

***Case No COMP/M.5469 -  
RENOVA INDUSTRIES/  
SULZER***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 17/06/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17/06/2009  
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party**

Dear Sir/Madam,

**Subject: Case No COMP/M.5469 - Renova Industries/ Sulzer  
Notification of 8 May 2009 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 8 May 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Renova Industries Ltd. ("Renova Industries", Bahamas), acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Sulzer AG ("Sulzer", Switzerland).

**I. THE PARTIES**

2. Renova Industries is an investment and holding company consolidating various participations which are mainly located in Russia and other CIS-countries. Renova Industries is part of the Renova group which is ultimately controlled by a Russian national. The Renova group is active in the metallurgical, oil, machine engineering, mining, chemical, construction, housing, communications, utilities and financial sectors. Renova Industries controls the **OC Oerlikon** group ("Oerlikon")<sup>2</sup> which has some overlapping activities with Sulzer.
3. **Sulzer** is active in the machinery, equipment, materials and service business relating to pumps, mixing and reaction technology, mass transfer technology, surface technology and thermal turbo machinery.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

<sup>2</sup> See Case No. COMP/M.5161 Renova Industries / OC Oerlikon.

## II. THE OPERATION

4. During 2007 and 2008 Renova Industries acquired 31.1% of Sulzer's capital from different sellers. Until end of May 2009, when the agreement expired, Renova Industries was prevented from fully exercising its voting rights by a "Stand-Still Agreement"<sup>3</sup> it concluded in October 2007 with Sulzer. Until 31 May 2009, the agreement prevented Renova Industries from exercising *de facto* control over Sulzer. As the stand-still agreement was soon to expire, Renova Industries notified the acquisition of control over Sulzer on 8 May 2009.
5. The assessment of *de facto* control needs to consider shareholder's attendance at annual shareholder's meetings. Over the last years, the presence rate at the Annual General Meeting was with one exception close or below 40% (2001: 40.5%, 2002: 32.2%, 2003: 29%, 2004: 31.81%, 2005: 40.9%, 2006: 38.22%, 2007: 31.03%, 2008: 39.81, and 2009: 62.5%). The exceptionally high attendance rate in the 2009 meeting can be explained by special circumstances.<sup>4</sup> However, even with such an exceptionally high attendance, Renova Industries prevailed in the shareholder's meeting.<sup>5</sup> It can be expected that at the future shareholders' meetings the attendance rate will return to a lower level. The parties explain that there is only one other large shareholder, Fidelity International, with 4.88% of Sulzer's capital while the rest of Sulzer's capital is widely dispersed. With 31.1% Renova Industries will thus likely have a majority in the shareholders' meeting (now that it exercises full rights after the expiry of the Stand-Still Agreement) and will have the ability to appoint the majority of the Board, which is the strategic decision-making body of the company. Therefore, it can be concluded that Renova Industries has *de facto* control over Sulzer following the expiry of the stand still obligation.

## III. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover<sup>6</sup> of more than EUR 5 billion (EUR [...] for Renova Industries and EUR [...] for Sulzer)<sup>7</sup>. Each of them had a Community-wide turnover in excess of EUR 250 million (EUR [...] for

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<sup>3</sup> [...].

<sup>4</sup> Renova Industries had made public its intention not to support the re-election of Mr Ulf Berg, the president of the Board of Directors. This provoked a public discussion and in particular officials of the town of Winterthur where Sulzer is headquartered called upon shareholders to attend the Annual General Meeting and support Mr Ulf Berg's re-election.

<sup>5</sup> With respect to the Annual General Meeting 2009 Renova Industries was, in accordance with the Stand-Still Agreement, not obliged to support the re-election of the Board members coming up for re-election. Consequently, failing Renova Industries' support (representing 31.1% of shares in the company) and given the attendance rate of 62.5%, Mr Ulf Berg was not re-elected in accordance with Renova's publicly stated intentions. Following the Annual General Meeting of 2009, Renova has two representatives out of seven in the Board of Directors (prior to that meeting, the Board of Directors had eight members including these two Renova's representatives).

<sup>6</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p.25).

<sup>7</sup> 2008 figures for Sulzer, 2007 for Renova. Renova confirmed that in 2008 (for which detailed figures were not available), the thresholds would equally be met.

Renova Industries and EUR [...] for Sulzer)<sup>8</sup>, but 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.

#### **IV. RELEVANT MARKETS**

##### **1. RELEVANT PRODUCT MARKET**

7. Both Sulzer and Renova Industries (via Oerlikon) are active in surface treatment. This encompasses a great variety of industrial processes designed to alter the surface of mainly metal parts with the aim of improving certain of their properties, i.e. control the friction and wear of a component, to improve resistance against corrosion, change its physical properties (e.g. conductivity, resistance and reflection) or alter its dimension and appearance. The parties' activities essentially overlap in one special area of surface treatment process - thin-film coating. This latter process allows metal components or tools (such as components of automotive engines, or cutting or drilling tools) to be coated with a very thin layer<sup>9</sup> which makes the surface of these items very hard without altering their shape, enabling to protect them from friction and wear.
8. The parties submit that the relevant product market can be defined as (i) a market for thin-film coating services and (ii) a market for thin-film coating equipment. A similar market definition was considered in the previous Commission case involving one of the parties, COMP/M.4432 Oerlikon/Saurer, although there was no need to investigate the markets in detail and conclude on market definition in that case.

##### **1.1 THIN-FILM COATING SERVICES**

9. Thin-film coatings are performed typically by specialized coating service companies (also referred to as 'job coaters'). A certain range of commodity chemicals can be applied to the surface of the tools / components in order to protect them or to improve their functionality. The service provided includes the coating of new products and the re-coating of used products. Typically, the tools / components are collected from the customer's production plant, transported to a "coating centre" and – after the coating process – returned to the customer. For large customers, in-house coating centres are operated directly on the production plant.
10. The parties submit that thin-film coating has to be distinguished from other surface treatment technologies. According to the parties, other surface treatment technologies used to improve hardness/resistance would not meet customers' requirements as to thinness and wear resistance and would thus not belong to the same product market. These other surface technologies are in particular heat treatments and thick coatings.

##### *Distinction between thin film coating and heat treatment*

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<sup>8</sup> 2008 figures for Sulzer, 2007 for Renova. Renova confirmed that in 2008 (for which detailed figures were not available), the thresholds would equally be met.

<sup>9</sup> Thickness of on average 10 micro-meter and not exceeding 50 micro-meter (1 micro-meter = 10<sup>-6</sup> m).

