

***Case No COMP/M.6557 - AGC GLASS EUROPE/
INTERPANE INTERNATIONAL GLAS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/05/2012

***In electronic form on the EUR-Lex website under
document number 32012M6557***



EUROPEAN COMMISSION

Brussels, 29.5.2012
C(2012) 3659 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.6557 - AGC GLASS EUROPE/ INTERPANE
INTERNATIONAL GLAS
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 17 April 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking AGC Glass Europe SA, ("AGC Europe", Belgium), controlled by Asahi Glass Co., Ltd ("AGC", Japan), acquires within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the whole of the undertakings Interpane International Glas GmbH (Germany) and Interpane Glass Holding AG (Switzerland) (together, "Interpane") by way of purchase of shares. AGC Europe is referred to hereafter as the "Notifying Party". AGC and Interpane are designated hereinafter as "Parties".

1. THE PARTIES

2. AGC Europe, based in Brussels, produces and processes flat glass for the building industry (both external glazing and indoor decorative glass), the automotive industry, the solar industry and specialist industries. AGC Europe has glass production and processing sites throughout Europe. AGC Europe belongs to the AGC group, a conglomerate active principally in glass operations, with some further activities in electronics and display products, chemicals and other areas, such as ceramics.

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

3. Interpane International Glas GmbH, based in Lauenförde, Germany, is the parent company of the Interpane group, a family owned, medium-sized European firm active in the manufacturing and processing of architectural glass, founded by Georg F. Hesselbach. Interpane Glass Holding AG (Switzerland) holds the solar glass activities of the Interpane group while Interpane International Glas GmbH (Lauenförde, Germany) holds the remaining business. Interpane has production and processing sites in Germany, Austria and France.

2. THE OPERATION

4. The proposed transaction consists of the acquisition by AGC Europe of a 51% shareholding of Interpane International Glas GmbH (which post transaction will hold, through Interpane Glas Industrie AG, the entire business of the Interpane group, except for its solar glass activities) and a 49% shareholding in a newly created Swiss legal entity, Interpane Glass Holding AG (which post transaction will hold the solar glass activities of the Interpane group).
5. The remaining shares in Interpane International Glas GmbH and Interpane Glass Holding AG will be held by Helgejos Glass Holding AG ("Helgejos"), the holding company of the Hesselbach family. AGC Europe and Helgejos have entered into a Shareholders' Agreement pursuant to the proposed transaction under which special rights giving rise to a power to block strategic commercial decisions are granted to the respective minority shareholders.

3. CONCENTRATION

6. The proposed transaction constitutes a concentration within the meaning of art. 3(1)(b) of the Merger Regulation as AGC Europe and Helgejos acquire joint control of Interpane within the meaning of Article 3(1)(b) of the Merger regulation.
7. AGC Europe will hold 51% of the shares of Interpane International Glas GmbH. However, special rights are granted to Helgejos and its shareholders in the Shareholders' Agreement. [...]
8. Consequently, post transaction Helgejos would have a veto right regarding the key strategic and personnel decisions. This leads to the conclusion that AGC and Helgejos would have joint control over Interpane International Glas GmbH.
9. Helgejos on the other hand would, following the proposed transaction, hold 51% of the shares of Interpane Glass Holding AG. However, the Shareholders' Agreement grants to AGC Europe the same veto rights which Helgejos has with respect to Interpane International Glas GmbH. Hence, AGC Europe and Helgejos would also have joint control over Interpane Glass Holding AG.
10. [...].

4. EU DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million² (AGC: EUR 11 088 million, Interpane: EUR 291 million).

² Turnover calculated in accordance with Article 5 of the Merger Regulation.

Each of them has an EU-wide turnover in excess of EUR 250 million (AGC: EUR [...] million, Interpane: EUR [...] million) but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

5. RELEVANT MARKETS

5.1. Float glass

12. The market definition for float glass has been examined by the Commission in a number of previous merger cases.³ In order to manufacture float glass, molten glass is poured continuously from a furnace onto a large shallow bath of molten tin. The molten glass floats on the tin, spreads out and forms a level surface. The thickness is controlled, inter alia, by the speed at which the solidifying glass ribbon is drawn off the float bath. After annealing, the glass emerges as a fire-polished product with virtually parallel surfaces. This corresponds to the so-called "level 1" float glass, also referred to as "raw float glass".
13. The raw float glass produced can then be processed in a number of different ways, e.g. by laminating or toughening the glass to produce a safety glass which will be shatter-safe on impact, or by coating the glass to enhance the energy efficiency qualities of the glass. Once processed, the glass may be used for a number of different end applications, in particular for the automotive trade (i.e. the glass used in car windows and sunroofs) and for the general trade (i.e. glass for internal and external use in buildings). These downstream products to raw float glass are referred to as "level 2".

5.1.1. Level 1: raw float glass

14. Both Parties are active in the production of level 1 float glass (i.e. raw float glass). Raw float glass is a homogenous, commodity-type product which, after further processing, has its principal applications at level 2.
15. The Notifying Party submits that the relevant geographic market for raw float glass is EEA-wide. In *Pilkington-Techint/SIV* and *Glaverbel/PPG* the Commission considered the relevant geographic market to be EU-wide, while nearly 13 years later in *Nippon Sheet Glass/Pilkington* the Commission indicated that the relevant geographic market is the EEA, although it ultimately did not further consider the geographic market definition as it was not relevant for that particular case. The market investigation confirmed that the relevant geographic market for raw float glass is EEA-wide.

