

# **Anticipated acquisition by Hempel Holdings (Germany) GmbH of J.W. Ostendorf GmbH & Co. KG**

## **Decision on relevant merger situation and substantial lessening of competition**

**ME/6761/18**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 6 September 2018. Full text of the decision published on 26 September 2018.

**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. Hempel Holdings (Germany) GmbH (**Hempel**) has agreed to acquire J.W. Ostendorf GmbH & Co. KG (**JWO**) (the **Merger**). Hempel and JWO are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Hempel and JWO is an enterprise, that these enterprises will cease to be distinct as a result of the Merger, and that the share of supply test is met. Accordingly, 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 supply of decorative coatings in the UK. They supply both branded and private label decorative coatings. The CMA found that branded and private label decorative coatings differ based on their product characteristics, pricing, consumer preferences, procurement and supplier set. The CMA therefore assessed the impact of the Merger in separate frames of reference for the supply of private label decorative coatings in the UK and branded decorative coatings in the UK.

4. The CMA investigated whether the Merger would give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in these frames of reference. The CMA found that:
  - (a) Competition concerns did not arise as a result of the Merger in the supply of branded decorative coatings as JWO supplies only a negligible volume of such coatings in the UK.
  - (b) Competition concerns also did not arise as a result of the Merger in the supply of private label decorative coatings in the UK as sufficient competition will remain post-Merger from alternative credible suppliers.
5. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects.
6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

7. Hempel supplies coatings to the decorative, protective, marine, container and yacht sectors, operating globally in over 80 countries. Hempel produces and supplies decorative coatings in the UK through Crown Paints Limited, which has two production sites in the UK. Hempel is a wholly-owned subsidiary of Hempel A/S, which is headquartered in Denmark. Hempel group's turnover in 2017 was approximately €1,376 million worldwide, of which approximately £[<] was generated in the UK.
8. JWO also supplies decorative coatings, primarily in Europe. It is headquartered in Germany. JWO does not have any production sites in the UK but supplies decorative coatings to the UK from facilities in Western Europe. JWO's turnover in 2017 was approximately €217 million worldwide, of which approximately £[<] was generated in the UK.

### **Transaction**

9. Hempel has agreed to purchase [<] JWO. An initial 65% of the share capital will be acquired on closing [<].
10. Hempel stated that its rationale for the Merger is to expand its decorative coatings product offering in Europe and to realise synergies in procurement, distribution, formulation and back-office requirements.

11. The Parties informed the CMA that the Bundeskartellamt (Federal Cartel Office) in Germany was also reviewing the Merger. The Bundeskartellamt cleared the Merger on 21 June 2018.

## Procedure

12. The CMA's mergers intelligence function identified the Merger as warranting an investigation.<sup>1</sup>

## Jurisdiction

13. Each of Hempel and JWO is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
14. The Parties overlap in the supply of private label decorative coatings in the UK, in which their combined share of supply, based on revenues, is approximately [50-60]%.<sup>2</sup> The increment from the Merger is approximately [5-10]%. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
15. Accordingly, 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.
16. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 3 August 2018 and the statutory 40 working day deadline for a decision is therefore 28 September 2018.

## Counterfactual

17. 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 believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is

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<sup>1</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

<sup>2</sup> See Table 1 below.

a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>3</sup>

18. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## Frame of reference

19. 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>4</sup>
20. The Parties overlap in the supply of decorative coatings in the UK. Decorative coatings refers to various types of coatings for walls, ceilings, doors, window frames and other surfaces, which are normally used on-site both internally and externally during the construction or refurbishment of architectural structures. Decorative coatings include both decorative paints and woodcare products.
21. In the UK, Hempel mainly supplies branded decorative coatings, although it has recently increased its private label supply. JWO focuses on supplying private label decorative coatings, which represented over [X]% of its UK decorative coatings sales in 2017. Almost all JWO's sales are to [X].<sup>5</sup>
22. Decorative coatings are sold to retail (ie non-professional) consumers and trade (ie professional) customers in the UK through different channels, including DIY retailers (such as B&Q and Homebase), generalist retailers (such as Tesco and Aldi), specialist retailers, wholesalers/builders' merchants, Internet distributors (such as Amazon) and directly from decorative coatings manufacturers. DIY retailers are the largest channel through which decorative

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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> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>5</sup> [X]

coatings are sold in the UK.<sup>6</sup> These retailers typically stock both branded and private label decorative coatings.

