

***Case No IV/M.1182 -
*** AKZO NOBEL /
COURTAULDS***

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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 30/06/1998

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.06.1998

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sirs,

Subject: Case No IV/M.1182 - AKZO NOBEL/COURTAULDS

1. On 13.05.1998 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 as amended by Regulation 1310/97 by which Akzo Nobel N.V. ("Akzo Nobel"), The Netherlands, acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of Courtaulds PLC ("Courtaulds"), Great Britain.

I. THE PARTIES

2. Akzo Nobel is a multinational company which produces and markets healthcare products, coatings, chemicals and fibres.
3. Courtaulds is an international chemical group. Its principal activities are coatings and sealants, chemicals, fibres and polymer products.

II. THE OPERATION AND THE CONCENTRATION

4. Akzo Nobel will acquire sole control of Courtaulds and its subsidiaries by way of a public bid. The operation is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than 5000 million ECU. Each of the undertakings has a Community-wide turnover in excess of 250 million ECU and they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension according to Article

1(2) of the Merger Regulation. It does not constitute a co-operation case under the EEA Agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

6. The proposed concentration concerns a large number of different sectors. However, coatings, fibres and chemicals are the only areas within which both parties are active and which could raise competition concerns.

A. Coatings

A.1. Relevant product markets

7. According to the parties a distinction can be made between decorative coatings, car re-finishes, aerospace coatings, marine coatings, protective coatings, yacht coatings and industrial coatings, which include wood finishes, powder coatings, coil coatings, packaging coatings, coatings for plastics, automotive OEM coatings and other industrial coatings:

Decorative coatings are normally used on-site to decorate buildings internally and externally.

Car re-finishes are used by car repair shops to repaint cars after accidents. These coatings are supplied directly to specialist wholesale channels and larger car repair shops. They are different from automotive OEM coatings (see below) not only in distribution, but also in the application system used for applying the coating.

Aerospace coatings are highly specialised coatings supplied to aircraft manufacturers, maintenance companies, airlines etc. Aerospace coatings are specifically formulated to fulfil extremely demanding specifications as regards temperature resistance and other physical properties. These product characteristics can not be matched by other coatings which have not been formulated for this purpose. They are a separate product market from aerospace sealants which are used to seal joints in aircrafts, i.e. in fuel tanks. These products are also highly specialised and formulated to fulfil very demanding specifications. They can thus not be substituted with by any other product. Aerospace sealants are not coatings but can be regarded as complements to aerospace coatings, since they are used by the same customers together with aerospace coatings for the same final purpose, i.e. the creation or maintenance of an airplane. It is for this reason, that they are being discussed together in this decision.

Marine coatings are supplied for the application to the hull, interior or superstructure of ships in order to protect ship structures from corrosion, to keep the underwater area free from slime and marine vegetable and animal life. Marine coatings are sold to shipyards, shipowners, charterers and independent distributors for smaller customers.

Protective coatings are heavy duty coatings for application primarily to land-based structural steel and concrete to enable them to resist corrosion, chemical attack and abrasion. They are normally supplied on a contract or project basis.

Yacht coatings are supplied for application on yachts and other leisure crafts all of which (unlike commercial ships and boats) are repainted regularly to ensure

appropriate appearance. These products are manufactured separately from marine coatings and sold to different customers.

Industrial wood finishes are supplied to the woodworking industry, for example for the treatment of furniture, building panels and kitchen cabinets.

Coil coatings are supplied for coating steel and aluminium coil during the production process. The coil is later cut and the sheets used for a range of products such as metal cladding and roofing for buildings/structures, household appliances etc.

Powder coatings are used for a wide range of industrial uses and are used for coating metal. They are applied to products by means of a static electrical charge, and then baked in an oven. Uses include aluminium windows and doors, automotive components, domestic appliances etc.

Packaging coatings are supplied for coating cans, drums, metal tubes, caps and other closures. The main customers are producers of packaging products.

Coatings for plastics are supplied to industrial users for application in an industrial environment to plastics; The products are used, for example, for coating of plastic automotive parts such as dashboards, bumpers or electronic products or sporting goods. The main customer is the automotive industry.

Automotive OEM are supplied directly to car manufacturers for OEM.

Other industrial coatings comprise a wide variety of liquid paints. Generally these coatings are specialised coatings sold to small customer groups. Examples include coatings for agricultural and construction machinery, road marking coatings, and mirror backing coatings. According to the parties it is standard industry practice to group this variety of coatings together.

8. The Commission investigation of this case has confirmed that aerospace coatings and aerospace sealants are separate relevant product markets.
9. The above distinction between the other different coatings markets has also basically been confirmed by the investigation. As far as these other coatings are concerned, the competitive impact of the operation is therefore assessed in terms of the above distinction. Nevertheless, it cannot be excluded that some of these markets should be grouped together. However, in this respect the definition of the relevant product markets is left open, since the concentration would not create or strengthen a dominant position in any of these coatings markets as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

A.2. Relevant geographic market

10. The parties have argued that the geographic scope of all of the above product markets is at least the EEA.
11. Aerospace coatings and aerospace sealants. The Commission investigation confirmed that the markets for aerospace coatings and aerospace sealants are at least EEA wide markets, but there are indications that both markets could be global markets. However, this question does not have to be finally decided, since, as discussed

below, the operation is likely to lead to the creation of a dominant position in both markets, even if these markets were to be global.