5.1.2. Level 2 float glass

5.1.2.1. Relevant product market

16. In its decisions the Commission distinguished between two different end uses for float glass at level 2: (A) *automotive trade* and (B) *general trade*.

³ Case IV/M.358 *Pilkington-Techint/SIV*, Commission decision of 21 December 1993, Case IV/M.1230 *Glaverbel/PPG*, Commission decision of 7 August 1998 and Case COMP/M.4173 *Nippon Sheet Glass/Pilkington*, Commission decision of 7 June 2006.

17. With regard to (A) automotive trade, the Notifying Party agrees with the Commission's approach in earlier cases which distinguished between (i) automotive glass supplied to original equipment manufacturers and original equipment suppliers ("OEM" and "OES") and (ii) replacement glass supplied to the independent aftermarket ("IAM"), on the basis that different conditions of competition exist in these markets. The automotive trade segment is however of a marginal relevance for the present case, as Interpane is not at all active in these markets.
18. As to (B) general trade, the Notifying Party agrees with the product market definition established in the previous Commission decisions regarding the general trade segment. In *Pilkington-Techint/SIV* and *Glaverbel/PPG*, the Commission concluded that, within general trade, separate markets existed for unprocessed glass, laminated glass, silvered glass, sealed units and toughened glass. In *Nippon Sheet Glass/Pilkington*, the Commission left open the question of whether coated glass also constituted a separate market within the general trade segment and the Notifying Party supports the view that such a market exists. In addition, the Notifying Party submits that within the general trade segment there is also a separate market for fire resistant glass ("FRG").
19. Unprocessed glass is raw float glass cut to size. Laminated glass is made by sandwiching an inner plastic laminate layer between the two glass pieces to form laminated glass. When broken, the glass remains in place by sticking to the vinyl interlayer and is therefore less likely to cause injury. Silvered glass is polished with a reflective coating of silver deposited on the back. Sealed units consist of two or more panes of glass which are separated by dry air or other gases in a hermetically sealed unit. The layer of gas or air between the two panes acts as an insulator. The panes used to create a sealed unit can be made from both laminated and coated glass. Sealed units/double or multiple glazing are used as glass for windows. Toughened glass (or "tempered" glass) is produced as a result of a toughening process carried out by a large number of tougheners, which effectively heat-treat the glass once it has been cut to size. Toughened glass has a higher resistance to mechanical and/or thermal stresses and when broken shatters into small pieces with non-sharp (blunt) edges, as a result of the toughening process, which means that it is used in the general trade sector and in the automotive sector as safety glass. It is thus used principally in the internal and external areas of buildings where shatter-safe glass is required. In line with the Commission precedents, the market investigation confirmed that these types of glass constitute separate product markets.
20. Coated glass is obtained when modified properties are produced from the basic glass by means of surface coatings. Glass can be coated either on-line (in the float process by which the hot glass is treated using chemical or spray techniques) or off-line (after the float has been manufactured where cold glass is coated using the magnetron technology). With regard to its intended use, it can be further distinguished between low emissivity⁴ ("low-E") and solar control glass⁵. Coated glass can be used directly as building glass, but it can also be further processed as sealed units or toughened glass.

⁴ Low emissivity or low-E glass is glass which reflects heat. It is used to preserve heat produced by central heating in buildings in winter time.

⁵ Solar control glass is glass which reflects sunrays. It is used to keep buildings cool in summer time. Although its designation is similar to the one for solar glass, the latter is a different glass, used to equip solar modules and explained in more detail below.

21. The Notifying Party submits that building regulations in several European countries require the use of energy efficient coated glass in new buildings and, in some cases, in replacement windows, the use of coated glass has increased considerably over the years. Against this background, the Notifying Party also submits that coated glass constitutes a separate product market, including both on-line and off-line coating (since from the customer's perspective they fulfil the same function) as well as the different varieties of coated glass since they are all capable of being produced from the same coating equipment.
22. The market investigation confirmed that coated glass is regarded by market players as a separate product market. All the competitors and customers who responded to the Commission's questionnaires subscribed to this definition.⁶ The market investigation also confirmed that coating, which is a specific technology different from other processing techniques, adds value to the raw float glass and cannot be substituted with glass processed in other ways.⁷ On the basis of the above the Commission considers that coated glass forms a separate product market within the general trade segment.
23. FRG is a type of glass which is used in screens and doors to stop the spread of fire and enable evacuation. The Notifying Party submits that this market, which has not yet been considered by the Commission, is also separate from the other markets within the general trade segment on the basis that FRG cannot be substituted with other types of glass from either the supply or the demand side perspective. In particular, the Notifying Party argues that building regulations prescribe the use of such type of glass in certain building areas.
24. The Notifying Party further submits that FRG requires specialised equipment and know-how, as well as a dedicated manufacturing line with the machinery involved. As such, a manufacturer of one of the other types of glass could not switch production to FRG without the relevant know-how and a significant capital investment.
25. Respondents to the market investigation agreed with the definition and characteristics of FRG as described above. Moreover, they agreed that there are neither other glass nor non-glass products which could be considered as a substitute for FRG with regard to its intended use.⁸
26. On the basis of the above, the Commission considers that FRG forms a separate market within the general trade segment.

