EUROPEAN COMMISSION
DG Competition

Case M.8020 - SHERWIN-WILLIAMS / VALSPAR

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 10/08/2016

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party:

Dear Sir/Madam,

Subject: Case M.8020 – Sherwin-Williams/Valspar
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004 [1] and Article 57 of the Agreement on the European Economic Area[2]

(1) On 5 July 2016, the European Commission ("the Commission") received notification of a proposed concentration pursuant to Article 4 of the Council Regulation (EC) No 139/2004 by which Sherwin-Williams Company ("Sherwin-Williams", the USA), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over the Valspar Corporation ("Valspar", the USA) by way of purchase of shares, hereinafter the "Transaction". Sherwin-Williams and Valspar are collectively referred to as "the Parties" and Sherwin-Williams is referred to as "the Notifying Party".

I. THE PARTIES

(2) **Sherwin-Williams** is a publicly listed company headquartered in Ohio (USA). It manufactures and sells paints and coatings mainly in the Americas. In the EEA,

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').

Sherwin-Williams sells primarily industrial coatings for wood and protective applications. It also sells decorative coatings but almost exclusively in the UK, Poland and Ireland.

(3) **Valspar** is a publicly listed company headquartered in Minnesota (USA). It manufactures and sells paints and coatings, with a geographical focus on North America, Europe, Asia and Australia/New Zealand. In the EEA, Valspar sells primarily industrial coatings for packaging, automotive refinish, coil and other metal applications. It also sells decorative coatings, almost exclusively in the UK.

II. THE OPERATION AND THE CONCENTRATION

(4) Pursuant to the Agreement and Plan of Merger signed on 19 March 2016 (the "Agreement") Sherwin-Williams will acquire all the outstanding shares of Valspar, which will become a wholly-owned subsidiary of Sherwin-Williams.

(5) Therefore, the Transaction constitutes an acquisition of sole control by Sherwin-Williams over Valspar and hence a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. UNION DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[3] (Sherwin-Williams: EUR 10 220 million and Valspar: EUR 4 172 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Sherwin-Williams: EUR […] million and Valspar: EUR […] million), and they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

(7) The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

IV. RELEVANT MARKETS AND COMPETITIVE ASSESSMENT

(8) In the EEA the Parties' activities overlap in certain areas of decorative coatings, industrial wood coatings, protective coatings and metal coatings.

(9) Specifically, the Transaction gives rise to three horizontally affected markets, namely in the area of decorative coatings: on the (retail) market for decorative woodcare products in the UK; and in the area of industrial coatings: on the market for industrial wood coatings in the UK and Ireland and the market for protective coatings in the UK and Greece.

(10) The Transaction also creates a vertical link between Valspar's activities as a resins manufacturer and Sherwin-Williams' activities as a manufacturer of paints and coatings. However, this vertical link does not give rise to an affected market and therefore will not be further examined in this Decision.

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

IV.1. DECORATIVE COATINGS

Relevant product market

(11) The term decorative coatings is used to describe various types of coatings for walls, ceilings, doors, window frames and other surfaces, which are normally used on-site both internally and externally during the construction or refurbishment of architectural structures.[4] Decorative coatings include both decorative paints and woodcare products.

(12) The Commission has previously established that decorative and industrial coatings are part of different product markets.[5] Within the overall market for decorative coatings, the Commission in the past considered potential segments for paints and for woodcare products.[6] The Commission also considered whether a distinction should be made between the trade segment (products for professional users) and the retail segment (products for non-professional users) sold mainly through Do-It-Yourself supermarkets.[7] Finally, the Commission considered whether a distinction between branded and private label products could be appropriate, but such distinction was not justified by the results of the market investigation in the case concerned.[8] The product market definition and the potential sub-segmentation within decorative coatings were ultimately left open in these cases.

(13) The Notifying Party does not contest the previous findings of the Commission. As regards the distinction between branded sales and private label, the Notifying Party submits that from the supply side perspective these paints are substitutable. From the demand side customers may have preferences based on branding and price but in Notifying Party's view these preferences do not give rise to separate markets.

(14) As regards the chemical composition of decorative coatings, the Commission has not in the past assessed whether water-based and solvent-based decorative coatings belong to separate markets.

