



EUROPEAN COMMISSION
DG Competition

Case M.10341 – PRINCE / FERRO

Only the English text is available and authentic.

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

Decision on the implementation of the commitments -
Purchaser approval
Date: 21/04/2022



EUROPEAN COMMISSION

Brussels, 21.4.2022
C(2022) 2618 final

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

ASP Prince Holdings, Inc.
15311 Vantage Parkway West,
Suite 350
77032 Houston, Texas
United States of America

Dear Sir or Madam,

Subject: Case M.10341 – PRINCE / FERRO
Approval of KPS as purchaser of Prince’s Divestment Businesses following your letter of 18 February 2022 and the Trustee’s opinion of 12 April 2022

1. FACTS AND PROCEDURE

- (1) By decision of 25 January 2022 (the “Decision”), based on Article 6(1)(b) in connection with Article 6(2) of Council Regulation (EC) No 139/2004 (the “Merger Regulation”), the Commission declared the operation, by which ASP Prince Holdings Inc. (“Prince”) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, sole control over Ferro Corporation (“Ferro”), compatible with the internal market, subject to conditions and obligations (the “Commitments”). Prince and Ferro are collectively referred to as the “Parties”.
- (2) The Commitments consist of the divestment of (i) Prince’s European porcelain enamel coatings business, and (ii) Prince’s European glass coatings business, which, respectively, include Prince’s Belgian subsidiary Prince Belgium BV (including its branches in France and Germany, as well as a representative office in Shanghai) and

Prince's Italian subsidiary Prince Minerals Italy S.r.l., jointly referred to as the "Divestment Businesses".

- (3) Specifically, the following elements are included in the Divestment Businesses:
- a) Prince's manufacturing facility in Bruges, Belgium (the "Bruges Facility") and all tangible and intangible assets (including intellectual property rights) located at the Bruges Facility needed to manufacture, develop and supply porcelain enamel coatings as currently manufactured, developed, and supplied by Prince,
 - b) Prince's manufacturing facility in Cambiago, Italy (the "Cambiago Facility") and all tangible and intangible assets (including intellectual property rights) located at the Cambiago Facility needed to manufacture, develop and supply glass coatings as currently manufactured, developed, and supplied by Prince,
 - c) All production equipment necessary for the production of forehearth concentrates to be relocated to the Bruges Facility from Fenton, UK,
 - d) The land where the tangible assets belonging to the Divestment Businesses are located (except for the premises where the Cambiago Facility operates as these are not owned by Prince Minerals Italy S.r.l.),
 - e) All raw materials, if any, work in progress and finishing goods inventory related to the Divestment Businesses,
 - f) All intellectual property rights used by Prince Belgium BV and Prince Minerals Italy S.r.l., know-how and R&D relating to the marketing, development, manufacture and supply of porcelain enamel coatings and glass coatings (including logos, sub-brands, taglines, trade dress) and the manufacturing processes used, including with respect to pipeline products,
 - g) All licences, permits and authorisations issued by any governmental organization for the benefit of the Divestment Businesses,
 - h) All contracts, leases, commitments, and customer orders of the Divestment Businesses,
 - i) All customer, credit and other records of the Divestment Businesses,
 - j) Through a transition services agreement ("TSA"), transitional support to the extent requested by the purchaser and for a period of up to [...] months, with an option for renewal of [...] months,
 - k) License to the purchaser – for a period up to [...] months necessary to allow the purchaser to rebrand the Divestment Businesses – to use the "Prince" name and logo to the same extent as such name and logo are currently used by Prince in relation to the Divestment Businesses,
 - l) During the period of the above mentioned license, a black-out period of up to [...] months during which Prince will not, within the EEA, sell any Prince-branded products of a type that is currently manufactured by the Divestment Businesses or Prince-branded forehearth concentrate products; and