5.1.2.2. Relevant geographic market

27. With regard to the (A) automotive trade, the Notifying Party endorses the Commission's earlier decision concluding that the relevant geographic market is EEA-wide both for OEM/OES as well as for IAM.

⁶ Cf. Question 14 competitors questionnaire, Question 8 customers questionnaire.

⁷ Cf. Question 8.1 customers questionnaire, Questions 14.1 and 14.2 competitors questionnaire.

⁸ Cf. also Questions 18.3 and 18.4 competitors questionnaire.

28. Concerning the (B) general trade, in *Pilkington-Techint/SIV* the Commission decided that the relevant geographic market for unprocessed glass is EU-wide, while in *Glaverbel/PPG* it concluded that the markets for laminated glass and for silvered glass are EU-wide on the basis that these products are transported over long distances by large producers. The Notifying Party generally agrees with the Commission's earlier findings and submits that the relevant geographic scope of these markets is EEA-wide.
29. By contrast, the Commission had left open the question whether the relevant geographic market for toughened glass and sealed units is EEA-wide or narrower, and so far it has not yet examined the geographic market for coated glass and FRG.
30. In relation to sealed units, toughened glass and FRG, the Notifying Party acknowledges that these markets have some national characteristics but is of the view that the question whether the relevant geographic scope of these markets is EEA-wide or national can ultimately be left open. The Commission agrees that for sealed units, toughened glass and FRG the relevant geographic market can be left open in the current case, since no competition issues arise at either the EEA or national level.
31. With regard to coated glass, the Notifying Party submits that the coated glass market must be considered to be EEA-wide in scope, since the rationale for an EEA-wide market for raw float glass established by the Commission in its precedent decisions applies to the same or an even greater extent for the coated glass market. In particular, similarly to what happens regarding raw float glass, coated glass is traded across Europe, often being transported over considerable distances from the relevant plant to reach the customer. Furthermore, in *Pilkington-Techint/SIV* the Commission analysis concluded that supply areas for float glass facilities generally correspond to concentric circles of 500 km around the float glass facilities. Given the dispersion of the individual float plants and the varying degrees of overlap between the concentric supply areas, the Commission considered that effects can be transmitted from one circle to another, and that the relevant geographic market was EU-wide. The Notifying Party submits that the same conclusion could be drawn with respect to coated glass.
32. The Commission first notes that coated glass constitutes a higher value product than raw float glass as it is further processed by coating which adds value and therefore transport distances can be higher. In the case of coated glass, the Notifying Party estimates the maximum economically viable transport distances between 900-1400 km.⁹ Market participants claimed distances up to 900 km were economically viable.¹⁰
33. The majority of the respondents to the market investigation indicated that there are no significant price differences between Member States for coated glass and that there are the same suppliers who essentially service the market throughout Europe. The majority of the respondents furthermore confirmed that there are no national preferences for the

⁹ In particular, the Notifying Party argues that [...] % of its Lodelinsart (Belgium) coating plant output for the free market (i.e. excluding captive sales) is sold within a radius of 1400km. For its Tiel (the Netherlands) plant this catchment area is 900km.

¹⁰ Cf. Question 23.2 competitors questionnaire. Non-confidential minutes of the conference call of 4 May 2012 with Guardian. Non-confidential minutes of the conference call of 7 May 2012 with Pilkington; Non-confidential minutes of the conference call of 7 May 2012 with Saint-Gobain.

product. The respondents also confirmed that in case of a small but significant increase in price (i.e. 5-10%) they would be willing to purchase outside their usual supply area.¹¹

34. As coating facilities are evenly distributed across the EEA, although with certain regional centres¹², one can draw the same overlapping circles around each coating site, marking their areas of distribution. Even if one assumes a more conservative approach and limits these circles to 500 km¹³, there are a sufficient number of competitors serving the area covered by every coating facility of the merged entity.¹⁴ Hence, given the dispersion of the individual coating plants and the varying degrees of overlap for the natural supply areas, so that effects can be transmitted from one circle to another, it seems appropriate to consider the relevant geographical market to be EEA-wide.
35. Furthermore, though raw float glass producers tend to have their highest market shares in the Member States where their float glass production is located, the market share data submitted by the Notifying Party demonstrates that there is a substantial degree of interpenetration at national level.
36. On the basis of the above, the Commission considers that the geographic market for coated glass is EEA-wide.

5.2. Other types of glass

5.2.1. Solar glass

5.2.1.1. Relevant product market

37. In relation to solar glass, which has not yet been examined by the Commission, the Notifying Party argues that it is a separate product market. According to the Notifying Party, the term solar glass describes the glass used in equipment for harnessing solar power (such as solar panels or solar modules), and is used by operators in the solar energy industry. It takes the form of a sheet of glass which has been treated to maximise the transformation of solar energy into heat and/or electricity and is used to produce solar and photovoltaic modules. Solar glass is a type of glass which can be produced from float glass or rolled and wired (also referred to as "patterned") glass.
38. More specifically, the Notifying Party explains that the term "solar glass" may refer to the following:
- the sheet of glass which is used as the transparent cover of a solar module (photovoltaic ("**PV**") **Cover** for crystalline, thin film CIGS and thermal modules), made from tempered extra-clear cast or float glass, potentially with anti-reflective coating;

¹¹ Cf. Questions 18-19 customers questionnaire.

