



EUROPEAN COMMISSION
DG Competition

***Case M.8004 - AKZO NOBEL / BASF INDUSTRIAL
COATINGS BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 28/10/2016

***In electronic form on the EUR-Lex website under document
number 32016M8004***



EUROPEAN COMMISSION

Brussels, 28.10.2016
C(2016) 7095

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

Subject: Case M.8004 - AKZO NOBEL / BASF INDUSTRIAL COATINGS BUSINESS
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004¹ and Article 57 of the Agreement on the European Economic Area²

- (1) On 26 September 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation following a referral pursuant to Article 4(5) thereof, by which the undertaking AkzoNobel N.V. ("AkzoNobel", the Netherlands) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the industrial coating business of BASF SE ("BASF IC", Germany) by way of purchase of shares and purchase of assets (the "proposed Transaction").³ AkzoNobel is referred to as the Notifying Party and together with BASF IC are collectively referred to as the "Parties". The undertaking resulting from the proposed Transaction is referred to as the "Merged Entity".
- (2) The same concentration was already notified to the Commission on 4 July 2016, but the notification was subsequently withdrawn on 29 July 2016.

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.

² OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

³ OJ C 363, 1.10.2016, p. 24.

1. THE PARTIES

- (3) AkzoNobel is a global manufacturer of a wide range of paints, performance coatings and specialty chemicals.
- (4) BASF IC is engaged in the development, manufacturing, sales and distribution of industrial coating products, globally.

2. THE OPERATION

- (5) On 17 February 2016, the Parties entered into an asset and share sale and purchase agreement, pursuant to which AkzoNobel will acquire from BASF SE the shares and assets constituting the BASF industrial coatings business. More specifically, the proposed Transaction includes:
 - a. the sale of shares in two dedicated coil coatings production sites, located in the United Kingdom (Deeside plant) and South Africa (Vanderbijlpark plant);⁴
 - b. the sale of the supply agreements signed with customers currently served from BASF IC sites which are excluded from the proposed Transaction,⁵ as well as the transfer of other assets related to the BASF IC business (for example, contracts with employees, recipes and intellectual property rights); and
 - c. the sale of five small-scale mixing stations for coil coatings supply (known as Pevicoat facilities), located in Russia, Turkey, Spain (two stations), and Uganda.
- (6) The automotive OEM coatings business and the automotive refinish coating business currently owned by BASF SE are not included in the BASF IC carve-out and are therefore excluded from the scope of the proposed Transaction.
- (7) The proposed Transaction constitutes an acquisition of sole control within the meaning of Article 3(1)(b) of the Merger Regulation.

3. UNION DIMENSION

- (8) The proposed Transaction does not have a Union dimension within the meaning of Article 1 of the Merger Regulation as it does not meet the thresholds set out therein.
- (9) However on 2 May 2016, the Parties informed the Commission, by means of a reasoned submission, that the proposed Transaction was capable of being reviewed under the national competition law of six Member States⁶ and moreover, that its competitive effects would likely go beyond the territory of one Member State. None of Member States competent to examine the operation under its national law

⁴ Six other production sites of BASF IC, of which three located in Europe, which are currently used for industrial coatings are excluded from the proposed Transaction.

⁵ AkzoNobel will transfer to its local subsidiaries the supply agreements with customers served from these sites

⁶ Austria, Cyprus, Germany, Poland, Spain and the United Kingdom

expressed its disagreement within 15 working days of receiving the reasoned submission.

- (10) Therefore, the operation is deemed to have a Union dimension pursuant to Article 4(5) of the Merger Regulation.

4. MARKET DEFINITION

- (11) BASF IC and AkzoNobel both manufacture and supply industrial coatings. Industrial coatings are applied to the surface of a substrate to improve its surface properties, including appearance, adhesion, wettability, corrosion resistance, wear resistance and scratch resistance. Industrial coatings are supplied to producers of goods on which the coating needs to be applied and that have as part of their production process an integrated paint application line (as opposed to, for example decorative coatings which are applied after construction of the item).

- (12) The Commission has previously identified several distinct product markets within the industrial coatings category: coil coatings, wood finishes, protective coatings, powder coatings, and other industrial coatings.⁷ The Parties' activities overlap with regard to each of these products. The proposed Transaction does not lead to any vertical links.

4.1. Coil coatings

4.1.1. Product market definition

- (13) Coil coatings are used in the treatment of aluminium and steel coils to improve their surface characteristics in particular by protecting them against corrosion or exposure to UV and by providing aesthetic effects such as colour, gloss, and metallic shine. They are purchased by steel and aluminium mills for application directly on to pre-cleaned metal coils on automated coil coating lines. These coated coils of steel and aluminium are cut and the sheets are used for a range of products such as metal cladding and roofing for buildings or household appliances.

- (14) The Notifying Party argues that from a demand side perspective, the market for coil coatings is highly heterogeneous; it argues that the properties of the different layers of a coating system each vary depending on the substrate, the end-application and by customer specification. As such, there is limited demand-side substitutability between individual products.

- (15) The Notifying Party submits however that coil coatings constitute one distinct product market given the high-degree of supply-side substitutability, with no need to further segment the market. The Notifying Party argues that all layers of coil coatings, for both steel and aluminium and for all end-applications, are manufactured using the same categories of ingredients, using the same production equipment, and the same production technology. The Notifying Party submits that as all coil coating products are produced in batches on the same production equipment, switching manufacture between different products does not normally involve any significant cost, other than cleaning of the equipment.

⁷ Case M.4853 - PPG/SigmaKalon, Commission decision of 10 December 2007, para 7.

(16) In a previous decision, the Commission concluded that coil coatings form a product market distinct from other industrial coatings, based on the particular characteristics of coil coatings which cannot be substituted by other types of coatings. The Commission, however, left open the question whether coil coatings for steel and for aluminium should be regarded as distinct product markets and not consider segmenting the market further, based on end-application or layers.⁸

4.1.1.1. Coil coating layers: Primers, backcoats and topcoats

(17) Coil coatings are built up in a number of layers, which together form a “system”; three categories of layers can be distinguished: primers, topcoats and backcoats.

(18) Primers are usually the most critical layer, given that they provide the adhesion between the pre-treated substrate and the topcoats; they are also responsible for the corrosion resistance of the whole system. The Notifying Party submits that compared to topcoats, primers tend to be less complex and are produced in large batches which leads to lower production costs.

(19) Topcoats are added on top of the primer and provide the aesthetic effect, for example colour or gloss. The Notifying Party submits that compared to primers, topcoats tend to be produced in smaller batches, are more complex to develop and sometimes include expensive pigments, leading to higher production costs.

(20) Backcoats are applied to the underside of the coil and provide mainly the adhesion properties. Backcoats are generally not exposed to corrosive environments and are not visible in the end-application. Backcoats are therefore considered easier to produce.

(21) The Notifying Party submits that due to supply-side substitutability, no distinction should be made between various coil coating layers. According to the Notifying Party, this was already established by the Commission in a previous case.⁹

(22) In response to the market investigation, the majority of manufacturers of coil coatings confirmed the Parties' submissions that there are no significant differences between the production processes for the different layers of coil coatings, and that this was true for both aluminium and steel substrates.¹⁰ A number of respondents noted that topcoats require the additional step of colour matching which is not required for primers and backcoats. The replies to the market investigation show that all coil coating suppliers supply and manufacture all three layers.¹¹

⁸ Case M.1363 – *Dupont / Hoechst / Herberts*, Commission decision of 5 February 1999, para 19; case M.4853 - *PPG/SigmaKalon*, Commission decision of 10 December 2007, paras 25 - 26.

⁹ Case M.4853 - *PPG/SigmaKalon*, Commission decision of 10 December 2007, para 25.

¹⁰ Non-confidential replies to question 7.3 – questionnaire Q1 to competitors; and non-confidential replies to questions 6 and 7, questionnaire Q6 to competitors.

¹¹ Non-confidential replies to question 8, questionnaire Q1 to competitors; non-confidential replies to questions 10 and 11, questionnaire 6 to competitors; non-confidential minutes of conference call with a competitor dated 22 July 2016; non-confidential minutes of conference call with a competitor dated 22 July 2016.

- (23) From a demand-side perspective, customers almost unanimously confirmed that primers, topcoats and backcoats are not substitutable.¹² Moreover, some customers commented that smaller companies do not offer all layers, for example, some small companies do not offer primers.¹³ Most of the customers acknowledge however, that large coil coating suppliers provide all layers and that customers often "mix and match" the three layers from different suppliers.¹⁴
- (24) In light of the results of the market investigation and in view of the information available to it, the Commission considers that for the purpose of this case, the question whether the coil coatings market should be further segmented by layer can be left open given that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.1.1.2. Coil coating substrates: Steel and aluminium

- (25) Coil coatings are applied to coils of either steel or aluminium. According to the Commission's market reconstruction, the vast majority (just under 90%) of coil coatings volumes are applied to steel with just over 10% purchased for aluminium applications.
- (26) The Notifying Party submits that due to supply-side substitutability, no distinction should be made between coil coatings for steel and coil coatings for aluminium.
- (27) In *PPG/SigmaKalon*,¹⁵ a few respondents expressed the view that the market for coil coatings should be divided into steel coil coatings and aluminium coil coatings. However, in most cases, the same respondents acknowledged that the technology necessary to produce steel and aluminium coil coatings is the same, thus recognising supply-side substitutability between the two sub-segments.
- (28) The Commission's market investigation in the current case confirmed the Parties' submissions regarding supply-side substitutability. Manufacturers of coil coatings responded that there are no significant differences in the manufacturing process of coil coatings for steel and for aluminium, and that minimal time is required to switch from producing coatings for steel compared to coatings for aluminium.¹⁶
- (29) From a demand-side perspective, the market investigation confirmed that there is no substitutability between aluminium and steel coil coatings. Customers almost unanimously confirmed that they do not buy steel and aluminium coil coatings

¹² Non-confidential replies to question 6 of questionnaire Q5 to coil coating customers.