11. The parties propose to distinguish thin-film coatings from heat treatment technologies (including in particular thermal diffusion processes such as plasma nitriding (hereafter PN)). PN is a diffusion process driven by temperature which modifies the sub-surface area of the product, but it does not apply a coating layer on the surface as it is the case for thin film coating.
12. In line with the parties' submission, the large majority of the respondents in the market investigation consider that thin film coating and heat treatment technologies including thermal diffusion processes such as PN are not substitutable as they have different technical characteristics and address different customer needs. A large majority of customers indicated that they would not be willing to switch from thin film to heat treatment technologies if the price of thin film coating were to increase by 5 to 10%.
13. However, two service providers consider that heat treatment, in particular PN, could constitute a cheap alternative to thin film coating for certain applications. Although this may be true in some very limited applications, this view has not been shared by the majority of the respondents who perceive thin film coating and PN as complementary rather than competing technologies. They indicate that PN is used for some applications as a pre-treatment rather than a substitute to thin film coating in order to harden the substrate of the product before coating.<sup>10</sup> Most of thin film coated products do not require this pre-treatment. However, even if PN is to some extent complementary, thin-film coating generally cannot be substituted by PN from the demand side.
14. The Commission's market investigation also indicated that important supply-side differences exist between thin film coating and other surface treatment technologies, which also explain that most of the market players are different with respect to each technology. The leading heat treatment companies do not offer thin-film coatings, and similarly not all coating companies offer heat treatment. The fact that the thin film coating process is taking place under vacuum conditions differentiates it from other technologies. The equipment used for heat treatment/PN cannot be used for thin-film coating. Similarly, the majority of the thin-film coating equipment does not generally perform PN.<sup>11</sup>
15. The distinct nature of the two technologies has been also confirmed by the large majority of thin film coating service providers. They indicated that the price of heat treatment/PN does not have any influence on the price of thin film coating and they do not feel competitive pressure coming from these alternative technologies.
16. Based on the above, it appears that thin film coating constitutes a separate product market from heat treatment (including PN). However, the question whether a broader market including heat treatment and/or PN exists can be left open in this case

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<sup>10</sup> This process combination is used in some component coatings, especially for components with heavy workload and high mechanical friction where the products must be strong and hard enough not only on the very surface but also below.

<sup>11</sup> There is an exception of so called 'duplex' coating machines which combine the two technologies. These duplex machines are not very widespread on the market, and it is more common to use separate machines for each of the two technologies.

considering that no competition concerns have been identified even under a narrower market definition.<sup>12</sup>

*Distinction between thin film coatings and thicker coatings*

17. As mentioned above, the parties also submit that the thicker coating process should be distinguished from thin-film coatings. Thicker coatings including those from thermal spraying processes have a coatings thickness of several times higher than thin film coating (ranging from 100 micro-meters to a couple of millimetres, compared to typically around 10 micro-meters for thin-film coating). Accordingly, they cannot be used in applications where the dimension of the component is critical.
18. These submissions were largely confirmed by the market investigation. Customers and competitors alike consider that thicker coatings are not substitutable to thin film coating as they have different technical characteristics and address different customer needs. Thin-film coating was developed precisely because very thin layers are necessary in order to preserve the shape of the tools and components. For example, for cutting tools, the thinness of the coating layer is crucial for preserving the sharpness of the cutting edge. Also for components with high friction, thicker layers would adversely affect the component's performance. Indeed, a large majority of customers indicated that they would not be willing to switch to thick coatings in case of a price increase in the magnitude of 5 to 10% and most of the customers do not report past examples of switching between the different technologies. From the supply side, the technologies for thicker coatings appear to be quite different, and competitors vary in both fields. Competitors responding to the market investigation regard thicker coating as a different business area, which does not influence the prices of thin-film coating, and they do not feel competitive pressure from service providers active in this area.
19. Therefore, it appears that the provision of services related to thicker coatings such as thermal spray can be distinguished from thin film coating services. However, this question can ultimately be left open in this case as the competitive assessment would not be altered either way.<sup>13</sup>

*Distinction between technologies within the thin film coating market*

20. The parties explain that within thin film coating, there are three basic types of technologies, i.e. PVD, CVD and PACVD. The parties submit that PACVD and PVD belong to the same market as those processes have many technical similarities and are performed on the same machines, while CVD shows several important differences and requires a different coating machine.

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<sup>12</sup> According to information provided by the parties, the parties' market shares would be lower on any alternative broader product market definition enlarging thin-film coating services with (i) heat treatment, (ii) thermal diffusion and (iii) plasma nitriding services. According to parties' estimates, the combined market share of the parties for a hypothetical market of plasma nitriding (which is the narrowest of the three alternatives) would be below 10% in Germany and EEA-wide and even lower on broader markets including all thermal diffusion or all hardening. Plasma nitriding is the only heat treatment area where both parties have overlapping activities.

<sup>13</sup> If one would enlarge the thin-film coating market with thermal spray coatings, the combined market shares of the parties would decrease. Oerlikon is not active in thermal spray services. Sulzer is providing thermal spraying services and parties estimate its market share on a hypothetical thermal spraying market at [5-10]% in Germany and below 10% in the EEA.

21. PVD (physical vapour deposition) is the most commonly used technology within thin film coating. It entails the formation of the coating from solid or sometimes liquid material. PVD processes involve the formation of a coating on a substrate by physical deposition in the form of physically emitting/shooting atoms, ions, or molecules of the coating material (from eg. a metal plate) which 'land' on the surface of the coated tool or component. This process requires vacuum conditions and temperatures generally around 100-500 °C.
22. PACVD (plasma-assisted chemical vapour deposition) is the newest technology and involves a gas or a chemical vapour precursor as a source and the coating is done in a plasma. PACVD is typically used to deposit extremely smooth, well adhered amorphous diamond-like carbon coatings in a high vacuum environment at temperatures generally below 200 °C. In the majority of cases, before a carbon layer is brought on the surface by PACVD the surface is 'pre-treated' by a PVD process which first applies a bond layer. PACVD is performed on the same machines as the PVD process (there are no separate PACVD machines) and in a way it can be described as an 'ad on' to PVD.
23. CVD (chemical vapour deposition) involves the formation of a coating on a heated surface by a chemical reaction triggered by gases. In other words, the coating material is contained in a gas which is being spread on the tool or component under very high deposition temperatures (generally in the range of 800 to 1000 °C). The layers applied by CVD have a slightly larger thickness (usually in the range of 8-20 µm). Due to the high deposition temperatures, only a limited range of materials can be coated. CVD is an older and more mature technology than PVD (and the newest PACVD), but well suited for some applications which are usually performed in-house by eg. large tools producers.
24. During the market investigation, most of the respondents indicated that although PVD and PACVD coating uses different technologies (one applying a gas and the other a physical deposition process), the two coating processes are to an extent substitutable. This is mainly due to the fact that both processes operate with a low deposition temperature and thus can be applied to a high number of substrate materials. However, there is no perfect demand side substitutability between the two processes as each has some advantages. Generally speaking, the PVD technology is more suited for tools whereas PACVD is mainly used for components (in particular with more complex geometries) in combination with PVD. Therefore, most of the customers would likely not be willing to switch from one technology to the other.
25. However, the market investigation indicated that from the supply side the two processes are largely substitutable. Indeed, PVD and PACVD may be combined on the same machinery (so called hybrid machinery) and machinery which has been originally configured exclusively for PVD can be upgraded to dual use. Also, most of the service providers confirmed the possibility of switching between the two technologies if demand increases for one at the expense of the other. As the technologies are related (with one machinery), most of the service providers active in PVD technology also offer PACVD coating.
26. The Commission's market investigation broadly confirmed the parties' submissions that there are important differences between PVD/PACVD and CVD coating both from the demand and supply side. The respondents pointed to the large temperature differences of CVD compared to PVD/PACVD which prevents the CVD technology to be used to coat tools/component sensitive to heat for risk of damaging them. Indeed, due to its

high deposition temperature, CVD coating requires completely different machines than PVD/PACVD coating, which is a low temperature process. The high temperatures needed for CVD also limits the type of material being able to be coated via this process as well as the choice of the coating materials. It is also less common to provide coating services with CVD, as this technology is to a large extent done in-house, and the importance of CVD in the service business is thus generally more limited. Consequently, not all main service coaters offer CVD coating (Sulzer has no activities in CVD; Oerlikon has only very limited activities<sup>14</sup>).

