup>
- 1.10 From the supply-side, the production processes for metal packaging coatings are broadly similar across the different segments of the market - although the manufacturing process for producing internal spray for 2-piece cans is different. Moreover, the relevant production processes are generally not complex. With the exception of internal spray, products for use across multiple segments can be produced in the same factories and, within a short time, on the same production lines. There are no significant technological, production or regulatory factors which lessen this scope for supply-side substitutability.

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<sup>2</sup> Case COMP M.4853 PPG/SigmaKalon (10 December 2007), at paragraph 38 *et seq.*

<sup>3</sup> Translation of BKartA final decision, paragraph 34 *et seq.*

<sup>4</sup> OFT Decision ME/5319/12 (23 May 2012), at paragraph 38.

- 1.11 AkzoNobel submits that, in any event, it is not necessary for the CC to reach a precise determination on product market definition, as no substantial lessening of competition ("SLC") arises in the UK on any plausible definition of the market.

***Geographic Market Definition***

- 1.12 Consistent with the European Commission's approach in *PPG/SigmaKalon* and the OFT's findings in its decision, AkzoNobel considers the relevant market to be at least EEA-wide in scope. The following factors support this definition:
- (i) the supply of metal packaging coatings generally takes place from production facilities across Europe. These facilities can distribute product to customers across Europe and beyond (including to the Middle East, Africa and other parts of the world);
  - (ii) the relevant coatings products are easily transported, and transport costs are low;
  - (iii) customers typically purchase their requirements for at least the whole of Europe (if not wider), and neither purchasing preferences nor prices vary significantly across Europe; and
  - (iv) legal and regulatory requirements for coatings products are primarily based on EU legislation or are highly similar across Europe.

- 1.13 Indeed, there are a number of factors pointing towards a global market for metal packaging coatings – notably the global nature of key customers, the relatively harmonised global standards for quality assurance for both internal and external coatings, and the low costs of transportation globally for packaging coatings. These global considerations are relevant to an assessment of the impact of the transaction on competition within the UK. However, AkzoNobel submits that it is not necessary for the CC to reach a conclusion on geographic market definition as no prospect of an SLC arises in the UK on any plausible basis.

***Competitive Assessment***

- 1.14 The exercise of AkzoNobel's call option – and the resulting full merger between the metal packaging coatings activities of Metlac and those of the AkzoNobel Packaging Coatings ("ANPG") business unit<sup>5</sup> – will not give rise to an SLC in the UK, for the following reasons:

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<sup>5</sup> References to ANPG in this Submission are to AkzoNobel's Packaging Coatings, the worldwide business, which has operations not only in EMEA (Europe, Middle East and Africa), but also in North America, South America and Asia.

- (i) The parties' combined market share will not be at levels which would give rise to competition concerns. ANPG and Metlac had an estimated *pro forma* share of the metal packaging coatings market of [30–40%] by value and [40–50%] by volume on an EEA-wide basis in 2011;
- (ii) Within the metal packaging coatings market, AkzoNobel will continue to face significant competition following the exercise of the call option:
  - In relation to external coatings for 2-piece cans for use in the beverages sector (which is the main area of product overlap between ANPG and Metlac), the parties have an estimated *pro forma* share of **[CONFIDENTIAL]** by value. AkzoNobel will continue to face competition from major international suppliers Valspar and PPG,<sup>6</sup> both of which are active on a worldwide scale and offer broadly comparable ranges of products across all segments of packaging coatings. AkzoNobel will also continue to face competition in Europe from other suppliers, including Grace Darex and Actega, which are significant suppliers to the metal packaging industry with quality products, well-established reputations and strong connections to the leading can manufacturers in Europe;
  - In relation to coatings in each of the other segments in which an overlap arises – coatings for Food, Caps and Closures and General Line packaging (sometimes referred to as “FCG”) – in addition to the four largest competitors (Valspar, PPG, Grace Darex and Actega), there are a significant number of smaller niche suppliers.
- (iii) The customer profile is different between the beverage and FCG sectors of the metal packaging coatings market:
  - Total sales of packaging coatings to the beverage sector in the EEA amounted to **[CONFIDENTIAL]** in 2011. The vast majority of beverage cans in Europe are produced by a small number of large customers – namely Rexam, Crown, Ball and Can-Pack – which exercise significant buyer power. Procurement is conducted by means of sophisticated tendering processes and contracts are typically weighted heavily in the customer's favour, for example by fixing pricing levels for the term of the contract and facilitating switching between suppliers. These customers also face downstream competitive pressures from their customers (e.g. food and drink suppliers) who use various different suppliers and different packaging materials (e.g. plastic and glass packaging) for their products; ANPG works closely with these customers to ensure that their

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<sup>6</sup> AkzoNobel notes that in the United States only PPG and Valspar compete against ANPG in the beverages sector. The US market is highly competitive, notwithstanding this level of concentration.

products remain competitive in terms of price and performance. These customers are, in particular, highly sensitive to price and can quickly and easily switch large contracts between suppliers to obtain best prices – as seen in the case of [CONFIDENTIAL];

- Total sales of packaging coatings to the FCG sector in the EEA amounted to [CONFIDENTIAL] in 2011. There are a larger number of customers in this sector than in beverages, reflecting the greater number of niche packaging products made for food, general line and caps and closures and the more diverse range of coatings available for those products. FCG customers tend to deploy less formal tendering processes for procuring coatings than those in the beverages sector, reflecting their narrower product and geographic focus, but remain sensitive to the price and competitive offerings of coatings suppliers.

(iv) ANPG and Metlac are not closest competitors in the metal packaging coatings market, as evidenced by the following:

- Although Metlac supplies customers with external beverage coatings (B2E), it is not active in the supply of other coatings to the beverages sector. In relation to ANPG's most significant segment in terms of EEA revenues – internal spray for 2-piece beverage cans (B2I) – Metlac is not active at all. Metlac is also not active in the supply of coatings for beverage ends (BE). In contrast, ANPG competes with Valspar and PPG across all segments in the beverage sector;
- ANPG and Metlac, while active across all FCG packaging coatings segments (FE, F2, F3/B3, C&C and GL), each has a different product focus within those segments and competes with a broad range of suppliers (both large and niche/specialist suppliers);
- Metlac is not a leader in terms of innovation or R&D. ANPG's research, development and innovation ("RDI") capabilities, as well as those of PPG and Valspar, are very substantially greater than those of Metlac. Moreover, in addition to developing individual formulations and processes for packaging coatings, ANPG's RDI is directed towards industry-wide innovations, such as improved resins, crosslinking methodologies and technology platforms. Metlac does not engage in this type of R&D activity to any material extent.

(v) Barriers to expansion in relation to external coatings of 2-piece or 3-piece cans are not high. The manufacturing process for the different coatings segments is not complex, raw materials are readily available and there are no onerous certification requirements for such products. While the barriers to expansion in relation to internal sprays and coatings which will be in contact with food or beverages packaged in the cans are somewhat higher (in terms of performance requirements and qualification periods), ANPG already faces strong competition in that segment from PPG and Valspar and Metlac is not present.

- (vi) Following the exercise of the call option, and the full merger between ANPG and Metlac, there are a number of existing suppliers in all segments which could expand if necessary to fulfil customer demand and would prevent AkzoNobel, post-transaction, from increasing prices or reducing capacity.

### **No Coordinated Effects**

- 1.15 The exercise of the call option will not give rise to coordinated effects. AkzoNobel notes in this regard the OFT's finding that "*in relation to coordinated effects, the evidence is less clear and points to a number of difficulties in suppliers reaching and monitoring a co-ordinated outcome. Also, the internal and external sustainability of co-ordination may be difficult to sustain*".<sup>7</sup>
- 1.16 Given that suppliers' pricing is not transparent and AkzoNobel has no visibility on its competitors' pricing or overall costs, it is implausible that ANPG, PPG and Valspar would seek to co-ordinate their pricing strategies, capacity levels or certification of particular products post-transaction. This is particularly the case, given:
- the strong negotiating position of customers - notably Rexam, Crown, Ball and Can-Pack in the beverages sector, as well as the likes of Ardagh, Crown and others in the FCG sector. These customers have the ability to drive down prices through their procurement processes, be they formal tenders or otherwise;
  - pricing (particularly in the beverages sector) is highly dependent on the cost of raw materials, over which ANPG, PPG and Valspar have very little control; and
  - the presence of a number of significant smaller competitors (including those with substantial international operations, such as Grace Darex and Actega).