¹³ Non-confidential replies to question 5 and 5.1 of questionnaire Q4 to coil coating customers.

¹⁴ Non-confidential replies to question 6 of questionnaire Q4 to coil coating customers.

¹⁵ Case M.4853 - *PPG/SigmaKalon*, Commission decision of 10 December 2007, para 25.

¹⁶ Non-confidential replies to questions 5, 7.3 and 8 –questionnaire Q1 to competitors; non-confidential replies to question 5 – questionnaire Q6 to competitors. All respondents that are active in coil coatings in the EEA confirmed that there are no significant differences between production processes for coil coatings for steel and aluminium.

from the same supplier.¹⁷ In fact, customers that buy steel coil coatings generally do not buy aluminium coil coatings and *vice versa*.¹⁸

- (30) In light of the results of the market investigation and in view of the information available to it, the Commission considers that for the purpose of this case, the question whether the coil coatings market should be further segmented between steel and aluminium can be left open given that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.1.1.3. End-application

- (31) Coated coil can be used for a variety of end-applications. According to the Commission's market reconstruction, the vast majority (in excess of 90%) is used in the construction industry (for example, building panels, metal roofs, garage doors and wall panels), less than 5% is used for domestic appliances (white goods such as washing machines as well as brown goods such as TVs) and the remainder is used for transport (for example, caravans, trailers) and other end-applications.
- (32) The Notifying Party submits that due to supply-side substitutability, no distinction should be made between coil coatings for different end-applications. The Commission has not considered this issue in previous decisions in this sector.
- (33) The Commission's market investigation shows that from a demand-side perspective, substitutability of coil coatings for different applications is limited.¹⁹ Respondents to the investigation mentioned that although there may be theoretically a degree of substitutability between the coatings for different end-applications, in practice, customers buy specific coatings designed for a specific end-application.
- (34) The market investigation largely confirmed the Parties' submissions regarding supply-side substitutability. The majority of manufacturers of coil coatings responded that there are no significant differences in the manufacturing processes of coil coatings for different end-applications although a number identify additional quality requirements for coil coatings for domestic appliances.²⁰ The results show that all coil coating suppliers could manufacture and supply coil coatings for domestic appliances on the production equipment that they use for coil coatings for other end-applications²¹ and with the exception of one respondent, all suppliers provide all layers for all end-applications.²² That being said, a majority of the customers noted that suppliers tend to focus on certain types of coatings for end-

¹⁷ Non-confidential replies to replies to question 7 of questionnaire Q4 – to coil coating customers.

¹⁸ Non-confidential replies to questions 7.1, 8.1, and 8.2 of questionnaire Q4 to coil coating customers; and question 6 of questionnaire Q5 to coil coating customers.

¹⁹ Non-confidential replies to question 9 –questionnaire Q5 to coil coating customers and questionnaire Q2 to powder coating customers.

²⁰ Non-confidential replies to questions 8 and 12 of questionnaire Q6 to competitors.

²¹ Non-confidential replies to questions 10 and 11 of questionnaire Q6 to competitors; non-confidential minutes of conference call with a competitor dated 22 July 2016; non-confidential minutes of conference call with a competitor dated 22 July 2016.

²² Non-confidential replies to questions 10 and 11 of questionnaire Q6 to competitors.

applications.²³ One customer explained that: *"It is difficult and long to start a new end-application because of development of formula which will be according to specification."*²⁴

- (35) The market investigation also revealed price differences between coil coatings for different end-applications. One customer noted that: *"In general coil coatings for DA are more complex than those for construction and that's the reason why they have generally higher prices than most coil coatings for construction."*²⁵
- (36) Finally, several internal documents of AkzoNobel indicated that the following end-applications are regarded as distinct product markets: building products (construction), domestic appliances, transportation and general industry.²⁶ In particular, the Notifying Party evaluates the market dynamics, including its competitive position, separately for each of these end-application segments.²⁷ Internal documents of BASF IC indicated that it also analyses its market position according to end-application e.g. construction *versus* domestic appliances.²⁸
- (37) Given the results of the market investigation and the internal documents of the Parties, the Commission considers that it cannot be excluded that the market for coil coatings should be further segmented by type of end-application. However, this question can ultimately be left open for the purpose of the present case given that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.1.1.4. Conclusion on product market definition for coil coatings

- (38) In light of the results of the market investigation and the internal documents of the Parties, the Commission considers that the market for coil coatings can be segmented by substrate, (steel and aluminium), by type of layer (primer, backcoats, topcoats) or by type of end-application. However the scope of the precise product market definition can be left open for the purpose of the present case given that serious doubts would not arise even under the narrowest market definition.

4.1.2. Geographic market definition

- (39) In previous decisions,²⁹ the Commission concluded that the scope of the relevant geographic market is at least EEA-wide.
- (40) The Notifying Party argues that this finding is still appropriate. It argues that the Parties, as well as other suppliers, supply their customers all over the entire EEA from only a few plants. The prices that the Parties (and their competitors) quote to customers are inclusive of packaging and delivery; the Notifying Party submits that

²³ Non-confidential replies to questions 10 and 11 of questionnaire Q5 to coil coating customers.

²⁴ Non-confidential replies to question 12.1 of questionnaire Q5 to coil coating customers.

²⁵ Non-confidential minutes of conference call with a customer on 27 September 2016.

²⁶ See for example *"Market Segment Planning September 15 – 16, 2015Coil EMEA"*, page 11, Annex 52, BAM February.

²⁷ See MC Strategy Update presentation – slides 21/24/27/29/116.

²⁸ See *"Coil Coatings CIS – Strategic Roadmap"*

²⁹ Case M.4853 - *PPG/SigmaKalon*, Commission decision of 10 December 2007, para 27; Case M.1182 – *Akzo Nobel / Courtaulds*, Commission decision of 30 June 1998, para 12.

these costs constitute approximately [0-15]% of total costs. It further submits that coil coating customers source coil coatings from suppliers all over the world. The Notifying Party also argues that there are no environmental, safety or other regulations that limit trade between Member States and that prices are homogenous across the EEA.

- (41) Customers responding to the Commission's market investigation indicated that the proximity is an important factor for their choice of coil coating supplier, in particular due to short lead-time requirements.³⁰ That being said, the overwhelming majority of the respondents to the market investigation confirmed that they source coil coatings at EEA level.³¹
- (42) Manufacturers of coil coatings confirmed that they generally ship their coil coatings across the whole EEA,³² and sometimes wider to Russia and other non-EEA countries from their European plants. The majority did not identify any limiting factors on the ability to transport coil coatings across the EEA.³³
- (43) Finally, the market investigation confirmed that the sales price of coil coatings of the same type does not differ substantially between various countries in the EEA.³⁴

4.1.2.1. Conclusion on geographic market definition for coil coatings

- (44) Based on the results of the market investigation and the information available to it, the Commission considers that the market for coil coatings and its sub-segments is the EEA.

4.2. Powder coatings

4.2.1. Product market definition

- (45) Powder coatings are coatings that are applied as a free-flowing, dry powder. Powder coatings are normally used to create a hard finish, and mainly used to coat metal substrates, such as white goods, aluminium extrusions, and automobile and bicycle parts. Contrary to a liquid coating (such as coil coatings), powder coating does not require a solvent (which evaporates after the coating is applied) to keep the binder and filler parts in a liquid suspension form.
- (46) The Notifying Party submits that powder coatings should be considered as a separate market compared to the other industrial coatings, but that the market should not be sub-divided further according to end-application because of supply-side substitutability.

³⁰ Non-confidential replies to questions 15 and 15.1 of questionnaire Q5 to coil coating customers. For example, one customer noted that: *"The physical presence of the particular country is not necessary, but due to reasons of lead times, flexibility and service, we prefer short distances from the coil paint factory to our production sites."*

³¹ Non-confidential replies to question 13 of questionnaire Q5 to coil coating customers.

³² Non-confidential replies to question 20 of questionnaire Q1 to competitors, and question 13 of questionnaire Q6 to competitors.

³³ Non-confidential replies to question 14 of questionnaire Q6 to competitors.

³⁴ Non-confidential replies to question 17 of questionnaire Q5 to coil coating customers.

