

Anticipated acquisition by Hempel Decorative Paints Limited of FB Ammonite Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6943/21

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 26 August 2021. Full text of the decision published on 3 September.

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

SUMMARY

1. Hempel Decorative Paints Limited (**Hempel**) has agreed to acquire FB Ammonite Limited (**FBA**) (the **Merger**). Hempel and FBA are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal effects.
3. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties and transaction

4. Hempel is a producer and supplier of coatings to the decorative, protective, marine, container, and yacht markets. In the UK, it supplies decorative coatings through Crown and JWO and non-decorative coatings through Hempel UK. Hempel's turnover for the financial year ending 31 December 2020 was £1,371,812,374 worldwide and £[X] in the UK.

5. FBA, through its subsidiary Farrow & Ball (**F&B**), is a producer and supplier of branded paint to customers in the UK and globally. The turnover of FBA for the financial year ending 28 March 2021 was £[X] worldwide and £[X] in the UK.
6. Hempel will acquire 100% of the share capital in, and sole control over, FBA.
7. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in Germany.

Jurisdiction

8. Each of Hempel and FBA is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
9. The UK turnover of FBA exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
10. The CMA therefore 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.
11. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 9 July 2021 and the statutory 40 working day deadline for a decision is therefore 6 September 2021.

Counterfactual

12. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).
13. In conducting this assessment in line with paragraph 3.12 of the CMA's merger assessment guidelines, the CMA found that in this case, there is no evidence supporting an alternative counterfactual to the prevailing conditions of competition, 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.¹

Frame of reference

14. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the

¹ The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#), from paragraph 3.12.

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.²

15. The Parties overlap in the supply of decorative coatings in the UK. Hempel's main coating brands are JWO and Crown Paints which, according to the Parties, are positioned as 'mass-market brands'. F&B's brand, by contrast, is promoted as a premium brand.

Product scope

16. Decorative coatings include 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.
17. Hempel submitted that there is an overall market for decorative coatings in the UK. It submitted that it would not be appropriate to further segment the market between (i) private label and branded decorative coatings, (ii) decorative paint and decorative woodcare products, (iii) water-based and solvent-based decorative coatings, and (iv) retail and trade customers.³
18. In this case, it was not necessary for the CMA to reach a conclusion on the product frame of reference since no competition concerns arise on any plausible basis.

Geographic scope

19. The Parties submitted that the geographic market is at least UK-wide and may be wider.
20. In *Hempel/JWO*, the CMA analysed the transaction by reference to its impact in the UK, while also acknowledging constraint from non-UK suppliers noting that "on the basis of the 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".⁴

² [Merger Assessment Guidelines](#), paragraph 9.4.

³ Merger Notice, paragraphs 13.8–13.44

⁴ *Hempel / JWO*, paragraph 48.

The CMA considers that market conditions have not changed in a way that would merit departing from this finding.

21. In this case, however, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference since no competition concerns arise on any plausible basis.

Conclusion on frame of reference

22. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of decorative coatings in the UK.

Competitive assessment

Horizontal unilateral effects

23. 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 without needing to coordinate with its rivals.⁵ Horizontal unilateral effects are more likely when the merging parties are close competitors. 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 in relation to horizontal unilateral effects in supply of decorative coatings in the UK.
24. In its assessment, the CMA considered: (i) shares of supply; (ii) closeness of competition between the Parties; and (iii) competitive constraints from alternative suppliers.

Shares of supply

25. The Parties submitted shares of supply for the supply of decorative coatings in the UK, which are shown in Table 1 below.⁶

⁵ [Merger Assessment Guidelines](#), from paragraph 4.1.

