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***Case No COMP/M.5745 -
AKZONOBEL/ ROHM
AND HAAS POWDER
COATING BUSINESS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/04/2010

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EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam:

**Subject : Case No COMP/M.5745 – AKZONOBEL/ ROHM AND HAAS POWDER COATING BUSINESS
Notification of 12.03.2010 pursuant to Article 4 of Council Regulation No 139/2004¹**

1. On 12 March 2010, the Commission received a notification of a proposed concentration following a pre-notification referral by which the undertaking AkzoNobel N.V. of The Netherlands ('AkzoNobel') acquires control of the powder coating business of Rohm and Haas Chemicals LLC of the United States and its affiliated companies ('R&H Powder Coating Business') by way of purchase of assets and shares.

I. THE PARTIES AND THE TRANSACTION

2. AkzoNobel is a global undertaking engaged in the production and marketing of a wide range of decorative and industrial coatings (or 'paints') and specialty chemicals. The coating products of AkzoNobel include both liquid and powder coatings.
3. The R&H Powder Coating Business, currently owned by The Dow Chemical Company ('Dow'), is engaged in the research, development, production, marketing

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.

and sale of powder coatings. It has production facilities in Germany, Italy and Spain in the EU. Outside the EU, it has production facilities in China and the United States.

4. On 12 November 2009, AkzoNobel and Dow announced that they had entered into a Purchase and Sale Agreement by which AkzoNobel intends to acquire the assets comprising the R&H Powder Coating Business².

II. THE CONCENTRATION

5. The proposed acquisition constitutes the acquisition of sole control by AkzoNobel over the whole of R&H Powder Coating Business. It therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. UNION DIMENSION

6. R&H Powder Coating Business generated a Union-wide turnover of EUR [...] million in 2008 and made sales exceeding EUR 25 million in only two Member States ([...]). As such, the proposed transaction does not meet the jurisdictional thresholds under Article 1(2) or 1(3) of the Merger Regulation.
7. As the proposed concentration, however, was capable of being reviewed under the national competition laws of more than three Member States, namely: Austria, Germany, Greece, Slovakia, and Sweden³, AkzoNobel made a pre-notification request pursuant to Article 4(5) of the Merger Regulation for the proposed concentration to be referred to and assessed by the Commission.
8. None of the Member States competent to review the proposed transaction objected to the referral request within the applicable deadline. The proposed concentration is therefore deemed to have a Community dimension.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

(i) Introduction

9. Both parties offer coatings (a synonym for paints) for a wide variety of products. Coatings are applied to industrial products in order to improve their surface properties, such as appearance, adhesion, corrosion resistance, wear resistance and scratch resistance. Coatings may also bring a colour finish to the surface of an object. There are two main types of coating: liquid and powder.

² The proposed transaction consists primarily of the acquisition of assets from various entities currently owned by Dow. The only legal entity that is being acquired by AkzoNobel is a Danish holding company, Rohm and Haas (Shanghai) Specialty Coatings Investment ApS, which holds all the shares in Rohm and Haas (Shanghai) Specialty Coatings Co., Ltd., a Chinese entity.

³ If the relevant market is defined as the market for powder coatings, the concentration would additionally have been capable of being reviewed in the United Kingdom.

10. AkzoNobel is active in both liquid and powder coatings whereas the target business is only active in powder coatings. AkzoNobel is not vertically integrated in the production of any of the raw materials used in the production of coatings (whether liquid or powder) such as resins, pigments and additives. The R&H Powder Coating Business, prior to its acquisition by Dow in 2009⁴, was also not vertically integrated. The vertical integration that currently exists between the R&H Powder Coating Business and other entities within Dow will come to an end with the closing of the proposed transaction.
11. Powder coatings are normally used to coat metal objects of a size that can be cured in an oven, for example white goods, aluminium extrusions, automotive and bicycle parts, furniture⁵. The objects to be coated must be able to attract the powder coating which is typically applied using an electrostatic spray and thereafter withstand the temperature at which curing takes place⁶.