### **Product scope**

23. The Parties submitted that there is an overall market for decorative coatings and that no further segmentation is appropriate.
24. The CMA's approach to the frame of reference is typically to begin with the parties' overlapping products in the narrowest plausible candidate frame of reference and then to see if this should be widened. The CMA pays particular regard to demand-side factors (ie the behaviour of customers and its effects). However, it may also consider supply-side factors (ie the capabilities and reactions of suppliers in the short-term) and other market characteristics.<sup>7</sup>
25. The European Commission (**EC**) has considered the supply of decorative coatings on several occasions.<sup>8</sup> In these decisions, the EC has concluded that decorative coatings are a separate and distinct market from industrial coatings. The EC also considered potential segmentations within the decorative coatings market based on: (i) branded and private label decorative coatings; (ii) paint and woodcare products; (iii) retail consumers and trade customers; and (iv) water-based and solvent-based decorative coatings. It has, however, left open whether each of these segments constitutes a separate product market.
26. The CMA has considered below whether separate frames of reference are appropriate for each of these different segmentations in the present case.

### **Branded and private label decorative coatings**

27. The CMA and its predecessors have considered the distinction between branded and private label products in several previous cases.<sup>9</sup> These cases show that there is no general rule as to whether branded and private label products form part of the same product market. Each case needs to be

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<sup>6</sup> Information Research Limited, *The Global Paints & Coatings Market 2017 report: United Kingdom – Architectural Coatings Market*, November 2017.

<sup>7</sup> *Merger Assessment Guidelines*, section 5.2.

<sup>8</sup> For example: (i) Case No COMP/M.4853, PPG / SIGMAKALON, 10 December 2007; (ii) Case No COMP/M.4779, AKZO NOBEL / ICI, 13 December 2007; and (iii) Case No COMP/M.8020, SHERWIN-WILLIAMS / VALSPAR, 10 August 2016.

<sup>9</sup> For example: (i) ME/6675/17, *Anticipated acquisition by Hain Frozen Foods UK Limited of The Yorkshire Provender Limited*, 20 April 2017; (ii) ME/6598/16, *Completed acquisition by Whitby Seafoods Ltd of the Scamp Processing Business of Dawnfresh Seafoods Ltd*, 20 June 2016; (iii) ME/6585/16, *Completed acquisition by Hain Frozen Foods UK Limited of Orchard House Foods Limited*, 17 May 2016; and (iv) ME/6452/14, *Anticipated acquisition by Associated British Foods Plc of Dorset Cereals Limited*, 6 October 2014.

considered on its own facts, and the CMA and its predecessors have reached different conclusions in different cases.

28. In assessing whether branded and private label decorative coatings should be assessed in the same product frame of reference, the CMA has considered the following factors:

(a) **Product characteristics:** Some customers told the CMA that the product quality and specifications of private label and branded products are comparable. This is consistent with industry reports noting that the quality of private label decorative coatings has improved in recent years.<sup>10</sup> However, other customers and most competitors said that branded products are often higher quality than private label products, and more innovative in terms of product development and use.

(b) **Pricing:** The Parties provided evidence showing that branded and private label decorative coatings are sold at a range of price points. However, most customers and competitors told the CMA that private label decorative coatings are cheaper than branded products and often preferred by price-conscious consumers. This is consistent with several industry reports.<sup>11</sup>

(c) **Consumer preferences and switching:** Several retailers and competitors told the CMA that some consumers switch between branded and private label products. Most third parties, however, said that switching usually occurs in response to special offers and price promotions. Similarly, while the Parties provided consumer research indicating that brand is not a significant factor for consumers when choosing decorative coatings, this research indicates that price is the most important factor.<sup>12</sup> As noted above, the CMA found that private label products are generally cheaper than branded products. The CMA therefore believes that the importance of price when choosing decorative coatings may result in price-conscious consumers preferring private label products.

(d) **Procurement by customers (eg retailers and builders' merchants):** While some customers of the Parties procure branded and private label products together, the vast majority told the CMA that they tend to procure private label products separately from branded products.

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<sup>10</sup> See, for example, AMA Research, *Paint, Wallcoverings and Woodcare Market Report – UK 2018 - 2022*, January 2018, page 40.

