

## **Anticipated acquisition by AGC Automotive Europe S.A. of NordGlass Sp. z o.o.**

**ME/6540/15**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 28 September 2015. Full text of the decision published on 29 October 2015.

**Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.**

### **SUMMARY**

1. AGC Automotive Europe S.A. (**AGC**), a subsidiary of Asahi Glass Co (**Asahi**), has agreed to acquire NordGlass Sp. z o.o (**NordGlass**) (the **Merger**). AGC and NordGlass are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that two or more enterprises controlled by the Parties will cease to be distinct as a result of the Merger and that the share of supply test is met. As a result, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the production and supply of automotive glass to independent aftermarket customers (**IAM**) and to original equipment manufacturers and/or suppliers (**OEM**) globally. Asahi also supplies float glass, an input for the production of automotive glass, and NordGlass is one of its float glass customers in the European Economic Area (**EEA**).
4. In line with past decisional practice of the European Commission (**EC**), the CMA found that in the supply chain of automotive glass, the production and supply of float glass (the 'upstream level') and the production and supply of automotive glass (the 'downstream level') constitute two separate product markets. At the downstream level, the CMA found that the conditions of competition and customers' requirements differ materially between the OEM and IAM distribution channels. The CMA's market testing also indicated that there is limited supply-side substitution between these two channels.

5. The CMA found that customers procure float and automotive glass on an EEA basis. Therefore, the CMA considered the effects of the Merger with this frame of reference but, on a cautious basis, the CMA also considered the effects in relation to the supply of automotive glass in the UK.
6. NordGlass supplies very little automotive glass to the OEM channel so the increment arising from the Merger to AGC's estimated [20–30]% share of supply in this market is negligible. The CMA believes that, following the Merger, AGC will continue to face sufficient competition from remaining suppliers.
7. The Parties' combined share of supply in the IAM channel is around [30–40]% in both the UK and the EEA. However, the CMA believes that the Parties' products in this channel are differentiated in both their quality and price. This is reflected in the different sets of customers served by each Party. Overall, the CMA believes that the Parties are not close competitors in this channel and that the merged entity will remain constrained by other closer competitors.
8. The CMA believes that the Merger does not raise vertical competition concerns. The ability of AGC to foreclose its competitors, either upstream (input foreclosure) or downstream (customer foreclosure), will not change substantially as a result of the Merger. Upstream, the competitive impact of the Merger in the supply of float glass is negligible and sufficient capacity remains available for alternative float glass suppliers; while downstream, the current suppliers of float glass to the Parties would be able to find other customers for their product.
9. The CMA concludes that the Merger will not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the supply of float and/or automotive glass to the OEM and/or IAM channels in the UK and/or the EEA.
10. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

11. AGC is controlled by Asahi Glass Co. Ltd (together with its subsidiaries **AGC Group**), a publicly-listed company on the Tokyo Stock Exchange.
12. The AGC Group is a worldwide supplier of float glass, automotive and display glass, chemicals and other high-tech materials and components. In the UK, it

provides automotive glass services, such as encapsulation and assembly, from its plant in Northampton. The AGC Group imports all its UK sales of automotive glass.<sup>1</sup> In 2014, the AGC Group's worldwide turnover was £[X], of which £[X] was derived from sales in the UK.

13. NordGlass is a European producer of glass for the automotive, railway and maritime industries. It is controlled by Polish Enterprise Fund VI and has two factories in Poland.<sup>2</sup> NordGlass also imports all its UK sales of automotive glass. In 2014, NordGlass' worldwide turnover was £[X], of which £[X] was derived from sales in the UK.

## Transaction

14. AGC proposes acquiring the entire issued share capital of NordGlass for €[X].
15. AGC informed the CMA that the Merger received merger control clearance in Austria, Germany, Poland and Ukraine. Completion of the Merger is conditional on UK merger control clearance.