27. Based on the above, it appears that there is a single market including both PVD and PACVD technologies and a further distinction according to these two technologies is not warranted. The question whether CVD belongs to the same thin film coating market can be ultimately left open, as the transaction does not raise competition concerns even on a narrower market excluding CVD.<sup>15</sup> The competitive assessment as regards thin-film coating (and the thin-film coating market) will therefore be limited in this decision to PVD/PACVD thin-film coating, without including CVD coating. (Hereinafter, the term thin film coating will only refer to PVD/PACVD coating).

#### *Customer segmentation of thin film coating service market*

28. The parties, as well as the Commission's market investigation point to a segmentation of the thin film coating service market into two broad customer/application segments: tools and components (in particular the high volume automotive components segment).
29. The Parties explain that the components business is generally characterised by long-term relationships, specific investments and dedicated production facilities. This business is mainly related to the high volume automotive (HVA) sector with the presence of few global players (automotive OEM's) on the demand side driving the business. While these HVA customers often have their own in-house coating production line, they also rely on coating services suppliers to avoid single sourcing. The time to become a qualified HVA coating supplier for these customers usually takes 1-2 years. Also, high investments are necessary to automate the processes as far as possible to meet the price requirements. As the HVA coating supplier will also be responsible for the quality of the part, expensive insurances are needed. Apart from the HVA business, the component coating also comprises the coating of lower volumes automotive parts, racing, aviation/aerospace, medical components and others.
30. The parties explain that the tool coating business is based on a much wider foundation (low number of key accounts, high number of medium to small sized customers). As the variations of the different tools are very high (application, material, type, shape, dimension, functional area, etc.), the grade of automation is relatively low. The handling has to be carried out mainly manually. The biggest part of this business

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<sup>14</sup> Via its recently acquired subsidiary VST Keller. These CVD services are generating less than [...] million Euro (i.e less than [0-5]% of Oerlikon's sales in thin-film coating services using PVD and PACVD).

<sup>15</sup> If one would include CVD technologies into PVD/PACVD, the parties' position and market shares would on that broader market be even lower. CVD would not be an affected market as there is no overlap.



relates to cutting tools<sup>16</sup>, which includes the coating of new tools and recoating of tools<sup>17</sup>, plus forming tools, moulds and dies.

31. The investigation broadly confirmed this general distinction between components and tools, although sometimes it is difficult to draw exact lines between the two broad segments.<sup>18</sup> Most market players tend to concentrate on a particular segment of the market and even on special niches or sub-segments (eg. cutting tools, racing components, medical instruments, decorative coating). However, the market investigation indicated that (apart from an exception discussed below) there is generally a large degree of supply side substitutability between the two broad segments and also between the different sub-segments within tools and components. This also applies to niche areas which could not easily be grouped with either tools or components (eg decorative coating). Service providers report that it is relatively easy to switch the focus from one sector to the other as in principle the same coating equipment can be used for different tools applications and components, with relatively minor adjustments<sup>19</sup>. There are no major technical difficulties that prevent a market player active in one segment from entering another.
32. As is indicated above, the HVA (sub-)segment constitutes an exception. To enter this business requires considerable investments and qualification time, high level of automation and the taking on of significant liability risks from the coaters. This tends to single out the HVA business from the rest of the market.
33. However, as there is no overlap in the HVA business between the parties (Sulzer is not active there), the question whether this area should be singled out from the market can be left open in this case. Segmentation of the market according to tools and components will be taken into account in the competitive assessment.<sup>20</sup>

## **1.2 THIN-FILM COATING EQUIPMENT**

34. Both parties also produce thin-film coating equipment, however neither parties sell CVD equipment.
35. According to the parties, thin-film coating equipment is not substitutable with any other kind of surface treatment equipment. Similarly to the service market, the parties propose to delineate the relevant product market for thin-film coating equipment as comprising PVD and PACVD technology.

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<sup>16</sup> Cutting tools are used by many industrial customers for cutting metal parts used for their products.

<sup>17</sup> Cutting tools are usually re-coated several times during their lifetime.

<sup>18</sup> Some market players for example refer to coating of medical instruments as being in the broad segment of components, whereas Sulzer sees it as a group by itself.

<sup>19</sup> Minutes of conference calls with [competitors].

<sup>20</sup> As indicated above (paragraph 31 and footnote 18), it can be difficult to draw a clear-cut line between the segments of tools and components in quantitative terms, as the understanding of the market players about the exact scope of the segments vary. Also, market shares estimates for the different segments vary between the two parties and the Commission did not receive sufficient data from third parties. Nevertheless, a qualitative competitive analysis has been carried out separately for the two main market segments (see paragraphs 61 - 64 below).

36. In line with the submission of the parties, the result of the market investigation indicated that thin film coating equipment constitutes a separate market from other equipment. While some respondents indicated that plasma nitriding equipment could for some very limited application constitute a cheap alternative to thin film coating equipment, they do not consider that any competitive pressure stems from this technology.
37. The market investigation confirmed the substitutability between PVD and PACVD equipment. Indeed, the PACVD processes can be carried out on most PVD equipment by means of an add-on. Equipment performing PACVD has typically both PVD and PACVD functionality. Similarly, most of the market players active in PVD also supply PACVD equipment. Therefore, there appears to be no need to divide the equipment market between PVD and PACVD.
38. Considering that PVD/PACVD equipment is generally multifunctional, i.e. capable of serving all types of applications (tools and components), it does not appear necessary to further segment the film coating equipment market.<sup>21</sup>
39. Based on the above, it appears that there is a single market for thin film coating PVD and PACVD equipment, although the exact product market definition can be left open in this case as no competition concerns arise even on this narrower market excluding CVD or plasma nitriding/heat treatment equipment.<sup>22</sup>

## **2. RELEVANT GEOGRAPHIC MARKET**

### **2.1 THIN-FILM COATING SERVICES**

40. The parties submit that the market for thin-film coating services is national. According to them, coating services are typically supplied to customers within a radius of approximately 200 to 300 km from the coating centre. Nevertheless, they also point to several aspects speaking in favour of markets defined rather by national borders than strictly based on distance between customer and coating centre. According to the parties, the main service suppliers usually operate a sufficient number of coating centres to cover the territory of a Member State and conditions are rather homogeneous within one and the same Member State. Oerlikon which has coating centres across Member States [...]. A national market definition was also proposed in a previous case COMP/M.4432 Oerlikon/Saurer, although no conclusion needed to be reached.
41. The Commission's investigation was not entirely conclusive. It provided a mixed picture indicating that the location of the customers from the coating centres varies significantly, in a range of 200 to 1000 km. For most of the customers, the delivery time and good logistics are more important than the actual distance of the coating centre. However, the average delivery time varies significantly, some customers indicating a maximum delivery time of 24 hours, others one or several weeks.