- (47) In a previous decision,³⁵ the Commission found that although liquid coatings and powder coatings may be theoretical substitutes in terms of their technical performance in a wide range of metal coating applications, the ability of customers to switch between powder and liquid coatings is limited by the fact that the same equipment cannot be used to apply the two types of coating. Moreover, there is little if any substitutability between liquid and powder coatings from the supply-side perspective. The Commission therefore found that powder coatings constitute a separate product market but that no further sub-segmentation of powder coatings by end-application or production technology was warranted.³⁶
- (48) The market investigation largely confirmed the Parties' submissions regarding supply-side substitutability with regard to different types of powder coatings. Manufacturers of powder coatings confirmed that suppliers of powder coatings in general offer a complete range of powder coatings, for various types of end-applications, based on various types of resins³⁷ and that there are minimal differences between the production techniques used for different powder coatings.³⁸ From a demand-side perspective, powder coatings customers in general do not distinguish between powder coatings for different end-applications other than for certain niches.³⁹
- (49) In any event, for the purposes of this decision and the assessment of the proposed Transaction, the Commission considers that it is not necessary to sub-segment the powder coatings market by end-application and it can be left open whether a segmentation by production technology is necessary since the proposed Transaction does not give rise to any competition concerns, given that serious doubts would not arise even under the narrowest market definition.

4.2.2. *Geographic market definition*

- (50) The Notifying Party submits that the relevant geographic market is EEA-wide.
- (51) In previous decisions, the Commission has concluded that the market definition for powder coatings is at least the EEA⁴⁰ but has left the definition open in a more recent case.⁴¹
- (52) The market investigation provided mixed responses on whether the market should be considered as EEA-wide. A number of respondents reported that national sourcing gave an advantage with regard to lead time for delivery, others considered

³⁵ Case M.5745 - *AkzoNobel / Rohm & Haas Powder Coating business*, Commission decision of 21 April 2010, para 23.

³⁶ The Commission also found that it was not appropriate to sub-divide the market according to production technology, that is to say thermoset vs thermoplastic powder coatings. Neither of the Parties is active with regard to thermoplastic powder coatings.

³⁷ Non-confidential replies to question 13 of questionnaire Q1 to competitors.

³⁸ Non-confidential replies to question 14 of questionnaire Q1 to competitors.

³⁹ Non-confidential replies to questions 6 and 7 of questionnaire Q2 to powder coating customers.

⁴⁰ Case M.1182 – *AkzoNobel / Courtaulds*, Commission decision of 30 June 1998, para 13

⁴¹ Case M.5745 - *AkzoNobel / Rohm & Haas Powder Coating business*, Commission decision of 21 April 2010, para 23.

that suppliers within the EEA could deliver products sufficiently quickly and that prices were homogeneous across the EEA.⁴²

- (53) In any case, for the purposes of this decision, the exact scope of the geographic market for powder coatings can be left open since the proposed Transaction does not give rise to serious doubts about its compatibility with the internal market under any plausible geographic market definition.

4.3. Wood finishes

- (54) Wood finishes are industrial coatings applied to wood and wood-based panels which are then used to manufacture end products such as furniture, cabinets, doors and floors. Wood finishes mainly provide scratch resistance, durability, and decorative features to the wood products they are applied to.
- (55) In a previous case, the Commission found that there is a separate market for wood finishes distinct from other industrial coatings, but has left open the question whether the geographic scope of the market is national or wider.⁴³
- (56) In this case, the geographic market definition can be left open as no affected markets arise even on the basis of the narrowest possible segmentations. These products will therefore not be discussed further in this decision.

4.4. Protective coatings

- (57) Protective coatings are heavy-duty industrial coatings for application to structural steel, concrete and other industrial substrates, mainly to enable these materials to resist corrosion, chemical influences and heat. Protective coatings are supplied for application to large assets in a wide variety of industries, such as the power generation industry, oil and gas industry, mining industry, and operators of infrastructure like airports and stadiums.
- (58) In previous cases, the Commission considered that protective and marine coatings constitute a separate product market distinct from other industrial coatings but has left open whether protective coatings and marine coatings should be distinguished.⁴⁴
- (59) The Notifying Party submits that due to demand-side and supply-side substitutability protective coatings form a single market without the need for further subdivision by different end-application. The Notifying Party notes that the same protective coatings are used in various end-applications and various industries (power generation, oil and gas, infrastructure etc.); irrespective of the target industry the coatings are based on the same technology and have the same product characteristics and functionalities.

⁴² Non-confidential replies to questions 20 and 21 of questionnaire Q1 to competitors, and questions 9 – 12 of questionnaire Q2 to powder coatings customers.

⁴³ Case M.1182 – *AkzoNobel / Courtaulds*, Commission decision of 30 June 1998, para 9.

⁴⁴ Case M.1363 – *Dupont / Hoechst / Herberts*, Commission decision of 5 February 1999, para 19; Case M.4853 – *PPG / SigmaKalon*, Commission decision of 10 December 2007, paras 16 - 19.

- (60) The Commission previously left open the question whether the geographic scope of the market is EEA-wide or national.⁴⁵
- (61) The Notifying Party submits that the market is at least EEA-wide in scope: each of AkzoNobel and BASF serve at least the entire EEA from a single production facility, throughout the EEA the same brands and the same technical and product specifications are used and the transport costs are not significant.
- (62) In this case, the results of the market investigation are inconclusive as regards the product market definition, while for the geographic scope, the customer responses suggest that the relevant market is wider than national – most respondents source the protective coatings at the EEA or worldwide level.⁴⁶ All the customers of protective coatings indicate that prices of protective coatings of the same type do not differ significantly between various Member States.⁴⁷
- (63) In view of the above, the Commission considers for the purpose of this case that the market for protective coatings is EEA wide in scope. As regards the product market definition, for the purposes of this decision, the Commission considers that the precise scope of the product market definition can be left open since the proposed Transaction does not give rise to serious doubts about its compatibility with the internal market under any plausible product market definition..

4.5. Other industrial coatings

- (64) Other industrial coatings comprise the most basic coatings in terms of technology and functionalities (like basic durability, stain and corrosion resistance) which do not require any specific technology or know-how and can be used on a wide variety of industrial products.
- (65) In a previous decision,⁴⁸ the Commission considered that other industrial coatings could be considered a single product market. The Commission left open the question whether the scope of the geographic market should be considered national or EEA wide.⁴⁹
- (66) In this case, the product and geographic market definitions can be left open as no affected markets arise even on the basis of the narrowest possible segmentation. These products will therefore not be discussed further in this decision.

5. COMPETITIVE ASSESSMENT

- (67) Under Article 2 (2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it.
- (68) In this respect, a merger may entail horizontal effects which may significantly impede effective competition in a market. Horizontal effects are those deriving

⁴⁵ Case M.1182 – *Akzo Nobel / Courtaulds*, Commission decision of 30 June 1998, para 9.

⁴⁶ Non-confidential replies to question 11 of questionnaire Q3 to power generation customers.

⁴⁷ Non-confidential replies to question 14 of questionnaire Q3 to power generation customers.

⁴⁸ Case M.1182 – *Akzo Nobel / Courtaulds*, Commission decision of 30 June 1998, para 9.

⁴⁹ Case M.1182 – *Akzo Nobel / Courtaulds*, Commission decision of 30 June 1998, para 9.

from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.

- (69) The Horizontal Merger Guidelines, list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects.⁵⁰
- (70) In addition, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, entry and efficiencies.
- (71) The proposed Transaction gives rise to affected markets with regard to: (i) coil coatings; and (ii) powder coatings.⁵¹

5.1. Coil coatings

- (72) AkzoNobel and BASF IC both manufacture coil coatings. In addition to the Parties, the main suppliers of coil coatings in the EEA are Beckers, Valspar and PPG with a number of smaller regional players and a new entrant, Primetop, also active. The customers of coil coating suppliers are steel and aluminium producers such as ArcelorMittal, ThyssenKrupp, TataSteel, voestalpine and Salzgitter who coat the steel or aluminium coil before selling it on to their end customers.
- (73) Demand for coil coatings is heterogeneous; for each end-application, a coating system of primer, topcoat and backcoat needs to be developed with specific performance characteristics.
- (74) The vast majority of coil coatings are used for construction end-applications (in excess of 90% of all coil coating sales). The demand for coil coatings for domestic appliances (which constitutes less than 5% of the market) shows a number of distinct characteristics in comparison to demand for coil coatings for construction. First, the end-customers, that is domestic appliance manufacturers such as Bosch-Siemens, Samsung, Whirlpool, Miele and Electrolux, tend to be more active in the development of the coil coating system and in the selection of the coil coating

⁵⁰ Horizontal Merger Guidelines, paragraph 26.

⁵¹ Theoretically the proposed Transaction would lead to the affected market in the area of protective coatings for use in power generation industry, if the market was segmented according to end-application (combined market share of [20-30]%). In reality, however, this is not a plausible market. The only potential overlap in this theoretical segment would be between the coatings used for covering rotor blades in wind turbines offered by BASF IC and the yacht coatings offered by AkzoNobel for use in yacht industry and other end-applications, including the power generation industry. Apart from this coating, there are no overlaps between the Parties in the protective coatings used in power generation industry. For completeness, on the overall market for protective coatings the combined market share amounts to [10-20]% (by value) and [10-20]% (by volume) with the increment by BASF IC below [0-5]%.

supplier compared to the construction sector. Second, coil coating systems for domestic appliances appear to be more bespoke in comparison to coil coatings in the construction sector for which there are more universal products that can be used for a variety of applications. For domestic appliances, each paint system is generally developed specifically for a particular end-customer with specific characteristics which may result in a customer having only one supplier qualified for a particular product.