## Jurisdiction

16. As a result of the Merger, the enterprises of AGC and NordGlass will cease to be distinct.
17. The Parties overlap in the supply of automotive glass. Their combined share of supply of automotive glass to the IAM channel in the UK is higher than 25%, with an increment of [10–20]% arising from the Merger (see Table 2). The CMA therefore believes that the share of supply test in section 23 of the Act is met.
18. Therefore, the CMA believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 4 August 2015 and the statutory 40 working day deadline for a decision is therefore 29 September 2015.

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<sup>1</sup> The AGC Group imports to the UK from [X].

<sup>2</sup> [X]

## Counterfactual

20. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>3</sup>
21. In this case, the CMA has seen no evidence indicating that it should depart from considering the prevailing conditions of competition to be the relevant counterfactual.

## Background

22. In the supply chain of automotive glass there are three different levels:
  - (a) the production and supply of float glass (the 'upstream level');
  - (b) the processing of float glass into automotive glass (production of automotive glass); and
  - (c) the supply of automotive glass (the 'downstream level').
23. Float glass is a commodity product, which, with further processing, is turned into different types of glass for different industries (eg automotive, building and high tech applications).<sup>4</sup>
24. The supply of automotive glass at the downstream level can be segmented into:
  - (a) the OEM channel, serving car manufacturers. Products are developed, produced and fitted into new vehicles, or supplied as branded/official replacement parts for those car manufacturers; and
  - (b) the IAM channel, comprising non-branded glass replacement products and services. These products have the same use as the original glass

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<sup>3</sup> *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

<sup>4</sup> Demand of float glass for automotive uses accounts for around 15 to 20% of the global float glass market. See Glass for Europe, '[Overview of the automotive and transport glass market](#)'.

products that they replace, but the technical specifications may differ and they are not branded by the car manufacturers.

25. The IAM channel serves different types of customers: (a) vertically integrated wholesalers, typically large companies operating in several countries (such as Belron<sup>5</sup>), through their retail network selling to end-customers; (b) independent wholesalers supplying third-party distributors; and (c) spare car parts dealers selling to garages.
26. Competition for the supply of automotive glass to OEM customers takes place at the vehicle design stage, and contracts usually cover the model's lifetime. In the IAM channel, contracts with automotive glass manufacturers/suppliers takes place through formal tenders or informal bilateral contractual relationships. The frequency and duration of these tenders, negotiations and contracts varies.

### **Frame of reference**

27. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>6</sup>
28. The Parties overlap in the UK in the supply of automotive glass to the OEM and IAM channels. In the IAM channel, the Parties supply automotive glass to both integrated and independent wholesalers.
29. The Parties are also vertically related at the EEA level, as the AGC Group currently supplies float glass to NordGlass.

### **Product scope**

30. AGC submitted that the production and supply of float glass is a separate product market. It said that float glass manufacturers can produce float glass for different applications but no segmentation in terms of these applications would be appropriate. AGC noted that float glass is a commodity-type

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<sup>5</sup> Belron owns the Autoglass and Carglass brands.

<sup>6</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

product, which, for its principal applications (safety glass in motor vehicles and glass for buildings) has no substitutes.

31. At the downstream level, AGC said that the customers, product specifications and quality requirements were substantially different in the OEM channel from the IAM channel. It submitted that several manufacturers were only present in the IAM channel. It said that these factors led to different conditions of competition in each channel, which were reflected in pricing, volumes and the length of contracts.
32. In past decisions, the EC has defined the production and supply of float glass as a separate product market.<sup>7</sup> The EC found that float glass is a commodity-type product which, after being processed, has a number of different applications, including in cars. At the downstream level, the EC has distinguished between automotive glass supplied to OEM customers and replacement glass supplied to the IAM channel on the basis that different conditions of competition exist in these two channels.<sup>8</sup> In the present investigation, the evidence gathered by the CMA supports this view.
33. With regard to supply-side factors,<sup>9</sup> the CMA found that both the competitor set and the competitive strength of the suppliers of automotive glass to the OEM and IAM channels are different (see Tables 1 and 2). Furthermore, the CMA found that suppliers of automotive glass to the IAM channel would not be able, on a timely basis, to start supplying the OEM channel in response to relative changes in prices.
34. For these reasons, and in line with EC previous decisions, the CMA believes that:
  - (a) the production and supply of float glass constitute separate product frames of reference; and
  - (b) the production and supply of automotive glass to the OEM channel and to the IAM channel constitute separate product frames of reference.