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<sup>21</sup> Even though some market participants pointed out that some equipment is particularly suited to coat certain application segments.

<sup>22</sup> In a hypothetical market comprising CVD equipment, the market shares would be lower as none of the parties has sales in CVD equipment. Similarly, the market shares would not be higher in a broader market including equipment for plasma nitriding / thermal diffusion / heat treatment.

Moreover, while most of the customers acknowledge that the proximity of the service supplier is an advantage, they do not consider it as the most important criteria when they are looking for suppliers. Quality and price or the good relationship with the supplier are sometimes more important than the actual distance.

42. The result of the market investigation indicates that a distinction could very generally be made between the coating of tools and components, although the picture is still quite mixed. Delivery time as well as distance is more important for the tool segment. This is in particular evident for the re-coating of tools: cutting tools or forming tools taken off the production line need to be recoated very quickly. Quick delivery time and distance to the customer is therefore an important element when looking for a supplier. In this segment, the customers replying in the investigation usually look for suppliers within a radius of 500 km and many of them below that radius. However, some customers (in particular large customers or customers with some specific coating needs) are less sensitive to the proximity of the coating centers and they would look for suppliers in a larger radius (and often beyond national borders).
43. In the component segment, notably because the coated part must perform in the product for a long period of time, the quality of the coating is very important. Also, the ability to produce very large volumes of the same product cost effectively is key, in particular in the high-volume automotive business. This tends to lead those suppliers that focus on components coating to centralize in centers that serve a much larger service radius (and are serving also customers from different countries). Price and quality are the main drivers in this market and quick delivery time and distance to the customer appears to be secondary.
44. However, the market investigation also confirmed elements that indicate a national market both for the tool and component segments. Most of the service providers determine prices at national level, and market participants indicate that prices within Member States are rather homogenous while significant price differences exist between different Member States. Most of the respondents consider that a national presence/national sales offices of the service provider constitute an important element for customers even in the component segment. As a service market, coating is to a certain extent relationship-based and therefore cultural and linguistic closeness helps. Also, the market participants mostly acknowledge that networks of coating centers operated by main coating service providers across larger countries (such as Germany) contributes to homogenizing competition conditions within Member States.
45. Even if national markets seem to be the most appropriate geographical framework suited to analyze the present transaction, the exact geographic market definition can be left open in the present case as no competition problems would arise under a wider or narrower geographic market definition.<sup>23</sup>

## **2.2 THIN-FILM COATING EQUIPMENT**

46. The parties submit that the market for thin-film coating equipment is at least EEA-wide since transport costs do not account for more than [0-5]% of the equipment value. Significant barriers to sell thin-film equipment cross-border within the EEA do not

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<sup>23</sup> See competitive assessment, paragraph 68 and footnote 40 and 41 below.

seem to exist. An EEA-wide market definition is in line with the previous case M.4432 Oerlikon/Saurer.

47. The market investigation confirmed the views of the parties that the geographic scope of the market is at least EEA-wide. Some elements suggested a worldwide market for thin film coating equipment: suppliers tend to operate on a world-wide basis with products manufactured in a limited number of facilities; some suppliers and customers replying in the investigation have indicated that prices are determined at a global level and may be rather homogenous, although exchange rate fluctuation might have an impact on the price; transport costs are not significant in comparison to the overall cost of the products; and most of the replying customers indicated that they may be willing to look for suppliers on a global basis.
48. However, the market investigation also provided indications in favour of an EEA-wide market. In particular, Kobelco, one of the largest equipment providers located in Japan, has so far been absent from Europe. Customers report that local presence in Europe constitutes an important element to penetrate the EEA market. Regulatory approvals in Europe (CE marking) seem to differ from other regions and may hence increase regulatory costs for entrants. A physical presence in Europe was also viewed by customers as an advantage. They indicated that although in most of the cases they look for suppliers at a worldwide level, they prefer a European supplier given the proximity of its presence (e.g. after-sales service).
49. However, the exact geographic market definition can be left open in the present case as it does not affect the competitive assessment.

## **V. COMPETITIVE ASSESSMENT**

### **1 THIN-FILM COATING SERVICES**

#### **HORIZONTAL ASSESSMENT**

50. Oerlikon is the overall leader in the thin-film coating service industry in the EEA with a 30-40% market share.<sup>24</sup> It operates 40 service centres across Europe. The four next largest competitors on the EEA-wide level are: IonBond (17 European coating centres); Eifeler (10 centres in Europe), CemeCon (3 European centres), HOT (4 centres in Europe) and Bekaert (4 centres in Europe). Sulzer has an EEA market share of slightly below [0-5]% and operates three coating centres, all of them in Germany.
51. The only Member States where the increment brought about by the transaction is above 1% and at the same time the merged entity reaches a combined market shares of more than 25% are Germany, Sweden, Austria and Poland. The market shares of the parties and their main competitors in those Member States and on an EEA-wide level are summarized in Table 1.

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<sup>24</sup> See Table 1 below.

Table 1: Market shares for thin-film coating services (including PVD and PACVD technology)

	<b>EEA</b>	<b>Germany</b>	<b>Austria</b>	<b>Sweden</b>	<b>Poland</b>
<b>Oerlikon</b>	[30-40]%	[25-35]%	[50-60]%	[70-80]%	[80-90]%
<b>Sulzer</b>	[0-5] %	[5-10]%	[5-10]%	[0-5] %	[0-5]%
<b>Combined</b>	<b>[35-45]%</b>	<b>[35-45]%</b>	<b>[60-70]%</b>	<b>[70-80]%</b>	<b>[80-90]%</b>
Competitor 1	IonBond [5-10]%	CemeCon [5-10]%	IonBond [10-20]%	IonBond [10-20]%	Gühring [5-10]%
Competitor 2	Eifeler [0-5]%	HOT [5-10]%	Eifeler [5-10]%	Unimerco [5-10]%	
Competitor 3	CemeCon [0-5]%	Eifeler [0-5]%	Rubig [5-10]%		
Competitor 4	HOT [0-5]%	IonBond [0-5]%			
Competitor 5	Bekaert [0-5]%	Bekaert [0-5]%			

*Source: Market investigation and Form CO (for EEA, Germany and Austria); Form CO (for Sweden and Poland)*

52. The Commission examined the concentration notably with respect to the German market, where all of Sulzer's coating centres are located and where Sulzer generates the vast majority (close to [...])% of its sales for thin film coating services. Germany (which is the largest European thin-film coating market, concentrating around half of all EEA-wide service sales) is thus the centre of gravity of the present transaction.

*Sulzer has not played a key competitive role in the German market and a critical number of larger players will remain post-merger*

53. On the German market Oerlikon is the clear market leader, reaching a market share of 25-35%. Oerlikon was historically one of the first companies to start providing thin-film coating services and hence had a first-mover advantage. Through internal growth and acquisitions<sup>25</sup> Oerlikon was able to build up a good position on the market. This is the case both in the tools segment, which represents a large part of the market in Germany, and also in coating components. Oerlikon operates one specialized centre in Bingen (Western Germany) where it centrally coats [...]. The additional 9 coating centres across Germany mostly coat tools, and the level of automation is fairly limited. Oerlikon is the most diversified and largest coater in Germany. It is strongly present also in many other European countries and it generates less than half of its EEA-wide turnover in Germany.