- (75) A number of customers of the Parties for coil coatings for domestic appliances raised concerns during the market investigation,⁵² claiming that the Parties are each other's closest competitors and that the merged entity would have a very strong market position post-Transaction.⁵³ Customers did not, however, state that they could not qualify alternative suppliers, rather that it would take time and some suppliers had in the past been better than others in developing coil coating products for domestic appliances, in particular BASF IC. It should be noted that there are effectively four major customers that purchase coil coating products for domestic appliances and a number of the Parties' customers have started discussions with alternative suppliers with a view to qualifying new products to diversify their supply base (other customers purchase negligible amounts of coil coatings for domestic appliances).
- (76) A few customers also raised general concerns with regard to the overall coil coatings market because of the difficulties in qualifying new suppliers and a potential loss of BASF's research and development capabilities.
- (77) For the reasons set out in this section 5.1, the Commission considers that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market with regard to the coil coatings market as a whole, nor for any particular sub-segment, including domestic appliances.

5.1.1. *Structure of the market*

- (78) The coil coatings market in the EEA currently consists of five key suppliers: the market leader Beckers, followed by AkzoNobel, BASF IC, PPG and Valspar. In addition, the market includes a relatively new entrant Primetop as well as a number of smaller regional competitors.
- (79) Post-Transaction, Beckers will remain the market leader overall, followed by the merged entity.
- (80) The Notifying Party has provided market share data broken down by all plausible market definitions, that is: (i) all coil coatings; (ii) coil coatings broken down by layer (primer, topcoat and backcoat); (iii) coil coatings broken down by substrate

⁵² Non-confidential responses to questions 26 and 27 of questionnaire Q4 to coil coating customers.

⁵³ The results of the market investigation suggest that there may be some niche products for use in the transport segment, for which the Parties are close competitors. The Commission considers that its analysis regarding the coil coating market as a whole and in particular with regard to certain low volume products for which a customer may only have one supplier qualified is applicable and therefore the proposed Transaction will not have a significant impediment to effective competition with regard these products.

(steel, aluminium); and (iv) coil coatings broken down by end-application (construction, domestic appliances, transport and general industrial).

- (81) In order to estimate market shares, the Notifying Party has used AkzoNobel's and BASF IC's actual volume and value figures whereas the sales figures for competitors are based on market intelligence. Market totals in volume are based on ECCA data.⁵⁴ ECCA provides market totals in volume for the whole of Europe, as well as a percentage allocation of this total volume to EU15, EU13 and the rest of Europe. AkzoNobel has taken the volume figures for the whole of Europe, and extrapolated the figures for the EEA. For the value data, the Notifying Party has applied an average selling price to the volumes figures calculated based on ECCA data.
- (82) In order to evaluate the reliability of the Parties' coil coatings estimates based on ECCA data, the Commission carried out a limited market reconstruction based on the actual volume and value sales data of the five largest suppliers in the EEA split by layer, substrate and end-application. These five suppliers represent the vast majority of sales in the industry. This market reconstruction broadly confirmed the Parties' estimates provided in the Form CO although given that the reconstruction only included the largest five players, the market shares of each of these players is likely slightly overstated in most cases.

5.1.1.1. Market structure for coil coatings

Table 1 - Coil coatings – EEA - 2015

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[10-20]%	[...]	[10-20]%
BASF IC	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[20-30]%	[...]	[20-30]%
Beckers	[...]	[30-40]%	[...]	[30-40]%
PPG	[...]	[10-20]%	[...]	[10-20]%
Valspar ⁵⁵	[...]	[5-10]%	[...]	[5-10]%
Primetop	[...]	[0-05]%	[...]	[0-5]%
Others (number of small local competitors)	[...]	[10-20]%	[...]	[10-20]%
Total market	[500-600]	100%	[100-150]	100%

⁵⁴ ECCA is the European Coil Coating Association, its mission is to promote the use of prepainted metal as the environmentally sound, the cost effective and the high quality method of finishing. Moreover ECCA also operates as an industry association thereby, among others, it sets quality and performance standards, creates industry forums and increases market awareness on coil coatings.

⁵⁵ As explained in the Form CO, the figures for Valspar do not take into account its 2016 acquisition of ISVA, which according to the Notifying Party's estimates represent approximately EUR [...] million sales in value and [...] ktons sales in volume. If these figures are included, the market share of Valspar is close to [5-10]% if measured by value, and just above [5-10]% by volume.

Source: Form CO

- (83) Table 1 details the Parties' and their competitors' market shares for the coil coatings market in the EEA in 2015. As mentioned above, Beckers will remain the market leader post-Transaction with a market share of [30-40]% by value and [30-40]% by volume, the Parties will be second with a combined market share of [20-30]% by value and [20-30]% by volume with an increment of [10-20]% by value and [10-20]% by volume, followed by PPG and Valspar both having market shares around [10-20]% and a number of other smaller players also present.
- (84) The Commission's market reconstruction indicates that these estimates are broadly correct, although some of the competitors' market shares are higher than estimated by the Notifying Party.

5.1.1.2. Market structure for coil coatings broken down by layer

Table 2 - Coil coatings – Primers - EEA (2015)

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
<i>AkzoNobel</i>	[...]	[10-20]%	[...]	[10-20]%
<i>BASF IC</i> ⁵⁶	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[20-30]%	[...]	[20-30]%
Others	[...]	[70-80]%	[...]	[70-80]%
Total market	[100-150]	100%	[20-30]	100%

Source: Form CO

Table 3 - Coil coatings – Topcoats – EEA (2015)

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
<i>AkzoNobel</i>	[...]	[10-20]%	[...]	[10-20]%
<i>BASF IC</i>	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[30-40]%	[...]	[20-30]%

⁵⁶ The sales figures of BASF IC for the three categories do not add up completely to its total coil coatings sales. This small difference is due to the fact that a small quantity of products within its coil coatings business do not fit within any of the categories mentioned here. According to the Notifying Party these products are not coil coatings and should be deducted from the sales data provided by BASF IC. However, given the small size of the sales of these products that moreover are spread over numerous customers the Notifying Party did not change the figures previously submitted to the Commission in this regard.

Others	[...]	[60-70]%	[...]	[70-80]%
Total market	[300-400]	100%	[80-90]	100%

Source: Form CO

Table 4 - Coil coatings – Backcoats – EEA (2015)

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[20-30]%	[...]	[20-30]%
BASF IC	[...]	[0-5]%	[...]	[0-5]%
Combined	[...]	[20-30]%	[...]	[20-30]%
Others	[...]	[70-80]%	[...]	[70-80]%
Total market	[80-90]	100%	[20-30]	100%

Source: Form CO

- (85) Table 2, Table 3, and Table 4 provide the Parties' market shares for the coil coatings market in the EEA in 2015 broken down by layer (primers, topcoats and backcoats respectively).
- (86) With regard to primers (Table 2) the Parties' combined market share is [20-30]% by value and [20-30]% by volume with an increment of [10-20]% by value and [10-20]% by volume. With regard topcoats (Table 3) the Parties' combined market share is [30-40]% by value and [20-30]% by volume with an increment of [10-20]% by value and [10-20]% by volume. With regard to backcoats (Table 4) the Parties' combined market share is [20-30]% by value and [20-30]% by volume with an increment of [0-5]% by value and [0-50]% by volume.
- (87) When considering the market broken down into these potential segments, the Parties' shares are lower for both primers and backcoats than when considering the coil coatings market as a whole, whereas the Parties' combined market share for topcoats is slightly higher.
- (88) The Commission's market reconstruction indicates that these estimates are broadly correct with the Merged Entity having a range between a maximum of [30-40]% in primers by value and a minimum of [20-30]% in backcoats, by volume.

5.1.1.3. Market structure for coil coatings broken down by substrate

Table 5 - Coil coatings – Steel – EEA (2015)

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[10-20]%	[...]	[10-20]%
BASF IC	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[20-30]%	[...]	[20-30]%
Others	[...]	[70-80]%	[...]	[70-80]%
Total market	[400-500]	100%	[100-150]	100%

Source: Form CO

Table 6 - Coil coatings – Aluminium - EEA (2015)

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[30-40]%	[...]	[30-40]%
BASF IC	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[40-50]%	[...]	[50-60]%
Others	[...]	[50-60]%	[...]	[50-60]%
Total market	[60-70]	100%	[10-20]	100%

Source: Form CO

- (89) Table 5 and Table 6 provide the Parties' market shares for the coil coatings market in the EEA in 2015 broken down by substrate: steel and aluminium respectively.
- (90) When considering the market broken down into these potential segments, the Parties' shares are higher for the aluminium sub-segment than when considering the coil coatings market as a whole.
- (91) With regard steel (Table 5) the Parties' combined market share is [20-30]% by value and [20-30]% by volume with an increment of [10-20]% by value and [10-20]% volume. With regard aluminium (Table 6) the Parties' combined market share is [40-50]% by value and [50-60]% by volume with an increment of [10-20]% by value and [10-20]% by volume.
- (92) The Commission's market reconstruction indicates that these estimates are broadly correct for steel. In respect of aluminium, the market reconstruction indicates a significantly lower combined share for the Parties than the Notifying Party's estimate. The main reason for this deviation is that the Notifying Party underestimated the size of the market segment.