- m) All personnel employed at each of the Bruges Facility and the Cambiago Facility (approximately 125 individuals in the Bruges Facility and 26 individuals in the Cambiago Facility), including the key personnel.
- (4) The Commitments include also Prince’s commitment not to close the acquisition of Ferro before the Commission approves a potential purchaser and the terms of the sale (*upfront buyer requirement*).
- (5) By letter of 18 February 2022, Prince proposed KPS Capital Partners, LP (“KPS” or the “Proposed Purchaser”) for approval by the Commission as purchaser of the Divestment Businesses and submitted the proposed Securities and Asset Purchase Agreement and related agreements (the “Proposed Agreement”), as entered into between Prince and KPS on 9 February 2022. Shortly after, Smith & Williamson LLP (the “Trustee”) submitted an assessment of KPS’ suitability as a purchaser (the “Reasoned Opinion”) and, in particular, indicated that it fulfils the purchaser criteria pursuant to paragraph 15 of the Commitments attached to the Decision. In this assessment, the Trustee indicated also that, based on the Proposed Agreement, the Divestment Businesses would be sold in a manner consistent with the Commitments.

2. ASSESSMENT OF THE PROPOSAL

2.1. Description of the Proposed Purchaser

- (6) KPS is a private equity firm, headquartered in New York, United States. KPS has completed approximately 100 controlling investments through six institutional investment funds. As of September 2021, KPS portfolio companies had aggregate annual revenues of approximately USD 14.9 billion, operated 163 manufacturing facilities in 26 countries and had over 43,000 employees, directly and through joint ventures worldwide. KPS has three active funds, KPS Special Situations Fund IV, KPS Special Situations Fund V, and KPS Special Situations Mid-Cap Fund. These three active funds had a combined USD [...] billion of investments at fair value as of 31 December 2020. KPS Special Situations Mid-Cap Fund is the fund actively investing in the Divestment Businesses (the “Fund”). The Fund focuses on investments in the lower-end of the middle market that require up to USD 100 million of initial equity capital. The Fund targets the same type of investment opportunities and utilises the same investment strategy as the other KPS funds.
- (7) KPS acquires businesses manufacturing a diverse array of products across a broad number of industries, such as materials, healthcare, automotive and general manufacturing.¹ It operates three main investment strategies:
- a) corporate divestitures and carve-outs, which consist in the creation of new portfolio companies to acquire non-core assets or businesses from large corporations that would benefit from becoming an independent or focused company,²

¹ KPS’ experience in the manufacturing/industrial sector includes Anchor Glass, AIS Global, Chassis Brakes, Expera, Howden, IKG, North American Breweries, Life Fitness, and Waupaca.

² Corporate carve-outs represent approximately 50% of the KPS platform investments.

- b) private sales, which consist in acquiring assets or businesses from families, entrepreneurs, and other financial owners seeking to transfer their ownership, and
- c) businesses acquired in connection with financial restructuring proceedings.

2.2. Purchaser criteria

- (8) Based on the Commitments,³ in order to be approved by the Commission, the purchaser must fulfil the following criteria:
 - a) the purchaser shall be independent of and unconnected to the Parties and their affiliated undertakings (this being assessed having regard to the situation following the divestiture),
 - b) the purchaser shall have the financial resources, proven experience (specifically in the manufacturing sector in the EEA) and incentive to maintain and develop the Divestment Businesses as a long-term viable and active competitive force in competition with the Parties and other competitors,
 - c) should the purchaser be a financial investor, it shall (i) have a proven track-record of long-term commitment to maintain the businesses it acquired viable, competitive, and well-capitalised and (ii) demonstrate a long-term commitment to maintain the Divestment Businesses viable, competitive, and well-capitalised,
 - d) the acquisition of the Divestment Businesses by the purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the purchaser must be reasonably expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

2.3. Independence from the Parties

- (9) Prince submits that the Proposed Purchaser and the Parties are entirely independent and unconnected. Specifically, neither KPS nor any of its portfolio companies have any shareholdings in companies, which are related to, or form part of, Prince or Ferro. None of KPS' portfolio companies has any common executive or non-executive directorships, or memberships to the management or supervisory boards of Prince and/or Ferro. There are no cross shareholdings, commercial, management, or board links between KPS, its portfolio companies and Prince and/or Ferro. Finally, there are no supply agreements, sales relationships, or other commercial links between KPS and Prince, Ferro, or their affiliated undertakings, and *vice versa*.
- (10) In its Reasoned Opinion, the Trustee submits that the Proposed Purchaser does not have any planned or current business relationships with Prince and/or Ferro, other than those related to the divestiture of the Divestment Businesses. The Trustee

³ Paragraph 15 of the Commitments.

confirms that KPS does not participate to any joint ventures with Prince and/or Ferro. It does not have any common executive or non-executive directors, members of the management board or the supervisory board of Prince and/or Ferro or any of their affiliated undertakings or *vice versa*. Finally, there are no links between KPS and Prince and/or Ferro or any of their subsidiaries.