54. Sulzer is, with respect to thin-film coating services, a relatively local company focused on its home-base Germany. Sulzer has one main centre in Western Germany (Bergisch-Gladbach) where it coats both tools and components, but without automated production

<sup>25</sup> The most recent one included acquisition of VST Keller, which operates one coating centre in Germany and is mostly focused on coating forming tools.

needed for high-volume automotive components. Sulzer also has another specialized centre (Hohenlockstedt, Northern Germany) focusing almost exclusively on decorative coatings. The company is just starting operation of one new centre in Southern Germany, [...].<sup>26</sup> By its market share, Sulzer is with 5-10% among the four largest thin-film coaters in Germany.

55. There are a number of competing coaters in Germany. Behind Oerlikon, Sulzer has a market share more or less comparable with HOT (5-10%) and CemeCon (5-10%), followed by Eifeler, IonBond and Bekaert. Eifeler has an extensive network of 7 coating centres in Germany. Several market players have referred to Eifeler as being the company which offers low prices and puts a strong price pressure on the market. Eifeler as a German company has a focus on the German market but it has expanded to other countries in Europe and beyond. HOT, the next competitor, is a local German company operating 4 service centres in the country. CemeCon, also headquartered in Germany, has one large coating centre in Germany. Besides these companies with a strong focus on the German market, there is one other important player - IonBond - a large and experienced international service coater. It is also present on the German market and it operates one centre in Germany, one in the Netherlands (at the German border) and has also coating centres in Switzerland. The market share of IonBond in Germany is smaller than in the EEA, as in Germany the company focuses mainly on coating high-volume automotive components and so far abstained from serving extensively the large tooling segment. IonBond seems nevertheless to be known and recognised in Germany. The Belgian company Bekaert is also operating one centre in Germany. Apart from these relatively large companies with a network of several service centres, with proprietary technology and coating machinery, there is a number of smaller local German competitors. These small companies typically operate only one coating centre, often using outsourced equipment and focusing on more standardised business.
56. In the presence of a critical number of relatively large competitors, the disappearance of Sulzer does not seem to significantly change the competitive landscape in the German market. This holds particularly true in a situation where Sulzer is not a close competitor to Oerlikon, as explained below.

*Sulzer is not a close competitor of Oerlikon*

57. Sulzer is active in (sub-)segments of the market for thin-film coating services where it hardly faces the market leader Oerlikon as competitor. Decorative coatings – a special segment of the market where Oerlikon is not active - account for [...]% of Sulzer's thin-film coating service; a speciality of Sulzer - coating long tools above a certain size which is not performed by Oerlikon (and hardly any other players) - constitutes another [...]% of its sales; other 'niche' applications where Sulzer is not facing Oerlikon are the coating of drill bits (special tools for drilling- [...]% of sales) and the coating of medical instruments ([...]% of sales). These areas account in total for around [50-60]% of Sulzer's overall sales in thin-film coating services. In these market (sub-)segments, Sulzer competes either with other coating companies which also focus on these areas (such as with IonBond for medical instruments), or has found a niche where hardly any competitor is present (i.e. long tools), but it does not compete with

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<sup>26</sup> The third centre in Southern Germany just opened in May 2009 and hence generated no sales for 2008. Sulzer's latest business plan for that centre calculates with sales of [...]in PVD services, as most of the revenue is planned to be achieved [...].

Oerlikon. Apart from those specialities, Sulzer is coating a mixture of various more standard applications in both tools and components.

58. In fact, when customers were asked whether there is any application segment or technology where they perceive *both* Sulzer and Oerlikon to be particularly strong or having some special advantages, the vast majority of the customers (coming from across application segments) did not indicate any such area.<sup>27</sup> Customer replies also indicate that Sulzer is not perceived as the closest competitor of Oerlikon. Parties' customers replying in the investigation most often mention IonBond as a close competitor to Oerlikon.<sup>28</sup>
59. Similarly to customers, the main competitors questioned in the investigation did not perceive Sulzer as a particularly close competitor to Oerlikon. Some of the larger competitors in fact mentioned themselves to be the closest competitor to Oerlikon. Generally, Eifeler was perceived as the closest to Oerlikon in Germany (perhaps given its developed service network), followed by Cemecon and Sulzer, and also HOT and IonBond (for automotive components).
60. The Commission also analysed internal strategy documents of the parties and there is no indication that Sulzer would be a particularly close competitor of Oerlikon.<sup>29</sup> In particular Oerlikon's documents analysing the competitive environment focus closely on some other competitors, but not Sulzer.

#### *Tools and components segments*

61. The conclusion that Sulzer is not a very close competitor and thus is not a particularly constraining force on Oerlikon also holds true when looking at the two main segments of the market: tools and components.<sup>30</sup>
62. The tools segment seems to be more mature, more standardised and more fragmented in terms of competition on both the demand and supply side. Most of the competitors are active in this segment which represents a large part of the market in Germany. In

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<sup>27</sup> The few customers who replied positively on that question (less than one quarter of all replies) generally refer to features not directly related to any special segment or area within the affected product market: one customer to technology areas such as "PVD coating" (ie the default technology for thin-film coating used by all competitors) or one customer to "CVD coating" (where Sulzer is not active), one customer made reference only to general "process and quality know-how", another one did not specify the area of close competition at all. One customer referred to "tools" and another one to "cutting tools", whereas three referred to components. Interestingly, almost all of these above mentioned customers then also referred to other companies (eg. CemeCon, Eifeler, HOT, IonBond, HVM) when asked about the other main competitors in these particular segments, often mentioning more than one such competitor.

<sup>28</sup> Commission questionnaire to thin-film service customers of 11 May 2009, question 38. IonBond was mentioned most often, then equally CemeCon and Sulzer, followed by Eifeler and HOT. Many customers did not mention any company as the closest competitor.

<sup>29</sup> Documents annexed to the Form CO (annexes 7 A.3.(3a)-(4.c)), and document submitted by Oerlikon on 29 May 2009.

<sup>30</sup> The same holds true for small (sub-)segments which cannot be clearly attributed either to the tools or to the components segment, i.e. decorative coating and medical instruments (where there is no overlap as Oerlikon is not active in the EEA).

the tools segment in Germany, Oerlikon is traditionally very strong and is followed by a number of competitors - Eifeler and CemeCon (who both have their focus on tools coating), as well as Sulzer and HOT (who both also serve the tooling segments alongside components). Smaller local competitors follow. The investigation clearly indicates that with the presence of these players, sufficient competition to the combined entity will remain in that segment.<sup>31</sup>

63. As regards the components segment, both demand and supply are more concentrated. In the HVA components business the customers are large and sophisticated, often have in-house coating capabilities and use service coaters as a second sourcing option. The main players in this high-volume automotive segment are the two largest world-wide coating companies Oerlikon and IonBond. Sulzer has confirmed that it is not active in the HVA sub-segment of the thin-film coating market.<sup>32</sup> In fact, many relatively smaller competitors like Sulzer abstain from entering this sub-segment as the risks are high given the investments in automation and customisation of the processes necessary to be qualified by the customers and being able to compete profitably in that area.<sup>33</sup> Apart from the HVA business, there are other areas of components (such as lower-volume automotive, racing, aviation, medical components and others), in which additional players such as CemeCon, Eifeler, Sulzer, HOT or Bekeart (specialized in racing components) are active to some extent. Large automotive companies are also served by a company called HVM, which is another competitor active in components coating.<sup>34</sup> In the components segment, the disappearance of Sulzer would thus not significantly change the competitive situation given the presence of other stronger players.
64. Beside Oerlikon who is the only truly universal player in Germany (IonBond may be getting closer internationally), each competitor seems to have its own specialities and niche areas where it decides to focus strategically and develops to be recognised as a leading service supplier among customer groups. As the competitors explain, they are technically flexible in coating other applications (apart from high-volume automotive which seems to have higher barriers to entry) and they would be able to switch their focus according to their strategy if it would be commercially interesting.<sup>35</sup>

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<sup>31</sup> See also minutes of conference calls with [competitors]

<sup>32</sup> [...]