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<sup>7</sup> See the decisions of the EC in the following cases: IV/M.358 Pilkington-Techint/SIV, 21 December 1993; IV/M.1230 Glaverbel/PPG, 7 August 1998; and Case COMP/M.4173 Nippon Sheet Glass/Pilkington, 7 June 2006.

<sup>8</sup> See the decisions of the EC in the following cases: COMP/M.6557 AGC Glass Europe/Interpane International Glass (2012); and COMP/M.4173 Nippon Sheet Glass/Pilkington (2006).

<sup>9</sup> [Merger Assessment Guidelines](#), paragraph 5.2.17.

## ***Geographic scope***

35. AGC submitted that the geographic market for the production and supply of float glass and for the supply of automotive glass to both the OEM and IAM channels is at least EEA-wide.<sup>10</sup>
36. EC decisional practice notes that float glass is bulky, fragile and expensive to transport relative to its value and, as a result, the EC has limited the scope of the geographic market to the EEA.<sup>11</sup> In relation to the supply of automotive glass, the EC decisional practice has found that the relevant geographic market for both the OEM channel and the IAM channel is the EEA.<sup>12</sup>
37. In the present case, the CMA notes that customers procure float and automotive glass at EEA level. Third parties confirmed that UK customers purchase float glass and automotive glass from suppliers based outside the UK.
38. For these reasons, the CMA has assessed the effects of the Merger in the supply of float glass and the supply of automotive glass to the OEM channel and the IAM channel at an EEA level. On a cautious basis, the CMA has also considered the supply of automotive glass in the UK.

## ***Conclusion on frame of reference***

39. The CMA has considered the impact of the Merger in the following frames of reference:
  - The supply of float glass at the EEA level.
  - The supply of automotive glass to the OEM channel in the UK and in the EEA.
  - The supply of automotive glass to the IAM channel in the UK and in the EEA.

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<sup>10</sup> AGC estimates that, on average, transport costs account for 10 to 15% per unit of automotive glass supplied to the OEM channel in the UK. In the IAM channel, AGC estimated that transport accounts for approximately 5 to 10% of the cost of a replacement screen.

<sup>11</sup> See COMP/M.4173 Nippon Sheet Glass/Pilkington (2006).

<sup>12</sup> See, for instance, the decisions of the EC in IV/M.358 Pilkington-Techint/SIV (1993).

## Competitive assessment

### *Horizontal unilateral effects*

40. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>13</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.
41. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC through unilateral horizontal effects in the supply of automotive glass to the OEM channel and to the IAM channel, both in the UK and in the EEA. The CMA considered whether the merged firm might increase the price and/or reduce the quality of its automotive glass following the removal of a significant competitive constraint. The CMA considered the Parties' views, shares of supply, tender data and third party views.

### *Supply of automotive glass to the OEM channel*

#### *Parties' views*

42. AGC submitted that NordGlass' commercial strategy has focused on the IAM channel, and it has only a limited presence in the OEM channel. AGC noted that NordGlass' production technology is designed to be able to provide a number of different parts for a wide range of models, while in the OEM channel customers typically require the supplier to provide a very large number of units of a single model. AGC said that, after the Merger, it will continue to face effective competition in the OEM channel from several other suppliers, including Saint-Gobain, Pilkington and Fuyao.