<sup>11</sup> See, for example, Annexes 10.2, 10.3, 10.9 and 13.01 to the Merger Notice.

<sup>12</sup> See Annex 13.03 to the Merger Notice.

(e) **Supply-side substitution:** The CMA found that many decorative coatings suppliers produce both branded and private label products, and that it is relatively easy for suppliers to switch production between these products as the raw materials and manufacturing processes are similar. Almost all competitors that responded to the CMA's investigation said that the costs and time for switching production between branded and private label products are low, with some competitors noting that they can switch production between branded and private label products on the same manufacturing line numerous times each day. However, the CMA also found that some suppliers of branded decorative coatings do not supply private label decorative coatings. The CMA believes that this may be due to the perceived adverse impact on the supplier's brand, [§].<sup>13</sup>

29. Overall, and in particular because many customers of the Parties buy private label decorative coatings separately from branded decorative coatings (typically through a distinct tender process), the CMA does not believe that the constraint of branded decorative coatings on private label decorative coatings is sufficient to include them in the same frame of reference.
30. While both Parties supply branded decorative coatings, only a minimal proportion of JWO's UK turnover is generated from these products (ie less than [§]% in 2017). The CMA also found that JWO does not have any plans to expand materially its sales of branded decorative coatings in the UK. As JWO's share of supply of branded decorative coatings in the UK is negligible (ie below [0-5]% by volume or revenues), and no customers considered JWO to be a close alternative to Hempel for branded decorative coatings, the CMA did not consider this overlap further.
31. The CMA has therefore assessed the impact of the Merger within a frame of reference for private label decorative coatings.

#### *Decorative paint and woodcare products*

32. The CMA considered whether decorative paint and woodcare products should be assessed in the same product frame of reference.
33. On the demand side, retailers told the CMA that decorative paint products and woodcare products largely have different uses and there are only limited circumstances where they are substitutable.
34. On the supply side, the CMA found that many decorative coatings suppliers produce both paint and woodcare products, including Akzo Nobel, PPG,

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<sup>13</sup> See Annex 9.06 to the Merger Notice.

Hempel, Sherwin-Williams and JWO. The Parties said that there are no significant barriers to switching production between these two product types. This view was supported by some competitors.

35. However, it was not necessary for the CMA to conclude on whether there are separate frames of reference for decorative paints and woodcare products since, as set out below, no competition concerns arise on any plausible basis. Where relevant, the CMA has taken into account the differences between paint products and woodcare products within its competitive assessment.

#### *Retail consumers and trade customers*

36. The CMA considered whether the supply of decorative coatings to retail (ie non-professional) consumers and trade (ie professional) customers should be assessed in the same product frame of reference.
37. On the demand side, the CMA found that there are some differences between the preferences of retail consumers and trade customers and the decorative coatings they buy. For example, trade customers tend to prefer branded products, as they can become used to the viscosity of a particular brand or they may receive trade discounts from branded suppliers.
38. On the supply side, the CMA found that many suppliers produce decorative coatings for both trade customers and retail consumers. The Parties said that it is easy for suppliers to switch production between products targeted at the different customer groups, with Hempel providing evidence that it does so on a weekly basis depending on demand.<sup>14</sup>
39. However, it was not necessary for the CMA to conclude on whether there are separate frames of reference for decorative coatings to trade customers and retail consumers since, as set out below, no competition concerns arise on any plausible basis. Where relevant, the CMA has taken into account the differences between decorative coatings for trade customers and retail consumers within its competitive assessment.

#### *Water-based and solvent-based decorative coatings*

40. The CMA considered whether water-based and solvent-based decorative coatings should be assessed in the same product frame of reference.

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<sup>14</sup> See Annex 9.01 to Hempel's response to the CMA's information request of 10 July 2018.



41. On the demand side, the Parties noted that there has been a shift from solvent-based coatings to water-based coatings for environmental and safety reasons. This view was supported by a recent industry report.<sup>15</sup> Retailers also told the CMA that retail consumers generally only use water-based coatings.
42. On the supply side, the CMA found that most large suppliers produce both water-based and solvent-based decorative coatings, although additional costs and time are required to switch production as equipment must be entirely clean of solvent before producing water-based products.
43. However, it was not necessary for the CMA to conclude on whether there are separate frames of reference for water-based decorative coatings and solvent-based decorative coatings since, as set out below, no competition concerns arise on any plausible basis. Where relevant, the CMA has taken into account the differences between water-based and solvent-based decorative coatings within its competitive assessment.

