

THE ANTICIPATED ACQUISITION BY AKZO NOBEL N.V. OF METLAC HOLDING S.R.L

Notice of acceptance of final undertakings pursuant to section 82 and Schedule 10 of the Enterprise Act 2002

Background

1. 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 N.V. (AkzoNobel) of the remaining shares in Metlac Holding S.r.l. (Metlac Holding) that it did not already own through its subsidiary Akzo Nobel Coatings International B.V. (ANCI).
2. In its report, Akzo Nobel N.V. / Metlac Holding S.R.L.: [A report on the anticipated acquisition by Akzo Nobel N.V. of Metlac Holding S.r.l.](#) (the Report), dated 21 December 2012 the CC concluded that:
 - (a) the proposed acquisition of the remaining shares in Metlac Holding was a relevant merger situation;
 - (b) the creation of that merger situation may be expected to result in a substantial lessening of competition (SLC) within the market for the supply of metal packaging coatings for Beer and Beverage (B&B) metal packaging in the UK;
 - (c) the CC should take action to remedy the SLC and any adverse effects which flow from it; and
 - (d) undertakings should be given by AkzoNobel (or an Order imposed) to give effect to the remedy of prohibiting the proposed acquisition identified by the CC in section 11 of the Report.
3. On 17 January 2013, AkzoNobel challenged the lawfulness of the CC's decision to impose a remedy on AkzoNobel in the Competition Appeal Tribunal (the Tribunal). The appeal to the Tribunal was unsuccessful and the subsequent appeal of the Tribunal's decision to the Court of Appeal was also

unsuccessful. On 16 December 2014, AkzoNobel's application for permission to appeal to the Supreme Court was refused.

4. On 1 April 2014, the remaining functions of the CC in relation to the reference were transferred to the Competition and Markets Authority (CMA) under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014 (the Order). Accordingly these undertakings are accepted by the CMA.

Notice of acceptance of undertakings

5. The CMA published a notice of proposal to accept undertakings on 14 August 2015. No representations were received that provided cause for us to amend the undertakings on which we consulted and the CMA has therefore decided to accept undertakings given by AkzoNobel to remedy the SLC in the form set out in the attached appendix. The reference has now been finally determined and the undertakings come into force accordingly.
6. The undertakings may be varied, superseded or released by the CMA under section 82(2) of the Act.
7. This Notice and a non-confidential version of the undertakings will be published on the CMA website.

(signed) ROGER WITCOMB
Group Chairman and Panel Chair
1 October 2015

THE ANTICIPATED ACQUISITION BY AKZO NOBEL N.V. OF METLAC HOLDING S.R.L.

Undertakings given by Akzo Nobel N.V. and the Bocchio Family to the Competition and Markets Authority pursuant to section 82 of and Schedule 10 to the Enterprise Act 2002

Background

1. In 2008 Akzo Nobel N.V. (AkzoNobel) acquired Imperial Chemical Industries plc (ICI) in a transaction cleared by the European Commission. As a result of the transaction, AkzoNobel acquired shareholdings in Metlac Holding S.r.l. (Metlac Holding) and Metlac S.p.A. (Metlac) through subsidiary companies: Akzo Nobel Coatings International B.V (ANCI) acquired a 49 per cent shareholding in Metlac Holding (the ANCI Shares) and Mortar Investments International Limited (Mortar), formerly a subsidiary of ICI, already held a 44.44 per cent shareholding in Metlac (the Mortar Shares). Metlac Holding holds the remaining 55.56 per cent of Metlac.
2. The remaining 51 per cent of shares in Metlac Holding (the Bocchio Shares) are held by Mr Pier Ugo Bocchio (Mr Bocchio), Mr Davide Bocchio and Mr Diego Bocchio (together and individually, the Bocchio Family). Mr Bocchio is also the Managing Director of Metlac, an appointment which was extended by the Metlac shareholders on 25 June 2014 until mid-2016.
3. Also as a result of the acquisition of ICI, ANCI acquired a call option to acquire the Bocchio Shares under clause 8.5.2 of the Metlac Holding Formation and Quotaholders Agreement of 30 September 2007 (the 2007 Agreement). The call option was exercisable in the period between 1 October 2011 and 30 September 2012. On 23 December 2011, ANCI sent a formal notice in writing to Mr Bocchio the appointed representative of the individual shareholder members of the Bocchio Family exercising this call option (hereafter referred to as 'the Proposed Acquisition').
4. The 2007 Agreement provided that the transfer of the Bocchio Shares to ANCI would become automatically effective 20 business days after receipt of the notice of exercise or 20 business days after the date of any applicable antitrust clearance has occurred.
5. Metlac notified the Proposed Acquisition to the Office of Fair Trading (OFT) and on 23 May 2012, the OFT made a reference to the Competition

Commission (CC) under section 33 of the Enterprise Act (the Act) concerning the Proposed Acquisition.