(15) The Notifying Party submits that due to both demand-side and supply-side substitutability, water-based and solvent-based decorative coatings belong to the same product market.

(16) Within the decorative coatings, the market investigation focused on the woodcare products, which are the products concerned by the Transaction. The majority of customers indicated that, as regards the woodcare products, the water-based and solvent-based products are not substitutable. A supplier explained that *"Generally customers will chose their product based initially on the substrate they are*

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4 COMP/M.4853 PPG/Sigmakalon of 10 December 2007, recital 9.

5 COMP/M.390 Akzo/Nobel Industrier, of 10 January 1994; COMP/M.1167 ICI/Williams, of 29 April 1998; COMP/M.6270 Berkshire Hathaway/Lubrizol of 24 August 2011; COMP/M.4779 AkzoNobel / ICI of 13 December 2007; COMP/M.4853 PPG/Sigmakalon of 10 December 2007; COMP/M.1363 Dupont/Hoechst/Herberts of 5 February 1999; COMP/M.1182 AkzoNobel/Courtaulds of 30 June 1998.

6 COMP/M.1167 ICI/Williams, of 29 April 1998 paras 8 et seq.

7 COMP/M.390 Akzo/Nobel Industrier, of 10 January 1994 para 39 et seq.

8 COMP/M.4779 Akzo Nobel/ICI.

decorating and then on what characteristics they wish to achieve from the finished job, i.e. if they prefer longevity they may default to a solvent based product, if they want to complete the job in a day they would chose a water based product. Therefore they can interchange products for their substrate based on individual requirements."[9] Furthermore, the market participants submitted that typically the water-based products tend to be more expensive.[10]

(17) As regards the supply side, some producers indicated that there are no significant differences in the manufacturing process of water-based and solvent-based coatings. Other respondents indicated, however, that not all suppliers offer the two types of products and *"water-based and solvent-based products involve technologies with specific features, leading to different final results"*.[11]

(18) In any event, for the purposes of this decision, the product market definition can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to decorative coatings under any plausible product market definition.

<u>Relevant geographic market</u>

(19) The Commission has found in previous cases that relevant geographic market for decorative coatings could be national in scope due to the fact that cross-border sourcing is limited while technical, product specifications, language and label requirements differ between Member States.[12]

(20) The market investigation in the present case has indicated that market players tend to consider the market for decorative coatings national in scope, mainly due to logistics (availability, delivery and transport costs) and regulatory reasons.[13]

(21) In any event, the Commission considers that for the purpose of this decision it can be left open whether the geographic market definition regarding decorative wood coatings should be defined at the EEA or narrower level since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

<u>Competitive assessment</u>

(22) On the overall decorative coatings market including both water-based and solvent-based products, the Transaction leads to an affected market only in woodcare products (retail level) in the UK. In the EEA, the Parties' combined market share for woodcare products, at retail level, is slightly above [10-20]%. For completeness

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9 See response to Q1– Questionnaire to competitors, question 6(1).

10 See response to Q1 – Questionnaire to competitors, question 8.

11 See response to Q1– Questionnaire to competitors, question 6(1).

12 COMP/M.4853 – PPG / Sigmakalon of 10 December 2007; Case COMP/M.4779 – AkzoNobel / ICI of 13 December 2007.

13 See response to Q2– Questionnaire to customers, question 17 (1). One customer explained *"we purchase locally, regulations relating to the import of paint as a chemical substance are complex, and reliance is placed on the supplier to undertake the necessary regulatory processes to enable a product to be placed on the market"*.

it is noted that at the wholesale level the Transaction does not lead to any affected market in the EEA (including national markets).

(23) On the woodcare products retail market in the UK, the Parties' combined market share, based on 2015 figures, amounts to [40-50]% with an increment of only [0-5]% (HHI delta amounts to [0-100]). This combined market share has slightly increased over the last three years, in 2013 Valspar's market share was below [0-5]% and Sherwin-Williams' share slightly exceeded [40-50]%.

(24) Should the market be further sub-divided into water-based and solvent-based woodcare products, the Parties' combined market share in the UK would reach [40-50]% on the market for water-based woodcare products and [30-40]% on the market for solvent-based woodcare products, with an increment of only [0-5]% in both markets (HHI delta of [100-200] and [100-200] respectively, as based on 2015 data). Finally, on the market for woodcare branded products at the retail level the combined market share would reach [50-60]% in the UK with an increment of [0-5]% brought by Valspar (HHI delta amounts to [100-200]).