#### *Conclusion on product scope*

44. For the reasons set out above, the CMA has assessed the impact of the Merger in the supply of private label decorative coatings.

#### **Geographic scope**

45. The Parties submitted that the geographic market is at least UK-wide and may be wider. They noted that any barriers to supplying decorative coatings to UK customers from another EU Member State are not sufficient to prevent new entry.
46. In previous decisions, the EC has considered the decorative coatings market to be national in scope due to transportation and other logistical costs, as well as differences in product specifications and labelling requirements between EU Member States.<sup>16</sup>
47. The CMA noted:
  - (a) There are some Western European suppliers importing decorative coatings into the UK (such as JWO). However, a few Western European

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<sup>15</sup> AMA Research, *Paint, Wallcoverings and Woodcare Market Report – UK 2018 - 2022*, January 2018, page 45.

<sup>16</sup> For example: (i) Case No COMP/M.4853, PPG / SIGMAKALON, 10 December 2007; (ii) Case No COMP/M.4779, AKZO NOBEL / ICI, 13 December 2007; and (iii) Case No COMP/M.8020, SHERWIN-WILLIAMS / VALSPAR, 10 August 2016.

suppliers told the CMA that transportation and logistical costs have made it challenging to attempt to supply UK customers.

(b) Some customers told the CMA that there are some differences in the product specifications and formulations (eg viscosity) of decorative coatings between the UK and other countries (both within the EU and outside the EU). For example, the Parties provided a [X] setting out particular product specification requirements for decorative coatings supplied to the UK.<sup>17</sup>

(c) The Parties' internal documents refer to differences in customer behaviour, packaging, product specifications and distribution channels across different countries in Europe.<sup>18</sup>

48. On the basis of this evidence, the CMA believes that it is appropriate to assess the Merger within a UK frame of reference, taking into account the constraint from suppliers importing decorative coatings to UK customers.

#### *Conclusion on geographic scope*

49. For the reasons set out above, the CMA has assessed the impact of the Merger in the UK.

#### *Conclusion on frame of reference*

50. For the reasons set out above, the CMA has assessed the impact of the Merger in the supply of private label decorative coatings in the UK.

51. Where relevant, the CMA has taken into account within its competitive assessment any differences between: (i) decorative paint products and woodcare products; (ii) retail consumers and trade customers; and (iii) water-based decorative coatings and solvent-based decorative coatings.

## **Competitive assessment**

### *Horizontal unilateral effects*

52. 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 to degrade quality on its own and

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<sup>17</sup> Annex 7.02 to JWO's response to the CMA's information request of 10 July 2018.

<sup>18</sup> Annexes 8.06, 8.07, 9.10 and 10.13 to the Merger Notice.

without needing to coordinate with its rivals.<sup>19</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.

53. The CMA has assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of private label decorative coatings in the UK.
54. In making this assessment, the CMA has considered:
- (a) Shares of supply;
  - (b) Closeness of competition between the Parties; and
  - (c) Competitive constraints from alternative suppliers.

#### *Shares of supply*

55. Table 1 sets out the CMA’s estimates of shares of supply for private label decorative coatings in the UK (based on revenues). The CMA did not receive responses from all suppliers of decorative coatings in the UK, which means that Table 1 will overstate the shares of those suppliers shown.

**Table 1: Shares of supply for decorative coatings in the UK in 2017**

Supplier	Decorative coatings		Private label decorative coatings	
	Revenue (£m)	Share (%)	Revenue (£m)	Share (%)
Hempel	[<]	[10-20]	[<]	[5-10]
JWO	[<]	[0-5]	[<]	[40-50]
<b>Parties combined</b>	[<]	[10-20]	[<]	[50-60]
Akzo Nobel	[<]	[40-50]	[<]	0.0
PPG	[<]	[20-30]	[<]	[20-30]
Sherwin-Williams	[<]	[5-10]	[<]	[0-5]
Farrow & Ball	[<]	[5-10]	[<]	0.0
Tor Coatings	[<]	[0-5]	[<]	[10-20]
Other*	[<]	[0-5]	[<]	[5-10]
<b>Total</b>	[<]	100	[<]	100

Source: CMA analysis of revenue data from the Parties and third parties.