### **Conclusion**

- 1.17 The exercise of AkzoNobel's call option does not give rise to any prospect of an SLC in the UK. Metlac's sales of metal packaging coatings in the UK (at just [CONFIDENTIAL] in 2010, accounting for less than [CONFIDENTIAL] of its global turnover) is very small. ANPG and Metlac are not close competitors. Following the exercise of the call option, AkzoNobel will continue to face significant levels of competition from a number of other suppliers in all market segments, as well as competitive constraints exercised by customers.
- 1.18 The context in which this case has been referred to the CC is unusual. [CONFIDENTIAL]. Despite Mr Bocchio's considerable efforts, the transaction has already been approved unconditionally by the competition authorities in the other EEA

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<sup>7</sup> OFT Decision ME/5319/12 (23 May 2012), at paragraph 140.

jurisdictions which have reviewed it (including in the case of the BKartA, following an extensive Phase II investigation). In AkzoNobel's view, there are no special UK considerations distinct from the analysis undertaken by those authorities that would warrant the CC reaching a different conclusion.

## THE PARTIES

### **AkzoNobel**

- 2.1 AkzoNobel N.V. is a multinational company headquartered in the Netherlands, specialising in performance coatings (including metal packaging coatings), decorative paints and specialty chemicals. It supplies a broad range of products to industries and customers worldwide. AkzoNobel's turnover in 2011 was some €15.7 billion (2010: €14.6 billion).
- 2.2 AkzoNobel's main businesses are as follows:
- (i) **Performance Coatings:** Performance coatings accounted for approximately 33% of AkzoNobel's turnover in 2011. There are five main AkzoNobel business units within this broad category, i.e. automotive and aerospace coatings; marine and protective coatings; powder coatings; industrial coatings (which include metal packaging coatings); and wood finishes & adhesives. AkzoNobel's brand names for Performance Coatings include *Interpon*, *International*, *Sikkens* and *Resicoat*.
  - (ii) **Decorative Paints:** Decorative paints accounted for approximately 33% of AkzoNobel's turnover in 2011. This business area manufactures paints, lacquers, varnishes and adhesives, as well as speciality coatings for metal, concrete and building materials. AkzoNobel's brand names in this sector include *Sikkens*, *Dulux* and *Hammerite*.
  - (iii) **Specialty Chemicals:** Speciality chemicals accounted for approximately 34% of AkzoNobel's turnover in 2011. These include: industrial chemicals; functional chemicals; surface chemistry; pulp and paper chemicals; and Chemicals Pakistan.
- 2.3 As noted above, packaging coatings (ANPG) is a sub-business unit of the Industrial Coatings business, which itself is part of the wider Performance Coatings business of AkzoNobel. In 2008, the ANPG headquarters were relocated to Hilden, Germany and a new Business Unit leadership team was appointed. ANPG 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.

- 2.4 AkzoNobel's global packaging coatings business locations are shown in the diagram below. As can be seen, AkzoNobel's interests in packaging coatings are global in scope, with production facilities in the United States, South America, Europe and Asia.<sup>8</sup>

**Figure 2.1**  
**AkzoNobel metal packaging coatings production locations**

[CONFIDENTIAL]

*Source: AkzoNobel.*

- 2.5 ANCI is a wholly-owned subsidiary of AkzoNobel N.V., and a pure holding company for a number of AkzoNobel's coatings entities, comprising *inter alia* those that include the activities of ANPG in the EMEA region (Europe, Middle East, Africa). Part of AkzoNobel's interest in Metlac is held through ANCI, as described in more detail in the following paragraphs.

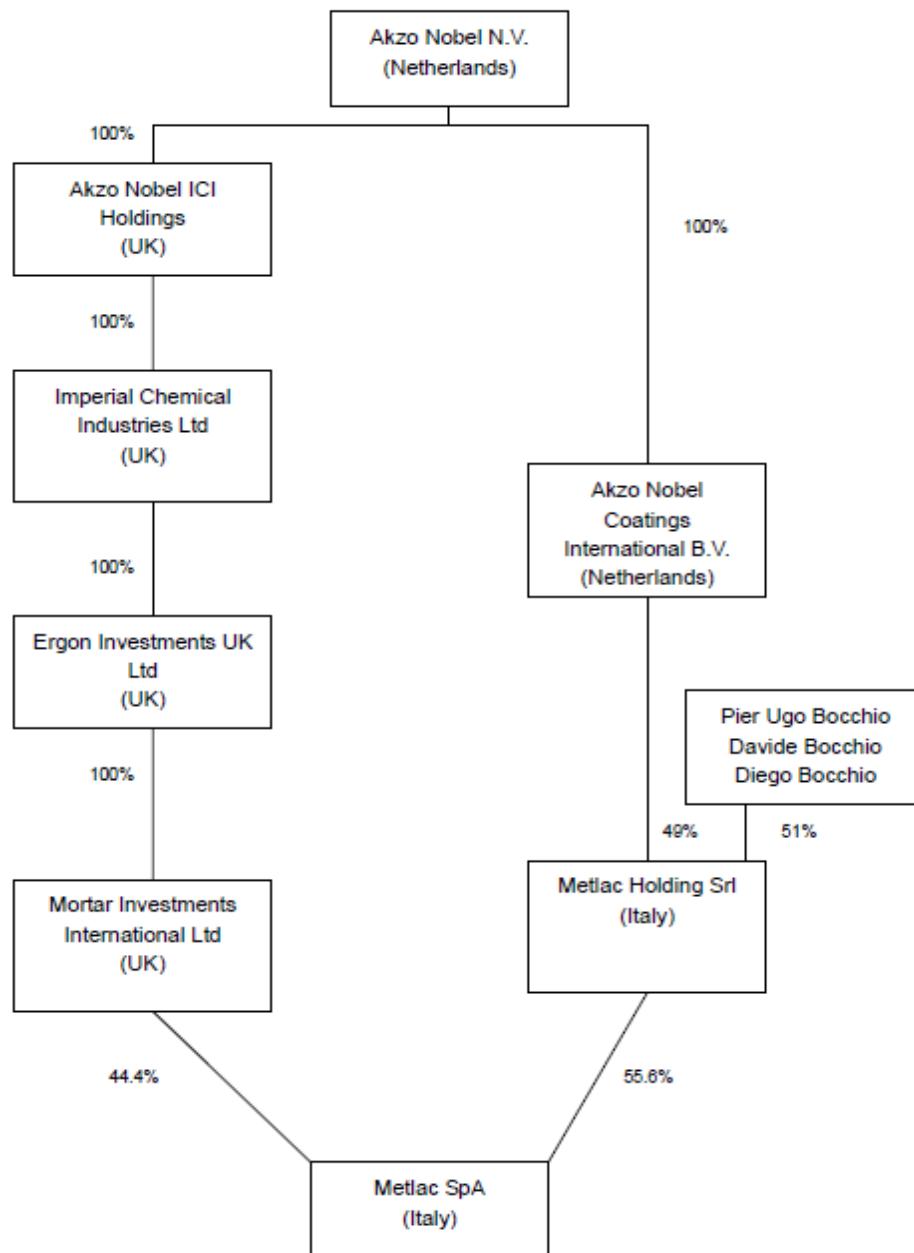
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<sup>8</sup> AkzoNobel has provided at Annex 8 of its response to the CC's Initial Factual Information Request a structure chart outlining the AkzoNobel entities active (directly or indirectly) in the supply of packaging coatings. A copy of that structure chart is also provided, for convenience, at Annex 2 to this Submission.

***Relationship between AkzoNobel and Metlac***

- 2.6 The current relationship between Metlac and AkzoNobel/ANCI is illustrated below.

**Figure 2.2**  
**Structure of AkzoNobel/ANCI holding in Metlac**



- 2.7 Metlac is thus already an associated company of AkzoNobel, focused exclusively on the manufacture of metal packaging coatings and decorative inks. Its global turnover in 2010 was [CONFIDENTIAL], while its turnover in the UK was just [CONFIDENTIAL] (accounting for [CONFIDENTIAL] of Metlac's global turnover).

- 2.8 Metlac's geographic focus is primarily in Italy, which continues to account for approximately [CONFIDENTIAL] of its turnover and is the location of its sole manufacturing facility at Bosco Marengo.<sup>9</sup> ICI's initial joint venture with Metlac involved the transfer of ICI's Italian operations (with the exception of internal spray) to Metlac, in addition to ICI providing technology licences, manufacturing know-how, investment and operational support to Metlac. [CONFIDENTIAL].

***Overlap***

- 2.9 Although ANPG and Metlac are each present in many of the segments and sub-segments within the metal packaging coatings market, the focus of their businesses is different. In most cases, the overlap between the parties is not significant. Furthermore, in all segments, the parties face competition from a range of other competitors.

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<sup>9</sup> Metlac has since expanded its sales reach beyond Italy.

## INFORMATION ABOUT THE TRANSACTION

- 3.1 It is important to understand the unique circumstances of this case in order to place the transaction (and consideration of the competition issues) in the appropriate context. This background is not referred to in the OFT's decision, but is described below.