(25) Thus, the Commission notes that under any plausible product market definition the market share increment brought about by the Transaction is very small and consequently the HHI delta deriving from the Transaction remains [100-200] indicating that the Transaction would not have significant impact on the on the structure of the market for woodcare products in the UK.

(26) Furthermore, the Notifying Party notes that in the UK Valspar sells woodcare products exclusively through one retail chain, "B&Q", which is present with around 300 stores across the UK. Sherwin-Williams' products are sold along with other woodcare products of various manufacturers through various chains.

(27) The Notifying Party also submits that the products offered by the Parties are not close substitutes and, therefore, do not compete directly. In particular, Valspar's products need to be mixed in a dedicated equipment in store at the customer's request in order to match specific customer requirements such as colouring requirements (the so-called "tinted coatings"), whereas Sherwin-Williams sell only premix products ready to be used off-the-shelf. Products custom mixed in the stores represent a minority of sales in the UK retail channel (and in B&Q), whereas off-the-shelf products represent the majority of sales.

(28) Furthermore, the Notifying Party notes that as regards the woodcare products, Valspar serves the UK market with products manufactured […]. The Notifying Party submitted that […].

(29) The market investigation confirmed the small presence of Valspar. One of competitors indicated that Valspar "*is not strong in woodcare sector in Europe*".[14] One of customers confirmed that Valspar sells its woodcare products exclusively through the retail chain, "B&Q" and another customer indicated: "*in our opinion Valspar brand is less well known in UK*".[15]

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14 See response to Q1– Questionnaire to competitors, question 27.

15 See response to Q2– Questionnaire to customers, question 30.

(30) The market participants indicated that there are a number of suppliers of woodcare products in Europe. In particular, post-transaction the Parties will continue to face two strong competitors, namely AkzoNobel (with [20-30]% market share) and Crown Paints ([5-10]%), which have been significantly stronger than Valspar as regards woodcare products in Europe; as well as a number of smaller competitors such as Rustins and Liberon.

(31) As regards the closeness of competition, Akzo Nobel is perceived as having a more similar offer to that of Sherwin-Williams than Valspar, in particular in terms of brand, range of products and service.[16]

(32) The market investigation revealed that almost all customers of woodcare products multisource and the competition between suppliers seems to be effective; as explained by one of customers: *"It is important that we offer leading brands that will provide the best product range at the most competitive prices to our customers. To ensure that there is competition between suppliers so our business expectations are delivered"*.[17] The majority of customers explained that they could start purchasing woodcare products from a new supplier quickly and without incurring significant costs.[18]

(33) Finally, in reaction to the market investigation the vast majority of customers indicated that they do not expect the Transaction to have any impact on the market of woodcare products. As explained by one of the UK customers "*The impact is likely to be limited as in the UK Valspar is a fairly small player with Sherwin & AkzoNobel having the majority of share".*

(34) The limited concerns were of very general nature or not merger-specific, namely, one customer is concerned because the Transaction *"will narrow the supplier base considerably*" and another customer is worried that Valspar's manufacturing of woodcare products could be moved from Ireland to a central European factory, which could lead to a price increase. Some customers, however, expect that the Transaction might have a positive impact on competition and the offerings on the market: *"Sherwin-William have their own stores in the USA and if they decide to open them here in the EEA with Valspar there would be additional competition in the market"; "I expect a larger focus on their customer requirements, I expect strong support, greater R&D and reduction in prices due to increased capacity to source raw materials, greater productivity"*.[19]

<u>Conclusion</u>

(35) Based on the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to woodcare products in the UK.

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16 See response to Q2– Questionnaire to customers, questions 30 and 31.

17 See response to Q2 – Questionnaire to customers, question 34 and 34.1.

18 See response to Q2 – Questionnaire to customers, question 36.

19 See response to Q2 – Questionnaire to customers, question 53.

IV.2. INDUSTRIAL WOOD COATINGS

Relevant product market

(36) The Commission has in the past considered industrial coatings by end-application and considered separate markets for industrial coatings such as industrial wood finishes, protective and marine coatings, packaging coatings, coil coatings, automotive OEM finishes, automotive refinishes and aerospace coatings.