5.1.1.4. Market structure for coil coatings broken down by end-application

Table 7 - Coil coatings – Construction - EEA (2015)

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[20-30]%	[...]	[10-20]%
BASF IC	[...]	[10-20]%	[...]	[10-20]%
Combined	[...]	[30-40]%	[...]	[30-40]%
Others	[...]	[60-70]%	[...]	[60-70]%
Total market	[350-400]	100%	[90-110]	100%

Source: Form CO

Table 8 - Coil coatings – Domestic appliances - EEA (2015)

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[10-20]%	[...]	[10-20]%
BASF IC	[...]	[20-30]%	[...]	[20-30]%
Combined	[...]	[40-50]%	[...]	[30-40]%
Others	[...]	[50-60]%	[...]	[60-70]%
Total market	[20-40]	100%	[0-10]	100%

Source: Form CO

Table 9 - Coil coatings – Transportation - EEA (2015)

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[5-10]%	[...]	[5-10]%
BASF IC	[...]	[0-5]%	[...]	[0-5]%
Combined	[...]	[10-20]%	[...]	[10-20]%
Others	[...]	[80-90]%	[...]	[80-90]%
Total market	[20-40]	100%	[0-10]	100%

Source: Form CO

Table 10 - Coil coatings – General Industrial – EEA (2015)

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[0-05]%	[...]	[0-5]%
BASF IC	[...]	[5-10]%	[...]	[0-5]%
Combined	[...]	[5-10]%	[...]	[0-5]%
Others	[...]	[90-100]%	[...]	[90-100]%
Total market	[80-100]	100%	[20-30]	100%

Source: Form CO

- (93) Table 7, Table 8, Table 9, and Table 10 provide the Parties' market shares for the coil coatings market in the EEA in 2015 broken down by end-application: construction, domestic appliances, transportation and general industry respectively.
- (94) With regard to transport (Table 9), the Parties' combined market share is [10-20]% by value and [10-20]% by volume. With regard general industry (Table 10) the Parties' combined market share is [5-10]% by value and [0-5]% by volume. Were these sub-segments to be considered as separate markets, they would not be considered as an affected markets.
- (95) With regard to construction (Table 7) the Parties' combined market share is [30-40]% by value and [30-40]% by volume and with regard domestic appliances (Table 8), the Parties' combined market share is [40-50]% by value and [30-40]% by volume. When considering the market broken down into these potential segments, the Parties' shares are higher for the domestic appliances sub-segment than when considering the coil coatings market as a whole.
- (96) The Commission's market reconstruction indicates that the Parties' combined share in respect of construction applications is in fact lower than the Notifying Party estimated and in fact more aligned with the Merged Entities' combined share for the total coil coatings market. This is in line with the fact that, according to the market reconstruction, more than 90% of the coil coatings market is destined for construction applications and as such, the market shares for the total coil coatings market and for the construction segment should not differ greatly.
- (97) In respect of domestic appliances, the market reconstruction indicates that in 2015 the Parties would have had a higher combined share than the Notifying Party estimated in the Form CO, in the range of [55-65%]. The market reconstruction however is not entirely reliable since the classification by end-application was difficult to harmonise across competitors.⁵⁷ Moreover, the limited nature of the market reconstruction led to the non-inclusion of competitors such as Primetop and

⁵⁷ For instance the Parties include both white goods and brown goods the classification of "domestic appliances" whereas other competitors consider only white goods under this classification. End-application use is not an industry standard; similar issues are present for the "transport" end-application.

all the regional and local players which play a more relevant role in certain specific end-applications (small players tend to specialise in small batch niche products).

- (98) As regards transport end-applications, the market reconstruction is also unreliable. The actual sales figures of competitors and the Parties do not in any way match the total market size estimates which are consistent between the Parties and their competitors.⁵⁸ As such, the most reliable data seems to be the Parties' estimates in this case.

5.1.2. *The Notifying Party's view*

- (99) The Notifying Party submits that the proposed Transaction will not result in a significant impediment to effective competition with regard to coil coatings regardless of whether all coil coatings are considered as belonging to the same product market or whether the market is segmented by layer, substrate or end-application.
- (100) First, it argues that the combined market shares of the Parties and their main competitors are such that there can be no creation of market power.
- (101) Second, the Notifying Party argues that the coil coatings market is characterised by strong market dynamics with customers able to shift large volumes between suppliers. In this regard, the Notifying Party submits that the qualification process that customers require to be completed prior to sourcing a new product does not act as a barrier to customer switching.
- (102) Third, the Notifying Party argues that BASF IC customers will need to re-qualify all of the products for which production will transfer to AkzoNobel facilities as a result of the proposed Transaction.⁵⁹ This will also be an opportunity for customers to start running qualification processes with alternative suppliers.
- (103) Fourth, the Notifying Party submits that, although there are instances in which the Parties are number one and number two supplier of a specific plant or a specific customer, in general AkzoNobel and BASF IC are not particularly close competitors on the EEA coil coatings market or any sub-segment thereof.
- (104) Fifth, the Notifying Party submits that there is significant over-capacity in the EEA market, meaning that AkzoNobel has no incentive or opportunity to increase prices post-Transaction.
- (105) Sixth, the Notifying Party submits that coil coating customers have buyer power given that demand is very concentrated and customers have the ability to easily switch their demand between suppliers. The Notifying Party claims that this buyer power is evidenced by actual switches by customers in the market, the use of competitive processes for the award of supply contracts such as the widespread use of tenders, and the absence of volume commitments in supply contracts.

⁵⁸ Competitors estimate the total size of the transport end-application segment to be between EUR 20 and EUR 23 million which is in line with the Parties' estimate of the total market size.

⁵⁹ In the EEA only the Deeside plant in the UK will be transferred from BASF IC to AkzoNobel and this plant serves predominantly one customer in the UK. Therefore the vast majority of customers currently supplying from BASF IC will see their purchases transferred to AkzoNobel facilities.

- (106) Finally, with regard to coil coatings for domestic appliances where the Parties would have a comparably higher market share post-Transaction, the Notifying Party submits that: (i) given the high degree of supply-side substitutability, other coil coatings suppliers could expand their sales in the domestic appliances segment; (ii) there are only four main customers that purchase coil coatings for domestic appliances which are able to exercise considerable buyer power; (iii) sales of coil coatings for domestic appliances make up a very small portion of the Parties' total sales; and (iv) there are a number of examples where customers of the Parties have switched volumes of coil coatings for domestic appliances to other suppliers than AkzoNobel or BASF IC.⁶⁰

5.1.3. *The Commission's market investigation and assessment*

5.1.3.1. *The Parties' competitors*

- (107) The results of the market investigation and data collection support the view that the coil coating market in the EEA is currently mainly characterised by the presence of five key suppliers: Beckers, AkzoNobel, BASF IC, PPG and Valspar. In addition to these large suppliers, there is a relatively new entrant, Primetop, and a number of smaller local players.
- (108) Beckers is the clear market leader in coil coatings in the EEA, and will remain so post-Transaction, with a market share of [30-40]% by value and [20-30]% by volume according to the Notifying Party's estimates and even higher according to the Commission's market reconstruction. Beckers is active in all segments of the coil coatings market and is the leader in every segment except for that relating to coil coatings for domestic appliances and transport.
- (109) PPG is an American manufacturer of coil coatings with multiple European production sites for coil coatings. PPG is active in all coil coating sub-segments although has only started to make sales of coil coatings for domestic appliances relatively recently. Despite this, the Commission's market reconstruction suggests that PPG's presence in domestic appliances is not negligible. Moreover, PPG has confirmed that it is: "*engaged in, willing and able to expand the domestic appliances business if approached by a customer to do so*".⁶¹
- (110) Valspar is an American manufacturer with European production sites for coil coatings. Valspar has seen a consistent increase in its market share in the EEA in recent years: according to the Parties' estimate, in 2015, Valspar had a market share of [5-10]% by value and [5-10]% by volume when considering the market for all coil coatings, up from [5-10]% by value and [5-10]% by volume in 2013. The Commission's market reconstruction suggests that Valspar's share could be even higher than that estimated by the Notifying Party. Valspar has also recently (in 2016) acquired a local Italian coil coater, ISVA.⁶² It is estimated that if ISVA's sales are included the market share of Valspar on the overall coil coating market is

⁶⁰ BASF IC also submits that it believes that some end-customers such as Samsung and LG import coil coated sheets from Korean suppliers such as KCC who will in all likelihood have used Korean paint.

⁶¹ Non-confidential version of minutes of a telephone call with a competitor dated 26 September 2016.