<sup>33</sup> See minutes of conference calls with [competitors].

<sup>34</sup> Coating company operating two coating centres in the Czech Republic, using Hauzer's equipment. See [www.hvm.cz/](http://www.hvm.cz/)

<sup>35</sup> See minutes of conference calls with [competitors]. One of the coating competitors explains that it would take not more than a few months to adjust the machines and processes (coatings), as from a technological point of view, the process is quite similar. In fact, the competitor reports that it actively considers entering a segment (in which it is currently virtually absent) when the right opportunity arises.



### *Feedback from market investigation*

65. The Commission conducted an extensive market investigation contacting a number of customers located mainly in Germany<sup>36</sup> as well as parties' competitors<sup>37</sup>.
66. The general customer feedback on the likely competitive impact of the notified transition was mostly positive or neutral. The vast majority of customers who replied did not express any concerns about the possible merger and no substantiated negative comments were made.<sup>38</sup> In particular larger customers with sufficient market knowledge indicated several alternative competitors which would remain post-merger.
67. Likewise, major competitors were not concerned about the merger, although two of them pointed to Oerlikon's already very strong position on the market (and size of the parties' parent companies).<sup>39</sup> In addition, several smaller local competitors expressed their concern that it is difficult for them to compete against large companies, some fearing to be driven out of the market. They pointed out in particular the already large size of Oerlikon on the market, who is potentially merging with another relatively large thin-film coating company. However, they mostly also recognised that there is a number of comparable or even larger competitors than Sulzer remaining on the market. As the thin-film coating service business has been going through a consolidation phase in the past period, some smaller companies may be absorbed by larger companies, or possibly be exiting the market. The current economic downturn may, according to some market participants, prompt such developments. The present merger however does not fundamentally change this situation. Most importantly, there will still remain a critical number of relatively larger companies on the market which will be able to compete against the merged entity.

### *Conclusion for Germany*

68. For all the reasons as elaborated above, the Commission concludes that the concentration does not lead to serious doubts as to the compatibility of the

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<sup>36</sup> The Commission sent questionnaires to around 80 parties' customers for thin-film coating services active across different application segments, out of which 57 were located in Germany. Answers from 37 customers was received, the vast majority in Germany.

<sup>37</sup> All major and several smaller competitors were contacted via questionnaires and the Commission conducted 10 telephone conferences mostly with major competitors. Feedback from all major competitors was received.

<sup>38</sup> Commission questionnaire to thin-film service customers of 11 May 2009, question 43. Out of 37 customer replies, the vast majority of customers (27) did not express any concerns, with most of them explicitly stating that they do not expect any negative effects (17) or not taking a position (10). Only 7 companies stated that they do expect a negative impact while three considered a negative impact as a possibility.

Negative comments included general statements such as that the number of suppliers will be limited, that Oerlikon has a strong market position, or that both companies are market leaders, but mostly indicating no specific reasons and not elaborating their comment. Generally, these negative replies either (i) provide no information about other companies on the market and are largely incomplete (possibly not having a sufficient market knowledge); or (ii) name other coating companies regarded as closer to the parties than the respective other party (questions 38 and 39), and/or active in the same area where they perceive both parties to be particularly strong (question 40), and/or several of them even indicating alternative suppliers to which they could easily switch away from the parties (question 41).

<sup>39</sup> Each of them in addition brought up a specific conglomerate-type concern (those will be dealt with in a separate section below).

concentration with the Common market as regards the thin-film coating service market in Germany. The same reasoning would apply per analogy to a hypothetically narrower geographic market within Germany<sup>40</sup> or broader markets than Germany<sup>41</sup>.

*No competition concerns in Austria, Sweden and Poland*

69. Outside its home market Germany, Sulzer also reaches some clients in other EEA countries. The market presence of Sulzer in those countries has to be analysed in the light of their respective small market sizes, the absence of a local coating centre of Sulzer in these countries and its dependence on a limited number of clients.
70. In Austria, where Oerlikon is clearly leading (50-60% market share), Sulzer's market share of 5-10% is not insignificant.<sup>42</sup> However, a majority ([...]%) of Sulzer's Austrian sales are attributable to one single customer. Also, market shares in Austria have to be seen in the context of a relatively small overall market (the total volume of the market is about 30-times smaller than in Germany according to parties' estimates). In that context, Sulzer does not have a local coating centre in Austria and is serving its clients from Western Germany. For some clients Sulzer seems to be preferred due to its 'niche' positioning which provides those clients with the incentive to seek coating services from Sulzer despite the longer distance.<sup>43</sup> Besides Oerlikon, local coating centres in Austria are operated by two major competitors, IonBond (10-20% market share), Eifeler (with 5-10%) and a local player, Rubig (5-10%)<sup>44</sup>, which will continue to exercise a competitive pressure on the merged entity similar to the situation pre-merger. A local presence in Austria gives a certain visibility and thus advantage over Sulzer: indeed some Austrian customers refer to IonBond and Eifeler as closest competitors to Oerlikon. Sulzer cannot be seen as a close competitor to Oerlikon in Austria, not only due to the absence of a local presence but also due to its different focus as explained above (paragraphs 57 - 64). Other larger companies operating from Germany (or other neighbouring countries, like HVM from the Czech Republic) may also serve Austrian clients, as Sulzer's customers in Austria are apparently ready to accept supplies delivered from a larger distance. The distances of these competitors from Austrian clients are comparable or even smaller than the distance to Sulzer's

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<sup>40</sup> The same reasoning would apply per analogy to a hypothetically narrower geographic market, taking as reference the area around Sulzer's main service centre in Bergisch-Gladbach (generating [a very significant proportion] of Sulzer's turnover in thin-film coating services). In fact, all major coating competitors have a coating centre within a radius of not more than 107 km from Bergisch-Gladbach (Eifeler several coating centres, the closest in Düsseldorf (44 km); CemeCon close to Aachen (95km); IonBond in Venlo (107 km); HOT in Werl (103 km). Bekaert has the closest coating centre in Herford with slightly more distance at 193 km). They would thus all be within a reasonable reach of Sulzer's clients and thus the conditions for competition would not significantly change in such a narrower geographic market.

<sup>41</sup> The same conclusion holds true for a hypothetical EEA-wide market or a wider than national market including Germany, as the centre of gravity of Sulzer's activities relates to Germany and its importance consequently diminishes with a broader market.

<sup>42</sup> According to parties' estimates, those market shares were fairly stable in the last years.