⁶ Merger Notice, paragraph 14.4

**Table 1: Market shares for the supply of decorative coatings in the UK
(by volume), 2019⁷**

Producer	Core UK brands	Sales by volume in litres (2019)	Market share by volume (2019)
Hempel	Crown, Sandtex, Sadolin, Macpherson, Berger, Magicote, Permoglaze, Elle Decoration	[X]	[10-20]%
F&B	Farrow & Ball	[X]	[0-5]%
Total		[X]	[15-25]%
Akzo Nobel	Dulux, Weathershield, Sikkens, Hammerite, Polycell, Armstead	[X]	[20-30]%
PPG	Johnstone's, Leyland	[X]	[10-20]%
Sherwin-Williams	Valspar, Ronseal, Colron	[X]	[5-10]%
Laura Ashley	Laura Ashley	[X]	[0-5]%
HMG Paints	HMG Paints	[X]	[0-5]%
Others (including RPM International and Axalta)		[X]	[20-30]%
Market total		[X]	100%

26. As Table 1 shows, the Parties have a combined share of supply of less than [15-25]% with a relatively small increment of [0-5]% being brought about by the Merger. After the Merger, the Parties will continue to face competition

⁷ The Parties provided shares of supply for calendar year 2019 because more recent data was not available. The Parties submitted that shares of supply for 2019 were broadly representative of the 2020 market.

from several other suppliers, including Akzo Nobel, PPG, Sherwin-Williams, and a long tail of smaller suppliers (of a broadly similar size to F&B).

Closeness of competition

27. The CMA assessed the extent to which the Parties compete closely in the supply of decorative coatings in the UK.
28. The Parties submitted that they are not close competitors and have largely complementary areas of focus. In particular, the Parties submitted that:
 - (a) F&B's business is focussed more on the consumer (retail) segment whereas Hempel's UK decorative coatings business has historically been focussed more towards trade.
 - (b) Hempel and F&B's products are marketed at different price points, with F&B's target demographic comprising of home decoration enthusiasts (including more affluent consumers and interior designers), and Hempel (through Crown) positioning its products as mass market brands. For example, the average sales price per litre of Crown paint is [REDACTED], whereas the average sales price per litre of F&B paint is nearly [REDACTED] times greater, at [REDACTED].
29. Hempel also explained that even its most expensive range, Elle Decoration, cannot be considered a close competitor of F&B. The Elle Decoration range remains materially cheaper than F&B's range, with a 2.5 litre tin of F&B's standard paint product being over [REDACTED]% more expensive than a 2.5 litre tin of Elle Decoration.⁸
30. The Parties' internal documents confirmed that they do not view each other as close competitors:
 - (a) Hempel's internal documents show that [REDACTED].⁹
 - (b) F&B's internal documents show that [REDACTED].¹⁰
31. The majority of third parties that responded to the CMA's merger investigation did not consider Hempel's decorative coatings compete closely with F&B's products. Third parties noted that F&B is a niche supplier in the UK, and that

⁸ Merger Notice, paragraph 14.33.

⁹ See for example, Annexes 97-111.

¹⁰ See for example, Annex 1.1

its products differ from Hempel's in terms of price, brand positioning, and customer base.

32. On this basis, the CMA considers that the Parties are not close competitors, and there is no evidence to suggest that, absent the Merger, they would become closer competitors in future.

Competitive constraints

33. The Parties submitted that there are a significant number of other suppliers active in the UK. These include significant and well-known producers of decorative coatings, such as Akzo Nobel, PPG and Sherwin Williams, which each have significant market shares in the decorative coatings market (as set out in Table 1 above).
34. In addition, there will remain a number of specialist paint brands operating at the premium end of the market, which currently compete more closely with F&B, including: Little Greene, Craig & Rose, Benjamin Moore, Annie Sloan, Mylands, Paint & Paper Library, Fenwick & Tilbrook, Edward Bulmer Paints and The Pickleson Paint Co.¹¹
35. The share of supply data and the Parties' internal documents broadly confirm that there is a range of alternative suppliers of decorative coatings in the UK.¹²
36. On this basis, the CMA considers that the Parties will continue to face competition from a variety of suppliers post-Merger.

Conclusion on horizontal unilateral effects

37. For the reasons set out above, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of decorative coatings in the UK.

Third party views

38. The CMA has received input during its investigation from competitors and customers. Third party comments have been taken into account in the competitive assessment above.

¹¹ Merger Notice, paragraph 14.10.

¹² See Table 1 above for alternative suppliers such as Akzo Nobel (Dulux, Weathershield, Sikkens, Hammerite, Polycell, Armstead), PPG (Johnstone's, Leyland), Sherwin-Williams (Valspar, Ronseal, Colron), HMG Paints. See also, paragraph 32.

Decision

39. 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.
40. The Merger will therefore **not be referred** under section 33(1) of the Act.

Ricardo Zimbrón
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