⁶² Market shares attributable to ISVA have not been included in the market shares included in Table 1 above.

close to [10-20]%.⁶³ Moreover, some customers responding to the market investigation have indicated that they are currently working with Valspar to qualify new products, including for domestic appliance end-applications where Valspar has not to date had sales in the EEA (Valspar does supply coil coatings for domestic appliances in the United States).⁶⁴

- (111) Primetop is a Russian company that entered the EEA coil coatings market in 2013. Primetop does not own its own production facilities in the EEA but has two toll manufacturing agreements for coil coating, one with a company in Sweden and another in Germany. Primetop's market share by volume doubled from [0-5]% to [0-5]% between 2014 and 2015. A number of customers responding to the market investigation have confirmed that they are in contact with Primetop and are in the process of starting to qualify a number of Primetop's products.
- (112) Finally, there are a number of smaller local players such as Salchi Metalcoat and Alcea in Italy, Shingels in Spain and Walter Mader, a Swiss company mainly operating in Germany. Those local players tend to specialise in niche products and small volume segments due to the relative small size of their production facilities but nonetheless they pose a certain degree of competitive constraint on the major players in particular when it comes to small volume segments and niche products. The Commission notes not all these competitors provided submissions in reply to the market investigation, but Salchi, which did respond, indicated that it is active in the supply of coil coatings for domestic appliance end-applications.⁶⁵ This shows that the smaller coil coatings suppliers may exert the competitive pressure also in the domestic appliances segment.
- (113) In general, all the large coil coatings suppliers and some smaller suppliers (like Salchi) submit that they provide all types of coil coating layers for use in any end-application.⁶⁶
- (114) In conclusion, the Commission considers that given the constraining effect of other players active on the market, in particular Becker and those that are currently expanding their presence, the Merged Entity will continue to face strong competitive pressure post-Transaction.

5.1.3.2. Closeness of competition

- (115) The Commission's Horizontal Merger Guidelines explain that a merger between two producers which a substantial number of customers regard as their first and second best choices could generate significant price increases, since the suppliers are perceived as closely competing.⁶⁷
- (116) In support of the Notifying Party's claim that the Parties are not particularly close competitors on the overall EEA coil coatings market, it has provided data on the top 15 AkzoNobel customers and the top 10 BASF IC customers comparing

⁶³ Based on the Form CO, footnote 40.

⁶⁴ Non-confidential replies to question 19 of questionnaire Q6 to competitors; and non-confidential version of minutes of a telephone call with a customer dated 15 September 2016.

⁶⁵ Non-confidential replies to question 4 of questionnaire Q6 to competitors.

⁶⁶ Non-confidential replies to question 10 of questionnaire Q6 to competitors.

⁶⁷ Horizontal Merger Guidelines, paragraph 28.

volumes purchased from the Parties and volumes purchased from each of the other large coil coating suppliers present in the EEA. This data illustrates that in the vast majority of the cases when AkzoNobel is the main supplier, BASF IC has a limited share of supply, and in any event, much lower than the share of supply attributed to PPG and Beckers. The data also shows that when BASF IC is the main supplier, AkzoNobel's share of supply is lower than the share of supply attributed to Beckers which indeed indicates that they are not close competitors.

- (117) When considering different segments of the coil coating market, the respondents to the market investigation indicated that with regard to the construction segment, AkzoNobel and BASF IC are not each other's closest competitors. Customers identified both AkzoNobel and Beckers as the number one player whereas no customer identified BASF IC as the most important player in this segment. Similarly, AkzoNobel was not mentioned as the number one supplier in the transport segments, whereas BASF IC was mentioned once.⁶⁸ Overall, customers generally perceive BASF IC as competing more closely with PPG and Beckers than with AkzoNobel.⁶⁹
- (118) As regards the domestic appliances end-application segment, the Parties appear to compete more closely⁷⁰ and are perceived by some customers as the number one and number two supplier or more generally the main suppliers of coil coatings for this segment.⁷¹
- (119) Nonetheless, evidence of actual switching of volumes by customers between different suppliers in the construction as well as in the domestic appliances segment, (see section 5.1.3.3 below) support the notion that AkzoNobel and BASF IC are no closer competitors to each other than Beckers, PPG and Valspar in any of the segments as well as in the overall market.
- (120) In light of the results of the market investigation, the Commission considers that the Parties are not particularly close competitors in the market for coil coatings overall or its sub-segments, other than possibly for domestic appliances.

5.1.3.3. Possibility for customers to switch suppliers

- (121) The Commission's Horizontal Merger Guidelines state that customers of merging parties are particularly vulnerable to price rises when they have few alternative suppliers to the merging parties or if they face substantial switching costs.⁷²
- (122) Whilst the Commission has found that a number of strong or expanding competitors will remain in the market post-Transaction, a key feature of the coil coating industry is the qualification process required before a customer will start

⁶⁸ Non-confidential replies to question 18 of questionnaire Q5 to coil coating customers.

⁶⁹ Non-confidential replies to questions 19 and 20 of questionnaire Q4 to coil coating customers.

⁷⁰ Non-confidential replies to questions 18 and 20 of questionnaire Q5 to coil coating customers.

⁷¹ Non-confidential version of minutes conference call with a customer on 27 September 2016, non - confidential minutes of conference calls with a customer on 18 July 2016 and 21 September 2016; non-confidential version of minutes conference call with a customer on 18 July 2016, non-confidential replies to question 27 of questionnaire Q4 to customers; non-confidential replies to questions 18 and 20 of questionnaire Q5 to customers

⁷² Horizontal Merger Guidelines, paragraph 31.

using a new product or start purchasing from a new supplier. As such, it is important to assess whether this qualification process constitutes a barrier to switching.

5.1.3.3.1. Qualification process

- (123) Prior to a customer purchasing a coil coating from a supplier, it will "qualify" or "homologate" the coil coating. Qualification is required in a broad range of circumstances including for a completely new product, for the reformulation of an existing product or for a change of production facility.
- (124) The amount of time needed to undertake this qualification process depends on the reason for the qualification and on the particular product. For example, primers generally take longer to qualify than topcoats or backcoats as they are the layer that provides corrosion resistance; qualifying a product after it has moved production facilities requires a far shorter qualification process than a product that has been reformulated or a product based on a brand new polymer never used before; and coatings for inside usage have a shorter qualification process than coatings for products that will be used outside.⁷³
- (125) When looking at different segments, the market investigation confirmed that the qualification process for coil coatings used for construction end-applications is significantly longer than the qualification process for a new coatings for domestic appliances.⁷⁴ Most of the respondents indicated that in the area of domestic appliances, the time necessary to qualify a new coil coating from a new supplier is on average one year, whereas in the area of construction, it takes between one to two years on average depending on the product.⁷⁵ There will always be outliers which will take much longer or much shorter periods of time.
- (126) The Commission has not identified any evidence that would substantiate the concern that BASF IC's R&D capabilities (and therefore its ability to develop and qualify new products) would be diminished as a result of the proposed Transaction. According to the Parties, AkzoNobel currently spends approximately [...] % of sales on R&D whereas BASF IC's R&D spend corresponds to approximately [...] % of sales.⁷⁶ Internal documents prepared by AkzoNobel assessing the proposed Transaction indicate that it will maintain the same levels of R&D spending post-Transaction, if not slightly increased, to [...] %.⁷⁷

5.1.3.3.2. Customer switching

- (127) The degree to which customers switch suppliers is in part dependant on the qualification process before a customer will purchase a coil coating. In this respect it should be noted that generally customers qualify several suppliers: minimum two for specific products (for example topcoats for construction application) and up to

⁷³ Non-confidential replies to question 27 of questionnaire Q6 to competitors.

⁷⁴ Non-confidential replies to questions 12 and questions 12.1 of questionnaire Q5 to customers.

⁷⁵ Non-confidential replies to questions 26 and 27 of questionnaire Q5 to customers; non-confidential replies to questions 25 and 26 of questionnaire Q6 to competitors.

⁷⁶ Form CO, paragraph 361.

⁷⁷ In addition, [...].

five or six for products such as universal primers.⁷⁸ Customers typically allocate volumes among all the qualified suppliers. Nevertheless, some products are developed jointly between a customer and a coil coating supplier and tailored to the customers' specific needs. For these products customers have only one supplier and the proposed Transaction will not lead to any change on the market.⁷⁹

- (128) Primers, in particular so called universal primers, need to be compatible with a broad range of topcoats. Once qualified by a customer, primers tend to be purchased (and produced) in big batches and ordered for very long periods, often for more than 10 years. As mentioned above, they are typically supplied by several qualified coil coating manufacturers and customers allocated volumes among them.
- (129) Coil coaters are reluctant to change primer suppliers for two main reasons: first, the corrosion resistance provided by the primer is linked to a guarantee towards end-customers, which in construction may cover more than 20-30 years and obviously the qualification process may only be an indication of product performance in such a long period. Second, a new primer would require new qualification process for all (or at least for most of) the systems in which the primer is used – i.e. all the topcoats which have been used in combination with the given primer. In this respect, competitors almost unanimously indicated that the results of the exposure test performed with one customer can be used in the qualification with another customer.⁸⁰
- (130) On the other hand, switching topcoat appears to be easier for coil coating customers. Qualification is still required, in particular the topcoat must undergo colour matching, first when a new colour is requested by a customer and then, during the production process, when all the batches need to have consistent quality and colour.
- (131) As regards coil coatings used in the domestic appliances segment, the market investigation indicated that this takes approximately a year which is shorter than coil coatings for construction end-applications despite it including the extra step is obtaining approval from the ultimate end-customer (that is, companies like Bosch-Siemens, Miele, Electrolux, Samsung or Whirlpool). The Commission understands that in a number of instances, a coil coater will have two or more suppliers qualified for a particular paint system but only one of them will also have been qualified by the end customer.⁸¹
- (132) Once the supplier is qualified for a specific paint, or end-application, customers can easily reallocate volumes between suppliers, without any additional testing. The overwhelming majority of customers responding to the market investigation indicated that they have more than one supplier qualified per application. As one customer noted: *"The number of supplier doesn't normally vary between the segments, but it varies between the single paints"*.⁸²

⁷⁸ Non-confidential replies to question 31 of questionnaire Q6 to competitors.