12. Coil coatings are mainly sold to a small number of large steel mills. These customers have traditionally required producers to have production close to their own production facility in order to allow quick adjustments in their production processes. However, most of the customers questioned by the Commission sourced from several countries, and there are significant trade flows between the EEA countries. Transport costs are relatively low and according to the third parties prices tend to be similar throughout the EEA. Third parties unanimously considered the scope of the relevant geographic market to be the EEA. For all of the above reasons the Commission has, therefore, concluded that the scope of the relevant geographic market for coil coatings is at least the EEA.
13. Powder coatings. As for coil coatings the Commission investigation showed that although there are certain advantages of geographic closeness to the customers, powder coatings are sourced by customers on an EEA wide basis. There are thus large trade flows of powder coatings within the EEA. Transport costs are relatively low and according to third parties prices tend to be similar throughout the EEA. Furthermore, third parties unanimously considered the scope of the geographic market to be the EEA. For all of the above reasons the Commission has, therefore, concluded that the scope of the relevant geographic market for powder coatings is at least the EEA.
14. Yacht coatings are mostly sold to smaller boat yards either directly or through specialist ships' chandlers or to DIY (Do It Yourself) customers. This market is in many ways similar to consumer products markets, and it cannot be excluded that the geographic scope of this market is national. However, the geographic market definition can be left open since, as discussed below, even on the narrowest possible market definition, the concentration does not create or strengthen a dominant position in this market as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

Decorative coatings, car re-finishes, marine, protective coatings, industrial wood finishes, packaging coatings, automotive OEM, and other industrial coatings. As far as these other coatings are concerned there are either no or only small market share additions both on an EEA as well as on a national level. Therefore, the geographic market definition can be left open since even on the narrowest possible market definition, the concentration does not create or strengthen a dominant position in these markets as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area (see below).

A.3. Competitive assessment

15. Market shares. The market shares of the parties for each coatings market and aerospace sealants are shown in the table below. As seen from the table the operation is largely complementary. Only one of the parties is effectively active, apart from marginal operations, in decorative, car re-finishes, marine, industrial wood finishes, packaging, plastics and other industrial coatings. Only the protective, coil, powder, yacht and aerospace coatings markets are, therefore, considered in the following.

Market shares coatings and aerospace sealants, EEA, 1997 (value basis)

	Akzo Nobel	Courtaulds	Total parties
Decorative	[10-15] ¹	[0-5] ¹	[10-15] ¹
Car re-finishes	[10-15] ¹	[0-5] ¹	[10-15] ¹
Aerospace coatings	[35-40] ¹	[40-45] ¹	[75-80] ¹
Aerospace sealants	[0-5] ¹	[30-35] ¹ ([75-80] including Licensee)	[30-35] ¹ ([75-80] including Licensee)
Marine coatings	[0-5] ¹	[25-30] ¹	[25-30] ¹
Protective	[0-5] ¹	[10-15] ¹	[10-15] ¹
Yacht	[0-5] ¹	[35-40] ¹	[40-45] ¹
Wood finishes	[10-15] ¹	[0-5] ¹	[10-15] ¹
Coil	[10-15] ¹	[15-20] ¹	[25-30] ¹
Powder	[10-15] ¹	[10-15] ¹	[25-30] ¹
Packaging	[0-5] ¹	[20-25] ¹	[20-25] ¹
Coatings for plastics	[25-30] ¹	[0-5] ¹	[25-30] ¹
Automotive OEM	[0-5] ¹	[0-5] ¹	[0-5] ¹
Other industrial	[5-10] ¹	[0-5] ¹	[0-5] ¹

Note: Courtaulds is active in decorative paints in the USA

16. The markets for protective coatings. The parties achieve combined EEA wide market shares of [10-15%]¹. The highest market share on a national level is achieved with a [25-30%]¹ market share in [...]². Consequently, even if the relevant geographic market were to be found to be national, the operation does not lead to the creation or strengthening of a dominant position in the protective coatings markets, as a result of which competition would be significantly impeded in the common market or a substantial part of it.

¹ Figures deleted. Business secrets.

² Deleted. Business secrets.

17. Coil coatings. In this market the operation only gives rise to combined EEA market shares of [20-30%]³. Furthermore, strong competitors such as Becker AB, Sigma Coatings, Hydro Coatings, and PPG Industries exist in this market. Consequently, the operation does not lead to the creation or strengthening of a dominant position in the coil coatings markets, as a result of which competition would be significantly impeded in the common market or a substantial part of it.
18. Powder coatings. In this market the operation only gives rise to combined EEA market shares of [25-30%]³. Furthermore, there are strong competitors such as the current market leader Herberts, Morton, and Ferro. Consequently, the operation does not lead to the creation or strengthening of a dominant position in the powder coatings markets, as a result of which competition would be significantly impeded in the common market or a substantial part of it.
19. Yacht coatings. In the market for yacht coatings the parties achieve a market share of [40-45%]³ on an EEA wide level. Courtaulds is the market leader at the EEA level with a market share of [35-40%]³, whereas Akzo Nobel has a [0-5%]³ market share, which arises through a presence in the Netherlands and to a small extent in Germany. At the EEA level the main competitors to Courtaulds are Hempel ([10-15%]³), Awlgrip Yacht Coatings ([10-15%]³), Jotun ([10-15%]³). Akzo Nobel is not an important player in this market at the EEA level. In this respect it is also important that Akzo Nobel does not supply a full line of yacht coatings. In conclusion, the operation does not give rise to the creation or strengthening of a dominant position in this market at the EEA level.
20. There are indications that the market for yacht coatings could be national. If this were to be the case then market share additions would basically only take place in the Netherlands and Germany. In the Netherlands Akzo Nobel has a market share of [20-25%]³ and Courtaulds [15-20%]³. The combined market share would thus be [35-40%]³. The main competitors are Awlgrip with some [20-25%]³ whereas Sigma has [15-20%]³. Therefore, in view of this market structure, the operation will not lead to the creation or strengthening of a dominant position in the Dutch market for yacht coatings. In Germany Akzo Nobel has sales of ECU [...] which amounts to a market share of [0-5%]³. Courtaulds is the market leader with [35-40%]³. Combined the parties would have [40-45%]³ of the market. The largest competitors are Hempel ([20-25%]³), Van Höveling ([15-20%]³) and Awlgrip ([10-15%]³). In view of the presence of other large competitors in Germany and the small presence of Akzo Nobel, it can be concluded that the operation will not lead to the creation or strengthening of a dominant position in the German market for yacht coatings.
21. The market for aerospace coatings. In the market for aerospace coatings Courtaulds is the leading supplier in the EEA (market share [40-45%]³) as well as globally ([55-60%]⁴). Akzo Nobel through its stake in the Akzo Dexter Aerospace Finishes (ADAF) joint venture with the US company Dexter is a close number two with a

³ Figures deleted. Business secrets.