(ii) Position of the notifying party

12. The notifying party submits that for most applications powder coatings can be substituted by liquid coatings and that the reverse is also true with the exception of objects that are too large to pass through an oven or where the objects are typically coated on-site (such as marine vessels and aircraft). The notifying party therefore submits that powder coatings do not constitute a distinct product market but rather a type of technology that is used to apply coatings to certain surfaces. It therefore considers that powder coatings form part of an overall coatings market that also encompasses liquid coatings. It notes that this position is in line with the findings of the most recent merger case concerning coatings⁷.
13. The notifying party acknowledges that within an overall coatings market it is possible, as the Commission has done in a number of previous decisions in which coatings have been considered, to identify certain sub-segments⁸. Of these sub-segments, the notifying party considers that the relevant market segment for assessing the proposed transaction is that of 'metal coatings' or 'other industrial coatings' which comprises coatings (both liquid and powder) that can be applied to the types of metallic products noted above (i.e. white goods, aluminium extrusions etc). This market segment by definition would exclude other sub-segments previously

⁴ Case No COMP/M.5424 Dow / Rohm and Haas, decision of 8 January 2009.

⁵ More modern technologies enable other materials such as medium-density fibreboard ("MDF") to be coated with powder but such applications are not significant compared to the use of powder coatings on metals.

⁶ The process of curing powder coatings involves two aspects. First the powder coating particles need to melt so that a consistent film is formed on the surface of the object to be coated (also known as the substrate). Second, the particles need to undergo a chemical reaction so that they bond with the substrate and form a hard and dry finish. Powder coatings are generally cured at a temperature of approximately 160°C in an oven based space in which the melting and chemical reaction aspects are achieved in one step.

⁷ See Case No COMP/M.4853 PPG / SigmaKalon, decision of 10 December 2007, paras. 35 and 36.

⁸ Case No COMP/M.1182 Akzo Nobel / Courtaulds, decision of 30 June 1998; Case No COMP/M.1363 DuPont / Hoechst / Herberts, decision of 5 February 1999 and Case No COMP/M.4853 PPG / SigmaKalon, decision of 10 December 2007.

considered by the Commission such as the decorative, marine and coil segments where powder coatings are not used.

14. According to the notifying party there is a high degree of demand side substitutability within the metal coatings / industrial coatings sub-segment between liquid and powder coatings that would justify their being in the same relevant product market. The notifying party argues that in each case where powder coatings can be used, liquid coatings can also be used as they generally perform the same functions and meet the same technical requirements.
15. The notifying party finally submits that should the Commission find that powder coatings should be distinguished from liquid coatings for the purposes of defining the relevant product market, powder coatings should not be further subsegmented but held to constitute a single product market in view of demand and supply side considerations.

(iii) Results of the market investigation

16. The market investigation in the present case has clearly demonstrated that although liquid 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.
17. The market investigation has shown that the majority of powder coating customers only possess the equipment to apply powder coatings. As a result, most customers would continue to purchase powder coatings even if they were to increase in price by 5-10% whilst the prices of other products remained constant (the SSNIP test)⁹. Even where customers have the equipment to apply both types of coating (liquid and powder), this is typically done at separate sites and/or on separate lines. This picture is consistent with the views expressed by the majority of powder coating producers in the market investigation that estimated the proportion of their customers having the equipment to apply both liquid and powder coatings to be in the range 0 - 25% of their overall customer base.
18. At the same time, the market investigation has shown that there is little if any substitutability between liquid and powder coatings from the supply side perspective. Although certain large coating manufacturers (including AkzoNobel) produce both liquid and powder coatings, this is typically carried out at separate facilities and/or on separate production lines¹⁰.

⁹ The unwillingness or inability of customers to switch was also confirmed by the majority of powder coating producers.

¹⁰ Powder coatings, as a more recent technology, are viewed as offering certain environmental and economic benefits vis-à-vis liquid coatings in that they do not contain solvents and are typically more cost effective to apply in the sense that only one coating is typically required and any coating that does not adhere to the object being coated can be captured and reused whereas this is not possible with liquid coatings.

19. As to the question whether a possible segmentation within powder coatings is warranted, the market investigation indicated that powder coating manufacturers generally tend to categorise the market by end application, e.g. automotive, construction, domestic appliances etc. Such classifications are not consistently applied and are not likely to justify any distinct subsegments. In addition, it was acknowledged by the majority of respondents (both customers and competitors alike) that powder coating manufacturers are typically able to offer a broad range of powder coatings. In a similar fashion, the market investigation did not bring forward any evidence that would support a segmentation of the powder coatings market on the basis of production technology¹¹.