⁷⁹ Non-confidential replies to question 31.1 of questionnaire Q6 to competitors.

⁸⁰ Non-confidential replies to question 29 of questionnaire Q6 to competitors.

⁸¹ Non-confidential replies to question 32 and 32.1 of questionnaire Q5 to customers.

⁸² Non-confidential replies to question 33 of questionnaire Q5 to customers.

- (133) The average duration of the supply contract is approximately a year⁸³ and coil coatings are often tendered. In this respect, one customer mentioned that switching "*depends on tender results, parts of the business are changed yearly*".⁸⁴ The investigation also revealed that customers change the supplier of a given coating frequently. When customers were asked how often they change the supplier, most of them indicated that this happens on a yearly basis. A customer noted that: "*Based on the price situation [the supplier is changed] on a regular basis*".
- (134) None of the customers considered the switching costs linked to the qualification process as high, including costs for qualifying products with end-customers in the case of domestic appliances. Customers run several qualification processes every year since this is part of the market functioning mechanisms.⁸⁵

5.1.3.3.3. *Past examples of customer switching*

- (135) In 2014 and 2015, AkzoNobel launched a major restructuring of its manufacturing site located in Nuremberg (Germany) and transferred the production of some of its coil coatings, including for construction and for domestic appliances to Vilafranca (Spain).
- (136) During this process, AkzoNobel experienced [...] difficulties in [...] meeting customer orders. In response to this, [...] customers shifted volumes initially allocated to AkzoNobel to alternative suppliers that were already qualified, but also undertook qualification for new suppliers in a short time period. For example, according to the Notifying Party, [...] customer in the EEA, qualified Valspar and Primetop in response to AkzoNobel's supply issues and switched volumes to these other suppliers. As a result of this restructuring AkzoNobel's market share decrease from [20-30]% in 2013 to [10-20]% (volume) in 2015.
- (137) The Notifying Party provided a win/loss analysis per customer for this time period, according to which volumes were transferred mainly to Beckers, PPG and Valspar. In addition, BASF's market share has increased to a limited extent during this time period [0-5]% (volume).⁸⁶
- (138) The Notifying Party also provided a break-down of sales of coil coatings of AkzoNobel per individual customer and per field of application for the years 2011-2015. This data shows that sales of coil coatings for domestic appliances have fluctuated significantly with individual customers. For example, the AkzoNobel submits that [a customer] shifted all of its domestic appliance purchases away from it at the beginning of 2016, sales which had constituted approx. [45-65]% of its AkzoNobel purchases and between 2015 and 2016, AkzoNobel lost around EUR [...] million of its domestic appliances business with [...].
- (139) The fact the customers were able to shift volumes away from AkzoNobel in such a short time period either by shifting volumes to alternative suppliers that were already qualified or speeding up the qualification process with suppliers (and with

⁸³ Non-confidential replies to questions 27 and 27.1 of questionnaire Q5 to customers.

⁸⁴ Non-confidential replies to questions 22, 23 and 24 of questionnaire Q5 to customers.

⁸⁵ Non-confidential replies to questions 34 and 35 of questionnaire Q5 to customers.

⁸⁶ Annex 42 to the Form CO.

their customers where required) in response to the supply difficulties it faced as well as these other examples of customers shifting volumes for domestic appliance applications illustrates that the qualification process is not such a significant barrier to switching suppliers.

- (140) Moreover, the Commission considers that in a number of instances, customer concerns may be the result of an overall concern as to how AkzoNobel will manage the transfer of BASF IC's business given their past negative experience with AkzoNobel's internal reorganisation which resulted in both supply difficulties and the need to undertake a qualification process for each product that was moved.⁸⁷
- (141) With regard to the Notifying Parties' claim that all the BASF IC products will need to be re-qualified by customers as a result of the proposed Transaction, and that this gives customers the incentive to potentially qualify alternative suppliers, several customers have indeed confirmed that they have already approached alternative suppliers, including for qualification in the area of domestic appliances.⁸⁸

5.1.3.3.4. Conclusions on customer switching

- (142) In light of the results of the market investigation and the information available to it, the Commission considers that while the need to qualify a product prior to a supplier commencing supply presents a potential hurdle to switching, it can be surmounted in a relatively short period of time and would not ultimately hinder the ability of existing suppliers to start supplying a customer with a new product in response to any potential price increase by AkzoNobel post-Transaction.

5.1.3.4. Spare capacity

- (143) The Commission's Horizontal Merger Guidelines state that where rival firms have enough capacity and find it profitable to expand output significantly, the Commission is unlikely to find that the merger will create or strengthen a dominant position or otherwise significantly impede effective competition.⁸⁹
- (144) The Commission received capacity data from a number of competitors during its market investigation.⁹⁰ This data shows that there is free capacity in the market that can be used by competitors without incurring substantial additional costs. The data collected as part of the market reconstruction confirmed this situation and highlighted how the overall EEA volumes of BASF IC are a fraction of the EEA spare capacity of the competitors.
- (145) If the Commission were to consider the possibility for competitors to increase their capacity by, for instance, adding an additional shift in their production facilities or installing new capacity on their production lines, the spare capacity available in the EEA would further increase.

⁸⁷ Non-confidential version of minutes conference call with a customer on 18 July 2016.

⁸⁸ Non-confidential version of minutes conference call with a customer on 21 September 2016; non - confidential version of minutes conference call with a customer on 27 September 2016.

⁸⁹ Horizontal Merger Guidelines, para 33.

⁹⁰ Non-confidential replies to question 32 of questionnaire Q1 to competitors.

- (146) In light of the result of the market investigation, the Commission considers that in such a situation of spare capacity and supply-side substitutability any attempt by the merged entity to raise prices could be constrained by competitors.

5.1.3.5. Buyer power

- (147) The Commission's Horizontal Merger Guidelines explain that even firms with high market shares may not be in a position to significantly impede effective competition in the event that their customers possess countervailing power, that is, they have bargaining strength vis-à-vis the merging parties in commercial negotiations due to their size, commercial significance to the seller, and the ability to switch to alternative suppliers.⁹¹
- (148) As noted above in paragraphs (72), the customers of coil coatings are steel and aluminium manufactures which coat steel or aluminium coil before selling it to their end-customers. The Notifying Party submits that two steel mills alone, ArcelorMittal and TataSteel, together purchase [50-60]% of total coil coatings in the EEA. For BASF IC, its top 3 coil coating customers account for [50-60]% of its supply and similarly, for AkzoNobel its top 3 customers account for [50-60]% of its total supply. When considering the top 10 customers, the share of purchases increases to [80-90]% for BASF IC and [90-100]% for AkzoNobel.
- (149) The Notifying Party has also submitted data showing that when considering the market from an EEA perspective, the top five largest coil coaters overall (ArcelorMittal, Tata Steel, SSAB, ThyssenKrupp Steel and Novelis) in 2014 and 2015 accounted for approximately [60-70]% of the entire demand in the EEA coil coatings market.
- (150) Each of the Parties' customers purchases a wide range of products from the Parties for a wide variety of end-applications. The Notifying Party submits that with regard to domestic appliances in particular, if they were to raise prices, it would result in lost sales for other products, for example higher volume products such as construction. Some respondents to the market investigation considered this to be accurate; for example: *"For certain [...] products, [...] there is a mutual trust that a key supplier would not raise prices after the award of the volumes."*⁹² Another customer mentioned that *"... even when a coil coating producer is a unique supplier of a specific coating, it cannot act as a monopoly and increase their price because the customers would turn to someone else for other products, and shift large volumes even if a process for qualification is needed. For instance, when AkzoNobel was the only supplier of few products, they did not act as a monopoly"*⁹³
- (151) Critically however, buyer power can only be exercised to the extent that customers can credibly threaten to immediately switch to other suppliers.⁹⁴ The market investigation revealed that at any one time, customers strive to have two qualified suppliers for any one product which they can immediately switch between, thereby allowing them to maintain competitive tension and to provide a backup in case of

⁹¹ Commission's Horizontal Merger Guidelines, paragraph 64

⁹² Non-confidential version of minutes conference call with a customer on 27 September 2016.

⁹³ Non-confidential version of minutes conference call with a customer on 20 September 2016.

⁹⁴ Commission's Horizontal Merger Guidelines, paragraph 65.

supply difficulties.⁹⁵ There are some instances however, for example for certain low volume products where only one supplier is qualified. Also, with regard to domestic appliances where both the coil coater and the end-customer will undertake qualification testing, it may be the case that the coil coater has two suppliers qualified but the end-customer only has one of those suppliers qualified. A customer can therefore only threaten to switch immediately, and therefore be considered to exercise buyer power, in the event that it already has a second supplier qualified. This being said, given the relatively short time period of qualification in this industry and the threat of losing volumes on a permanent basis after a year or two, restrains a company's incentive to raise prices for short-term gain.