⁴ Figures deleted. Business secrets.

market share of [40-45%]⁴ in the EEA ([15-20%]⁴ globally). The combination of Courtaulds and ADAF would thus achieve a market share of almost [80-85%]⁴ in the EEA and about [70-75%]⁴ globally. Dexter which is active in the US outside the joint venture with Akzo Nobel would account for [10-15%]⁴ globally. The Commission investigation showed that it was likely that the operation would lead to the creation of a dominant position in aerospace coatings even if the geographic market was global. This preliminary finding is based not only on the high market shares which have been stable in the last years, but also on the existence of very high barriers to entry. No competitor has entered this market in a significant way in the last 5 years and none of the customers expected any market entry in the future. The parties recognised the problem at an early stage, and have offered a divestiture commitment in order to remedy the problem (see below).

22. The Commission examined possible vertical effects in the aerospace coatings market as well. In particular Akzo Nobel is a producer of resins, which are the main component of coatings. However, in aerospace coatings mainly epoxy resins and polyurethane systems are used. Akzo Nobel does not produce epoxy resins. The key materials for polyurethane systems are isocyanates which are also not produced by Akzo Nobel. Therefore, there are no vertical effects of the operation in the aerospace market and the dominant position in aerospace coatings will not be strengthened through any vertical effects of the operation.
23. The market for aerospace sealants. Courtaulds is the leading supplier of aerospace sealants worldwide. Together with its licensee LJF it supplies around [80-85%]⁴ of the world market (Courtaulds around [65-70%]⁴, LJF around [10-15%]⁴). In the EEA, Courtaulds has a market share of around [30-35%]⁴, while LJF has [50-55%]⁴. LJF has been described as being totally dependent on Courtaulds, and not being an independent competitive force. Aerospace sealants are a highly specialized product with high barriers to entry. There are no other major competitors in this market. The next biggest supplier in Europe would seem to be Chemetall, a subsidiary of the German Metallgesellschaft, which entered the market nine years ago and is still regarded as a new entrant. Its current market share is below [10-15%]⁴ in the EEA and much lower in a global market. At this stage, it would seem that Courtaulds is dominant in this market.
24. During the Commission's investigation, customers of Courtaulds have raised the concern that this dominant position could be strengthened by this merger operation. The concern relates to the fact that ADAF has a distribution contract with Chemetall, and that both companies (together with other partners, including British Aerospace) currently collaborate on an EC-sponsored RTD project on next generation coatings and sealants that has recently started.
25. It would therefore appear this merger operation could strengthen Courtauld's pre-existing dominant position since Akzo as the owner of both ADAF and the Courtaulds aerospace sealants business would no longer be interested in developing and distributing products jointly with Chemetal, their only serious competitor. To remedy this problem, the parties have offered to include aerospace sealants in the divestiture commitment (see below).

B. Chemicals

B.1. Relevant product markets

26. Akzo Nobel produces a wide range of chemicals such as: polymer chemicals, pulp and paper chemicals, catalysts, functional chemicals, surface chemistry, base chemicals and salt. Furthermore, Akzo Nobel participates in joint ventures, which are active in areas such as rubber chemicals, ethylene amines, PVC, stabilisers, polysulphides, UV/RC chemicals.
27. In comparison to Akzo Nobel, Courtaulds only has a limited presence in chemicals. Measured on sales value the bulk of Courtaulds' activities are in acetate flake, acetate plastics, and acetate filter tow for use in the tobacco industry. However, Courtaulds is also active in areas such as flame retardants for the use in the manufacture of plastics, carbon disulphide, sulphuric acid, aliphatic esters, aroma chemicals and pharmaceutical intermediates and related chemicals.
28. There is only a limited overlap between the chemicals businesses of Akzo Nobel and Courtaulds. Market share additions only take place for carbon disulphide (CS₂), sodium hydrogen sulphide (NaSH), flame retardants for plastic, sulphuric acid, and sodium sulphate. According to the parties each of these chemicals constitutes separate relevant product markets.
29. As far as carbon disulphide, sodium hydrogen sulphide, sulphuric acid and sodium sulphate are concerned it is noted that these are commodity products, whereas flame retardants for plastic are a group of additives used in the production of plastic, where flame retardancy is needed. It cannot be excluded that the relevant product market is wider than the product categories mentioned above. However, in the present case the relevant product market definition can be left open, since, even on the narrowest possible market definition, the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area (see below).

B.2. Relevant geographic markets

30. The parties have argued that the geographic scope is the EEA for carbon disulphide (CS₂), sodium hydrogen sulphide (NaSH), flame retardants for plastic, sulphuric acid, and sodium sulphate.
31. Carbon disulphide. As far as carbon disulphide is concerned it is widely transported. Akzo Nobel produces all its carbon disulphide in Germany and Courtaulds produces all its carbon disulphide in the UK. Both parties sell directly to customers in various member states, and prices are similar in the whole EEA area. In addition, there are significant imports from Eastern European countries. Therefore, the relevant geographic market is at least the EEA.
32. Sodium hydrogen sulphide, sulphuric acid, sodium sulphate and flame retardants. It is not necessary to finally decide on the extent of the geographic market for these products since, even on a national market definition, the concentration does not create or strengthen a dominant position as a result of which effective competition

would be significantly impeded in the EEA or any substantial part of that area (see below).

