

NON-CONFIDENTIAL VERSION

**PROPOSED ACQUISITION OF METLAC HOLDING S.R.L. AND
METLAC S.P.A. BY AKZONOBEL NOBEL COATINGS
INTERNATIONAL B.V.**

Comments from the Metlac Group on the Notice of Possible Remedies

October 3, 2012

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1. This Paper contains the views of the Metlac Group (“Metlac”) on the Competition Commission’s Notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure (the “Remedies Notice”).¹ Metlac is not aware of any specific remedies proposals made by AkzoNobel, and is therefore unable to make targeted submissions at this stage. In this Paper, Metlac therefore makes general submissions on the possible remedies in this case. It stands ready to respond to any specific proposals at the appropriate time.
2. Metlac agrees with the Competition Commission that prohibition of the proposed merger is the only effective and appropriate remedy for the expected SLC in this case. Prohibition would effectively address all of the substantive concerns identified by the Competition Commission in a clear, workable, and proportionate way. By contrast other structural, behavioural, and/or controlling remedies would not be address the SLC, and would be unworkable in practice. This reflects the following considerations:
 - First, the SLC identified by the Competition Commission applies across all relevant markets (and therefore across the entirety of the Metlac business). Prohibition would *inter alia* (1) retain the current competitive position/*status quo*, with Metlac operating as a dynamic, nimble, and innovative competitor in all market segments to the benefit of customers, (2) allow Metlac to realise its growth projections, and (3) not require monitoring or additional steps to implement. It is the clearest and most effective remedy in this case.
 - Second, Metlac considers that a divestment of certain of Metlac’s assets would be inappropriate or, in any event, ineffective. As the Competition Commission is aware, Metlac’s coatings manufacturing facilities operate from just one site. They are automated, efficient, and interoperable. It is unfeasible and/or impractical to split these operations in a manner which guarantees that the unique competitive characteristics of Metlac remain in the market. To the contrary, a divestiture of only certain of Metlac’s assets would dissolve the synergies which presently characterise the Metlac business.
 - Third, a divestiture of certain AkzoNobel assets would similarly be inappropriate and ineffective because it would not lead to the creation of a competitor as strong, nimble, and unique as Metlac. The SLC identified by the Competition Commission is based *inter alia* upon the uniqueness of Metlac as a competitor (*i.e.*, the fact that its management is dynamic and customer-focused, and that its strategy is to be low-cost / low priced). Such uniqueness is a feature of, and enabled by, a number of factors in combination. Identification of this combination (which competitors have not to date been able to match) poses a number of insuperable difficulties. It would be unsatisfactory from a competition perspective for this process to result in a divestment of certain AkzoNobel assets to a purchaser, which did not contain all relevant assets and attributes of Metlac’s current facilities and management, in whom customers have confidence. Therefore, it is highly unlikely that the transfer of certain assets of AkzoNobel to

¹ Capitalised terms and acronyms not defined herein have the meaning ascribed to them in the Provisional Findings.

a smaller competitor would place such smaller player in a position to constrain the merged entity in a similar fashion as the merging parties constrain each other pre-merger.

- Fourth, the Competition Commission’s provisional findings are that the proposed merger would likely create unilateral effects in B&B and FCG. In this respect, Metlac notes that none of AkzoNobel’s plants individually produces a range of packaging coatings that is comparable to Metlac’s site in Bosco Marengo. Any attempt to “*mix and match*” assets would give rise to significant uncertainty and have limited prospects of success.
 - Fifth, there can be no guarantee that a partial structural divestment would create a viable divestment package that would be attractive to potentially suitable purchasers. In addition, as recognised by the Competition Commission, those purchasers that might potentially be suitable (*i.e.*, existing industry players) have not in the past demonstrated the ability and willingness to compete and grow as effectively as Metlac.
 - Sixth, as recognised by the Competition Commission, barriers to entry and expansion in the coatings industry are significant. It took Metlac over a decade to establish the position it is in today (*i.e.*, to win the trust of customers and establish a proven track record of reliability and quality). It is therefore by no means clear that a divestment of assets (with its associated uncertainty) will lead to the creation of a competitor as strong as Metlac in the relevant timeframe for merger control purposes. In particular any purchaser would need to undergo the lengthy and uncertain process of achieving customer approvals.
3. Similar considerations apply to behavioural/controlling remedies. It is not clear how behavioural remedies could counteract the SLC identified by the Competition Commission. The unique qualities of Metlac identified by the Competition Commission (*e.g.*, its flexibility, innovativeness, customer service, and track record of reliability) are by definition dynamic and any attempt to delineate behavioural measures for these characteristics would give rise to significant specification and circumvention risk. In addition, any measures of this type would give rise to significant monitoring and enforcement difficulties.
4. For the reasons mentioned above, Metlac considers that structural, behavioural, and controlling remedies would not be appropriate and/or effective at remedying the SLC identified by the Competition Commission. It therefore considers that prohibition of the proposed merger will be the *only* effective and appropriate remedy in this case.

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