¹² In particular, there is strong concentration in Northern France, the Benelux countries and Germany.

¹³ Cf. paragraph 32. A 500km radius was applied in the case of float glass which is a lower value product. Moreover, a radius of 500km can be considered conservative as the market investigation indicates longer distances.

¹⁴ In the Benelux countries, competitors (Guardian and Scheuten) have coating facilities, in France, Saint-Gobain and Trösch are present, and in Germany, all the big players (Saint-Gobain, Pilkington, Guardian) as well as smaller competitors have coating plants.

- the sheet of glass which is coated with a conductive coating and serves as back electrode (Molybdenum – *Mo* – for thin film CIGS), made from float glass with offline coated Mo;
 - the sheet of glass which is coated with a transparent conductive oxide ("TCO") and serves as front electrode (*PV TCO* for thin film Silicon or CdTe), made from clear or extra-clear float glass with online or offline coated TCO;
 - the sheet of glass which serves as back glass (*back glass* for thin film Silicon or CdTe), made from tempered float glass with a hole for the junction box; and/or
 - the sheet of glass which is silvered and serves as mirror to concentrate sun energy (*solar mirror* for Concentrated Solar Power (*CSP*)), made from extra clear float glass coated with silver, copper and paint.
39. According to the Notifying Party, solar glass has increased significantly in importance in recent years in line with the increase in popularity of solar energy, such that solar glass is now considered to form an end use in its own right.¹⁵ Although the solar-energy application for flat glass is still relatively small in volume (5% of flat glass volume) compared to the markets of flat glass for buildings and for automotive and transports, it is expected to grow steadily in the years to come.
40. The Notifying Party submits that solar glass can be distinguished from the end uses for float glass, on the basis that:
- Customers for solar glass products differ from those for float glass. Solar glass customers have specific requirements which differ according to their specific applications and are not usually met by glass produced for the other end uses, e.g. the glass must be extremely transparent, it must be coated with specifically developed coatings, it must be processed, packed and shipped in such a way that it is suitable for use in solar modules or CSP fields.
 - Solar glass is traded in a different way to float glass. Specifically, solar glass is in its vast majority supplied by vertically integrated players which produce the (coated) raw float or rolled and wired glass, cut it into shape and process it themselves.
41. In this respect, the market investigation indicated that solar glass constitutes a separate product market. In particular, the market investigation respondents agreed with the definition and characteristics of solar glass submitted by the Notifying Party and confirmed that the products are not substitutable from a demand side perspective¹⁶. On the supply side, the market investigation confirmed that solar glass requires special coating technology which sets it apart from the production of other glass products. Furthermore, most solar glass types require a number of processing steps such as tempering, coating and cutting which in their combination make it a rather complex and high-value product, as opposed to more conventional glass types.

¹⁵ For example, the trade association for Europe's flat glass manufacturers, Glass for Europe, refers to three separate categories of float glass, namely building glass, automotive glass and solar-energy glass (see Glass for Europe's website, <http://www.glassforeurope.com/en/index.php>).

¹⁶ Cf. Questions 13.1 and 13.2 of the customer questionnaire.

42. Furthermore, the market investigation confirmed that solar glass made from rolled and wired and from float glass essentially possess the same characteristics.¹⁷ However, market participants also explained that once a solar glass customer has settled for a certain type of solar glass, rolled and wired or float, that customer is unlikely to switch since this would require technical changes to the whole solar or photovoltaic module.¹⁸ Furthermore, while there are substantial imports from Asia for rolled and wired solar glass, there appear to be no such imports of float glass. Yet this may also be explained by the fact that according to market participants most of the major producers of solar and photovoltaic modules have chosen to use solar glass based on rolled and wired glass.
43. The question whether the solar glass market could be further segmented according to the different production processes described above can be left open for the purposes of this decision, given that even the narrowest possible definition would not alter the competition assessment.

5.2.1.2. Relevant geographic market

44. The Notifying Party submits that the market for solar glass should be considered EEA-wide in scope. The Notifying Party produces solar glass only in Belgium and serves customers in a number of countries throughout Europe (e.g. Czech Republic and Portugal). According to the Notifying Party, a similar situation arises with regard to its competitors: Pilkington produces solar glass in Germany and sells it as far as in Spain; Guardian produces solar glass in Spain and is active on the Italian market; Saint-Gobain's solar glass production sites are in Germany, Poland and Spain but it makes sales to other countries such as Sweden and Hungary; and Sisecam (Turkey) and the Chinese manufacturers of solar glass have significant sales in Europe (accounting for approximately [20-30]% of sales in 2010) even though they have no production sites in Europe. This emphasizes that solar glass customers are able to purchase solar glass produced in other European countries and from even further afield.
45. The Notifying Party further submits that while the glass and the coatings may vary by function (patterned glass v. float glass, anti-reflective coating v. TCO coatings), and although some functions may be more popular with some manufacturers than with others, the technical features for each solar glass function are substantially the same in EEA countries. It is therefore easy to export solar glass produced in one specific country throughout Europe. Furthermore, as with raw float and coated glass, there is no need for local distribution networks or proximity to customers to compete successfully in a particular region. Finally, Chinese manufacturers have been particularly successful in entering in the solar glass market, in part as the technical expertise of European manufacturers does not significantly differentiate them from Chinese manufacturers, which further demonstrates that the market must be considered to be EEA-wide, if not wider, in scope.