6. The CC published, Akzo Nobel N.V./Metlac Holding S.R.L.: A report on the anticipated acquisition by Akzo Nobel N.V. of Metlac Holding S.r.l. (the Report), on 21 December 2012.
7. On 1 April 2014, the remaining functions of the CC in relation to the reference were transferred to the Competition and Markets Authority (CMA) under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014 (the Order).
8. The Report concluded that the Proposed Acquisition may be expected to result in a substantial lessening of competition (SLC) within the market for supply of metal packaging coatings for Beer and Beverage (B&B) metal packaging in the UK.
9. The Report further concluded that in order to prevent the SLC from arising, the completion of the Proposed Acquisition should be prohibited and the CMA should seek undertakings from AkzoNobel and the Bocchio Family to give effect to the remedy of prohibiting the Proposed Acquisition identified by the CMA in section 11 of the Report but if agreement on undertakings was not forthcoming, the CC should have recourse to imposing an Order.
10. On 17 January 2013 AkzoNobel challenged the lawfulness of the CMA's decision to impose a remedy on AkzoNobel in the Competition Appeal Tribunal (the Tribunal). The appeal to the Tribunal was unsuccessful and the subsequent appeal of the Tribunal's decision to the Court of Appeal was also unsuccessful. On 16 December 2014 AkzoNobel's application for permission to appeal to the Supreme Court was refused.

NOW THEREFORE AkzoNobel and the Bocchio Family give to the CMA the following undertakings under section 82 of the Act for the purpose of preventing the SLC or any adverse effect which may be expected to result from it as identified in the Report.

1. Commencement

- 1.1 The Undertakings shall come into force on the Commencement Date.

2. Undertaking not to acquire shares

- 2.1 AkzoNobel undertakes that within the Prohibition Period it will not itself nor through any subsidiary, affiliate or associated person, including but not limited

to ANCI, directly or indirectly, including by the exercise of any pre-emption rights contained in the By-laws of Metlac Holding, acquire any shares in Metlac Holding in addition to the shares held by ANCI as at the Commencement Date without the prior written consent of the CMA.

- 2.2 For the avoidance of doubt, these Undertakings shall have no effect on AkzoNobel's interests in the ANCI Shares and Mortar Shares as held on the Commencement Date.

3. Undertaking not to sell shares

- 3.1 The Bocchio Family undertakes that none of them shall sell or otherwise transfer, including by the exercise of any pre-emption rights contained in the By-laws of Metlac Holding, any of the Bocchio Shares to AkzoNobel or to any subsidiary, affiliate or associated person of AkzoNobel within the Prohibition Period without the prior written consent of the CMA.

4. Undertaking not to enter into arrangements with similar effects

- 4.1 Except with the prior written consent of the CMA, AkzoNobel and the Bocchio Family undertake that they will not during the Prohibition Period enter into any agreement or arrangement that would have similar effect to the acquisition, directly or indirectly, by AkzoNobel itself or through any subsidiary, affiliate or associated person, including but not limited to ANCI, of any shares in Metlac Holding in addition to the shares held by ANCI as at the Commencement Date, including by the exercise of the pre-emption rights contained in the By-laws of Metlac Holding.

5. Compliance

- 5.1 AkzoNobel and the Bocchio Family undertake to comply with these Undertakings.
- 5.2 AkzoNobel undertakes to procure that its subsidiaries, affiliates and associated persons comply with these Undertakings.
- 5.3 AkzoNobel and the Bocchio Family shall each provide promptly to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under these Undertakings or under Sections 82, 83, 92 and 94(6) of the Act.

6. Directions

- 6.1 The CMA may give directions falling within paragraph 6.2 to:
- (a) a person specified in the directions; or

(b) a holder for the time being of an office so specified in any body of persons corporate or unincorporate.

6.2 Directions fall within this paragraph if they are directions:

(a) to take such steps as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with these Undertakings; or

(b) to do, or refrain from doing, anything so specified or described which the person might be required by these Undertakings to do or refrain from doing. The CMA may vary or revoke any directions so given.

6.3 Each of AkzoNobel and the Bocchio Family undertakes to comply with such written directions as the CMA may from time to time (acting reasonably) issue in so far as such steps are within its competence.

7. Governing law

7.1 These Undertakings shall be governed by and construed in all respects in accordance with English law.

7.2 Disputes arising concerning these Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

8. Effect of invalidity

8.1 Should any provision of these Undertakings be contrary to law or invalid for any reason, AkzoNobel and the Bocchio Family undertake to continue to observe the remaining provisions.

9. Termination and variation

9.1 These Undertakings shall be in force until such time as they are varied superseded or released under the Act or for the period of ten years commencing on the date of the CC Report, whichever is the earlier.

9.2 The variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

9.3 For the avoidance of doubt, nothing in these Undertakings affects the rights of AkzoNobel and the Bocchio Family to make a request to the CMA for variation of these Undertakings.

10. Interpretation

10.1 For the purposes of these Undertakings, the following definitions apply:

Affiliate	means a person who would be regarded as under common control for the purposes of Section 26 of the Act;
Associated Person	means a person who would be treated as associated with another person by Section 127(4) of the Act;
CC Report	means the report entitled " <i>A report on the anticipated acquisition by Akzo Nobel N.V. of Metlac Holding S.r.l.</i> ", as published on 21 December 2012;
Commencement Date	means the date on which these Undertakings are accepted by the CMA;
Prohibition Period	means the period of ten years commencing on the date of the CC Report and ending on 21 December 2022;
Shares	means certificates or book entries representing units of ownership in a company and any reference to a share or shares or shareholder shall also be taken to refer to a Quota, Quotas or Quotaholder;
Subsidiary	has the meaning given to it by Section 1159 of the Companies Act 2006.

SIGNED FOR AND ON BEHALF OF AKZO NOBEL N.V.:

Partha Basu
Director Finance Operations

Hans de Vriese
Group Controller