<sup>43</sup> One Austrian client indicated that it needed to coat very long parts, and given that Sulzer is a specialist in this area, that apparently makes this customer to prefer Sulzer despite being located further away. For explanations on the areas in which Sulzer specialises but where Oerlikon is not active (like long parts), see section on Germany, paragraph 57.

<sup>44</sup> See Table 1 above.

centre in Western Germany from which they are currently served. Indeed, CemeCon was mentioned in customer replies from Austria as a competitor. Both the geographic and cultural/language closeness of, in particular, the German competitors (CemeCon, HOT) indicate that they may be well placed for a potential entry into the Austrian market. No specific concerns were raised during the investigation concerning Austria. The Commission contacted the parties' customers in Austria and the majority of those replying were neutral or even positive about the acquisition's impact on competition.

71. In Sweden, Sulzer only has [a very limited number of customers], therefore its [0-5]% market share in the relatively small market does not represent a significant increase to Oerlikon's market position and cannot be considered to have exercised a significant competitive constraint in Sweden. Similarly, in Poland Sulzer generates a [0-5]% market share essentially with only [a very limited number of customers]. As explained above, other coating service companies located eg. in Germany may also serve these clients similarly to Sulzer. No specific concerns were raised during the investigation with regard to Sweden or Poland. In any event, the present transaction does not significantly change the competitive landscape in those countries.
72. It thus follows that the merger does not raise serious doubts as to its compatibility with the common market if Austria, Poland and Sweden were to be considered separate geographic markets.<sup>45</sup>

#### NON-HORIZONTAL ASSESMENT

73. As indicated above, two conglomerate-type issues were raised by two competitors respectively. Therefore the Commission has analysed also the possible non-horizontal effects of the transaction relating to thin-film coating services.

#### *Conglomerate-type issues related to plasma nitriding*

74. One of the competitors expressed a concern that the combination of Oerlikon with Sulzer's plasma nitriding/thermal diffusion business will bring an advantage to the combined entity resulting in a negative effect on the market in the component segment, notably automotive components.<sup>46</sup> This competitor regards Sulzer as a strong player in the nitriding technology and expresses its fears that this will add an advantage to Oerlikon which is already in a leading position in the thin film coating market. The competitor is alleging that for automotive components the technical advantage of combining both technologies in-house is the largest and will bring undue benefits to the merged entity.<sup>47</sup> In addition, from a commercial perspective, large customers such as automotive suppliers may prefer to work with a coater which can provide them with both services at the same time.

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<sup>45</sup> One smaller competitor raised concerns about the merger with respect to the Italian market. However, this concern is not merger specific as Sulzer is virtually not active on that market (Sulzer's market share in Italy is [negligible]).

<sup>46</sup> See minutes of Conference Call with [competitor] of 28 May 2009.

<sup>47</sup> As explained in the part on market definition above, plasma nitriding/thermal diffusion/hardening is for some types of applications complementary to thin-film coating and is applied to harden the component before it is coated.

75. The Commission's investigation revealed that this concern is not shared by customers or by other competitors and is unfounded. Above all, Oerlikon already possesses the plasma nitriding technology pre-merger (via its recent acquisition of VST Keller), so the combination of both technologies in one hands is not merger specific.<sup>48</sup> It is true that Sulzer is offering a machine which combines both processes, but adding this machinery to Oerlikon's technological portfolio does not appear to create a significant advantage.<sup>49</sup>
76. Next, although not all coating competitors offer plasma nitriding, there are a number of them actually offering both services: besides the parties these are notably IonBond, Eifeler and HOT (one of them also combining two processes in one machine). Therefore, the parties would not have an advantage that could not be matched by other service competitors. The investigation further indicates that some coating companies have recently developed the plasma nitriding technology internally<sup>50</sup>; and that service coaters can actually procure the equipment necessary to offer these services<sup>51</sup>. Also, one coater indicated that it is a common practice for coaters to outsource heat treatment to specialized heat treatment companies on the market, if needed.<sup>52</sup>
77. Finally, the claimed negative impact especially on customers active in the automotive industry appears to be minimal. One competitor explained that often the automotive industry clients (which are claimed to be most affected) do hardening already in-house before they send the components to be coated, so there is often actually no need to offer these services by a coating company.<sup>53</sup> In addition, the impact (if any) on these automotive customers appears to be limited by the generally strong buyer power and multi-sourcing approach of these large customers.<sup>54</sup>
78. Therefore, the concentration does not raise any competition concerns in relation to the combination of thin-film coating with heat treatment / plasma nitriding / thermal diffusion.

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<sup>48</sup> According to parties' estimates, the combined market share of the parties for a hypothetical market of plasma nitriding (which is the narrower alternative) would be below 10% in Germany and EEA-wide and even lower on broader markets including all thermal diffusion or all hardening.

<sup>49</sup> As two companies having developed similar combined machines explain, same or similar results can be obtained by running the process on two separate machines (Conference Call with [competitors]). The conclusion that a combined machinery does not confer a significant advantage is also implicitly confirmed by the fact that Oerlikon already managed to be very strong in automotive coating without having such a machinery.

<sup>50</sup> Conference Call with [competitor]. The complainant himself admits that "technically it is not extremely difficult to combine both" technologies.

<sup>51</sup> As one company active in coating business explains, "Plasma Nitriding is in principle cheap compared to coating. Coating service providers who want to extent their portfolio to Plasma Nitriding can easily buy a Plasma Nitriding machine, f.e. at [name of company providing machines]. Good metallurgical knowledge is needed though to know the process, but Plasma Nitriding is in principle not a difficult technology for companies in the coating business." Conference Call with [competitor].

<sup>52</sup> Conference Call with [competitor]

<sup>53</sup> Conference Call with [competitor].

<sup>54</sup> See for example Minutes of conference call with [competitor].

*No Conglomerate-type concerns related thick-film coating*

79. Another competitor raised the issue of a combination of Oerlikon's thin-film coating services with thermal spraying thick coatings offered by Sulzer. The competitor alleged that the ability to offer those two processes will allow Oerlikon to enlarge its product portfolio and attract more customers in the thin film market. The Commission followed up this issue with the company concerned during a conference call and found out that this concern (which was not raised by any other competitor or customer) was not substantiated.
80. The company itself explained that in its view "*...For most of the applications, these technologies are rather complementary than competing. Occasionally, there are overlaps where thick film can compete with CVD but not with PVD. But in general, there are very few overlapping applications for thick and thin film coating and there is quite a clear line between them.*"<sup>55</sup> The company did not elaborate more on its initial concern. The market investigation also indicates that thick-film coating is a completely different business and that customers mostly require either one or the other service, with very few exceptions in the automotive industry.<sup>56</sup> Sulzer explains that even in that customer segment most clients need only one of the technologies, and in the rare cases where the customers use both, there are different purchasing teams and joint selling has never been tried as it does not make commercial sense.<sup>57</sup> The lack of significant overlaps in applications and customer groups between the PVD technology (which the parties primarily offer<sup>58</sup>) and the thick-film coating offered by Sulzer indeed does not allow any significant leverage effect to the detriment of competition.
81. Therefore, the concentration does not raise any competition concerns in relation to the combination of thermal spraying thick coatings and thin-film coating services.