¹⁷ Cf. Non-confidential minutes of the conference call of 7 May 2012 with Pilkington; Non-confidential minutes of the conference call of 7 May 2012 with Saint-Gobain.

¹⁸ Cf. Non-confidential minutes of the conference call of 7 May 2012 with Pilkington; of the conference call of 7 May 2012 with Saint-Gobain.

46. Respondents to the Commission's market investigation confirmed this view.¹⁹ In particular, they confirmed the importance of imports from as far as Asia.²⁰
47. On the basis of the above, the Commission considers that the geographic market for solar glass is EEA-wide.

5.2.2. *Rolled and wired glass*

48. Finally, the Notifying Party also distinguishes rolled and wired glass from float glass, which is in line with the Commission precedents. Indeed, in *Pilkington-Techint/SIV*, the Commission recognised that "[a]part from float glass there are other types of flat glass, namely plate glass, sheet glass, polished, wired and patterned glass, which are manufactured using completely different production methods." Furthermore, the Notifying Party claims that the market for rolled and wired glass is EEA-wide. The Commission notes that the relevant geographic market can be left open for the purposes of this decision, given that even the narrowest possible definition would not alter the competition assessment.
49. In addition, rolled and wired glass is of a marginal relevance for the present case, as Interpane is not active in these markets and is only affected due to its upstream vertical relationship with regard to solar glass.

6. COMPETITIVE ASSESSMENT

6.1. Horizontally affected markets

50. The proposed transaction gives rise to the following horizontally affected markets at EEA level: raw float glass (AGC [10-20]%, Interpane [0-5]%), coated glass (AGC [10-20]%, Interpane [5-10]%), laminated glass (AGC [10-20]%, Interpane [0-5]%) and solar glass (AGC [20-30]%, Interpane [0-5]%). At national level, it gives rise to a horizontally affected market for the supply of sealed units in Slovakia (AGC [10-20]%, Interpane [0-5]%). Moreover, there are a number of technically horizontally affected markets where the increment is minimal ([0-5]% or less) which will not be further assessed.²¹
51. The Notifying Party submits that:
- (i) the increase in the market share is less than 5% in every horizontally affected market (with the exception of coated glass at EEA level);
 - (ii) for those markets where the increment is higher than 1%, the Parties' combined market share is always below 25%;

¹⁹ Cf. Questions 33.3., 33.4 and 34 customers questionnaire, cf. questions 36 to 40 competitors questionnaire and Non-confidential minutes of the conference call of 7 May 2012 with Saint-Gobain.

²⁰ Non-confidential minutes of the conference call of 7 May 2012 with Saint-Gobain, Non-confidential minutes of the conference call of 4 May 2012 with Guardian.

²¹ At EEA level, silvered glass (AGC: [20-30]%, Interpane: <1%). At national level, for the following markets: (i) sealed units in Belgium (AGC: [30-40]%, Interpane: [0-5]%), Czech Republic (AGC: [20-30]%, Interpane: <1%) and the Netherlands (AGC: [20-30]%, Interpane: [0-5]%); (ii) toughened/tempered glass in France (AGC: [20-30]%, Interpane: <1%); (iii) coated glass in Bulgaria (AGC: [30-40]%, Interpane: <1%), Czech Republic (AGC: [40-50]%, Interpane:[0-5]%), Latvia (AGC: [20-30]%, Interpane:[0-5]%), Poland (AGC: [20-30]%, Interpane:<1%) and Slovenia (AGC: [10-20]%, Interpane:[0-5]%); and (iv) solar glass in Italy (AGC: [30-40]%, Interpane: <1%) and Sweden (AGC: [40-50]%, Interpane: <1%).

- (iii) there are a number of strong competitors, mostly international players²², exercising a significant competitive constraint; and
- (iv) there is excess capacity in the markets which would preclude any anti-competitive behaviour.

52. As regards coated glass specifically, the Notifying Party submits that at EEA level the Parties' combined market share remains below 25% and hence it can be presumed that effective competition will not be impeded. Moreover, it argues that there is a substantial excess capacity as, according to its estimates, firms in the coated glass market operated on average at only 65% of capacity in 2010.²³

6.1.1. Raw float glass at EEA level

53. Respondents to the Commission's market investigation confirmed that there were no competitive concerns regarding the market for raw float glass. They pointed out that over the past ten years a number of new players, including Trösch and Scheuten, have extended their capacities and that today the market showed signs of over-capacity so that the merger would not change the competitive environment.²⁴
54. This corroborates the Commission's findings. Taking into account Saint-Gobain ([20-30]%), NSG Pilkington ([20-30]%), Guardian ([10-20]%), and Trösch Euroglas ([5-10]%), several other competitors with comparably high market shares would remain in the market and could restrain the Parties' conduct, especially given the existing over-capacities. Moreover, a number of smaller, independent producers such as Siseecam ([0-5]% market share) and Sangalli ([0-5]%) would remain active in the market and impose further restraints. The over-capacity and the presence of independent producers would also prevent any incentive to collude between the large producers. Finally, the increment of the proposed transaction is low, at around [0-5]%, adding further to the finding that the proposed transaction does not raise serious doubts regarding the markets for raw float glass.