\* “Other” comprises three small suppliers of decorative coatings.

56. Table 1 shows that, based on revenues, JWO is by far the largest supplier of private label decorative coatings in the UK. PPG is the second largest supplier. Hempel is a much smaller supplier of private label decorative coatings with a relatively low share (around [5-10]%). The Merger therefore brings about a small increment to the Parties’ share of supply.

<sup>19</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

57. However, the CMA noted that Hempel's share of supply for 2017 may understate its competitive position in relation to the supply of private label decorative coatings as it has recently won [X] tenders to supply [X], which means that its share of supply for private label decorative coatings in the UK is likely to increase.

#### *Closeness of competition*

58. The CMA assessed the extent to which the Parties compete closely in the supply of private label decorative coatings in the UK.
59. The Parties submitted that they are not close competitors and have largely complementary areas of focus. Hempel predominantly supplies branded products (with only a small proportion of its sales generated from the supply of private label products) and JWO predominantly supplies private label products (see paragraph 21 above).
60. The Parties' internal documents and third party views presented mixed evidence on whether the Parties are close competitors:
- (a) The CMA found several internal documents which indicated that the Parties' activities are complementary and which mention other competitors more frequently than they mention each other.<sup>20</sup> However, the CMA also found some documents which suggested that the Parties compete against each other in private label tenders and that JWO is looking to grow in the UK.<sup>21</sup>
  - (b) Most competitors said that the Parties are close competitors for decorative coatings. However, only a few customers said that the Parties are close alternatives for private label decorative coatings in the UK.
61. The CMA also examined tender data submitted by the Parties. The CMA found that the Parties have competed against each other relatively frequently in recent private label tenders (ie they have bid against each other in at least [X] private label tenders since [X]). However, the CMA is aware of a further [X] tenders where only JWO bid and [X] tenders where only Hempel bid. Hempel confirmed that it planned to [X].
62. The CMA believes that this evidence indicates that Hempel and JWO compete against each other relatively closely for the supply of private label decorative coatings in the UK.

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<sup>20</sup> For example, Annexes 9.10 and 10.15 to the Merger Notice.

<sup>21</sup> For example, Annexes 9.02 and 10.01 to the Merger Notice.

### *Competitive constraints from alternative suppliers*

63. Unilateral effects are more likely where customers have little choice of alternative suppliers.<sup>22</sup> Accordingly, the CMA assessed the extent to which the merged entity would be effectively constrained by other decorative coatings suppliers post-Merger. The CMA considered the competitive constraint from large suppliers of private label decorative coatings in the UK, suppliers that import decorative coatings to the UK from Western Europe (eg France, Germany and the Netherlands), smaller suppliers, and suppliers of branded decorative coatings.
64. **Large suppliers of private label decorative coatings in the UK.** The CMA found that both PPG and Sherwin-Williams, which are two global suppliers of decorative coatings, supply private label decorative coatings in the UK. The CMA found that PPG and Sherwin-Williams are credible and effective competitors of the Parties for these products, based on: (i) tender data submitted by the Parties and third parties, which showed that PPG and Sherwin-Williams have frequently participated in UK private label tenders in the last two years; and (ii) third party views, as many customers and competitors told the CMA that both PPG and Sherwin-Williams are credible suppliers of private label decorative coatings in the UK. On the basis of this evidence, the CMA believes that PPG and Sherwin-Williams exercise a strong competitive constraint on the Parties.
65. **Suppliers into the UK from Western Europe.** The CMA also assessed the competitive constraint from decorative coatings suppliers located in Western Europe. Large customers told the CMA that they would consider procuring private label decorative coatings from suppliers located in Western Europe. They said that their ability to buy high volumes could offset the additional transport costs. The CMA found that a small number of Western European suppliers currently supply private label decorative coatings to large retailers in the UK (eg Somefor and Avenarius, as well as JWO), and a few Western European suppliers have recently participated in UK private label tenders (eg [X]). The CMA therefore believes that, while Western European suppliers do not exercise as strong a constraint on the Parties as PPG and Sherwin-Williams, they are a credible alternative for some large customers and therefore exercise some competitive constraint on the Parties.
66. **Smaller suppliers.** Several smaller suppliers currently supply private label decorative coatings to customers in the UK, including Tor Coatings, Steyport, VFM Coatings, Craig & Rose and FLAG Paints. The CMA found that smaller