B.3. Competitive assessment

33. Carbon disulphide. Akzo Nobel is the largest producer and Courtauld the fourth largest producer supplying carbon disulphide in the EEA. Both Akzo Nobel and Courtaulds use carbon disulphide internally for the production of viscose, but about [...] ⁵ of their production is sold to third parties. On the EEA level Akzo Nobel and Courtaulds have a combined market share of [25-30%] ⁵ of the free market (excluding captive use). However, there are several other large suppliers of carbon disulphide to the free market such as FMC Foret (Spain), Rhodia (formerly Rhône-Poulenc), Siarkopol (Poland) and a number of other producers in the former East Bloc countries. About 35% of the supplies to the free market in the EEA are thus produced in the former East Bloc countries by producers who have no links to the parties. Furthermore, the industry is characterised by over-capacity. In view of this market structure, the concentration does not lead to the creation or strengthening of a dominant position in the market for carbon disulphide.
34. Sodium hydrogen sulphide. As far as this market is concerned the parties estimate that Akzo Nobel has a market share of [55-60%] ⁵ of the non-captive EEA market, whereas Courtaulds has only [0-5%] ⁵ of the non-captive EEA market. On a national basis the only overlap would be in the UK. However, the value of sales made by Courtaulds in the UK only represents ECU [...] ⁵, and they are made exclusively to [...] ⁶ on a toll manufacturing basis. Therefore, it could be argued that Courtaulds is not in reality active in this market at all. In any case, it is clear that Courtaulds is not a significant player in this market. Furthermore, competitors such as Leuna, Tessenderlo and Lubrizol will remain in the market. It also need to be taken into account that sodium hydrogen sulphide is a commodity, which is relatively simple to produce. There is no proprietary technology, and economies of scale are not particularly important. To enter this market would seem to be relatively easy for a chemical company. Consequently, for all of the above reasons the operation will not lead to the creation or strengthening of a dominant position in the market for sodium hydrogen sulphide.
35. Sulphuric acid. The parties achieve combined market shares of less than [0-5%] ⁵ on the EEA level. In no Member State will the combined market share of the parties exceed 25%. Therefore, the operation will not create or strengthen a dominant position in this market.

Sodium sulphate is a large scale chemical commodity used, for example, as a builder in detergents. It can be mined or produced synthetically as a by-product of certain chemical processes such as the production of viscose. The parties produce sodium sulphate as a by-product of their viscose fibres production. They achieve a combined market share of less than 10% of the EEA market. The only Member State where the operation would lead to a significant overlap is Germany, where the parties would

⁵ Figures deleted. Business secrets.

⁶ Deleted. Business secrets.

have a combined share of [35-40%]⁷. There are however other important competitors active in this market (e.g. Glanzstoff, Lenzing). The operation will, therefore, not create or strengthen a dominant position in this market.

Flame retardants for plastic. The operation does not result in market shares higher than 20% in any EEA country. The operation will, therefore, not lead to the creation or strengthening of a dominant position in this market.

C. Fibres

C.1. Relevant product markets

36. Both parties are active in the production and sale of various man-made fibres. Courtaulds is active in the manufacture and sale of acrylic staple fibre, viscose staple, lyocell staple and acetate textile filament yarns. Akzo is active in the manufacture of viscose textile filament yarns and in industrial fibres, including aramid, carbon, polyamide, polyester, viscose and non-woven fibres.
37. According to the parties, the fibres industry usually categorises different fibre types into four main groups: staple fibres, textile filament yarns, industrial fibres and carpet fibres. Furthermore, they consider that each of the fibres and yarns mentioned above constitute distinct product markets, both on the basis of their different use, characteristics, price and production process.
38. Fibres for industrial applications, fibres for textile applications and fibres for carpets belong to distinct markets, for the reasons stated in the Commission's previous decisions in this sector⁸, i.e. their different end uses, physical properties, prices and production processes. It is not necessary to decide on the exact market definition for the industrial fibres above since the operation will not result in any addition of market shares in this area. Similarly, the parties only have small activities in carpet fibres. It is, therefore, not necessary to consider industrial or carpet fibres any further.
39. Akzo Nobel and Courtaulds are both active in the production of man-made textile fibres. Man-made textile fibres are produced either as staple fibres or continuous filament yarns. The various types of man-made fibres are shown in figure 1 and 2. As seen from the figures Courtaulds is active in staple fibres and continuous acetate filament yarn, whereas Akzo Nobel is active in continuous viscose filament yarn. Therefore, for the purpose of this decision it is necessary to determine (1) whether staple fibres are a part of the same relevant product market as continuous filament yarns and whether (2) viscose textile filament is part of the same market as acetate textile filament yarns. It is not necessary to decide whether the other man-made fibres involved constitute individual product markets since there would not be any competitive overlap in any possible market configuration (see assessment below):

⁷ Figures deleted. Business secrets.

⁸ Decision IV/M.214 Du Pont / ICI, 30.09.1992; Decision IV/M.206 Rhône Poulenc / SNIA, 10.08.1992, et al.

Fig. 1 - Man -made staple fibres

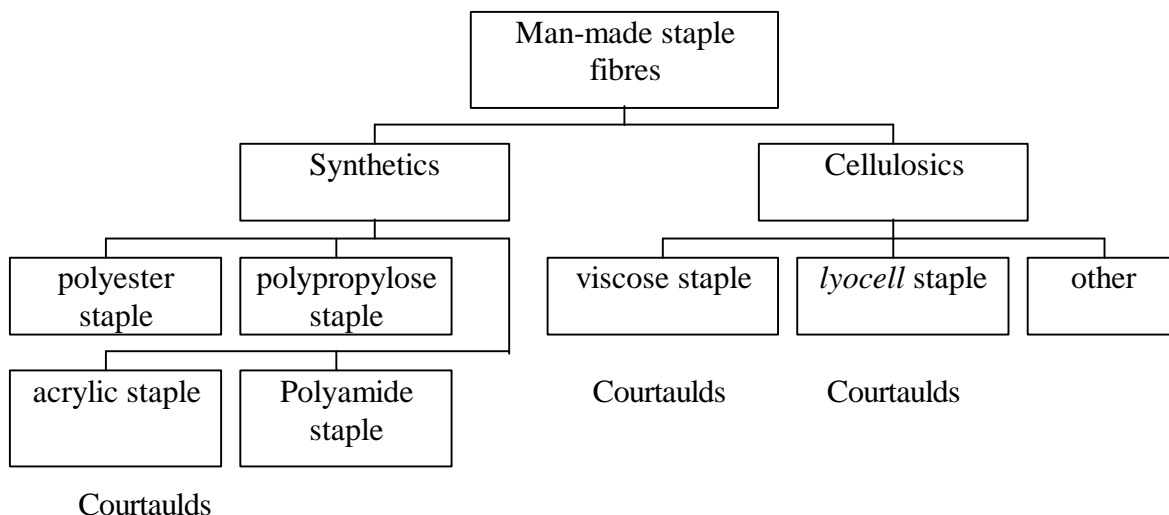
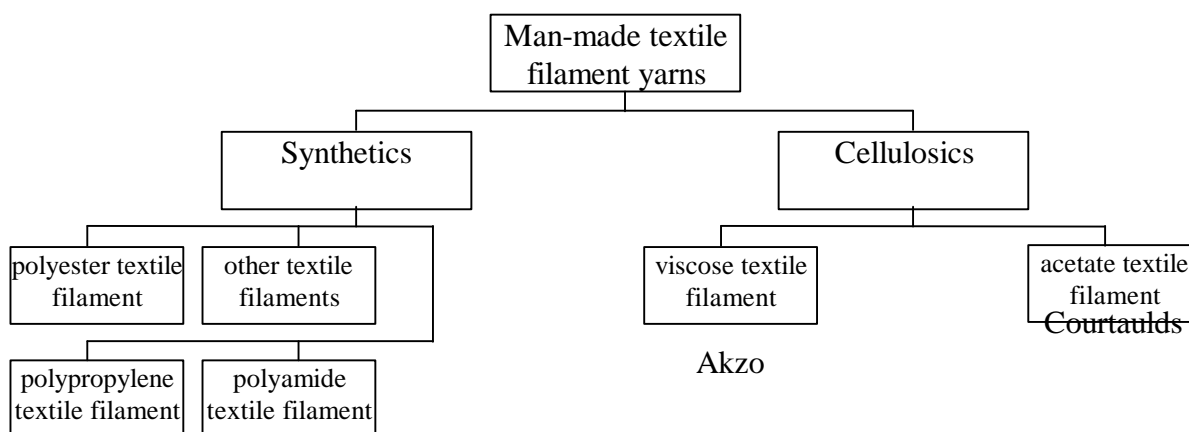