- (11) The Trustee informed the Commission that one of KPS' partners owns a *de minimis* amount of Ferro stock by means of a brokerage account which is managed by a third party, and over which the KPS partner owning this stock does not have any discretion. The Commission further inquired whether, through the ownership of this stock, the KPS partner would exercise some control over Ferro. The Trustee confirmed that, while the stock comes with the benefits and rights of ordinary common stock, it corresponds to [...] of Ferro's shares out of 93.4 million shares issued of common stock and 83.6 million shares outstanding as of 31 December 2021. The Commission, thus, considers that the Ferro stock held by the KPS partner is too limited to allow this partner to exercise any influence over Ferro.
- (12) In light of the foregoing, the Commission considers that the Proposed Purchaser is independent and unconnected to Prince, Ferro and their affiliates.

2.4. Financial resources, proven experience (specifically in the manufacturing sector in the EEA) to maintain and develop the Divestment Businesses as viable and competitive and proven track-record of long-term commitment to maintain the businesses it acquired viable, competitive, and well-capitalised

- (13) Considering that the Proposed Purchaser is a financial investor, in addition to the traditional purchaser criteria, including financial resources, proven experience, and incentive to maintain and develop the Divestment Businesses as a viable and active competitor, the Proposed Purchaser shall also meet the special purchaser criteria. These criteria are set out in the Commitments and they require that the Proposed Purchaser shall (i) have a proven track-record of long-term commitment to maintain the businesses it acquired viable, competitive, and well-capitalised and (ii) demonstrate a long-term commitment to maintain the Divestment Businesses viable, competitive, and well-capitalised.
- (14) In this Section 2.4, the Commission will analyse the Proposed Purchaser's financial resources, its proven experience to maintain and develop the Divestment Businesses as a viable and active competitor, as well as its proven track-record of long-term commitment to maintain the businesses acquired viable, competitive, and well-capitalised. In Section 2.5, the Commission will analyse the Proposed Purchaser's incentive, and its long-term commitment to maintain the Divestment Businesses viable, competitive, and well-capitalised.

2.4.1. Financial resources to maintain and develop the Divestment Businesses as a viable and active competitor

- (15) Under the Proposed Agreement, the acquisition price of the Divestment Businesses is set at USD [...] plus (or minus) necessary adjustments at closing, including cash amounts, indebtedness, and transaction expenses.
- (16) Given the acquisition price and as regards the Proposed Purchaser's financial resources, Prince submits that KPS has the financial resources to purchase, maintain and develop the Divestment Businesses as a viable and active competitive force in

competition with the Parties and other players active in the market. Prince indicates that KPS has more than sufficient funding in place to support the ongoing operation of, and any potential future investments by or into, the Divestment Businesses. Specifically, KPS has a credit facility with [...], *i.e.*, a USD [...] million initial term facility to finance the acquisition, and a USD [...] million revolving facility to finance the future operations of the Divestment Businesses. KPS would also be able to finance further potential investments with respect to the Divestment Businesses with equity.

- (17) In its Reasoned Opinion, the Trustee notes that, while KPS secured financing through [...] for a portion of the purchase price of the Divestment Businesses, it would be able to finance its entire acquisition with equity. Hence, even without the external financing element, KPS would have the funds to continue the acquisition of the Divestment Businesses on its own.
- (18) The Trustee indicates that it examined the Fund's financial statements. The Trustee confirmed to the Commission that the net assets of the Fund have increased, the Fund is profitable and there is further capital available, and the partners have committed a total of USD [...] to the Fund. As of 31 December 2020, USD [...] ([...])% of such committed capital was available to be collected and, as of 31 December 2021, USD [...] was available to finance the acquisition of the Divestment Businesses.
- (19) In light of the foregoing, the Commission considers that the Proposed Purchaser has sufficient financial resources to maintain and develop the Divestment Businesses as a viable and active competitor.