### ***History of the Bocchio relationship with AkzoNobel***

- 3.2 As already explained above, AkzoNobel already holds a 44.44% direct interest in Metlac SpA (the operating company) through its wholly-owned subsidiary Mortar Investments International Limited. The remaining 55.56% of Metlac SpA is held by Metlac Holding Srl – of which ANCI (a wholly owned AkzoNobel subsidiary) already holds 49%. AkzoNobel therefore already holds an indirect 71.67% economic interest in the Metlac business. The remaining 51% of Metlac Holding Srl is currently held by Pier Ugo Bocchio (who is also the current Managing Director of Metlac SpA) and his two sons.
- 3.3 AkzoNobel inherited the relationship with Mr Bocchio and his family in 2008 when it acquired ICI.<sup>10</sup> Over the course of his long career in packaging coatings, Mr Bocchio has enjoyed relationships with a number of international packaging coatings businesses. Experience shows that Mr Bocchio is well able to run a business.
- 3.4 Some 30 years ago he had been division manager of Fiat's automotive and industrial coatings business which had been producing packaging coatings under licence from Coates and which was sold to PPG in 1984. Over 25 years ago (in 1988), Mr Bocchio established the Coates Italia business (focused exclusively on packaging), which was owned 44.44% by Coates, 25% by Mr Bocchio and family, 25% by a second Italian family and 5.56% by a third Italian family.
- 3.5 In 1997 Coates sold its stake to Valspar, prompting Mr Bocchio and the other Italian minority shareholders to exercise a call option over the stake under a financing deal with ICI. Under those 1997 JV arrangements, ICI acquired this 44.44% shareholding in Metlac, contributed its own Italian packaging coatings business, licensed a portfolio of packaging coatings technology to the merged business, agreed not to compete with the Italian JV, and conferred substantial autonomy on Mr Bocchio to run the business without interference from above.<sup>11</sup> However, ICI retained its non-Italian activities outside the JV - including other technologies such as internal spray for 2-piece cans. These JV arrangements included put and call options under which ICI expected to acquire full control after 10 years in 2007.

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<sup>10</sup> A chronology of the relationship between ICI/AkzoNobel and Metlac is provided at Annex 3 to this Submission.

<sup>11</sup> AkzoNobel does not license new formulations to Metlac (see counterfactual analysis at Part 4).

- 3.6 The put and call options were originally scheduled to expire in [CONFIDENTIAL].<sup>12</sup> However, in advance of that date, ICI (at Mr Bocchio's express request) negotiated and agreed an amended JV structure for a maximum period of a further five years; two of the three founder families exited Metlac, but the Bocchio family remained. A new holding company was put in place (Metlac Holding) as follows:
- (i) ICI set up Metlac Holding;
  - (ii) The Bocchio family took a 51% stake in Metlac Holding with ICI taking 49% (and retaining its existing 44.44% interest in Metlac SpA); and
  - (iii) The Bocchio, Barlotti and Maietta families sell all their shares in Metlac SpA to Metlac Holding, so that Metlac Holding then holds 55.56% of the shares in Metlac SpA.
- 3.7 Mr Bocchio and his family thereby assured legal control of the Metlac group but ICI's indirect financial interest totalled some 71.67%. The 2007 Formation & Quotaholders Agreement also envisaged that 100% ownership would pass to ICI (now AkzoNobel) within five years of the date of the agreement at an agreed formula price by way of put- and call- options.
- 3.8 [CONFIDENTIAL].
- The Current Dispute*
- 3.9 Once it came to the time for AkzoNobel to exercise the call option in October 2011,<sup>13</sup> [CONFIDENTIAL]. Following its formal exercise, Mr Bocchio has taken issue both with the validity of the call option process and with the calculation of the amount payable to the Bocchio shareholders for their 51% interest in the holding company (including the date at which the calculation should properly be made); [CONFIDENTIAL].
- 3.10 [CONFIDENTIAL].
- 3.11 [CONFIDENTIAL].<sup>14</sup> [CONFIDENTIAL].<sup>15</sup>

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<sup>12</sup> [CONFIDENTIAL].

<sup>13</sup> The 2007 arrangements gave ICI/AkzoNobel the right to exercise the call option at any time between [CONFIDENTIAL].

<sup>14</sup> [CONFIDENTIAL].

<sup>15</sup> [CONFIDENTIAL].

### ***The Merger Control Process***

- 3.12 In addition to the proceedings in the UK, the transaction has been subject to merger control reviews elsewhere in the EU - in Austria, Cyprus and Germany.<sup>16</sup> In the case of the latter, the BKartA initiated Phase II proceedings on 27 January 2012. The BKartA's in-depth investigations considered substantial volumes of information and data provided by AkzoNobel, Metlac and third parties.<sup>17</sup> The BKartA ultimately adopted an unconditional Phase II clearance decision on 25 April 2012.<sup>18</sup>
- 3.13 The BKartA investigation and decision has considered the impact of exactly the same transaction on the same EEA-wide (or wider) market as the CC is now investigating. AkzoNobel therefore encourages the CC to take due account of the BKartA's findings and analyses, as part of the efficient conduct of its review. This would be consistent with moves towards greater cooperation between the national competition authorities in the review of cross-border transactions, particularly those within the European Competition Network.<sup>19</sup>

### ***Rationale***

- 3.14 There is a clear legal and economic rationale for AkzoNobel's exercise of its option to acquire the remaining shares in Metlac:
- (i) Metlac is already an associated company within the AkzoNobel group. Since the establishment of the JV by ICI in 1997, it was always envisaged that the businesses would ultimately come under full common control;
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<sup>16</sup> AkzoNobel had envisaged notifying the transaction to the European Commission (using the Article 4(5) Form RS procedure) so as to benefit from the EU Merger Regulation's "one-stop shop"; however, this possibility was denied to it when on 28 December 2011 Metlac unilaterally – and without even informing AkzoNobel – notified the transaction to the BKartA requesting the prohibition of the transfer of the shares. Metlac made this notification the day after it received formal notice (on 27 December 2011) of AkzoNobel's exercise of the option. [CONFIDENTIAL].

<sup>17</sup> For an indication of the information on the BKartA's file, see Annex 4 to this Submission.

<sup>18</sup> Metlac subsequently filed an appeal against that decision to the Higher Regional Court of Düsseldorf. It is likely that it will be declared inadmissible (as has already been ruled with regard to an application for interim measures made by Metlac).

<sup>19</sup> The ECN established the EU Merger Working Group in 2010, the objective of which is to "*foster increased consistency, convergence and cooperation among EU major jurisdictions.*" (The Group has a mandate to identify areas of possible improvements regarding issues arising in relation to mergers with a cross-border impact and to explore possible solutions, focusing on what is feasible within the existing legal frameworks, and drawing from agency practices and experience. In November 2011, it adopted a set of "*Best Practices between EU National Competition Authorities in Merger Review*". Consistent with these objectives, AkzoNobel also engaged in discussions with the NCAs in other EU Member States which had shown an interest in the transaction. These included notably Italy and Spain, both of which closed their informal investigations without requiring a notification (after contacts with the BKartA), as well as Cyprus and Austria which formally approved the transaction on 14 February and 4 May 2012 respectively.

- (ii) Metlac complements ANPG's existing position in regions where ANPG is under-represented, including good access to markets in the Middle East. In particular, Metlac has a significant presence in Italy which accounts for [CONFIDENTIAL] of its sales, whereas Italy accounts for [CONFIDENTIAL] of ANPG's EEA sales of metal packaging coatings, (given the JV non-compete arrangements under which ICI focused its Italian interests in packaging coatings on Metlac); and
- (iii) The integration of Metlac with ANPG will give rise to significant synergies and efficiencies, enabling AkzoNobel to deliver further benefits to customers.

## THE COUNTERFACTUAL

- 4.1 [CONFIDENTIAL].
- 4.2 [CONFIDENTIAL].<sup>20 21</sup>
- 4.3 [CONFIDENTIAL].
- 4.4 [CONFIDENTIAL].
- 4.5 [CONFIDENTIAL].

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<sup>20</sup> [CONFIDENTIAL].

<sup>21</sup> [CONFIDENTIAL].

## RELEVANT MARKETS

### I. Relevant Product Market

- 5.1 In *PPG/SigmaKalon*,<sup>22</sup> the European Commission identified one broad market for metal packaging coatings, due to supply-side substitution considerations.<sup>23</sup>
- 5.2 The market may be viewed as comprising of a number of segments which take into account (i) end use, (ii) can type (2-piece or 3-piece), and (iii) whether the coating is for external decoration and protection of the can or for internal food/beverage contact.
- 5.3 There are four primary end-uses for metal packaging products:
  - (i) **Beer & Beverage:** This segment comprises predominantly 2-piece cans for all types of drinks. Drinks may also be supplied in 3-piece cans, but this is considerably less common in Europe, as the majority of production has been converted to 2-piece cans;
  - (ii) **Food:** These are mainly 3-piece cans for all types of food, ranging e.g. from prepared soup to canned fish;
  - (iii) **Caps & Closures:** These are the metal caps and closures (including crowns and screw caps) used mainly on glass bottles;
  - (iv) **General Line:** These cans, tins and trays are used mainly for dry-food products (such as biscuits or confectionery), as well as for the packaging of other products such as chemicals or paint.
- 5.4 In the context of these overall end-uses, cans may be either 2-piece (comprising a combined tube/bottom and a separate top) or 3-piece (comprising the cylindrical tube, separate top and bottom). 2-piece cans are generally used for beer and beverages, while 3-piece cans generally store food or other general products (such as paint etc.), although this is not always the case.
- 5.5 The coatings applied to the cans will vary depending on whether the coating is for internal or external application (which is a key point of distinction) or the end of the can. The end-use of the can is also relevant in this context. Table 5.1 below provides a

<sup>22</sup> Case COMP/M.4853 *PPG/SigmaKalon* (10 December 2007), in particular at paragraphs 38 to 39.