Fig. 2 - Man-made continuous textile filament yarns



40. As to the question (1) whether staple fibres are to be distinguished from continuous filament yarns, the Commission found in its investigation that for textile application such a distinction is necessary, by reason both of demand and of supply side considerations. From the demand side staple fibres and continuous filament yarns are not substitutes. Staple fibres are made from bundled extruded fibre cut into shorter lengths which may vary from about 28 to 180 mm. This process was originally developed so as to replicate cotton and wool fibres and to suit the equipment used by customers in the yarn spinning process. In contrast continuous filament yarns comprise a relatively small number of continuous lengths of extruded fibre which are typically many kilometres long; this process aimed originally to imitate the qualities of natural silk. The end use of these two groups of products are different by reason of their different aesthetic and physical properties, and their prices differ significantly.
41. Moreover, on the supply side, the production processes of viscose filament and viscose staple are only similar at the initial chemical stage. In the subsequent spinning process continuous viscose filament yarn is different from staple. The large majority of the competitors and the customers contacted by the Commission agreed with the parties' general break-up of the market, including the distinction of staple fibres as a

separated group. In conclusion staple and continuous filament yarns are not part of the same relevant product market.

42. The second question (2) whether viscose textile filament yarns and acetate textile filament yarns belong to different markets, was analysed by the Commission in case IV/M.113 - Courtaulds/SNIA decision. It was concluded that, despite a certain degree of substitutability, they were not part of the same product market. This distinction was considered appropriate in view of the 'different price, performance and aesthetic characteristics, and because of market practice'⁹. In particular, viscose has good abrasion resistance and strength, whereas acetate is gentler to the touch but has poorer abrasion resistance and less durability advantages than viscose. Special dyes have been developed for acetate, since it does not accept dyes ordinarily used for cotton or rayon. From the supply side, switching production from one fibre to the other would not be feasible either, since both fibres are produced by fundamentally different manufacturing processes, using different machinery. This was confirmed by the Commission investigation of the present case. Accordingly, as in case IV/M.113 - Courtaulds/SNIA it is considered that viscose textile filament and acetate textile filament yarn constitute distinct product markets for the purposes of this assessment.

C.2. Relevant geographic markets

43. According to the parties, the scope of the relevant geographic market for continuous viscose textile filament yarns and continuous acetate textile filament yarns is at least the EEA This would be in line with the Commission's practice as reflected in its previous decisions.¹⁰ In fact, the parties consider that the geographic market is probably world-wide, by reason of the homogeneity of the prevailing market conditions for all the various different fibres concerned. Nevertheless, given the absence of overlaps in the different activities of the parties in the area of fibres, it is not necessary to decide whether the geographical market is European-wide or world-wide for the purposes of the assessment of this case, since, even on the narrowest possible market definition, the concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

⁹ Decision IV/M.113 Courtaulds / SNIA, 19.11.1991.

¹⁰ Decision IV/M.113 Courtaulds / SNIA, 19.11.1991.

C.3. Competitive assessment

44. Akzo Nobel is only active in continuous viscose filament yarn, Courtaulds is only active in acetate textile filament yarns. Therefore, no market overlaps and no market share additions arise from the combination of the parties' activities in the area of continuous filament yarns.
45. There is a vertical relationship between Courtaulds' acrylic fibres activities and Akzo Nobel's industrial carbon fibre, since Courtaulds makes some supplies of polyacrylonitrile (an intermediate material in the production of acrylic fibre) to Akzo Nobel's carbon fibre production as well as to other customers. However, the market shares of Akzo Nobel in the carbon fibre area are low ([0-5%]¹¹ in the EU and [10-15%]¹¹ world-wide) and Courtaulds' shares in the acrylic fibres area are also relatively low ([25-30%]¹¹ EU, [5-10%]¹¹ world-wide). Consequently, the operation will not give rise to any foreclosure or other vertical concerns as a result of which the operation would lead to the creation or strengthening of a dominant position in the acrylic or carbon fibres area.
46. Furthermore, both Courtaulds and Akzo Nobel produce carbon disulphide which is used in the production of viscose fibres. However, as discussed above the operation does not lead to a creation or strengthening of a dominant position neither in the production of carbon disulphide nor in viscose fibres. Furthermore, other producers of carbon disulphide are not vertically integrated. Therefore, the operation does not lead to any foreclosure effects or other vertical concerns as a result of which the operation will lead to the creation or strengthening of a dominant position in the markets for carbon disulphide, continuous viscose filament yarn or staple viscose fibres.