6.1.2. Laminated glass at EEA level

55. Likewise, no respondents to the market investigation raised concerns with regards to the markets for laminated glass.
56. In this respect, it has to be noted that the proposed transaction does not significantly change the competitive landscape as Interpane only adds a [0-5]% market share to AGC's [10-20]%. Moreover, the Commission's findings confirm that post transaction several strong competitors will remain in the market. These include Saint-Gobain (28% market share), Guardian ([10-20]%), Trösch ([10-20]%), NSG Pilkington ([5-10]%) and

²² For raw float glass at EEA level there are Saint-Gobain ([20-30]%), NSG Pilkington ([20-30]%), Guardian ([10-20]%) and Trösch ([5-10]%); for coated glass at EEA level there are Saint-Gobain ([20-30]%), Guardian ([10-20]%) NSG Pilkington ([10-20]%) and Trösch ([5-10]%); for laminated glass at EEA level there are Saint-Gobain ([20-30]%), Guardian ([10-20]%) Trösch ([10-20]%) and NSG Pilkington ([5-10]%); for solar glass at EEA level there are Pilkington ([10-20]%), Saint-Gobain ([10-20]%) and GMB ([10-20]%); for sealed units in Slovakia there are Saint-Gobain ([20-30]%) and Mol Glass ([5-10]%).

²³ With regard to the Parties' utilisation of coated glass production capacities, in their core markets (Belgium, France, Germany and the Netherlands), AGC has an utilisation rate of between [50-60]% and [60-70]% and Interpane has a utilisation rate of between [50-60]% and [80-90]% depending on the different production sites.

²⁴ Cf. Question 58 competitors questionnaire.

Sangalli ([5-10]%). In addition, a number of smaller operators such as Nova Vetro (Italy) or Vitro (Portugal) operate at least at national level. This alone indicates that sufficient competition remains after the merger. The Notifying Party estimated that in general only [70-80]% of the capacities available were used in 2010. The market investigation did not suggest anything to the contrary. Hence, the Commission concludes that the proposed transaction does not raise serious doubts regarding the markets for laminated glass.

6.1.3. Coated glass at EEA-level

57. Regarding coated glass, some of the Parties' competitors brought possible concerns to the Commission's attention. Some of these concerns related to the fact that the merged entity would have a wide-spread production network which might enable it to offer a wider product range closer to customers' facilities.
58. The merged entity would have a [20-30]% market share in this market. The Commission found during the market investigation that other competitors disposed of similarly large production capacities as the Parties such as Saint-Gobain with a market share [20-30]%, Guardian with [10-20]%, and NSG Pilkington with [10-20]%. Again, there are further smaller producers including Trösch/Euroglas ([5-10]%), Sangalli ([0-5]%), and smaller ones such as Germany's Semco and Arnold/Arcon. This remaining number of smaller and larger competitors with very different profiles already suggests that competition would remain significant even after the merger. Furthermore, the market for coated glass is again subject to over-capacity which could at any time allow competitors to counteract any price increases.
59. Regarding certain concerns by competitors with respect to the Parties' possible market power in Belgium, Netherlands, France and Germany, the Commission notes that in these areas there is the highest concentration of coating facilities in Europe. All big players have several coating plants and smaller companies are also present with coating plants.²⁵ As explained above, the market of coated glass is EEA-wide. However, even if only looking at the regional centres where the Parties' have their coating facilities, no competition concerns seem to arise as several competitors are also located nearby.
60. The Commission also notes that the Parties' geographic footprint is highly complementary, and Interpane has merely one facility in the area where there were some allegations raised by competitors with regard to the Parties' market power (i.e. Seingbouse in France) and there seem to be enough alternative supply possibilities for customers in that area.. By contrast, AGC has no coating facility in Germany and Austria, which is Interpane's stronghold.
61. As regards customers²⁶ of coated glass, there were no substantiated concerns with regard to the Parties' market power raised during the investigation. According to one major coated glass customer "*There is enough competition and capacities are more than demand for the next years*".²⁷

²⁵ Cf. footnote 14.

²⁶ Customers throughout Europe, including France, Benelux, Germany.

²⁷ CF. Customers questionnaire.

62. The Commission there notes that the competitors' claims are unfounded,²⁸ since there remain a number of alternative supply options in those geographic areas and the Parties' presence is counterbalanced by existing competitors in the nearby concentric circles.
63. As a result, the Commission considers that the proposed transaction does not raise any serious doubts with respect to the markets for coated glass.

6.1.4. *Solar glass at EEA-level*

64. With respect to solar glass, several competitors remarked that Interpane owns an exclusive technology for a special anti-reflective off-line coating which, at least according to some competitors, would be superior to other technologies on the market, most notably chemical coatings used by some of these competitors. Their concern is that a combination of this technology with AGC's extensive production capacities could provide a decisive competitive advantage for the merged entity.
65. However, during the market investigation it became clear to the Commission that possibly as much as half of Europe's demand for solar glass is serviced by Asian, most notably Chinese suppliers, while there were at the same time large over-capacities in Europe.²⁹ Market participants further confirmed that the Chinese suppliers could compete with European products because of their lower prices, even if their products might, in some cases be technically inferior. These factors suggest that market entry is possible, as shown by the increasing presence of Asian companies, and that competition on factors other than technology, such as price, is intense and often more decisive for customers.
66. These findings do not change when considering only the European producers. There remain strong competitors in the market, including Saint-Gobain ([20-30]%), Guardian ([20-30]%), Pilkington ([10-20]%) and Trösch (around [5-10]%). The Commission considers it unlikely that the merged entity could successfully raise prices since the over-capacities could service any customers willing to switch suppliers. Secondly, competition is not severely inhibited by any technological advantage since Interpane has been able to enter the market recently but has not gained decisive market share from other competitors.
67. As stated in the market definition analysis above (see paragraph 43 above), it can ultimately be left open whether there is a single market for all types of solar glass or whether a distinction should be drawn between the segments (see paragraphs 38 and 43 above). In particular, the only affected market under a possible further segmentation would be the PV cover market segment, where the Parties would have a combined market share of [20-30]%, with an increment of [0-5]%. There are also a number of strong competitors in this segment.³⁰