<sup>23</sup> The BKartA came to the same view on market definition in its decision in this case.

meaningful segmentation of different types of coatings within the wider metal packaging coatings market.<sup>24</sup>

**Table 5.1**  
**The 8 main segments of the metal packaging coatings market**

Main end-use	Can type	Segments	Sub-segments	
Beer and Beverage (B&B)	2-piece	<b>B2E</b> Beverage 2-piece exterior	Aluminium	
			Steel	
			Rim coatings	Water Solvent UV
	2-piece	<b>B2I</b> Beverage 2-piece interior	Aluminium	
			Steel	
	2-piece and 3-piece	<b>BE</b> Beverage ends	External	
			Internal	
Food	2-piece and 3-piece	<b>FE</b> Food ends	External	Aluminium Aluminium FAEOE Steel Steel FAEOE
			Internal	Aluminium Aluminium FAEOE Steel Steel FAEOE
			D&I (DWI)	External Internal
			DRD	External Steel Aluminium Internal Steel Aluminium
	2-piece	<b>F2</b> Food 2-piece (internal and external)	F3	External Side stripe Steel Internal Side stripe Steel
			B3	External Internal
	3-piece	<b>F3 / B3</b> Food / Beverage 3-piece (interior and exterior)		
Other	C&C	<b>C&amp;C</b> Caps & closures	External	Aluminium ROPP Crowns RTO
			Internal	Aluminium ROPP Crowns RTO
	GL	<b>GL</b> General line	External	Aerosol Steel Aluminium Side stripe Industrial side stripe Drum coatings Collapsible tubes
			Internal	Aerosol Steel Aluminium Side stripe Industrial side stripe Drum coatings Collapsible tubes

Source: AkzoNobel.

<sup>24</sup> AkzoNobel has also provided at Annex 5 to this Submission graphs outlining the relative size of each of these segments within the market in 2011, together with the shares of the principal suppliers in each segment.

- 5.6 The beverages sector is characterised by the presence of four major customers in Europe, which account for the vast majority of 2-piece can manufacturing: Rexam, Crown, Ball and Can-Pack. These large customers operate on a global scale, deploy sophisticated procurement processes including formal tenders, and exercise significant buyer power as the only effective route to market for suppliers of metal packaging coatings for the beverage segment.
- 5.7 The FCG sector features a larger number of customers – including Ardagh, Franpac, Massilly, Mutronic, Nampack, Vitogiannis, Rauh, Grafilac, Blechwaren Limburg and Crown – as there are a wider range of different packaging products in these segments (see Table 5.1 above). These customers tend to procure coatings on a less formal basis, but nevertheless source from a number of suppliers as part of ensuring competitive offerings on quality, performance and price.
- 5.8 The chart below shows the relative size of the segments in the overall metal packaging coatings market at the EEA level. As can be seen below, General Line accounts for the largest proportion of the market, at some [CONFIDENTIAL]. The B2E segment, which is the segment of most significant overlap between Metlac and AkzoNobel, accounts for only approximately [CONFIDENTIAL] of the overall market ([CONFIDENTIAL]).

**Figure 5.1**  
**Relative value of metal packaging coatings market segments, EEA 2011**

[CONFIDENTIAL]

#### ***Production***

- 5.9 The production processes for metal packaging coatings are generally similar across all segments, although there are points of distinction in the manufacture of internal spray for 2-piece cans (B2I), a segment in which Metlac is not active.
- 5.10 The classes of raw materials used for all segments of metal packaging coatings are materially the same. In addition, the blending process is similar across all segments, whether the resins are sourced from third party suppliers or produced in-house. Converting a production line to a different segment of coatings (e.g. from B2E to F3/B3 or *vice versa*) is straightforward and not particularly costly, as batch to batch switching is the norm. Indeed, with the exception of B2I, AkzoNobel frequently switches the production of coatings at its manufacturing facilities.
- 5.11 As acknowledged at paragraph 24 of the OFT's Decision, "*the (European Commission in PPG/SigmaKalon) found that switching of production between various sub-segments (beverage cans, food cans, caps and closures and general line) can be done in short time at virtually no cost*". The majority of third party respondents to the OFT's market testing also stated that there were no relevant distinctions between different end-uses as the application process and technology was the same for each and the same type of coating or lacquer can be used across different end-uses.

- 5.12 There is no particular distinction to be drawn in terms of formulation between the external coating of 2-piece cans or of 3-piece cans, although external sides of 2-piece cans are coated or printed using rollers (like 3-piece cans) whereas internal coatings of 2-piece cans will always be sprayed on after the can has been punched out of the steel or aluminium sheet.
- 5.13 Internal coatings are highly commoditised, as they do not need to be customised for colour or texture – once the coating is of the requisite specification and has the appropriate certifications for safety, the product is essentially standard. While the manufacture and supply of internal spray is a core part of ANPG's activities in the EEA, Metlac is not active in the B2I segment.

### ***Regulatory Requirements***

- 5.14 The regulatory requirements are broadly the same for internal coatings used in various metal packaging products, as (i) they are all based on the acceptable levels of chemicals exposure and (ii) the coatings contain largely the same raw materials. It is only the testing protocols which may differ between segments depending on the contents of the final product – here the principal distinction is between internal and external coatings.
- 5.15 Food cans have greater performance and testing requirements than beverage cans (given *inter alia* issues regarding the contents of the fill, cooking preparation requirements, and shelf-life requirements). Protection and shelf-life requirements are more demanding for food; for instance, coatings for food cans generally have a 2 year pack test, whereas coatings for beverage cans have a 6 month pack test (beverage cans are typically used by consumers within a month or two of shipment from the customer's filling plant). Flexibility requirements are more demanding for internal coatings for draw and redraw ("DRD") and full aperture easy open end ("FAEOE") food cans than they are for inside spray for 2-piece beverage cans.
- 5.16 Generally speaking, the testing requirements for external coatings (whether for food or beverages) are not as stringent as those for internal coatings which are in contact with food and drink. The so-called "sweat and saliva" test (a simple test for external coatings on beverage cans that is not typically required for food cans), which assesses the basic quality of the coating applied to the can, is not at all demanding (being met by all EEA suppliers) and is not a test mandated by any specific regulation or industry standard.
- 5.17 In addition, can makers' production lines use the same equipment to apply equivalent coatings from all suppliers, and this equipment does not have distinct requirements for coatings sourced from different suppliers. The necessary coating equipment is manufactured and supplied by essentially the same equipment manufacturers.

### ***Technological Developments***

- 5.18 Metal packaging coatings may generally be either waterborne, solvent-borne, or powder; the ingredients used will depend on whether the product is for food/beverage

contact or not. The table below summarises the technology used in metal packaging coatings products.

**Table 5.2**  
**Technology deployed in metal packaging handling products**

Product basis	Product class	Typical application	Core technology
Water Based	Food contact	Inside spray 2-piece food and beverage cans	[CONFIDENTIAL]
	Non-food contact	Beverage can external undercoat and varnish	[CONFIDENTIAL]
Solvent Based	Food contact	Internal roll-coat 3-piece food can bodies and ends	[CONFIDENTIAL]
		2-piece food can bodies Full-panel easy open ends Internal closures	[CONFIDENTIAL]
	Non-food contact	Beverage easy-open end external 2-piece food can bodies external External coatings for aerosol cans, caps & closures	[CONFIDENTIAL]
Powder	Powder side seam stripe	Interior side seam production for 3-piece food cans	[CONFIDENTIAL]
	FSMD Inks	Aerosol cans, GL cans, battery jackets	[CONFIDENTIAL]
	UV Varnish	External overprint varnish for aerosol cans	[CONFIDENTIAL]

Source: AkzoNobel Packaging Strategy 2009-2013.