#### *Shares of supply*

43. Table 1 shows the shares of supply of automotive glass to the OEM channel in 2014 in the UK.

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<sup>13</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

**Table 1: Shares in the supply of automotive glass to the OEM channel, UK,<sup>14</sup> 2014<sup>15</sup>**

Supplier	%	
	<i>Supply share (by unit)</i>	<i>Supply share (by equivalent car sets)</i>
AGC Group	[20–30]	[20–30]
NordGlass	[0–10]	[0–10]
Combined	[20–30]	[20–30]
Pilkington	[30–40]	[30–40]
Saint-Gobain	[20–30]	[20–30]
Fuyao	[10–20]	[10–20]
Central Glass	[0–10]	[0–10]
Total	100	100

Source: The Parties.<sup>16</sup>

44. At an EEA level, AGC estimates that the AGC Group’s share of supply is around [20–30]% by volume, similar to the level in the UK, with a negligible increment resulting from the Merger (less than [0–10]%).
45. Both in the UK and at an EEA level, the combined share of the Parties is [20–30]%, with an increment of less than [0–10]%. In both the UK and the EEA there are some large competitors remaining after the Merger, such as Pilkington and Saint-Gobain, with shares of supply of [30–40]% and [20–30]% respectively.

#### *Tender data*

46. Competition between suppliers of OEM automotive glass takes place two or three years prior to the commencement of the production line of a vehicle.
47. Automotive glass suppliers provide quotations based on factors such as their production costs, capacity, facilities, quality perception and historic prices for similar products. Typically, a single supplier of OEM automotive glass is selected (ie single sourcing), although vehicle manufacturers can split the car set between two or more suppliers (ie dual or multi sourcing) by allocating the automotive glass for different parts to different suppliers. On rare occasions,

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<sup>14</sup> The CMA has not considered whether the procurement decisions of OEM customers regarding automotive glass supplied to the UK were taken in the UK. On a cautious basis, the shares of supply estimates in Table 1 were based on automotive glass which was delivered in the UK.

<sup>15</sup> The share of supply data submitted to the CMA relates only to OEM. The Parties were not able to measure the size of the Original Equipment Suppliers (OES). OES customers supply automotive glass which is identical to the automotive glass supplied to OEMs for new vehicles (including the same logo). OES customers mainly consist of OEMs and dealerships who provide branded repair services. A dealership in order to be able to supply automotive glass with the OEM logo for a particular vehicle model must be authorised by the OEM. The Parties submitted that the shares for the OES segment are not substantially different from the shares of supply estimated for the OEM channel.

<sup>16</sup> ‘Equivalent car sets’ is the number of cars that could be equipped with the number of units sold by each party. This measure is based on the assumption that automotive glass used for a car comprises one windscreen, one rear window and six side windows. NordGlass estimated that its volumes in equivalent car sets ([~~3~~]) is too small to be reflected in the scale used. The Parties estimated the total OEM market size using the IHS database. The competitors’ market shares are based on AGC’s internal estimates using win/loss information.

for large orders, two suppliers may be selected to supply automotive glass for a specific part.

48. AGC submitted that NordGlass has not engaged in any tenders for OEM glass in the UK in the last ten years. It said that NordGlass' total UK revenue from sales of OEM glass in 2014 was £[REDACTED], derived mainly from [REDACTED].<sup>17</sup>

#### *Third party submissions*

49. No third parties expressed concerns regarding the effects of the Merger in the supply of automotive glass to the OEM channel. The Parties were not identified as close competitors in this segment, and several third parties said that there are other suppliers of automotive glass to the OEM channel which are closer competitors to AGC than NordGlass.

#### *CMA assessment and conclusion*

50. Based on this evidence, the CMA believes that the Parties are not close competitors in the supply of automotive glass to the OEM channel. Moreover, the CMA notes that NordGlass' internal documents indicate that, absent the Merger, NordGlass would [REDACTED]. The CMA believes that AGC will remain constrained in its supply of automotive glass to the OEM channel by other large competitors, such as Pilkington and Saint-Gobain.
51. For these reasons, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of automotive glass to the OEM channel in the UK and/or in the EEA.