V. MODIFICATION TO THE ORIGINAL CONCENTRATION

47. In order to remove the competitive concerns raised by the operation in relation to the markets for aerospace coatings and aerospace sealants, Akzo Nobel has submitted an undertaking to the Commission. The text of the undertaking is annexed and forms an integral part of this decision.
48. Akzo Nobel has undertaken to divest the whole of its interest to be acquired in the aerospace coatings and sealants business currently conducted by Courtaulds world-wide ("the Courtaulds Aerospace Business") to a viable existing or prospective competitor unconnected with and independent of Akzo Nobel. The sale will include all assets, physical facilities, manufacturing capacity, staff, contracts, and intellectual property rights as appropriate and according to the needs of the purchaser of the business. The undertaking further provides that as an alternative to the divestiture of the Courtaulds Aerospace Business, Akzo Nobel will have the possibility instead to propose a divestiture of its stake in the ADAF joint venture to its current partner Dexter. The Commission shall give its consent to the alternative remedy, if it is

¹¹ Figures deleted. Business secrets.

satisfied that the alternative remedy is equally effective in ensuring the maintenance of the competitive conditions in the aerospace coatings market in the EEA.

49. The Commission has conducted a market test to verify that these undertakings are sufficient to remove the competitive concerns raised by this operation. This market test has confirmed that the undertaking to sell the Courtaulds Aerospace Business to a third party is sufficient to remove the competitive concerns raised by this concentration under the condition that the purchaser is unconnected with and independent of Akzo Nobel and possesses the financial resources and proven expertise enabling it to maintain and develop the Courtaulds Aerospace Business as an active competitive force in competition with Akzo Nobel and other competitors. The purchaser would then be an effective competitor in the market for aerospace coatings. In the market for aerospace sealants, the competitive conditions would not change as compared to before the concentration, since ADAF would not be connected with an aerospace sealants producer and would continue to remain a partner in the RTD project described above.
50. The market test has also confirmed that a divestiture of Akzo Nobel's stake in the ADAF joint venture to Dexter could be equally effective in removing the competitive concerns raised by this concentration provided that Dexter acquires in this transaction all assets, physical facilities, manufacturing capacity, staff, contracts, and intellectual property rights necessary to act as a European producer and distributor of aerospace coatings, independent of Akzo Nobel. ADAF would then be an effective competitor in the market for aerospace coatings. A further condition would be that ADAF under the sole control of Dexter would continue to remain a fully committed partner in the RTD project for next-generation aerospace coatings and sealants. In the market for aerospace sealants, the competitive conditions would thus not change as compared to before the concentration, since ADAF would not be connected with an aerospace sealants producer and would continue to remain a partner in the RTD project described above.
51. The undertaking given by Akzo Nobel is thus in principle sufficient to remove the competition concerns raised by this operation. When Akzo Nobel approaches the Commission with a concrete proposal as to either the identity of a proposed purchaser of the Courtaulds Aerospace Business or as to the concrete details of a proposed sale of Akzo's share in ADAF to Dexter, the Commission will satisfy itself that these proposals are sufficient to ensure that customers will continue to benefit from competition in the markets of concern.

VI. CONCLUSION

52. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No. 4064/89, as amended by Regulation 1310/97, and Article 57 of the EEA Agreement.

For the Commission,

Annex

Pursuant to Article 6(2) of Council Regulation (EEC) No 4064/89 (as amended) (the “**Regulation**”), Akzo Nobel n.v. (“**Akzo Nobel**”) hereby gives the commitments set out below to the Commission of the European Communities (the “**Commission**”) with respect to Akzo Nobel’s acquisition of Courtaulds plc (“**Courtaulds**”). These commitments shall take effect on receipt of the Commission’s decision declaring Akzo Nobel’s acquisition of Courtaulds compatible with the common market pursuant to Article 6(1)(b) of the Regulation.

1. In accordance with the provisions set out below, and for the purpose of ensuring the maintenance of the competitive conditions in the aerospace coatings and the aerospace sealants markets in the European Economic Area immediately prior to the acquisition by Akzo Nobel of Courtaulds (the “**Current Competitive Conditions**”), Akzo Nobel commits to the Commission to divest the whole of its interest to be acquired in the aerospace coatings and sealants businesses currently conducted by Courtaulds worldwide including those listed in Schedule 1 (together the “**Courtaulds Aerospace Business**”). For the avoidance of doubt, the Courtaulds Aerospace Business includes both the aerospace coatings and the aerospace sealants businesses currently conducted by Courtaulds.

2. Following Completion¹², and pending the divestment envisaged at paragraph 1 above, Akzo Nobel commits:

- (a) to ensure that the Courtaulds Aerospace Business is held separate and managed as a distinct and saleable business, in particular separate from Akzo Dexter Aerospace Finishes Vennootschap onder Firma and Akzo Dexter Aerospace Finishes B.V., including their subsidiaries (collectively referred to as “**ADAF**”);
- (b) to use all reasonable efforts to ensure that the Courtaulds Aerospace Business’s production capacity and selling activities are maintained, pursuant to good business practices, at their current level, and that all contracts necessary to preserve the Courtaulds Aerospace Business are entered into or continued in accordance with their terms, consistent with good business practice and the ordinary course of business;
- (c) to maintain sufficient administrative and management functions relating to the Courtaulds Aerospace Business;
- (d) not to obtain from the Courtaulds Aerospace Business’s management any business secrets, know-how or commercial information of a confidential or proprietary nature relating to the Courtaulds Aerospace Business (other than: (i) information in Akzo Nobel’s possession pursuant to its offer to purchase Courtaulds; and

¹² Akzo Nobel’s acquisition of control of Courtaulds (“**Completion**”) is to be effected by means of a public offer pursuant to the UK City Code on Takeovers and Mergers. Except with the consent of the UK Panel on Takeovers and Mergers (the “**Panel**”), the latest date on which Akzo Nobel’s offer may be declared unconditional as to shareholder acceptances is 10 July 1998, and the latest date by which all other conditions of the offer must be fulfilled is 21 days after such declaration. Accordingly, except with the consent of the Panel, the latest date by which Akzo Nobel may effect Completion is 31 July 1998.