(37) In particular, industrial wood coatings are used to both enhance the appearance of wood and provide protection. The Commission has previously considered that industrial wood coatings can be segmented between coatings for (i) furniture, (ii) cabinets, and (iii) building products. The type of coatings used, the application techniques, and customers may differ per segment.

(38) The Notifying Party submits that there is a supply-side substitution between these coatings and these segments do not give rise to separate markets.

(39) During the market investigation, some suppliers indicated that specific equipment can be used for the manufacturing process of certain types of industrial wood coatings. However, the majority of suppliers seem to offer a complete range of industrial wood coatings (furniture, cabinets and buildings). A supplier explained that *"Many of large industrial wood coatings companies provide a complete range of coatings, but the medium to small competitors provide products to 1 or 2 segments. The large industrial wood coatings companies may have stronger segments."*[20]

(40) Similarly, from demand-side the majority of customers indicated that industrial wood coatings for furniture, cabinets and building products are not substitutable due to, in particular, different characteristics in particular in relation to their resistance to environment conditions (namely indoor versus outdoor use).

(41) In any event, for the purposes of this decision, the product market definition in relation to industrial wood coatings can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to industrial wood coatings irrespective of the precise product market definition.

Relevant geographic market

(42) The Commission has previously considered the market for industrial coatings and its possible sub-segments to be EEA-wide.[21]

(43) The Notifying Party submits that the market for industrial wood coatings is at least EEA-wide as there are no obstacles to trade across the EEA, transportation costs represent only a very small proportion of the average sales value and industrial wood coatings are sold at similar price levels across the EEA. The market investigation has confirmed that a large number of customers source from suppliers

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20 See response to Q 1– Questionnaire to competitors, question 15.

21 COMP/IV/M.1363 Dupont / Hoechst / Herberts of 5 February 1999.

active within the EEA and even worldwide. In addition, most customers indicated that prices for industrial wood coatings do not differ significantly within the EEA.

(44) In any event, the Commission considers that for the purpose of this decision it can be left open whether the geographic market definition regarding industrial wood coatings should be defined at the EEA or narrower level since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

Competitive assessment

(45) In the market for industrial wood coatings, the Parties' activities overlap in industrial coatings for wood building material.

(46) Furthermore, the Transaction leads to affected markets only at national level and only in the UK and in Ireland. These are the only two EEA countries in which Valspar sells industrial wood coatings.

(47) On the overall market for industrial wood coatings in the UK, the Parties' combined share, based on 2015 figures, amounts to [20-30]% with an increment of [0-5]% brought by Valspar (the HHI delta amounts to [0-100]). Should the market be defined per end-application, the Parties overlap only in the industrial wood coatings for buildings, where the combined market share amounts to [30-40]% in the UK with an increment of [0-5]% coming from Valspar and thus the HHI delta also does not exceed 200 (it amounts to [100-200]).

(48) In Ireland, the Parties' combined market shares, based on 2015 figures, amount to [20-30]%. Should the market be defined per end-application, the combined market shares of the Parties in relation to wood coatings for buildings in Ireland would amount to [40-50]% with an increment of [10-20]% brought by Sherwin-Williams.

(49) However, the Parties focus on different products: the only overlap between the Parties relates to Medium Density Fibreboard ("MDF") primers, and it represents a small volume of Sherwin-Williams' sales in the UK and Ireland (€[…]in the UK and €[…]in Ireland, or [0-5]% of Sherwin-Williams' total industrial wood sales in the UK and [0-1]% in Ireland). This is further evidenced by the fact that the Parties have only […] overlapping customers. It is also noted that Valspar serves the EEA primarily from production facilities located in […]. In fact, in 2008 Valspar decided to withdraw from the industrial wood coatings market in the EEA and converted its main production facility in the EEA for industrial wood coatings (in France) into a production facility for other coatings. In only maintained one small manufacturing unit (run by less than […] employees) in Ireland.

(50) Furthermore, in the market for industrial wood coatings for building products, there are a large number of competitors both in the UK/Ireland and in the EEA. In particular, in the EEA, the Parties' main competitors are AkzoNobel ([10-20]%), 3H-Lacke/Remmers ([10-20]%), PPG ([10-20]%) and Teknos ([10-20]%), all of them supply in the UK and Ireland.