- (152) With regard to the process by which contracts are awarded, the market investigation revealed that a large number of customers indeed procure coil coatings via tender processes, however this does not always appear to be the case. For example, smaller customers tend to negotiate bilaterally and some larger customers only use a tender process for large orders for more commodity grades of coil coatings or only address tenders for products that have already been qualified.⁹⁶
- (153) In light of the results of the market investigation and taking into account the relatively concentrated nature of the customer base, their commercial significance to the Parties in the overall market for coil coatings, ability to switch immediately to other qualified suppliers and their ability to qualify new suppliers in a relatively short time period in instances where no other qualified suppliers exist, the Commission considers that coil coating customers have a significant degree of buyer power.

5.1.4. *Conclusion with regard to coil coatings*

- (154) In view of the above considerations in paragraphs (107) - (153), the Commission considers that taking into account the existence of a number of other large suppliers, recent entry, competitors' growth plans, customer buyer power, customers' ability to switch and qualify new suppliers (and concrete examples of such switching), the coil coatings market and sub-segments thereof will remain contestable post-merger and AkzoNobel will not have the ability to increase prices unilaterally.
- (155) Even in respect of domestic appliances where the Parties may be considered close competitors and the merged entity would become the market leader, well-established players such as Beckers and PPG and expanding competitors such as Valspar and Primetop will continue to constrain the merged entity post-transaction. In particular the evidence of past switching and the fact that customers are already reaching out to other suppliers to qualify products for domestic appliances in anticipation of the proposed Transaction is compelling.
- (156) In light of the foregoing and in view of the results of the market investigation the, the Commission concludes that the proposed Transaction does not raise serious

⁹⁵ Non-confidential replies to questions 22, 23 and 24 of questionnaire Q5 to customers.

⁹⁶ Non-confidential replies to questions 22, 23 and 24 of questionnaire Q5 to customers.

doubts as to its compatibility with the internal market with respect to coil coatings or any sub-segments thereof.

5.2. Powder coatings

- (157) The Parties' and their competitors' market shares at an EEA-wide level for all powder coatings can be seen in Table 11 below and the market shares for the potential sub-segment of thermoset powder coating in Table 12 below. As said above, neither of the Parties are active with regard to powder coatings manufactured using thermoplastic plastic technology.⁹⁷
- (158) With regard to the market share data for powder coatings, the Notifying Party has used AkzoNobel's and BASF IC's actual volume and value figures; all other figures are based on AkzoNobel's and BASF IC's internal market intelligence and a verification with the Global Paints & Coatings Industry Market Analysis (2013-2018) published by the International Paint and Printing Ink Council (IPPIC).

Table 11 - Powder coatings – EEA - 2015

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[20-30]%	[...]	[20-30]%
BASF IC	[...]	[0-5]%	[...]	[0-5]%
Combined	[...]	[20-30]%	[...]	[20-30]%
Axalta	[...]	[10-20]%	[...]	[10-20]%
Jotun	[...]	[5-10]%	[...]	[5-10]%
Valspar	[...]	[5-10]%	[...]	[5-10]%
Tiger	[...]	[5-10]%	[...]	[0-5]%
Others (number of small local competitors)	[...]	[40-50]%	[...]	[40-50]%
Total market	[900-1100]	100%	[200-300]	100%

⁹⁷ See footnote 36.

Table 12 - Thermoset powder coatings – EEA - 2015

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[20-30]- [30-40]%	[...]	[20-30]%
BASF IC	[...]	[0-5]%	[...]	[0-5]%
<i>Combined</i>	[...]	[20-30]- [30-40]%	[...]	[20-30]%
Axalta	[...]	[10-20]%	[...]	[10-20]%
Jotun	[...]	[5-10]%	[...]	[5-10]%
Valspar	[...]	[5-10]%	[...]	[5-10]%
Tiger	[...]	[5-10]%	[...]	[5-10]%
Others	[...]	[30-40]- [40-50]%	[...]	[30-40]-[40-50]-%
Total market	[900-1100]	100%	[200-300]	100%

- (159) Post-Transaction, the Parties' combined market shares in the EEA in 2015 for powder coatings is [20-30]% by value and [20-30]% by volume with an increment of [0-5]% both by value and volume. Similarly, the Parties' combined market shares in the EEA in 2015 for thermoset powder coatings are [30-40]% by value and [20-30]% by volume with an increment of [0-5]% by value and [0-5]% volume.
- (160) BASF IC makes the vast majority of its sales in Germany and this is the only Member State where the Parties have a combined market share for powder coatings in excess of [20-30]%.⁹⁸ The Parties' and their competitors' market shares in Germany for powder coatings can be seen in Table 13 below and for the potential sub-segment of thermoset powder coatings in Table 14.

⁹⁸ BASF IC also has de minimis sales in Italy, Austria, Poland, Romania and the Czech Republic resulting in market shares of less than [0-5]%. Italy, the Czech Republic [and Poland] AkzoNobel has a market share in excess of [20-30]% which theoretically would result in an affected market in these Member States. Given the de minimis increment in these Member States and the legacy nature of BASF IC's activities in the market, no serious doubts as to the compatibility of the proposed Transaction with the internal market can arise in respect of powder coatings in these countries.

Table 13 - Powder coatings – Germany - 2015

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[20-30]%	[...]	[20-30]%
BASF IC	[...]	[5-10]%	[...]	[5-10]%
Combined	[...]	[30-40]%	[...]	[20-30]%
Freilacke	[...]	[10-20]%	[...]	[10-20]%
CWS	[...]	[10-20]%	[...]	[10-20]%
Tiger	[...]	[5-10]%	[...]	[5-10]%
IGP	[...]	[5-10]%	[...]	[5-10]%
Wörwag	[...]	[5-10]%	[...]	[5-10]%
Billux	[...]	[5-10]%	[...]	[5-10]%
Others (number of small competitors)	[...]	[10-20]%	[...]	[10-20]%
Total market	[200-300]	100%	[40-60]	100%

Table 14 - Thermoset powder coatings – Germany - 2015

Companies	Value (Euro, million)	Share (%)	Volume (ktons)	Share (%)
AkzoNobel	[...]	[20-30]%	[...]	[20-30]%
BASF IC	[...]	[5-10]%	[...]	[5-10]%
Combined	[...]	[30-40]%	[...]	20-30]%
Freilacke	[...]	[10-20]%	[...]	[10-20]%
CWS	[...]	[10-20]%	[...]	[10-20]%
Tiger	[...]	[5-10]%	[...]	[5-10]%
IGP	[...]	[5-10]%	[...]	[5-10]%
Wörwag	[...]	[5-10]%	[...]	[5-10]%
Billux	[...]	[5-10]%	[...]	[5-10]%
Others	[...]	[5-10]- [10-20]%	[...]	[5-10]-[10- 20]%
Total market	[100-200]	100%	[40-60]	100%

- (161) For all powder coatings in Germany, where BASF IC achieves nearly all of its turnover for powder coatings, the combined market shares are similar to the EEA level ([30-40]% by value, [20-30]% by volume) but with a larger increment – [5-10]%. For thermoset powder coatings in Germany, the combined market shares are also similar to the EEA level ([30-40]% by value, [20-30]% by volume) but again, with a larger increment – [5-10]% by value, [5-10]% by volume.
- (162) The market shares show that AkzoNobel is the leading player both at the EEA level and in Germany. BASF IC on the other hand divested its powder coatings business in 2009 to a third party, including all production facilities. Since then, BASF IC has not manufactured its own powder coatings, rather, it procures limited quantities mainly from the purchaser of its former business under a tolling agreement.
- (163) BASF IC submits that it does not actively market its powder coatings products, rather it just supplies to some of its customers to supplement its liquid coatings portfolio. This is reflected in the minimal merger specific increment with BASF IC having a market share of only [0-5]% at the EEA level and decreasing sales over the last three years (EEA: 2013 – [...]ktons; 2014 – [...]kton; 2015 – [...]ktons).
- (164) None of the respondents to the market investigation identified BASF IC as a top 5 player with regard to powder coatings in the EEA⁹⁹ and none considered that the proposed Transaction would have an impact on competition for powder coatings in the EEA.¹⁰⁰ Respondents to the market investigation considered Axalta ([10-20]% / [10-20]% market share in the EEA by value / volume) to be the closest competitor to AkzoNobel with Freilacke and Jotun also being important players.
- (165) In light of the results of the market investigation and taking into account that BASF IC's legacy activities in the powder coatings market result in a minimal increment, as well as the strong competition that the merged entity will continue to face post-Transaction from Axalta and local suppliers, the Commission concludes that the proposed Transaction does not raise serious doubts as to its compatibility with the internal market with respect to powder coatings.

6. CONCLUSION

- (166) 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)

*Margrethe VESTAGER
Member of the Commission*

⁹⁹ Non-confidential replies to question 13 of questionnaire Q2 to powder coating customers.

¹⁰⁰ Non-confidential replies to questions 22 and 23 of questionnaire Q2 to powder coating customers.