- 5.19 There have not been any recent technical developments that would lessen the scope for supply-side substitutability. The established nature of the relevant technology is confirmed by [CONFIDENTIAL], which confirms that the technology used is several decades old.<sup>25</sup>
- 5.20 Recent developments in technology have primarily been directed towards internal coatings, with development of external coatings taking a lower order of priority. The most common component of internal can coatings has traditionally been bisphenol-A (BPA) based epoxy resins. However, there is growing interest in moves away from the use of BPA resins, and a legislative trend towards a ban the use of BPA and compounds

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<sup>25</sup> See in particular [CONFIDENTIAL]. AkzoNobel notes that Metlac alleged in its notification to the BKartA that technological developments had diminished supply-side substitutability, which it was subsequently unable to substantiate (in four months of proceedings and at least nine written submissions to the BKartA).

containing BPA in varnish and coatings on packaging for foods particularly intended for young children.<sup>26</sup> Each of the principal suppliers of internal spray to the B2I segment has developed BPA-free<sup>27</sup> products, currently in qualification.

- 5.21 The move to BPANI will not have any material impact on the external coatings for beverage cans in the immediate future. Neither legislation nor any customers currently require external coatings to be BPANI. In addition, external coatings products have always been based on non-epoxy technologies (acrylic or polyester) with potentially only an additive containing BPA for adhesion and stability.

### ***Suppliers***

- 5.22 ANPG, Valspar and PPG each offer a full line of products in all eight of the market segments within metal packaging coatings and are major international companies competing on a global basis. ANPG, Valspar and PPG are the three largest manufacturers in the beverages sector – this will not change following the completion of the transaction. Within the food, C&C and general line segments, there is a broader range of competitors active.
- 5.23 There are a number of manufacturers of comparable size to Metlac that are active in Europe, such as Grace Darex, Actega and Salchi. These suppliers focus on supplying a smaller number of individual segments. Given the supply-side substitution considerations described above, these other suppliers are able to offer products across substantially all segments in which Metlac is active.

## **II. Relevant Geographic Market**

- 5.24 In *PPG/SigmaKalon*, the European Commission considered the metal packaging coatings market to be at least EEA-wide in scope.<sup>28</sup> AkzoNobel notes the following factors, highlighted by the OFT, in support of this definition:
- (i) the supply of metal packaging coatings generally takes place from production facilities across Europe. These facilities distribute product across Europe. Large international manufacturers such as Valspar, PPG and ANPG actually operate on a global level – [CONFIDENTIAL]<sup>29</sup>;

<sup>26</sup> While food safety authorities such as the European Food Safety Authority (“EFSA”) will reassess the situation following new studies based on relevant data and taking into account routes of exposure that mimic end-use applications (ingestion), the current position remains that any traces of BPA entering the body through materials in contact with food is too small to pose any risk to the health of children or adults.

<sup>27</sup> These products are referred to as BPA Non-Intent (“BPANI”) products.

<sup>28</sup> The BKartA adopted the same market definition in its decision (Translation of BKartA decision, at paragraph 56).

<sup>29</sup> [CONFIDENTIAL].

- (ii) the relevant products are easily transported in large bulk tankers (or smaller containers) and transport costs are low;
  - (iii) customers purchase for the whole of the EEA and neither purchasing preferences nor prices vary significantly across Europe; and
  - (iv) legal and regulatory requirements for coatings products are primarily based on EU legislation or are highly similar across Europe.
- 5.25 There are a number of factors pointing towards a global market for metal packaging coatings – notably the relatively harmonised global standards for quality assurance for both internal and external coatings and the low costs of transportation globally for packaging coatings. The global nature of customers in the beverages sector is also a supporting factor. However, AkzoNobel submits that it is not necessary for the CC to reach a conclusion on geographic market definition as no prospect of an SLC arises on any plausible basis.

## COMPETITIVE EFFECTS OF THE TRANSACTION

### I. Overview

- 6.1 There is no credible basis for concluding that the exercise by AkzoNobel of its call option and acquisition of remaining shares in Metlac will give rise to an SLC in the UK. Indeed, the BKartA and other authorities have already dismissed contrary arguments (having assessed the impact of the transaction on the market in Europe and elsewhere).
- 6.2 The parties' *pro forma* combined shares at the EEA level are set out in the table below.

**Table 6.1**  
**Market share estimates, metal packaging coating (EEA by value, 2010)**

2010	Value (EUR million)	Value (%)
ANPG	[...]	[20-30%]
Metlac	[...]	[10-20%]
<b>Combined</b>	[...]	<b>[30-40%]</b>
Valspar	[...]	[20-30%]
PPG	[...]	[10-20%]
Actega	[...]	[0-10%]
Others	[...]	[10-20%]
<b>Total</b>	[...]	<b>100.0%</b>

Source: *AkzoNobel estimates*.

- 6.3 On this basis, the parties' *pro forma* combined share of the overall metal packaging coating market is [30–40%] on an EEA-wide basis, with an increment to ANPG's existing position of approximately [0–10%]. ANPG will continue to face strong competition from current market leader Valspar ([20–30%] by value), as well as from PPG ([10–20%]), Actega ([0–10%]) and others ([10–20%]).
- 6.4 Analysing the market on a sector basis equally shows that no competition concerns arise. As can be seen from Figure 6.1 below, Metlac has a small position in beverages - accounting for just [0–10%] of sales of coatings by value in beverages. Valspar and PPG can both clearly be seen to be strong competitors, with estimated value shares of [30–40%] and [20–30%] respectively. In FCG, AkzoNobel faces competition from a large number of competitors, four of which have *pro forma* shares of [0–10%] by value or more.

**Figure 6.1**  
**Beverage and FCG shares by value (EEA, 2011)**

[CONFIDENTIAL]

Source: *AkzoNobel estimates*

- 6.5 The tables below show the *pro forma* shares of the parties and key competitors in each of the segments within the beverages (B2E, B2I and BE) and FCG (FE, F2-I&E, F3/B3, C&C and GL) sector. As can be seen from the tables below, all segments will have at least three participants post-transaction with a greater than [0–10%] share in the EEA.

**Table 6.2**  
**Beverages segment shares by value (EEA, 2011)**

Supplier	B2E		B2I		BE	
	EUR (m)	%	EUR (m)	%	EUR (m)	%
ANPG	[...]	[10-20]	[...]	[60-70]	[...]	[10-20]
Metlac	[...]	[20-30]	[...]	[0-10]	[...]	[0-10]
<b>Combined</b>	[...]	<b>[30-40]</b>	[...]	<b>[60-70]</b>	[...]	<b>[10-20]</b>
Valspar	[...]	[50-60]	[...]	[20-30]	[...]	[40-50]
PPG	[...]	[0-10]	[...]	[0-10]	[...]	[40-50]
Grace	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
Others	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
<b>Total</b>	[...]	100	[...]	100	[...]	100

Source: *AkzoNobel estimates*.

- 6.6 In beverages, the parties overlap in the B2E segment only. The parties' *pro forma* combined shares in the B2E segment is [30–40%], which is not at a level that give rise to competition concerns. The parties will continue to face competition from at least Valspar (the clear segment leader), as well as PPG.
- 6.7 Within the FCG sector, the parties face a broader range of competitors than in beverages, as shown by Table 6.3 below.

**Table 6.3**  
**FCG segment shares by value (EEA, 2011)**

Supplier	FE		C&C		F2		F3/B3		GL	
	EUR (m)	%								
ANPG	[...]	[40-50]	[...]	[10-20]	[...]	[40-50]	[...]	[10-20]	[...]	[10-20]
Metlac	[...]	[0-10]	[...]	[10-20]	[...]	[0-10]	[...]	[10-20]	[...]	[10-20]
<b>Combined</b>	[...]	<b>[50-60]</b>	[...]	<b>[20-30]</b>	[...]	<b>[50-60]</b>	[...]	<b>[30-40]</b>	[...]	<b>[30-40]</b>
Valspar	[...]	[10-20]	[...]	[10-20]	[...]	[20-30]	[...]	[20-30]	[...]	[0-10]
PPG	[...]	[0-10]	[...]	[10-20]	[...]	[0-10]	[...]	[0-10]	[...]	[10-20]
Grace	[...]	[10-20]	[...]	[0-10]	[...]	[0-10]	[...]	[10-20]	[...]	[0-10]
Others	[...]	[10-20]	[...]	[20-30]	[...]	[10-20]	[...]	[10-20]	[...]	[40-50]
<b>Total</b>	[...]	<b>100</b>								

Source: AkzoNobel estimates.

- 6.8 The parties' *pro forma* combined shares by value are less than [30–40%] in each of the F3/B3, C&C and GL segments. The parties' combined *pro forma* shares are higher in both FE and F2, largely as a result of AkzoNobel's existing position in these segments. The increment resulting from the transaction is small, at just [0–10%] in the FE segment, and is also modest within the F2 segment, at around [0–10%].
- 6.9 Within both the FE and F2 segments, ANPG and Metlac have complementary strengths. In FE, Metlac is a significant supplier of internal ends for aluminium, while ANPG has a good position in the supply of external coatings for steel ends. In the F2 segment, ANPG's only strong position is in the manufacture of coatings for internal and external D&I, while Metlac is completely absent from this segment. As reflected in its modest share of the segment, Metlac is not strong in supplying any type of coating within the F2 segment.
- 6.10 Furthermore, the UK shares, reflected in Table 6.4 below, evidence that the transaction does not have a material impact in the UK.