#### *Supply of automotive glass to the IAM channel*

##### *Parties' views*

52. AGC stated that the products it offers are perceived to be of higher quality than NordGlass' products, and its sales are to different customers. Information submitted by the Parties indicated that around [80–90]% of AGC's sales in the UK are to [REDACTED], a vertically integrated customer, whereas almost all of NordGlass' sales are to independent wholesalers. NordGlass said that it only provides occasional volumes to [REDACTED] when [REDACTED] usual suppliers are unable to deliver for some reason [REDACTED].

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<sup>17</sup> The parties also told us that NordGlass had no sales of automotive glass to OES in the UK in 2014.

### *Shares of supply*

53. Table 2 shows the shares of supply of automotive glass to the IAM channel in 2014 in the UK.

**Table 2: Shares in the supply of automotive glass to the IAM channel, UK, 2014<sup>18</sup>**

<i>Supplier</i>	<i>% Supply share (by unit)</i>
AGC Group	[10–20]
NordGlass	[10–20]
Combined	[20–30]
Pilkington	[20–30]
Fuyao	[20–30]
Xinyi	[0–10]
Guardian	[0–10]
Saint-Gobain	[0–10]
Total	100

Source: The Parties.<sup>19</sup>

54. At an EEA level, the Parties estimate that they have a combined market share of [30–40]% in the supply of automotive glass to the IAM channel, with an increment arising from the Merger of [10–20]%.
55. Two competitors, Pilkington and Fuyao, have shares of supply similar to the Parties' combined share of supply, at [20–30]% and [20–30]% in the UK respectively.

### *Tender data*

56. Most of the automotive glass supplied to the IAM channel by the Parties is supplied on a spot basis. Only a small proportion of the Parties' sales are via tenders ([30–40]% and [10–20]% by volume for AGC and NordGlass respectively).
57. Based on information submitted by the Parties, in the last five years there has been [X] independent wholesaler [X] for which both Parties have bid to supply automotive glass. NordGlass has never bid to supply AGC's main IAM tender customers (eg [X]).

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<sup>18</sup> The estimates provided by the Parties only relate to the supply of automotive glass for windscreens, which accounts for the vast majority of replacement units sold. The estimated shares of supply may, therefore underestimate, to some extent, the Parties' shares of supply. However, the evidence available to the CMA does not indicate that the estimated shares of supply significantly underestimate the Parties share of supply in the supply of automotive glass to the IAM channel.

<sup>19</sup> Competitors' shares of supply are based on NordGlass' internal estimates. The market size estimate is calculated based on Department for Transport information on the size of the UK car market, to which the Parties apply a breakage rate, a repair versus replacement split, and an OES versus IAM split.

### *Third parties submissions*

58. Most third parties that responded to the CMA's market testing submitted that the Parties are not close competitors in the supply of automotive glass to the IAM channel. Xinyi Glass and Guardian were named as the closest competitors to NordGlass, and Autover (Saint-Gobain) and Pilkington were identified as the closest competitors to AGC.
59. Some customers stated that while AGC's strength is the high quality of its products, NordGlass is more competitive in price and its delivery terms. None of the customers which responded to the CMA's market testing said that they 'played' AGC and NordGlass against each other to obtain a better price.
60. One customer said that its policy was to only contract with suppliers which are also active in the OEM segment because they offer higher quality glass products; and another customer stated that the fact that a supplier is present in the OEM channel is an indication of the quality of its products and of its technical ability. Given that NordGlass does not supply any OEM customer, NordGlass would not be considered by these customers as a possible supplier of their automotive glass.
61. All customers submitted that there are other suppliers of automotive glass which they could use in the event of a price rise by the Parties after the Merger.
62. A NordGlass customer expressed concern that the AGC Group may increase prices after the Merger or may stop supplying it, and that suppliers, such as Pilkington and Xinyi, would not be competitive alternatives in terms of price or quality. This customer submitted that it did not consider the main suppliers of automotive glass to IAM customers to be suitable suppliers for its purposes, but it did not rule out that it might be able to find a supplier which met its requirements [REDACTED] in the event of a price increase by the merged entity.