²⁸ Scheuten, which has joint venture agreements with both of the Parties, expressed concerns as to a possible decrease in its independence. Upon closer investigation, the Commission found that these concerns were neither substantiated nor merger specific.

²⁹ Non-confidential minutes of the conference call of 7 May 2012 with Saint-Gobain.

³⁰ Saint-Gobain [20-30]%; GMB [10-20]%; Centrosolar [10-20]%; Sisecam [5-10]%; Guardian [0-5]%; Others (mainly Chinese): [5-10]%

68. With respect to Interpane's coating technology, the market investigation shows that competitors have in the past, successfully defended their market position against Interpane's coating technology and that price is as important as technology in the solar market. Moreover, Interpane's technological advantage at present is the result of higher investments in research and development and new equipment. Competitors would be able to match it should they be willing to make the same efforts. So even if for a short period this technology provided a competitive advantage, such advantage is temporary and can be counteracted by the existing strong competitors.
69. Furthermore, the fact that Interpane is a recent market entrant does also not lead to competitive concerns. The company entered the market successfully but at a time when other companies, such as those from Asia, managed to do the same. Finally, competitors have confirmed during the market investigation that the Parties are not each other's closest competitors.
70. As a result, the Commission considers that the proposed transaction does not raise serious doubts regarding the market for solar glass.

6.1.5. *Sealed units: Slovakia*

71. The Parties have a combined market share of [10-20]% in the supply of sealed units in Slovakia, with an increment exceeding [0-5]% (AGC [10-20]%, Interpane [0-5]%).
72. The Notifying Party estimates that even after the merger there remains a sufficient number of competitors in the Slovakian market to restrain the merged entity. Nitrasklo as the largest competitor has a market share of [20-30]% (based on production in 2010). Further competitors such as Mol Glass ([5-10]%) and independent producers such as Izoglobal, Spol Kovac, Glasko, Iglas, Vanco and Festglas (all with a market share around [5-10]%) are able to counter any attempt to raise prices. Moreover, Interpane's share in the Slovakian market is only [0-5]%, making the proposed transaction's effect on the market situation as rather minor. None of the respondents to the market investigation raised concerns regarding the market for sealed units in Slovakia.³¹
73. Consequently, the Commission concludes that the proposed transaction does not raise serious doubts regarding the Slovakian market for sealed units.

6.1.6. *FRG*

74. [...] indirectly holds [...]% of the shares in Interver SA, France, and Interver AG, Switzerland (together "Interver"), a group active in FRG (mainly in France, Germany and the Netherlands). In addition, [...].
75. The Notifying Party submits that these facts do not give rise to any competition concerns, in particular since Interver is currently subject to a *procédure de sauvegarde* [...] ³² [...].
76. Furthermore, the Commission considers that no coordination between ACG (is also present on the FRG market) and Interver could arise in the short interim period during

³¹ Cf. Questions 54 and 54.1 competitors questionnaire and Questions 48 and 48.1 customers questionnaire.

³² [...].

which Interfer is subject to the *procédure de sauvegarde* since [...] control of Interfer is limited by the *procédure de sauvegarde*, which requires the company to operate under the supervision of a receiver (and ultimately to have its business plan and future direction approved by the competent court).

77. Even if coordination were possible as a result of the above mentioned shareholding or board memberships, the Notifying Party submits that (i) any alleged coordination would be short lived, and as such could not have any material effect on competition; (ii) Interfer is a minor player on the FRG markets (with a [0-5]% market share on the EEA level) ; (iii) Interfer cannot be considered to be an effective competitor given its current financial situation and [...]; and (iv) the FRG markets are subject to competition between producers which would have a disruptive effect on any alleged cooperation.
78. In addition, the Commission notes that during the market investigation only one competitor made a remark regarding Interfer.³³ However, this comment was of a general nature and did not express particular concern.
79. The parties' views are largely shared by the Commission. The fact that Interfer is essentially undergoing insolvency proceedings means that it is no longer under the free control of [...].³⁴ The merger does not change the competitive scenario with regard to this undertaking. Hence, the ownership link to [...] is not relevant to the present competitive assessment.

6.2. Vertically affected markets

6.2.1. Vertically affected markets

80. The proposed transaction also gives rise to a number of vertical relationships between the Parties. In particular, the following downstream markets are vertically affected: FRG at EEA and national level³⁵; sealed units at national level³⁶ and toughened glass at national level.³⁷
81. In light of the Parties' combined market shares in the downstream markets mentioned above, the upstream market for raw float glass at EEA level³⁸ is also affected.
82. As sealed units and toughened glass are downstream of the production of coated and laminated glass, the markets for coated glass at EEA level³⁹ and laminated glass at EEA level⁴⁰ are also affected.