(iv) Conclusion on the relevant product market

20. In conclusion, the Commission considers the relevant product market for assessing the effects of the proposed transaction is that of powder coatings which are distinct from liquid coatings. In view of the results of the market investigation, the Commission also considers that no further subsegmentation of powder coatings by end-users is merited.

B. Relevant geographic markets

(i) Position of the notifying party

21. The notifying party submits that the geographic market for a product market comprising powder coatings only should be defined as at least EEA-wide in scope. In support of its position, the notifying party argues that distributors and customers may source coating products from coatings suppliers located abroad and customers source from several countries; significant trade flows exist between the EEA countries; transport costs are relatively low; prices tend to be similar throughout the EEA; coatings are manufactured to almost identical technical and product specifications across the EEA; manufacturers use the same brand across the EEA with multilingual packaging/labelling; and there are no national consumer preferences for specific brands.

¹¹ The generally used production technology for powder coatings is known as thermoset chemistry. If a customer requires a metallic looking finish, an additional step can be performed at the end of the normal production process by which aluminium flakes are bonded onto the powder coating. This bonding process is carried out in house by some powder coating manufacturers or outsourced to third party bonders. Thermoset chemistry is also used to manufacture powder coatings based on an acrylic resins, albeit due to a cross contamination risk with non-acrylic powder coatings, such acrylic powder coatings tend to be produced on separate production lines. There is relatively limited demand for acrylic powder coatings and the market investigation has shown that not all powder coating manufacturers are active in the manufacture of coatings based on acrylic.

22. In this regard the notifying party also points to the findings of previous Commission decisions in which powder coatings have been discussed where the geographic market has been considered to be at least EEA-wide in scope¹².

(ii) Results of the market investigation

23. The market investigation in the present case has confirmed a number of elements that would suggest the geographic market for powder coatings is EEA-wide in scope. For example, a clear majority of respondents (both customers and competitors alike) have confirmed that there are no environmental, safety or other type of legislation limiting trade between EEA Member States and that the range of powder coatings offered by particular powder coating manufacturers does not differ by Member State. A majority of respondents also confirmed that powder coating prices do not differ significantly between the various EEA Member States, although there were indications to the contrary from some respondents.
24. Many customers, however, highlighted the importance of powder coating suppliers having a local presence in the various EEA Member States in which the customer was located citing reasons such as technical assistance and short delivery times. It should be noted, however, that even within this sub-set of customers, a number of customers nevertheless purchase powder coatings from manufacturers located in a Member State other than their own.

(iii) Conclusion on the relevant geographic market

25. Although the market investigation in the present case has confirmed a number of factors that would indicate the geographic market for powder coatings is EEA-wide, the precise scope of the geographic market can be left open for the purpose of the present case as even on the narrowest plausible market definition (i.e. national) the proposed transaction would not give rise to competition concerns.

C. Competitive assessment

(i) Introduction

26. The parties' activities overlap in the market for powder coatings. The merger does not give rise to any vertically affected markets.

(ii) Market structure

27. The proposed transaction would combine the number one and three players on the market. According to the notifying party, the aggregate market share of the parties in the powder coating market at the EEA-level would be [20-30%] (AkzoNobel [10-20%], Rohm and Haas Powder Coating Business [5-10%]). Post transaction, only one other competitor, Dupont, would have a share in excess of 10%. The market shares of other competitors, of which there are many, are less significant ranging from 1-7%.

¹² See Case No COMP/M.4853 PPG / SigmaKalon, decision of 10 December 2007, para. 37 which itself refers to the findings in Case No COMP/M.1182 Akzo Nobel / Courtaulds.

28. The market investigation largely confirmed this picture. The EEA-wide powder coatings market is thus characterized by a two-tier structure, with the parties and Dupont belonging to the upper tier. In general, the market is highly fragmented and dispersed.
29. If the market were to be considered national in scope, the proposed transaction would give rise to 18 affected markets, with aggregated market shares exceeding [40-50%] in Greece and Sweden, with market shares between [30-40%] and [40-50%] in the Czech Republic, in Denmark, in Italy, in Romania, in Spain and in the United Kingdom, and with market shares exceeding [20-30%] in Bulgaria, Ireland, Germany, Poland, Hungary and Slovakia. The remaining affected markets (Belgium, Finland, France and the Netherlands) show market shares below [20-30%].
30. In the case of Belgium, Bulgaria, Denmark, France, Greece, Ireland, the Netherlands, Romania, Slovakia and the United Kingdom, the increment arising from the proposed transaction is relatively limited (between [0-5%] and [0-5%]). As such, the proposed transaction is not expected to significantly change the competitive landscape in these Member States. In nearly all other instances where the increment in market share is more significant, the merged entity's market share would remain below or near [30-40%] (Finland, Germany, Hungary, Italy, Poland and Spain). As far as the Czech Republic and Sweden are concerned, where the increment in market share is significant and the combined market share would exceed [30-40%], there are a number of alternative competitors. The presence of alternative credible competitors to the merging parties is also true for other Member States where the proposed transaction would give rise to affected markets on a national basis.