### *CMA assessment and conclusion*

63. The CMA believes that the Parties' products to the IAM channel are differentiated in terms of quality and price, and this is reflected in the different customer groups which the Parties serve. While the AGC Group focuses on supplying higher quality products to vertically integrated wholesalers (mainly Belron), NordGlass competes on price and its delivery terms, and its customers are mainly independent wholesalers.<sup>20</sup>

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<sup>20</sup> This is confirmed by internal documents submitted by AGC, which describe [REDACTED].

64. The evidence gathered by the CMA, including third party submissions and tender data, indicates that the Parties are not close competitors. In particular, NordGlass does not compete with the AGC Group for those customers which require a supplier which also supplies the OEM channel (using this as an indication of quality and of an ability to meet higher technical specifications). The CMA notes that NordGlass' presence in the supply of automotive glass to the OEM channel is very limited and there is no indication that, absent the Merger, NordGlass would have expanded its presence in this channel.
65. The CMA also found that there are alternative suppliers to both NordGlass and AGC in the IAM channel, which it believes will sufficiently constraint the merged entity.
66. For these reasons, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of automotive glass to the IAM channel in the UK and/or in the EEA.

### **Vertical effects**

67. Vertical effects may arise when a merger involves firms at different levels of the supply chain. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.<sup>21</sup> In the present case, the CMA has considered whether the AGC Group:
  - (a) may increase the price of float glass to its competitors in the supply of automotive glass in order to harm their ability to compete in the downstream market (ie *partial input foreclosure*); and/or
  - (b) may reduce its purchases (including NordGlass' purchases) of float glass from AGC's competitors in the supply of float glass in order to harm their ability to compete in the upstream market (ie *partial customer foreclosure*).
68. The CMA's approach to assessing vertical theories of harm is to analyse the following cumulative conditions: (a) the ability of the merged entity to foreclose

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<sup>21</sup> In relation to this theory of harm, 'foreclosure' means either to foreclose a rival or to substantially competitively weaken a rival.

competitors; (b) the incentive of it to do so; and (c) the overall effect of the strategy on competition.<sup>22</sup>

69. The Parties submitted that, given NordGlass' limited presence as a purchaser of float glass in the EEA, and the large number of alternative float glass providers, there is no prospect of any vertical effects, whether arising from customer foreclosure or input foreclosure.

#### *Partial input foreclosure*

70. The AGC Group is already vertically integrated. AGC estimates that AGC Group's production of float glass in Europe<sup>23</sup> accounts for [20–30]% of all float glass produced in Europe (including Turkey) and [20–30]% of all float glass produced in West and Central Europe.
71. Third party submissions indicated that there are alternative suppliers of float glass, eg Saint-Gobain and Pilkington. No third parties expressed concerns regarding AGC engaging in input foreclosure as a result of the Merger.
72. On the basis of this evidence, the CMA believes that the Merger will not change AGC Group's ability to foreclose its competitors in the supply of automotive glass through input foreclosure. Therefore, the CMA concludes that there is no realistic prospect that vertical effects through input foreclosure will arise as a result of the Merger.

#### *Partial customer foreclosure*

73. The CMA notes that the overlap between the Parties in the supply of automotive glass to the OEM channel is limited, and the combined share of supply of the Parties in the OEM channel and the IAM channel at an EEA level is below or only slightly above 30% ([20–30]% and [30–40]% respectively).
74. Furthermore, at the downstream level, AGC estimates that NordGlass only accounts for [0–10]% of the total purchases of float glass in the EEA, which would suggest that NordGlass' purchases of float glass are not significant when compared with the overall demand for float glass in the EEA. Therefore, there are many alternative customers to which suppliers of float glass could switch in order to undermine any customer foreclosure by AGC Group.<sup>24</sup>

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<sup>22</sup> [Merger Assessment Guidelines](#), paragraph 5.6.6.