(ii) any further information required by Akzo Nobel in order to effect the sale of the Courtaulds Aerospace Business). In addition, Akzo Nobel undertakes to ensure that no such know-how or commercial information relating to ADAF is passed to the Courtaulds Aerospace Business. Notwithstanding any other provision of these commitments, Akzo Nobel may receive on a regular basis from the Courtaulds Aerospace Business aggregate financial information necessary to allow Akzo Nobel to prepare consolidated financial reports, tax returns and personnel reports; and

- (e) to provide and maintain sufficient working capital and a line of credit for the Courtaulds Aerospace Business.

In order to enhance its commercial viability to prospective purchasers, the Courtaulds Aerospace Business will include, to the extent permitted by law or contract, unless not required by, and agreed with, the purchaser:

- (a) the sites, including all assets, physical facilities and manufacturing capacity, which are currently used by the Courtaulds Aerospace Business and which are listed in the Schedule, subject to the following:
- (i) sites which are currently used exclusively by the Courtaulds Aerospace Business will be transferred in whole to the purchaser;
 - (ii) in the case of those sites which are used both in the Courtaulds Aerospace Business and any other business of the Courtaulds group, the sites shall, where practicable, be divided and/or made the subject of appropriate property leasing agreements by reference to their relative importance to the Courtaulds Aerospace Business and such other business and on such basis as Akzo Nobel and the purchaser may agree; and
 - (iii) in the case of those sites referred to in 3(a) which cannot be divided, Akzo Nobel and the purchaser will enter into toll manufacturing arrangements with each other where necessary or appropriate on the normal commercial terms in the coatings industry;
- (b) sufficient sales staff and production and administrative personnel to operate the Courtaulds Aerospace Business as a going concern;
- (c) the assignment to the purchaser of all existing contracts, and all contracts entered into between the date of the commitments and the closing of the sale of the Courtaulds Aerospace Business, which are related to, or associated with, the Courtaulds Aerospace Business;
- (d) the assignment to the purchaser of all intellectual property rights which are currently used exclusively by the Courtaulds Aerospace Business; and
- (e) if the purchaser is not an established aerospace coatings supplier, a non-exclusive licence from Akzo Nobel/Courtaulds on the normal commercial terms in the industry for the purchaser to use any existing Courtaulds' technology which is not included in the sale pursuant to paragraph (d) and which is currently used by the Courtaulds Aerospace Business.

4. Akzo Nobel undertakes, subject to the provisions set out below, to effect the sale of the Courtaulds Aerospace Business within [...] ¹³ of Completion to an independent third party purchaser approved by the Commission (whose approval shall not be unreasonably withheld), provided that such [...] ¹³ period shall be extended with the approval of the Commission (whose approval shall not be unreasonably withheld) if a proposed purchaser requests such an extension in order to satisfy itself that it will obtain all plant and product certifications necessary to ensure the maintenance and development of the Courtaulds Aerospace Business as an active competitive force in competition with Akzo Nobel and other competitors. A purchaser must make such a request jointly with Akzo Nobel in writing to the Commission. Upon the grant by the Commission of its consent, the [...] ¹³ period shall be extended to a period not exceeding [...] ¹³.

5. Akzo Nobel recognises that for a proposed purchaser to meet with the Commission's approval pursuant to paragraph 4 such purchaser shall be a viable existing or prospective competitor unconnected to and independent of Akzo Nobel and possessing the financial resources and proven expertise enabling it to maintain and develop the Courtaulds Aerospace Business as an active competitive force in competition with Akzo Nobel and other competitors.

6. Akzo Nobel shall be deemed to have complied with paragraph 4 (and paragraph 12) if, within the relevant period, it has entered into a binding letter of intent or a binding contract for the sale of the Courtaulds Aerospace Business (subject to due diligence and any other conditions not within the control of Akzo Nobel or the purchaser), provided that such sale is completed within a time limit then agreed to by the Commission.

7. Akzo Nobel shall:

- (a) promptly inform the Commission in writing of any prospective purchaser (subject to the consent of such prospective purchaser) who indicates a serious desire to purchase the Courtaulds Aerospace Business and to whom Akzo Nobel is seriously considering the sale of the Courtaulds Aerospace Business; and
- (b) in any event, every two months (or otherwise at the Commission's request) Akzo Nobel shall report in writing to the Commission on developments in its negotiations with potential purchasers of the Courtaulds Aerospace Business subject to the Commission agreeing to keep confidential all such information received.

8. If, within two weeks from the receipt of a report identifying a prospective purchaser in accordance with paragraph 7(a), the Commission does not formally indicate its disagreement to such prospective purchaser (with due regard to the requirements set out in paragraph 5), the sale to such prospective purchaser shall be free to proceed. In the case of a plurality of offers from prospective purchasers to whom the Commission does not object, Akzo Nobel shall be free to accept any offer or to select the offer it considers best.

¹³ Deleted. Business secrets.

9. Akzo Nobel will, as soon as practicable and in any event no later than two weeks after Completion, appoint an independent trustee (the “*Trustee*”), such as an investment bank, subject to approval by the Commission (such approval not to be unreasonably withheld) to act on Akzo Nobel’s behalf in overseeing the on-going management of the Courtaulds Aerospace Business in order to report on its continued viability, marketability and competitiveness.

10. The Trustee will:

- (a) in consultation with Akzo Nobel, determine the best management structure to ensure the viability, marketability and competitiveness of the Courtaulds Aerospace Business;
- (b) monitor the management and operation of the Courtaulds Aerospace Business in order to report on its continued viability, marketability and competitiveness. For the purpose of, and to the extent reasonably necessary for such monitoring, the Trustee will have access to the personnel and facilities as well as documents, books and records of the Courtaulds Aerospace Business, including relevant documents, books and records of other businesses in the Courtaulds group which do not form part of the Courtaulds Aerospace Business;
- (c) act as Akzo Nobel’s investment banker by assisting Akzo Nobel to conduct good faith negotiations with interested third parties with a view to selling the Courtaulds Aerospace Business by the end of the relevant period referred to in paragraph 4;
- (d) provide to the Commission, with a simultaneous copy to Akzo Nobel, a written report every two months concerning the monitoring of the operation and management of the Courtaulds Aerospace Business. In addition to these reports, the Trustee shall promptly report in writing to the Commission if the Trustee concludes on reasonable grounds that Akzo Nobel is failing to fulfil its obligations under paragraph 2. Akzo Nobel shall receive a simultaneous copy of such additional reports;
- (e) at any other time, to provide to the Commission, at its request, a written or oral report on the matters referred to in paragraph 10(d). Akzo Nobel shall receive a simultaneous copy of such written reports and shall be informed promptly of the content of such oral reports;
- (f) in conjunction with Akzo Nobel’s reports to the Commission pursuant to paragraph 7, indicate to the Commission whether it believes that each proposed purchaser mentioned in those reports would satisfy the requirements set out in paragraph 6; and
- (g) cease to perform its duties as Trustee with regard to the Courtaulds Aerospace Business after the closing of the sale of the Courtaulds Aerospace Business.

