COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 120 OF THE ENTERPRISE ACT 2002

CASE No. 1204/4/8/12

Pursuant to rules 15 and 25 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (the "Rules"), the Registrar gives notice of the receipt on 17 January 2013 of an application for review under section 120 of the Enterprise Act 2002 (the "Act"), by Akzo Nobel N.V. ("AkzoNobel") against a decision dated 21 December 2012 (the "Decision") made by the Competition Commission (the "Commission"). AkzoNobel is represented by Slaughter and May of One Bunhill Row, London EC1Y 8YY (ref: John Boyce).

AkzoNobel is a company incorporated in the Netherlands and active in the market for the manufacture and supply of metal packaging products. AkzoNobel (through its wholly owned subsidiary Akzo Nobel Coatings International B.V. ("ANCI")) currently holds 49% of the shares in Metlac Holding Srl ("Metlac Holding"), a company incorporated in Italy, which it obtained through its acquisition of another company in 2008, Imperial Chemical Industries ("ICI"). The remaining 51% of the issued share capital of Metlac Holding is held by members of the Bocchio family. By way of agreements between ICI and the other shareholders of Metlac Holding, ICI acquired a call option (now vested in ANCI) over the Bocchio family shareholding. On 23 December 2011, ANCI exercised that call option and informed the Bocchio family of its intention to acquire the remaining shares in Metlac Holding. The anticipated acquisition ("the Transaction") was referred to the Commission by the Office of Fair Trading on 23 May 2012 for investigation and report under the Act.

Metlac Holding owns a 55.56% stake in Metlac SpA ("Metlac") with the remaining shares being held by Mortar Investments Limited, a wholly owned subsidiary of AkzoNobel. Metlac's business concerns metal packaging coatings – namely lacquer coatings that are applied to packaging products such as cans, drums, metal tube caps and other closures. Metal packaging products generally have one of four uses: (i) the storage of beer and beverages ("B&B"); (ii) the storage of food; (iii) caps and closures; and (iv) general line (uses (ii)-(iv) are together referred to as "FCG"). Within the B&B segment, there are three types of coatings, namely those for: interior ("B2I"); exterior ("B2E"); and the ends("BE"). Both Metlac and an AkzoNobel subsidiary, AkzoNobel Packaging Coatings Ltd ("ANPG") are active in FCG. Metlac is active in B2E, but not B2I or BE. ANPG is active in all three B&B segments.

According to the application, the Commission prohibited the Transaction because it found that it would result in a substantial lessening of competition in the supply of one of the three types of coatings (B2E) for one of the four market segments (B&B).

In summary, the principal grounds of review on which AkzoNobel relies are that:

1. The Commission erred in law in its interpretation of section 86(1)(c) of the Act and/or misdirected itself in the application of that section, in concluding that AkzoNobel carries on business in the UK and could, therefore, be the subject of a prohibition order. AkzoNobel argues that the Commission had no power to impose such a remedy.

2. The Commission erred in law in finding that Metlac competes more aggressively on price than other competitors (PPG Industries, Inc and The Valspar Corporation), which finding was the basis for the Commission's theory of harm. In so doing, the Commission took a decision that was not supported by the evidence, failed to carry out sufficient enquiries and failed to have regard to material considerations.

3. The Commission erred in maintaining in the Decision a finding that the Transaction would lead to a loss of competition in innovation when there was no evidence to support that conclusion. The analysis in the Commission's provisional findings supporting an essential aspect of that conclusion, were dropped from the Decision. The Commission, therefore, made findings in the Decision that were not supported by the evidence and failed to carry out sufficient enquiries.

By way of final relief, AkzoNobel seeks:

1. a declaration pursuant to section 120(4) of the Act that the grounds of review are well-founded and that the Commission had no power to make a prohibition order against AkzoNobel;

2. an order quashing the Decision pursuant to section 120(5)(a) of the Act;

3. an order remitting the matter to the Commission with a direction to reconsider and make a new decision under section 36 of the Act in accordance with the ruling of the Tribunal under section 120(5)(b); and

4. an order that the Commission pay AkzoNobel the costs it has reasonably incurred in bringing the application for review.

AkzoNobel submits that the case merits a high degree of urgency since it relates to the review of a merger decision. Moreover, the shareholders' agreements relating to the operation of Metlac Holding expired in December 2012 and, as such, the governance of Metlac Holding is at present highly unclear as a matter of law and practice.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

Pursuant to the Order of the President of the Tribunal abridging time for applying for permission to intervene (made 22 January 2013), any request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB, so that it is received **no later than 12 noon on 28 January 2013**.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

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