³³ Cf. Question 54.1 competitors questionnaire.

³⁴ See footnote 32.

³⁵ EEA ([20-30]%), Belgium ([60-70]%), Czech Republic ([30-40]%), Estonia ([40-50]%), France ([30-40]%), Italy ([30-40]%), Latvia ([30-40]%), the Netherlands ([30-40]%), Poland ([50-60]%), Slovakia ([20-30]%), Spain ([30-40]%), UK ([20-30]%), Iceland ([30-40]%) and Norway ([30-40]%).

³⁶ Belgium ([30-40]%) and the Netherlands ([20-30]%). In addition, in light of the vertical relationship with coated glass, the markets for Austria ([5-10]%), Bulgaria (<1%), Czech Republic ([20-30]%), France ([5-10]%), Germany ([0-5]%), Greece (<1%), Italy (<1%), Poland ([5-10]%), Slovakia (10-20%) and Spain (<1%) are affected.

³⁷ Czech Republic ([30-40]%). In addition, in light of the vertical relationship with coated glass, the markets for Belgium ([5-10]%), France ([20-30]%), Germany ([0-5]%), Poland ([0-5]%), and Spain ([5-10]%) are affected.

³⁸ AGC: [10-20]%, Interpane: [0-5]%.

83. Furthermore, as solar glass can be also made from rolled and wired glass, the upstream supply of rolled and wired glass at national level⁴¹ is affected.

6.2.2. *Competitive assessment*

84. The Notifying Party claims that none of these vertical links gives rise to competition concerns. In particular, with regard to input foreclosure, it submits that the merged entity will not have market power on the upstream markets at EEA level and, as such, would not have the ability to exercise input foreclosure. Second, both AGC and Interpane produce an excess of upstream inputs compared to the inputs that their downstream operations require and rely on third party downstream customers buying a significant proportion of their upstream products. They would therefore have no incentive to cease supply to such customers.
85. As to customer foreclosure, the Notifying Party submits that the Parties are vertically integrated operators and they obtain upstream inputs for their downstream activities internally, so pre-merger the Parties are already not available as customers to other upstream producers. Furthermore, competing suppliers will be left with a very significant number of alternative customers on the downstream market.
86. In addition, concerning vertical overlaps and a possible input foreclosure, especially to competitors who also act as downstream customers, one can note that the parties' market position would be balanced by sizeable remaining competitors⁴² that would have the ability to challenge the position of the Parties and any attempt to increase prices post-merger, in particular since there is significant excess capacity in the market. This also holds true for a possible narrower regional areas within the EEA or for any particular Member States. In this respect, the Parties also underline the potential competition from firms with coated glass production sites located nearby regional areas. Moreover, customers indeed confirmed that they would turn to suppliers in a wider geographical area should suppliers in their immediate vicinity raise prices by 5 to 10%.⁴³ Hence any concerns about market power upstream and thus the ability to foreclose downstream customers are unfounded.
87. In the market investigation some competitors expressed concern regarding the sealed unit market.⁴⁴ However, these concerns exclusively relate to the Parties' increased power in the horizontal relationship with its competitors, which was already assessed above. No customers expressed concerns.⁴⁵ The Commission equally found that there is no incentive to foreclose downstream markets for the Parties nor would this be a feasible strategy given the remaining strong competitors upstream which could service

³⁹ AGC: [10-20]%, Interpane: [5-10]%.

⁴⁰ AGC: [10-20]%, Interpane: [0-5]%.

⁴¹ Sweden ([30-40]%), France ([30-40]%), Czech Republic ([30-40]%), Latvia ([30-40]%).

⁴² See footnote 22.

⁴³ See paragraph 33.

⁴⁴ Cf. Question 54. and 54.1 competitors questionnaire.

⁴⁵ Cf. Questions 48 and 48.1 customers questionnaire.

customers downstream. It also found the other arguments brought forward by the parties confirmed.

88. In view of the above, the proposed transaction does not give rise to any foreclosure concerns.

6.2.3. No foreclosure on downstream markets for use of solar glass

89. As explained above, solar glass is a type of float glass which is tempered and in general equipped with an anti-reflective coating. Solar glass is used to produce solar and photovoltaic modules. The Parties are only active in the upstream market for solar glass, but do not produce the downstream solar and photovoltaic modules. However, some of the parties' solar glass customers are also competing with the parties on the upstream solar glass markets.
90. A specific issue brought by some market participants was that through the merger, AGC would gain control over Interpane's specific anti-reflective coating technology which is used in the production of solar glass and thus foreclose competitors from this technology on which its solar module production is based.
91. Hereto, the Commission notes the following. In the current case there is no incentive to foreclose downstream customers, even if these are at the same time competing with the Parties in the upstream markets, from access to solar glass treated with Interpane's special coating technology as the parties (neither AGC nor Interpane) are not active in the downstream market for solar modules. The merger therefore does not create any vertical links between these markets. Furthermore, even if the parties had such a strategy, it would have no significant impact on the solar glass market as the supply relationship in question concerns only a small part of overall demand.
92. In view of the above, the proposed transaction is unlikely to give rise to any foreclosure concerns with regard to the solar glass market.
93. Consequently, the Commission concludes that the proposed transaction does not raise any serious doubts as a result of any of the vertical links between the Parties.

7. CONCLUSION

94. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission
(Signed)
Joaquín ALMUNIA
Vice-President*