11. In the event that the Courtaulds Aerospace Business has not been divested (or is not subject to a binding letter of intent or contract in accordance with paragraph 6) by the end of a period of [...] ¹⁴ from Completion, Akzo Nobel commits to give the Trustee an

¹⁴ Deleted. Business secrets.

irrevocable mandate to find a purchaser for the Courtaulds Aerospace Business for the best possible price and other terms, in accordance with paragraphs 2 and 3, within the remainder of the relevant period referred to in paragraph 4. Akzo Nobel undertakes to provide the Trustee with all reasonable assistance and information necessary for the execution of such divestment and shall be kept informed by the Trustee of all negotiations regarding finding a purchaser for the Courtaulds Aerospace Business.

12. Akzo Nobel will sign a binding sale and purchase agreement with a purchaser found by the Trustee pursuant to paragraph 11, and to whom the Commission does not object in accordance with paragraph 8, within the remainder of the [...]¹⁴ period as referred to in paragraph 4. In the case of a plurality of offers from prospective purchasers to whom the Commission does not object, Akzo Nobel shall be free to accept any offer or to select the offer it considers best.

13. The Commission may, upon Akzo Nobel's request, extend the relevant period referred to in paragraph 4 by a limited period only to enable Akzo Nobel to conclude its negotiations with a prospective purchaser of the Courtaulds Aerospace Business, provided that the period as so extended will in no event exceed [...]¹⁴.

14. If the Trustee is given a mandate to find a purchaser in accordance with paragraph 11, the reporting obligation on Akzo Nobel pursuant to paragraph 7 shall be transferred from Akzo Nobel to the Trustee and the Trustee shall provide copies of all such reports to Akzo Nobel in accordance with paragraph 10(e).

15. Akzo Nobel shall be entitled, subject to the terms of paragraphs 16 to 19, to propose as a substitute for the commitment set out in paragraph 1 (the "**Primary Commitment**") an alternative commitment which Akzo Nobel considers would be equally effective in ensuring the maintenance of the Current Competitive Conditions (the "**Alternative Commitment**").

16. Akzo Nobel may propose as the Alternative Commitment that, following termination of Akzo Nobel's joint venture agreement with The Dexter Corporation ("**Dexter**") in relation to ADAF (being a partnership in which Akzo Nobel holds a 60% interest and Dexter holds the remaining 40%), Akzo Nobel will sell all its interest in ADAF to Dexter.

17. Akzo Nobel shall only be entitled to propose the Alternative Commitment if Akzo Nobel and Dexter have entered into a binding letter of intent or a binding contract for the sale of all Akzo Nobel's interest in ADAF to Dexter within [...]¹⁴ of Completion. Akzo Nobel shall provide a copy of the letter or contract to the Commission.

18. If Akzo Nobel proposes the Alternative Commitment described in paragraph 16, the Commission shall not unreasonably withhold its consent to such Alternative Commitment being substituted in these commitments for the Primary Commitment if it is satisfied that the Alternative Commitment would be equally effective in ensuring the maintenance of the Current Competitive Conditions. In such circumstances, the Alternative Commitment shall be substituted for the Primary Commitment and the provisions of paragraph 19 shall apply.

19. In the event that an Alternative Commitment is substituted for the Primary Commitment in accordance with the terms of paragraphs 16 to 18, the obligations and other terms of these commitments shall apply to the Alternative Commitment and be

observed by Akzo Nobel and any Trustee appointed by Akzo Nobel mutatis mutandis as if they had been given by Akzo Nobel in relation to the Alternative Commitment upon the date hereof, provided that:

- (a) the period within which Akzo Nobel undertakes to sell all its interest in ADAF to Dexter for the purposes of paragraph 4 shall be within [...] ¹⁵ of Completion and not [...] ¹⁵ of Completion; and
- (b) the Trustee shall continue to be appointed for the purposes of paragraph 9 to act on Akzo Nobel's behalf in overseeing the on-going management of the Courtaulds Aerospace Business, and shall not be appointed in relation to ADAF, but for the purposes of paragraph 10(g) shall cease to perform its duties as Trustee after the closing of the sale of Akzo Nobel's interest in ADAF.

¹⁵ Deleted. Business secrets.

Schedule 1

Companies carrying on Courtaulds Aerospace Business

Courtaulds Aerospace Inc.	USA
Courtaulds Aerospace (Australia) Pty Ltd	Australia
Courtaulds North Asia Ltd	Hong Kong
International Celomer SFPV	France
Courtaulds Holdings GmbH	Germany
Courtaulds Japan Ltd	Japan
International Paint (Canada) Ltd	Canada
International Paint Saudi Arabia Ltd*	Saudi Arabia
Courtaulds (South East Asia) Pte Ltd	Singapore
Courtaulds Coatings South Africa (Pty) Ltd*	South Africa
International Paint (Korea) Ltd*	South Korea
Courtaulds Aerospace Business & Sealants Ltd	UK

* These are joint ventures 50% owned by Courtaulds (51% in the case of South Africa).

Schedule 2

Sites used by the Courtaulds Aerospace Business

Site	Function
Glendale, California, USA	Manufacturing/distribution
Mojave, California, USA	Manufacturing
Burbank, California, USA	Research and technology
Shildon, UK	Manufacturing/distribution
Gonfreville, France	Manufacturing/distribution
Le Havre, France	Offices and laboratories
Toulouse, France	Sales office
Various sites worldwide	Sales offices