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<sup>22</sup> [Merger Assessment Guidelines](#), paragraph 5.4.12.

suppliers mainly supply private label decorative coatings to smaller customers. While a few smaller suppliers do supply some types of private label decorative coatings to larger retailers, most large retailers told the CMA that smaller suppliers may not be able to provide sufficient volumes of decorative coatings to be an effective alternative to larger suppliers. On the basis of this evidence, the CMA believes that several smaller suppliers are a credible alternative for smaller customers, and they therefore exercise a significant competitive constraint on the Parties for these customers, but these suppliers exercise a more limited competitive constraint on the Parties for larger customers.

67. **Suppliers of branded decorative coatings.** The CMA found that: (i) some consumers switch between branded and private decorative coatings (often in response to special offers and price promotions); and (ii) almost all competitors stated that it is easy to switch production between branded and private label decorative coatings (see paragraph 28 above). The CMA therefore believes that the Parties are constrained to some extent in their supply of private label decorative coatings by suppliers of branded decorative coatings, in particular by Akzo Nobel (which is the largest supplier of branded decorative coatings in the UK).<sup>23</sup>
68. Third party evidence indicated that the merged entity would be constrained by credible alternative suppliers post-Merger. In particular:
- (a) The vast majority of customers told the CMA that there are sufficient alternative suppliers of private label decorative coatings, with most customers listing at least three alternative suppliers to the Parties; and
  - (b) Most large customers said that post-Merger they would be able to attract a sufficient number of suppliers to ensure effective competition in their private label tenders.
69. In light of the evidence set out above, the CMA believes that sufficient competition in the supply of private label decorative coatings will remain post-Merger from alternative credible suppliers.

#### *Narrower product segments*

70. The CMA also considered whether the Merger gives rise to competition concerns in relation to certain narrower product segments (see paragraph 51).

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<sup>23</sup> See Table 1 above.

71. The CMA found that:
- (a) **Paint and woodcare products:** JWO supplies both private label paint and woodcare products. While Hempel currently supplies only a negligible volume of private label woodcare products in the UK, it has participated in recent UK private label tenders for woodcare products. However, the CMA found that most of the alternative suppliers described at paragraphs 64 to 66 also supply woodcare products (including PPG, Sherwin-Williams, Steyport and Tor Coatings).
  - (b) **Retail consumers and trade customers:** JWO and Hempel both supply private label decorative coatings targeted at retail consumers and trade customers. The CMA found that most of the alternative suppliers noted at paragraphs 64 to 66 also supply both retail consumers and trade customers.
  - (c) **Water-based and solvent-based products:** JWO and Hempel both supply water-based and solvent-based private label decorative coatings. Based on the scope of the Parties' current activities, the Parties' tender data and third party views, JWO and Hempel do not compete more closely in either of these narrower product segments (ie water-based products or solvent-based products) compared with the wider private label decorative coatings segment. The CMA found that most of the alternative suppliers noted at paragraphs 64 to 66 supply both water-based and solvent-based products.
72. For these reasons, the CMA believes that sufficient alternative suppliers will remain post-Merger in each of these narrower possible segments. The conditions of competition are similar across the segments and the CMA therefore believes that competition concerns will not arise in any particular segment as a result of the Merger.

*Conclusion on horizontal unilateral effects*

73. For the reasons set out above, the CMA believes that sufficient competition in the supply of private label decorative coatings in the UK will remain post-Merger. Accordingly, 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 private label decorative coatings in the UK.

### ***Barriers to entry and expansion***

74. Entry, or the expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC.<sup>24</sup>
75. In the present case, the CMA has not considered barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

### ***Countervailing buyer power***

76. The Parties submitted that the decorative coatings market is characterised by customers that exercise significant bargaining power through their tendering processes or threats of switching.
77. The CMA has taken into account the tendering process in its competitive assessment above. It has not had to conclude on countervailing buyer power as the Merger does not give rise to competition concerns on any basis.

### **Third party views**

78. The CMA contacted customers and competitors of the Parties.
79. Third party comments have been taken into account where appropriate in the competitive assessment above.

### **Decision**

80. 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 UK.
81. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Andrew Wright**  
**Director**  
**Competition and Markets Authority**  
**6 September 2018**

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<sup>24</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.