(iii) Ability to raise powder coating prices

31. According to the notifying party the market is highly competitive throughout Europe, there is abundant overcapacity and the concentration ratio is still low. The notifying party also argues that the conclusion that there is one market for powder coatings implies that most suppliers can in principle serve all end-applications and customers.
32. Although the market shares in general remain relatively low, there were a number of customer replies to the Commission's request for information indicating that the merged entity would be able to raise powder coating prices. However, in subsequent contacts between the Commission services and customers taking a critical view of the merger, it became apparent they see a number of alternative suppliers to the merging parties on the market. This was more generally confirmed in the market investigation where it became apparent that most customers practise multi-sourcing. In cases where both of the merging parties are contacted as part of a request for quotation (RFQ), there is still at least one additional, if not two or more (and also smaller) suppliers that are also contacted as part of the same RFQ.
33. As to the closest competitors of the merging parties, the replies of customers and competitors in favour of the parties being each other's competitor were roughly in balance with those who mentioned Dupont as closest competitor to AkzoNobel as well as to the Rohm and Haas Powder Coating Business. At the same time, there was a large variety of competitors mentioned several times, such as Inver, Jotun, CIN, Tiger and PPG. This is consistent with the view expressed by many customers that

most powder coating manufacturers are able to offer a broad range of powder coatings.

34. Moreover, most respondents - customers as well as competitors - see an overcapacity and excess supply in the market, which means suppliers have unused capacity and therefore could expand their production in the event that the merged entity were to attempt to increase prices. Although part of the free capacity today is linked to the economic downturn, there is also structural overcapacity (e.g. free capacity over several years) according to the respective replies from competitors.
35. In the market investigation certain competitors argued that the merged entity would be able to benefit from increased complementarity in its product offer, due to a perceived specialisation by the R&H Powder Coating Business in particular niches. However, in general the market investigation has shown that most powder coating manufacturers are able to supply a broad range of products and that the merging parties do not possess any particular competitive advantage in terms of patents, know-how or unique products.
36. A number of competitors (and some customers) made comments relating to procurement of essential raw materials used in the production of powder coatings, namely solid resins. The market investigation was followed up to clarify these points concerning access to solid resins (both saturated polyester and epoxy) where some respondents (both competitors and customers) suggested that the merged entity, in view of its size, would have increased buyer power and somehow be able to control access to these key inputs¹³.
37. On closer examination, however, these concerns could not be substantiated in further contacts with suppliers of polyester and epoxy resins. Important *polyester resin* suppliers have confirmed that the merged entity's position on a hypothetical procurement market for this type of resin would be consistent with its position on the downstream powder coating market making control of access to the mentioned key inputs unlikely. These suppliers also indicated that there is free production capacity available for polyester resins used in the production of powder coatings.
38. As for *epoxy resins*, according to the notifying party the merged entity's purchases accounted for less than 10% of sales of solid epoxy resins in the EEA (2009). Contacts with a number of solid epoxy resin producers indicated that a temporary imbalance in the market due to the availability of certain raw materials is expected to even out in the short term. The market investigation also identified suppliers of solid epoxy resins able to expand their supply.
39. In view of the above, the market investigation has shown there to be a large number of alternative suppliers to the merged entity which are not constrained either in terms of capacity (notwithstanding the current economic downturn) or access to key raw materials. Therefore, it can be concluded that the proposed transaction does not raise serious doubts with respect to its compatibility with the common market and with the EEA agreement.

¹³ It should be noted that AkzoNobel is not backwards integrated although R&H is – if only for a short time – following its acquisition by Dow Chemical in 2009

V. CONCLUSION

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

For the European Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the European Commission