## **2 THIN-FILM COATING EQUIPMENT**

### **HORIZONTAL ASSESSMENT**

82. The parties have submitted information on market shares (in volume) for the merchant market of thin film coating (i.e. PVD and PACVD) equipment. The result of the market investigation has broadly confirmed the market shares provided by the parties with regard to the main market players. However, contrary to the submission of the parties, Kobelco did not have any sales in the EEA so far.

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<sup>55</sup> Minutes of conference Call with [the competitor concerned].

<sup>56</sup> From thin-film coating customers participating in the investigation only few companies used thermal spraying. These exceptions were mostly large automotive customers with multi-sourcing strategies. Almost all of them also used CVD.

<sup>57</sup> Submission of the parties of 11 June 2009 (answer to question 9 of Commission's information request of 9 June 2009).

<sup>58</sup> Oerlikon is active in CVD services only to a very limited extent (sales of [...] Euro in 2008). Sulzer has no CVD activities.

83. The market shares of the parties and their competitors for supplies of thin film coating equipment within the EEA and on a worldwide market were estimated by the parties as follows:

*Table 2: EEA-wide and global merchant market shares for thin-film coating equipment<sup>59</sup>*

	EEA	Worldwide
Oerlikon	[10-20]%	[5-10] %
Sulzer	[5-15] %	[0-5]%
<b>Combined</b>	<b>[15-30]%</b>	<b>[5-15]%</b>
CemeCon	[10-25]%	[10-15]%
Platit	[20-35]%	[20-25]%
Hauzer	[15-30]%	[15-20]%
Kobelco	-	[25-30]%
Others (incl. IonBond, Eifeler)	[10-15]%	[0-10]%

*Source: Parties' Best Estimates (corrected with regard to Kobelco's absence of EEA sales)*

84. The majority of the main equipment providers, including the parties, are also active in the service business. However, there are some large market players such as Kobelco, Hauzer, and Platit which are exclusively active in the equipment business or have only very limited sales in the coating service market. There are also some smaller service providers which produce thin film coating equipment but only for their own service business. These equipment producers are not included in the table above.
85. Most of the customers for thin film coating equipment are OEM/tool manufacturers who purchase these machineries for their internal use. There are also small service providers purchasing equipment although some of them develop their own equipment.
86. As it will be shown below, the present transaction combining Oerlikon and Sulzer, two relatively large market payers, does not raise serious doubts of leading to an impediment of effective competition in the market for thin film coating equipment, for the following reasons.
87. First, although the present transaction will bring about a non-negligible increment in the market share of the parties and will position them as the second largest actor in the EEA and the fifth worldwide, it is unlikely that the parties will be able to impede competition in the equipment market by increasing price or reducing output. Indeed, as it is shown by the table above, post transaction, there will remain a sufficient number of alternative suppliers with a size similar to the Parties or even bigger both in the EEA and worldwide which would be able to exercise sufficient competitive pressure on the parties in a way to prevent them from any price increase.
88. Second, respondents to the Commission's market investigation perceive these other large equipment suppliers such as Kobelco, Hauzer, CameCon, Platit as strong

<sup>59</sup> Parties estimated yearly market shares based on a period of 2006-2008, in order to offset the fluctuation of yearly market shares given the very lumpy nature of sales (total worldwide market only around 200 machines a year and EEA around 70 machines).

competitors to the parties both worldwide and within the EEA, although Kobelco, is not yet active within the EEA. It should be noted however that Kobelco indicated to the Commission that the company is currently entering the EEA market and has recently set up a sales office in Germany. Kobelco was quoted several times to be highly regarded and reputable for the quality of its machines and appears to be well known among some European customers. The fact that Kobelco did not have a presence in Europe so far was perceived as a certain disadvantage, but due to the recent establishment in Germany there are indications that this may likely change in the near future.

89. Third, while a certain number of the respondents considers that Kobelco, Hauzer, Platit and Oerlikon are rather strong from a technological point of view. As regards Sulzer's equipment it was several times mentioned that it uses a weaker technology.<sup>60</sup>
90. While a certain number of market participants expressed specific concerns with regard to the transaction, these comments were either not merger specific or were not substantiated.<sup>61</sup> Most of the competitors explained that due to the sufficient number of strong alternatives they do not perceive the proposed merger between Oerlikon and Sulzer as creating a negative impact on the market for thin film coating equipment.
91. Based on the above, it can be concluded that the present transaction does not raise serious doubts as to its compatibility with the Common market as regards thin film coating equipment, independently whether the geographic market is defined as EEA wide or worldwide.

#### VERTICAL ASSESSMENT

92. In those national markets where so far only Oerlikon has been active in thin-film coating services, the transaction leads to a vertical overlap to the extent that the market for services is downstream to the equipment market. [...] Sulzer provides equipment to small service providers active in Member States where Oerlikon is also active in the service business with a market share above 25%. Accordingly, the present transaction leads to some vertically affected markets.
93. The market investigation showed that post merger the parties would not have the ability to engage in any foreclosure strategy with regard to its customers active in the downstream service market. Indeed, as explained in the horizontal assessment part, post merger, there remain sufficient alternative suppliers of thin film coating equipment to whom Sulzer's current customers active in the service business in competition with Oerlikon could switch. None of the customers need any specific

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<sup>60</sup> Answer's of three competitors to Commission questionnaire for thin-film coating equipment competitors, question 39.

<sup>61</sup> One equipment competitor pointed out that the parties could have an advantage in the equipment market due to their very strong position in the service market. The contacts established with larger customers via service coating may privilege the parties for the supply of equipment to these customers. However, this concern is not merger specific as both Sulzer and Oerlikon were already active on the service market and were thus already in this 'privileged' position with these customers. Hence the merger would not change anything in this regard. Another customer expressed an initial concern that both parties would be very strong in 'arc' technology, but after further inquiry with this customer explained that this is standard technology which is offered by almost all competitors and that he sees realistic alternatives to the parties. Rather, the customer in question was concerned that post-merger Sulzer's service-oriented culture may be negatively affected by Oerlikon's approach to offer standardized machines without customization.

equipment that they could only receive from Sulzer, therefore, all the other suppliers of thin film equipment are viable alternatives for these customers should Sulzer adopt a similar strategy as Oerlikon and decide to no longer supply downstream competitors.

94. The Commission contacted each of Sulzer's customers active in the service market and none of them expressed concerns about a potential foreclosure strategy with regard to the procurement of equipment as result of the present transaction.<sup>62</sup> In particular, some market participants pointed to the fact that independent equipment suppliers, not active or only marginally active in the downstream service market, i.e., Hauzer, Platit and Kobelco, remain on the market as alternatives.
95. Based on the above, it is unlikely that the parties could post merger engage in a foreclosure strategy with regard to service providers that are not producing equipment themselves. Therefore, the concentration does not raise serious doubts as to its compatibility with the Common market as regards the vertical link between thin-film coating equipment and services.

## **VI. CONCLUSION**

96. For the above reasons, the present concentration does not raise serious doubts as to its compatibility with the Common market. Therefore, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission  
(signed)  
Neelie KROES  
Member of the Commission

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<sup>62</sup> One small company was concerned about the supply of spare part from Sulzer. However, it confirmed that for the equipment as such there are a number of alternative providers in the market.