(51) More generally, the Notifying Party submits that industrial wood coatings face declining demand as composite wood materials, for example MDF or particleboard, are used more frequently due to their lower cost, stability and environmental sustainability. While industrial wood coatings can be used on those

materials, alternative coatings, such as decorative foils, laminates and veeners are growing in popularity.

(52) Finally, the market investigation did not reveal any concerns in relation to the industrial wood coatings market in the EEA and more specifically in the UK and Ireland.

Conclusion

(53) Based on the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to industrial wood coatings in the UK/Ireland.

IV.3. PROTECTIVE COATINGS

Relevant product market

(54) Protective coatings are heavy-duty coatings for applications to structural steel, concrete and other industrial substrates used in a wide variety of industries, such as power generation industry, oil and gas industry, mining or infrastructures.

(55) In previous cases, the Commission considered protective coatings and marine coatings separately in view of their different applications, quality standards and end-users, but ultimately left the market definition open.[22]

(56) The Notifying Party does not contest the previous findings of the Commission.

(57) In any event, for the purposes of this decision, the market definition can be left open since the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to protective coatings irrespective of the precise product market definition.

Relevant geographic market

(58) In previous cases the Commission conducted its competitive assessment on the EEA level, but ultimately left the definition open.[23]

(59) The Notifying Party submits that the market for protective coatings is at least EEA-wide as there are no obstacles to trade across the EEA, transportation costs represent only a very small proportion of the average sales value and protective are sold at similar price levels across the EEA.

(60) The results of the market investigation were not conclusive as regards the geographic market for protective coatings. The majority of customers source the protective coatings at the EEA level or even globally. However, an important share of respondents prefer to purchase the protective coatings at the national level *"because these companies are close at hand if a problem arise"* or generally due to

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22 COMP IV/M.1182 AkzoNobel/Courtaulds of 30 June 1998, paras 14-16; COMP/M.4853 PPG/SigmaKalon of 10 December 2007, para 18.

23 COMP/M.4853 PPG/SigmaKalon of 10 December 2007.

considerations related to "*cost, availability, transport*".[24] For half of the respondents it is important to have a supplier with a physical presence in their country of operation and for another half it is not.[25]As regards prices, all the customers who responded to the market investigation submit that the prices of protective coatings of the same type do not differ significantly between various countries in the EEA.[26]

(61) In any event, the Commission considers that for the purpose of this decision it can be left open whether the geographic market definition regarding protective coatings should be defined at the EEA or narrower level since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

Competitive assessment

(62) In the market for protective coatings (excluding marine coatings)[27], the Transaction leads to affected markets only in Greece and in the UK. Based on 2015 figures, the Parties' have a combined market share of [30-40]% in Greece, with an increment of less than [0-5]% brought by Sherwin-Williams (the HHI delta amounts to [0-100]) and of [30-40]% in the UK, with an increment of less than [0-5]% brought by Valspar (the HHI delta amounts to [0-100]). On the EEA level the Parties' combined market share does not exceed [0-5]%.

(63) The Parties submit that in fact their products do not compete with each other, since they are used for different applications. Valspar's sales are exclusively for oil and gas infrastructure and pipeline coatings based on epoxy powder technologies, used to coat the exterior of the pipelines which Sherwin-Williams do not supply. Sherwin-Williams' sales are predominantly for civil constructions, bridges, highways and railways, commercial building infrastructures, and mining coatings. For oil and gas applications, Sherwin-Williams have negligible sales (€[…]) of liquid coatings mainly for oil equipment, tanks, platforms, and for the interior of pipelines, exclusively in the UK.

(64) The market investigation confirmed these elements and did not reveal any concerns in relation to the protective coatings market in the EEA and more specifically in the UK and Greece.

Conclusion

(65) Based on the above considerations, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to protective coatings in Greece and the UK.

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24 See response to Q2– Questionnaire to customers, question 25 and 25.1.

25 See response to Q2– Questionnaire to customers, question 27.

26 See response to Q2– Questionnaire to customers, question 28.

27 Valspar does not sell marine coatings and Sherwin-Williams has very limited sales of marine coatings in the EEA.

V. CONCLUSION

(66) 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)
Violeta BULC
Member of the Commission