<sup>23</sup> AGC also estimated that the Asahi Group's shares of supply of float glass destined for the automotive trade in 2014 were [20–30]% in Europe (including Turkey) and [20–30]% in West and Central Europe.

<sup>24</sup> This also suggests that the AGC Group's incentives to engage in a customer foreclosure strategy are not likely to change significantly as a result of the Merger.

75. Third parties which currently supply float glass to NordGlass submitted that, if NordGlass were to stop purchasing from them, they would be able to find other customers for their float glass in the EEA or outside the EEA. The suppliers of float glass to NordGlass and AGC Group which responded to the CMA said that NordGlass and AGC Group represent less than [30–40]% of their supplies.
76. On the basis of this evidence, the CMA believes that the Merger will not change the ability of the AGC Group to harm its rivals' ability to compete in the upstream market for the supply of float glass through the foreclosure of customers downstream. Therefore, the CMA concludes that vertical effects through customer foreclosure are unlikely to arise as a result of the Merger.

#### *Conclusion on vertical effects*

77. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects, both in relation to the supply of float glass to the Parties' competitors downstream (partial input foreclosure) and in relation to the purchase of float glass from the Parties' competitors upstream (partial customer foreclosure).

#### ***Coordinated effects***

78. Coordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent, and that they can reach a more profitable outcome if they coordinate to limit their rivalry.<sup>25</sup> A merger may raise competition concerns as a result of coordinated effects if it affects the market structure such that the conditions for sustaining coordinated effects are created or enhanced.
79. When assessing whether or not coordinated effects may arise as a result of a merger, the CMA has regard to whether: (a) there is evidence of pre-existing coordination in the relevant market(s); (b) firms are able to reach and monitor the terms of coordination; (c) coordination would be internally sustainable; and (d) coordination would be externally sustainable.<sup>26</sup>
80. Given that, in the past, the EC found coordination in the supply of automotive glass to the OEM channel,<sup>27</sup> the CMA has considered whether the Merger may increase the risk of coordinated effects in this market and whether this

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<sup>25</sup> [Merger Assessment Guidelines](#), paragraph 5.5.1.

<sup>26</sup> [Merger Assessment Guidelines](#), paragraphs 5.5.4 & 5.5.9.

<sup>27</sup> See, for instance, the EC Decision of 12 November 2008 relating to a proceeding under Article 82 of the Treaty establishing the European Community and Article 53 of the EEA Agreement (Case COMP/39.125 - Car glass).

could give rise to a realistic prospect of an SLC as a result of coordinated effects.

81. As mentioned above, NordGlass is only marginally active in the OEM channel and, as such, the Merger would only marginally affect the parties' presence in this market. Therefore, the CMA believes that the Merger will not substantially increase the risk of coordination in the supply of automotive glass to the OEM channel as it will not significantly impact the incentive of automotive suppliers to coordinate or the sustainability of any coordinated behaviour.

#### *Conclusion on coordinated effects*

82. For these reasons, the CMA believes that there is no realistic prospect of an SLC as a result of coordinated effects in the supply of automotive glass to the OEM channel.

#### **Third party views**

83. The CMA contacted customers and competitors of the Parties. From nine respondents to the CMA's market testing, only one IAM customer of automotive glass raised concerns regarding the Merger (see paragraph 62).
84. Third party comments have been taken into account where appropriate in the competitive assessment.

#### **Decision**

85. Based on the evidence set out above, the CMA believes that the Merger will not give rise to a realistic prospect of an SLC in the supply of float and/or automotive glass to the OEM and/or IAM channels in the UK and/or the EEA.
86. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
87. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Andrew Wright**  
**Director, Mergers**  
**Competition and Markets Authority**  
**28 September 2015**