**Table 6.4**  
**Beverage segment shares by value (UK, 2011)**

Supplier	B2E		B2I		BE	
	EUR (m)	%	EUR (m)	%	EUR (m)	%
ANPG	[...]	[30-40]	[...]	[60-70]	[...]	[0-10]
Metlac	[...]	[10-20]	[...]	[0-10]	[...]	[0-10]
<b>Combined</b>	[...]	<b>[40-50]</b>	[...]	<b>[60-70]</b>	[...]	<b>[0-10]</b>
Valspar	[...]	[40-50]	[...]	[30-40]	[...]	[0-10]
PPG	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
Grace	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
Others	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
<b>Total</b>	[...]	<b>100</b>	[...]	<b>100</b>	[...]	<b>100</b>

Source: AkzoNobel estimates.

- 6.11 In the UK, the parties overlap only in relation to the B2E segment. The parties' *pro forma* combined shares are [40–50%] by value, although the segment is very small, accounting for approximately [CONFIDENTIAL] in sales in 2011. Metlac's sales were just [CONFIDENTIAL]. Post-transaction, AkzoNobel will continue to face competition from Valspar (the segment leader) and PPG at the national level (as in the EEA). AkzoNobel does not consider any supplier to be active in the BE segment in the UK, as ends for aluminium 2-piece cans are exclusively imported (in pre-coated form) to the UK.
- 6.12 Metlac's minimal UK presence is reflected in the segment shares in the FCG sector, shown in Table 6.5 below.

**Table 6.5**  
**FCG segment shares by value (UK, 2011)**

	FE		C&C		F2		F3		GL	
	EUR (m)	%								
ANPG	[...]	[60-70]	[...]	[40-50]	[...]	[80-90]	[...]	[80-90]	[...]	[20-30]
Metlac	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
<b>Combined</b>	[...]	<b>[60-70]</b>	[...]	<b>[50-60]</b>	[...]	<b>[80-90]</b>	[...]	<b>[80-90]</b>	[...]	<b>[30-40]</b>
Valspar	[...]	[0-10]	[...]	[40-50]	[...]	[0-10]	[...]	[10-20]	[...]	[0-10]
PPG	[...]	[10-20]	[...]	[0-10]	[...]	[10-20]	[...]	[0-10]	[...]	[20-30]
Grace	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]
Others	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[0-10]	[...]	[30-40]
<b>Total</b>	[...]	<b>100</b>								

Source: AkzoNobel estimates.

- 6.13 As can be seen from the table above, there was no UK overlap in the FE, F2 and F3 segments, while Metlac's UK sales in the C&C and GL segment are estimated to be in the order of [CONFIDENTIAL] in aggregate. The increment to AkzoNobel's existing position is negligible in both cases, at [0–10%] or less.
- 6.14 In summary, the transaction therefore does not give rise to an SLC in the UK:
- (i) Within the beverages sector:
    - The parties only overlap to a material extent in the B2E segment. Metlac is not active at all in the B2I segment, which is where AkzoNobel has its largest segment share. By contrast, ANPG has only a modest position in both the B2E and BE segments.
    - ANPG will face competition from major international manufacturers Valspar and PPG across all segments, each of which has significant shares in the B2E and BE segments. Both of these competitors will continue to exert significant competitive constraints on ANPG.
    - Metlac is neither ANPG's closest competitor, nor is it a maverick in terms of pricing or innovation.

- Barriers to entry or expansion are not significant with respect to B2E. Raw materials are readily available, the manufacturing process is straightforward and there are no onerous safety or quality assurance regulations pertaining to external coatings. This is not the case for the B2I segment, which features higher distinct production methods and also higher levels of performance (as the coating is in contact with the contents of the can).
- Importantly, the four largest can manufacturers (Rexam, Crown, Ball and Can-Pack) account for the overwhelming majority of ANPG and Metlac's business in the beverages sector (see paragraph 6.16 below). These four customers wield very substantial levels of bargaining power and have been seen to quickly and easily switch large volumes between suppliers to obtain best terms.

(ii) Within the FCG sector:

- Customer demand is more highly fragmented than in beverages. ANPG will continue to face competition from a range of at least four other suppliers in each of the other segments in which an overlap arises. These competitors include Valspar and PPG, together with a number of other smaller suppliers which concentrate on supplying niche products in individual segments.
- Metlac is present outside the B2E segment, but only has material shares in the C&C (crowns and RTO), F3 (internal steel) and FE (aluminium FAEOE) segments. ANPG does not have a substantial presence in any of these sub-segments.
- To an even greater degree than in beverages coatings, barriers to entry and expansion with respect to external coatings in particular are not significant, as evidenced by the large number of competitors active in these segments.

## **II. Coatings for Beverage Cans (B&B)**

6.15 Competition for the supply of coatings in the beverage sector derives in large part from the powerful position of a small number of very large customers. Against this backdrop, ANPG faces strong competition from major international suppliers, principally Valspar and PPG.

### ***Customers in the B2E Segment Exert Extensive Buyer Power***

6.16 The beverage segment in Europe (and globally) consists of four main customers, which together account for virtually all EEA demand in the B2E and B2I segments:

- (i) **Rexam plc** is listed on the London Stock Exchange. Its turnover for the 2011 financial year was £4.7 billion (2010: £3.9 billion). Rexam claims a 40% share of the European beverage can market (which comprises 57 billion cans annually) and includes among its customers AB InBev, Carlsberg, Coca-Cola, Heineken, Red Bull and PepsiCo;<sup>30</sup>
  - (ii) **Ball Corp.** is listed on the New York Stock Exchange. It reported revenues in the 2011 financial year of \$8.6 billion (2010: \$7.6 billion).<sup>31</sup> Ball manufactures more than 50 billion aluminium cans annually.
  - (iii) **Crown Holdings Inc.** is also listed on the New York Stock Exchange. According to its most recent Annual Report, it recorded revenues of \$8.6 billion in the 2011 financial year (2010: \$7.9 billion), accounting for sales of some 51 billion beverage cans. Its customers include AB InBev, Carlsberg, Coca-Cola, Cott Beverages, Dr Pepper Snapple Group, Heineken, National Beverage and Pepsi-Co;<sup>32</sup> and
  - (iv) **Can-Pack S.A.** is a private company founded in 1989. Its 2011 turnover is reported to have been approximately \$1 billion.
- 6.17 Each of the main suppliers in the B2E segment is highly responsive to price. The responsiveness of Valspar, PPG and ANPG is driven by the strong bargaining power of the four major customers in the beverage segment. **[CONFIDENTIAL]**.
- 6.18 These four customers exert very substantial levels of power in negotiations with the suppliers of coatings in the B2E segment. Switching to suppliers which are already certified is quick and easy for customers and frequently takes place, while switching to suppliers which are not certified can be done in a relatively short timeframe at low cost to suppliers – contracts are often weighted in favour of customers to facilitate such switching. These large customers deploy sophisticated tendering processes to procure packaging coatings, including formal tenders for multi-year contracts, which set pricing levels (but, crucially, not minimum volume purchasing levels) for the term of the contract.
- 6.19 Manufacturers are not required to tender for contracts covering the full spectrum or volumes of packaging coatings needed – customers may source from a number of manufacturers in the same tender or for different elements of the tender (e.g. for internal and external coatings separately). The Rexam tender of 2010 demonstrates the level of competition over price. **[CONFIDENTIAL]**.

<sup>30</sup> Annual Report of Rexam plc. at pages 19-20.

<sup>31</sup> Annual Report of Ball Corp. at page 18.

<sup>32</sup> Annual Report of Crown Holdings Inc. at page 4.

- 6.20 Rexam, Ball, Crown and Can-Pack (along with other customers) are constantly re-evaluating the offerings they can secure in the market. Customers will source product for a variety of reasons, including service, product performance, trade terms and other factors, including price. As part of this process, they issue pricing guidance to potential suppliers and expect that their suppliers to offer or match the lowest price. It is important to note that prices which customers agree to pay for the offering reflect many factors and considerations, including (as noted above) product performance, superior service and better contractual terms.
- 6.21 Contracts also typically allow customers to vary the volumes they source from particular manufacturers. While manufacturers are held rigidly to contractual constraints, there will generally be a fixed range on prices, and customers will be free to switch or reduce volumes depending on prevailing prices or other market circumstances.
- 6.22 Given the strength of these customers, it is implausible that AkzoNobel will be able to raise prices following the completion of the transaction.

