

COMPETITION COMMISSION ACCEPTANCE OF INTERIM UNDERTAKINGS

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

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

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

On 24 May 2012, the CC advised Mr Pier Ugo Bocchio and Metlac Holding that, pursuant to section 78 of the Act, the completion of the transfer of the shares was prohibited without the consent of the CC.

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

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

Signed by authority of the CC.

Roger Witcomb
Group Chairman
10 July 2012

Interim Undertakings

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

Undertakings given by Mr Pier Ugo Bocchio to the Competition Commission pursuant to section 80 of the Enterprise Act 2002

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

Now for the purpose of preventing pre-emptive action Mr Pier Ugo Bocchio in his capacity as Managing Director of Metlac and on behalf of the owners of the Bocchio shares in Metlac Holding hereby gives to the CC the following Undertakings pursuant to section 80(2) of the Act:

Management of the Metlac business until determination of proceedings

1. Except with the prior written consent of the CC, Mr Pier Ugo Bocchio undertakes that in conducting the business affairs of Metlac he will not during the specified period take any action (including concerning the call option) which might prejudice the reference to the CC or impede the taking of any action under the Act by the CC or by any party which may be justified by the CC's decisions on the reference, including any action which would:
 - (a) lead to the further integration of the Metlac business with all or any part of the Akzo business;
 - (b) transfer the ownership of the Metlac business; or
 - (c) otherwise impair the ability of the Metlac business to compete independently in any markets affected by the proposed acquisition.
2. Except with the prior written consent of the CC, Mr Pier Ugo Bocchio undertakes when acting on behalf of the owners of the Bocchio shares in Metlac Holding he will not during the specified period take any action (including concerning the call option) which might prejudice the reference to the CC or impede the taking of any action under the Act by the CC or by any party which may be justified by the CC's decisions on the reference, including any action which would transfer the ownership of or in any way encumber the Bocchio shares in Metlac Holding.
3. Without prejudice to the generality of paragraph 1 and, except with the prior written consent of the CC, Mr Pier Ugo Bocchio undertakes during the specified period to procure that:
 - (a) the Metlac business is carried on separately from the ANPG business and separate sales or brand identity is maintained;
 - (b) the Metlac business is maintained as a going concern and continues to trade in the ordinary course of business;
 - (c) the nature, description, range and quality of the products and services of the Metlac business are maintained and preserved;
 - (d) except in the ordinary course of business, the assets of the Metlac business are maintained and preserved, including facilities and goodwill;
 - (e) notification is made and details provided to the CC immediately on the occurrence of any material development concerning the Metlac business;
 - (f) a copy of the Metlac business monthly management accounts along with the compliance statement required by paragraph 3 are provided to the CC no later than the 20th day of each month;
 - (g) the customer and supplier lists of the Metlac business shall be operated and updated separately from the ANPG business and any negotiations with customers or suppliers in relation to the Metlac business will be carried out by the

Metlac business alone and for the avoidance of doubt the ANPG business will not negotiate on behalf of the Metlac business;

- (h) all existing contracts awarded to the Metlac business continue to be serviced by the Metlac business;
- (i) no key staff are transferred between the Metlac business and AkzoNobel or its subsidiaries; and
- (j) no confidential information relating to the Metlac business, shall pass, directly or indirectly, from the Metlac business (or any of its employees, directors, agents, subsidiaries or affiliates) to AkzoNobel or the ANPG business (or any of its employees, directors, agents or affiliates) but not so as to prevent any of the directors of Metlac Holding or Metlac appointed by AkzoNobel (or any of its subsidiaries) from fulfilling their fiduciary and other duties, obligations and rights in their capacities as directors.

Compliance

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

Interpretation

- 7. The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
- 8. For the purposes of these Undertakings:

'the Act' means the Enterprise Act 2002;

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

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

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

'the CC' means the Competition Commission;

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

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

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

'key staff' means members of staff identified or considered by Mr Pier Ugo Bocchio as important to the operation of the Metlac business;

'material development' means a significant occurrence affecting the business and includes but is not limited to commencement of or taking steps to further or discontinuation of litigation or any other legal or arbitration proceedings involving AkzoNobel or the ANPG business, discussions or agreements affecting the conduct of the Metlac business, significant loss or gain of market share and changes in key staff;

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

'the OFT' means the Office of Fair Trading;

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

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

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

Signature

Name

Title

Date

Mr Pier Ugo Bocchio

Compliance Statement

I, Mr Pier Ugo Bocchio, confirm that I and the Metlac business:

- (a) have complied with the Undertakings given by it and accepted by the CC on *[insert date]* ('the Undertakings') in the period from *[insert date]* to *[insert date]*;
- (b) have notified the CC of any material development in the period from *[insert date]* to *[insert date]*;
- (c) remain in full compliance with the Undertakings and will continue actively to keep the CC informed of any material development relating to the Metlac business;
- (d) no action has been taken by me or the Metlac business in the period from *[insert date]* to *[insert date]* that will impede the taking of any action by the CC which may be justified by its decision on the reference;
- (e) no key staff have been transferred between Metlac and AkzoNobel or its subsidiaries;
- (f) no confidential information relating to the Metlac business, has passed, directly or indirectly, from the Metlac business (or any of its employees, directors, agents, subsidiaries or affiliates) to AkzoNobel or the ANPG business (or any of its employees, directors, agents or affiliates), except to allow any of the directors of Metlac Holding or Metlac appointed by AkzoNobel (or any of its subsidiaries) to fulfil their fiduciary and other duties, obligations and rights in their capacities as directors; and,
- (g) the monthly management accounts for the Metlac business for period from *[insert date]* to *[insert date]* are annexed to this Compliance Statement.

Interpretation

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

FOR AND ON BEHALF OF the METLAC Business and the owners of the Bocchio shares

Signature

Name: Mr Pier Ugo Bocchio

Title: Director and Chief Executive Officer

Date