***ANPG Faces Competition Principally from Valspar and PPG***

- 6.23 ANPG's product offering and geographic reach is more comparable to PPG and Valspar. Each of these companies is active on a worldwide scale and offer broadly comparable ranges of products across all segments of packaging coatings (although with each having somewhat different strengths and weaknesses).
- 6.24 **Valspar** is a publicly-traded coatings company with \$3.9 billion of sales in the 2011 financial year, of which \$2.1 billion derived from its coatings business.<sup>33</sup> AkzoNobel understands that approximately [CONFIDENTIAL] of Valspar's sales relate to packaging coatings – making it the leading player in the market globally, with a strong position in Europe, North America and South America. Like ANPG, Valspar is active across each of the segments of the metal packaging coatings market and has leading positions in the B2E, C&C and F3 segments. Valspar is also highly active in R&D and pioneered BPANI technology in the last decade.
- 6.25 **PPG** is a global supplier of paints, coatings, optical products, specialty materials, chemicals, glass and fibreglass and is listed on the New York Stock Exchange. Its revenues in the 2011 financial year were some \$14.9 billion, of which 28% derived from its industrial coatings business (which includes packaging coatings).<sup>34</sup> PPG is currently the global and European number three supplier of metal packaging coatings and is active across all segments of the market.

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<sup>33</sup> Valspar Annual Report 2011 at page 6.

<sup>34</sup> PPG Annual Report 2011 at page 1.

- 6.26 Furthermore, ANPG also faces competition from Grace Darex and Actega, which are both active on a worldwide basis and have positions of strength in the FCG sector, from which they could expand their offering into the supply of coatings for beverage cans.

***Metlac is not AkzoNobel's Closest Competitor***

- 6.27 ANPG and Metlac are not close competitors in the B2E segment. While Metlac has an approximately [CONFIDENTIAL] share by value of the B2E segment, arising in large part from its Rexam contract won in 2010 [CONFIDENTIAL], there is nothing about Metlac's market proposition which makes it a close competitor to ANPG than Valspar or PPG. Metlac is not an innovative player in the segment (which is not in any event characterised by high levels of innovation).<sup>35</sup>
- 6.28 AkzoNobel is not aware of instances where ANPG is a customer's primary supplier and Metlac is the only qualified back-up supplier, nor is AkzoNobel aware of ANPG being the only qualified back-up supplier for a customer using Metlac as its primary supplier.
- 6.29 AkzoNobel's views are also confirmed by the BKartA's supplier switching analysis of 1 April 2012 which found that the level of switching between ANPG and Metlac was not higher than those with PPG and Valspar. The BKartA's analysis shows that only about [CONFIDENTIAL] was won by Metlac from ANPG. Thus, for Metlac the importance of turnover won from ANPG was small. In the other direction, ANPG did not win any turnover from Metlac at all.<sup>36</sup> As the BKartA has found, Valspar lost significantly more business to Metlac than ANPG did. ANPG, on the other hand, lost much more business to Valspar than to Metlac.
- 6.30 [CONFIDENTIAL].<sup>37</sup> Therefore, although both ANPG and Metlac competed in the same tender, the extent of actual competition between the two parties was limited to only this one segment of the tender.
- 6.31 Furthermore, the segment represents just a small portion of Ball's overall demand. ANPG's turnover with Ball in 2009 was [CONFIDENTIAL] for inside spray coatings of steel cans (in which Metlac is not active), [CONFIDENTIAL] for inside spray of aluminium cans (in which Metlac is not active) and only [CONFIDENTIAL] for external spray. Of the total EEA turnover with Ball of approximately [CONFIDENTIAL] in 2009, less than [CONFIDENTIAL] was therefore achieved in segments where ANPG saw Metlac as a relevant competitor.

<sup>35</sup> The primary focus of innovation in the beverage segment relates to BPANI products for internal spray coatings applied to 2-piece cans. As noted extensively in this submission, Metlac is not active in this segment. While there are incremental developments in the formulations used for external coatings (such as for example, higher levels of gloss or creation of specific textures), these are generally niche lines, rather than step-changes in product formulation.

<sup>36</sup> Translation of BKartA final decision, paragraph 82.

<sup>37</sup> This document was provided at Annex 2 to AkzoNobel's response to the OFT's Issues Paper.

- 6.32 Each of ANPG, PPG, Valspar and Metlac has a material share in the B2E segment. The Ball tender however demonstrates that the mere fact that both Metlac and ANPG participate in the same tender does not necessarily mean that they compete for the same products.

### III. Other Segments of the Packaging Coatings Market (FCG)

- 6.33 The segments outside of beverages are considerably more fragmented, both in terms of customers and suppliers of metal packaging coatings. Following the completion of the transaction, ANPG will continue to face competition from a range of alternative suppliers in each of the segments in the FCG sector in which an overlap arises.
- 6.34 These competitors include PPG and Valspar, whose operations are described in detail above, each of which have a material presence outside beverages and have the capability of increasing their share in these segments. ANPG/Metlac will also continue to face competition from a number of smaller, though equally effective competitors, including major companies such as Grace Darex and Actega:
- (i) **Grace Darex** is a global competitor, which has access to most of the can manufacturers in the world due to its strong position in the related sealants market. With its acquisition of Sistiaga in 2007, furthermore, it gained entry to the food segment and will be able to expand into the beverage and food external categories on the basis of its existing manufacturing assets and know-how. Grace Darex has a greater worldwide presence than Metlac, with about €85 million sales in packaging coatings globally and €200 million sales in sealants.
  - (ii) **Actega** also already has an established global market position. Although smaller than Grace Darex, Actega is a leading supplier of sealants and therefore enjoys similar access to global can makers as larger companies in the segment. It is the market leader in sealing compounds for closures and glass containers, as well as in water-based sealing compounds for food, beverage and GL cans.
- 6.35 Certain competitors in the segments outside beverages also specialise to a greater extent in the supply of particular coatings for specific purposes. Within individual segments (e.g. C&C or GL), these suppliers clearly exercise significant constraints on ANPG. These competitors include Tiger, IPC, Salchi and Diostyl.
- 6.36 [CONFIDENTIAL].
- 6.37 Outside the beverages sector, suppliers of packaging coatings frequently compete with each other for the supply of products to individual customers – with a high degree of “churn” in these segments as customers switch between suppliers for particular products. While there is less in the way of formal tendering for specific contracts, customers are nevertheless highly sensitive to price and will play different suppliers against each other in order to obtain best terms.

#### **IV. The Transaction Will Not Eliminate a Leader in Innovation in either Beverages or FCG**

- 6.38 The technology and formulations in relation to external coatings for both 2-piece and 3-piece cans are long-established; and the production of coatings in these segments is quite a basic process. While all manufacturers will continuously improve and upgrade their formulations, such changes tend to be incremental in nature.
- 6.39 Innovation is of much greater relevance in relation to internal coatings, where the development of BPANI coatings for use in internal spray is regarded as the most important frontier for innovation. Metlac is not active in the B2I segment and has not, so far as AkzoNobel is aware, commercialised any BPA free products.<sup>38</sup>
- 6.40 Generally speaking, Metlac is not considered to be a particularly innovative manufacturer. **[CONFIDENTIAL]**. Metlac is described as having a broad product line and being strong in Italy but without “*any specific stand out technologies*”.<sup>39</sup> This contrasts with Schekolin and Actega which are complemented in the report for “*being the first to investigate new concepts*” and having “*strategic R&D efforts*”, respectively.<sup>40</sup>
- 6.41 The BKartA’s customer survey also confirmed that Metlac is not seen as innovative. Its decision notes: “*Metlac states that Metlac is regarded by its customers as a leading innovator in packaging coatings. This was not confirmed in the customer survey. Only in a few cases do the customers state Metlac to have an advantage because of its technology. These customers are customers who mainly cover their needs from Metlac and therefore do not have any contact or only very little to other suppliers of metal packaging coatings. Most customers do not recognise Metlac to have such an advantage.*”<sup>41</sup>
- 6.42 By contrast, ANPG is highly innovative in metal packaging coatings, particularly in relation to internal coatings. ANPG sold some **[CONFIDENTIAL]** of BPANI products in 2011 (of which **[CONFIDENTIAL]** was in the EMEA region), the majority of which was in the food segment. ANPG’s innovation is focused on advancing the technological basis of the packaging coatings sector – with a wide innovation platform developing new resins, methodologies and technology platforms. Other manufacturers such as Metlac

<sup>38</sup> Metlac’s website reports nothing on BPANI products either but only mentions BADGE (Bisphenol-A Diglycidyl Ether)-free products: “*In order to satisfy the market requirements and anticipate possible modifications to legislation in terms of migration limits, Metlac has developed a new range of epoxy phenolic materials which allow very low migration of BADGE and derivatives – non detectable under normal application conditions.*”

<sup>39</sup> See **[CONFIDENTIAL]**.

<sup>40</sup> The OFT acknowledges at paragraph 71 of the decision that “*there is disagreement between the parties, and among third parties, as to whether Metlac has a technological edge in innovative products*”.

<sup>41</sup> Translation of BKartA’s decision, paragraph 79.

focus merely on improving formulations using existing materials and blending processes.<sup>42</sup>

- 6.43 Customers such as Rexam and Ball also recognise that ANPG is a global market leader on inside spray. In addition, the customer surveys conducted by [CONFIDENTIAL] on behalf of ANPG in August 2011<sup>43</sup> (together with [CONFIDENTIAL] presentation of its analysis) show that customers believe that ANPG is strong in innovation; for example, [CONFIDENTIAL] state that they chose ANPG as a supplier for its technology.
- 6.44 ANPG's RDI organisation (which does not include technical service support to the market or quality control in production facilities) currently has over [CONFIDENTIAL] full-time employees; of these, [CONFIDENTIAL] full-time employees work on developing BPANI coatings for the B2I segment alone. AkzoNobel's increasing investment in innovation is reflected by the fact that in 2009 ANPG had [CONFIDENTIAL] full-time employees in R&D and during 2012 there will be [CONFIDENTIAL] employees (an increase of over [CONFIDENTIAL] in dedicated staff). These RDI activities are undertaken at specialised R&D centres situated in the UK, the United States and China.
- 6.45 ANPG has an annual RDI budget of [CONFIDENTIAL] for packaging coatings. This figure does not include technical services, quality control or customer services which are often included by other companies to inflate the appearance of the investment in R&D. Of this budget, [CONFIDENTIAL] ([CONFIDENTIAL]) is spent on R&D for BPANI.
- 6.46 Metlac's investment is much smaller. It comes nowhere close to investing the time and money into BPANI products that ANPG invests. Metlac has [CONFIDENTIAL] full-time employees in its laboratory in total - including people working in technical service and quality control (who are not in fact contributing to innovation). As far as AkzoNobel is aware, Metlac has no resident BPA researchers focused on innovative technology platforms. Metlac's annual budget, including technical service and quality control, has ranged between [CONFIDENTIAL] and [CONFIDENTIAL] per annum since 2005. In addition, Metlac's investment in this area appears to have declined over recent years: data provided by Metlac to the BKartA show that, while from 2006-2008 its investments and laboratory costs accounted on average for [CONFIDENTIAL] and [CONFIDENTIAL] of turnover respectively, this decreased in the 2009-2011 period to [CONFIDENTIAL] and [CONFIDENTIAL] respectively.

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<sup>42</sup> The low level of laboratory expenditure by Metlac would not allow it do anything more fundamental anyway.

<sup>43</sup> The [CONFIDENTIAL] was submitted as Annex 27 of AkzoNobel's response to the CC's Initial Information Request.

## BARRIERS TO ENTRY/EXPANSION

### I. Barriers to Expansion are Not Significant

- 7.1 There have been numerous new entrants over recent years, such as Grace Darex, Actega, Salchi, Rembrandtin and VPL Coatings. Indeed, Metlac itself has also grown considerably since 2003, indicating that barriers to entry and expansion are not as significant or insurmountable as suggested in the OFT's decision. This is especially so for the segments which require fewer approvals, such as GL and external coatings. New entrants are able to toll manufacture as a means of easy entry, as in the case of IPC (International Packaging Coatings).<sup>44</sup>
- 7.2 Large customers can also sponsor entry, for example through aligned strategic directions, line time and qualification support. In this way, Ardagh helped the entry of Salchi, Grace, Diostyl and Actega; Crown and Ball built up VPL Coatings; Glud and Marstrand both developed a strategy with Grace, Actega, Lindgens and Metlac; Tubex did so with Tiger (Austria); and Huber did so as regards Rembrandtin (now part of Salchi) and IPC.
- 7.3 [CONFIDENTIAL] also confirms that market entry across all segments is not particularly difficult. The core coatings technology is well established (in fact several decades old) and the raw material components are well-known and easily available. Further, market entry is facilitated by low capital intensity, a low degree of product differentiation and low economies of scale. It provides the example of Rembrandtin entering the market in 2006. The report thus concluded that it has been relatively easy for local/regional suppliers to enter and leave the market over the years, depending upon their strategic business interests, and that this would be possible for global suppliers as well.<sup>45</sup>

### II. Switching Costs and Timing

- 7.4 For internal coatings, switching to a alternative (qualified) supplier should take no more than 9-12 months,<sup>46</sup> while for external coatings, this switching time will be considerably shorter, in the order of 3-4 months.
- 7.5 Switching costs both for customers and suppliers are moderate although they may be higher for metal packaging coatings for internal applications in food and beverages

<sup>44</sup> Indeed when Mr Bocchio first launched the Metlac business 25 years ago its coatings were toll-manufactured for it by PPG and subsequently by other coatings manufacturers with plants in Italy (with AkzoNobel continuing to provide some toll production to Metlac).

<sup>45</sup> Some raw materials providers, such as Dow, have provided know-how on packaging coatings formulations in order to drive sales of raw materials.

<sup>46</sup> Indeed, this can be achieved in an even shorter timeframe, [CONFIDENTIAL].

cans, as a result of the additional performance requirements for these products.<sup>47</sup> Qualification of a new supplier in B2I (in which Metlac is not active) takes 12 to 18 months. AkzoNobel believes that the cost of gaining qualification for internal coatings is in the order of [CONFIDENTIAL], with a significant portion of that figure being fixed personnel costs.

- 7.6 Suppliers and their customers each bear their own costs arising out of the approval and switching procedure. These costs are very limited for the customers, however, and do not constitute a material barrier to a change of supplier. This is especially true for the food and beverage categories, which generally require a more complex switching procedure, and where total demand is accounted for by a small group of very large customers.<sup>48</sup>
- 7.7 While the future development of new technology platforms and subsequent approval can take several years, this is much shorter if new developments are made based on the same technological platform. Significantly, the process of approving external coatings (for beverage or food) using a known technology platform should take only about 6 months. The chemical and mechanical performance check of the film composition should take a maximum of 6 months for external coatings and a maximum of 2 years for food or beverage internal coatings.

### III. Capacity

- 7.8 There are no material capacity constraints in the market. Where volume fluctuations do arise, these are almost always as a consequence of loss of volume, rather than capacity constraints – [CONFIDENTIAL].
- 7.9 According to AkzoNobel estimates, there is at least [CONFIDENTIAL] spare capacity in the overall market. This represents more spare capacity than Metlac's current total capacity. Furthermore, such capacity on the market should only increase with the merger as AkzoNobel invests in Metlac's manufacturing facility in Bosco Marengo, Italy. Suppliers can bring this capacity on line quickly to meet the needs of the largest volume customers.
- 7.10 [CONFIDENTIAL]. Other suppliers could likewise either toll manufacture or add another shift. AkzoNobel is not aware of any producers currently operating any of their plants on a three-shift a day, seven-day week basis - but suppliers would be able to do this to take advantage of significant volumes.

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<sup>47</sup> [CONFIDENTIAL].

<sup>48</sup> Smaller can makers rely on the results of tests at the larger manufacturers. For example, this is the case for Can-Pack, which mainly checks the application performance on the line, but does not repeat a full approval process.

## COORDINATED EFFECTS

- 8.1 The OFT did not find it necessary to conclude whether the test for reference may be met in the context of co-ordinated effects, but noted that "*the evidence is less clear and points to a number of difficulties in suppliers reaching and monitoring a coordinated outcome*". The OFT added that "*the internal and external sustainability of coordination may be difficult to sustain*".<sup>49</sup>
- 8.2 This view coincides with that of the BKartA in relation to coordinated effects.<sup>50</sup> Such coordination is not plausible as ANPG has no visibility of its competitors' pricing, while the structure of the metal packaging coatings market in the EEA (i.e. the heterogeneous nature of the product market, the lack of transparency, the strong negotiating position of customers, and the presence of a number of significant smaller competitors, militates against coordination. In addition, neither ANPG, Valspar nor PPG have any control over raw materials prices, which is the key variable cost element of the manufacture of metal packaging coatings.
- 8.3 In the circumstances, it is not credible to suggest that AkzoNobel, PPG and Valspar could reach a tacit understanding on prices or on any other parameters of competition - such as capacity levels, entry, exit or expansion in certain product lines, or whether to seek certification and approvals for particular products.

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<sup>49</sup> OFT Decision at paragraph 140.

<sup>50</sup> Translation of BKartA final decision, paragraph 91 *et seq.*

## **EFFICIENCIES**

- 9.1 AkzoNobel expects significant synergies to arise out of the full merger between ANPG and Metlac. These include procurement cost synergies, lower operating costs, providing Metlac with in-house resin manufacturing rather than relying on external supplies, and savings in R&D and commercial operations.
- 9.2 **[CONFIDENTIAL].**
- 9.3 AkzoNobel's plans envisage that these synergies and cost savings will enable it to pass on some of the benefits of the merger to customers in the form of lower prices, thereby ensuring that it will maintain at least some of the business which customers would otherwise move to Valspar, PPG and smaller competitors.

**14 June 2012**

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