2.4.2. *Proven experience (specifically in the manufacturing sector in the EEA) to maintain and develop the Divestment Businesses as viable and active competitor*

- (20) As regards the Proposed Purchaser's proven experience, Prince indicates that KPS has a particular focus on corporate carve-outs for industrial and manufacturing companies, and has invested in several companies operating manufacturing sites in the EEA. Additionally, Prince notes that KPS has maintained positive and constructive working relationships with the major manufacturing and industrial unions in Europe since its creation in 1991. Therefore, Prince considers that, over the years, KPS has developed a deep understanding of the characteristics and drivers of the manufacturing industry in the EEA, and has built established relationships with all the relevant stakeholders which will enable KPS to easily and readily support the Divestment Businesses.
- (21) In its Reasoned Opinion, the Trustee indicates that KPS has experience with businesses presenting a number of similarities with the Divestment Businesses. For instance, in the past, KPS acquired companies manufacturing products ultimately destined to the automotive industry or to the household market, such as some of the products incorporating porcelain enamel and glass coatings – the Divestment Businesses' core product areas. Moreover, a number of businesses acquired by KPS are also subject to commodity price fluctuations, similarly to the Divestment Businesses, therefore enabling KPS to develop a particular experience in handling fluctuating input prices and global supply chain issues. The Trustee observes that KPS' businesses serve similar customer groups to those served by the Divestment Businesses, especially manufacturing conglomerates, like Electrolux or General Electric. The Trustee finally notes that KPS' portfolio companies deploy very similar

manufacturing processes to those of the Divestment Businesses, such as, for instance, the processes used by KPS in its metal extrusion business.

- (22) The Trustee also notes that KPS has experience in manufacturing in the EEA. For instance, among KPS's current portfolio companies, there are:
- a) Speira GmbH, a German based company active globally in the manufacturing of aluminium rolled products, with five manufacturing facilities in Germany and two in Norway,
 - b) AIS Global, a designer of human machine interface solutions for equipment manufacturers in the medical, commercial, and industrial markets, with one manufacturing facility in Germany,
 - c) Eviosys, a manufacturer of sustainable packaging with seven manufacturing facilities in France, three in Germany, two in Poland, two in Hungary, six in Italy, one in Greece, eight in Spain, and one in the Netherlands,
 - d) Howden, a provider of critical air and gas handling products with one manufacturing facility in France, one in Spain, two in Germany, and one in the Netherlands,
 - e) Metra, a global manufacturer of aluminium profiles and related services, including painting, oxidation, machining and assembly, headquartered in Italy, where it has five manufacturing facilities,
 - f) Life Fitness, a global manufacturer of commercial fitness equipment and game tables, with one manufacturing facility in Hungary,
 - g) Siderforgerossi, a company specialised in large diameter forged products, serving the energy and automotive industries, headquartered in Italy, where it has nine manufacturing facilities.
- (23) The Trustee points out that the lead partner⁴ for the acquisition of the Divestment Businesses by KPS has already covered the role of CEO of three KPS companies, active globally in manufacturing industries (the "Lead Partner"). More generally, the Lead Partner has led and managed global manufacturing, capital equipment, and luxury good and consumer companies.
- (24) The Commission notes KPS' experience and knowledge in companies' carve-outs, specifically, in the manufacturing sector. KPS' proven experience with companies active globally, and specifically, operating a number of manufacturing facilities in the EEA, as set out above, indicates that KPS would have sufficient experience to maintain and develop the Divestment Businesses as a viable competitor.

⁴ The lead partner is typically involved throughout the entire deal process (*i.e.*, origination, underwriting and portfolio company management). The lead partner is generally also the Chairman of the Board of Directors.

2.4.3. *Proven track-record of long-term commitment to maintain the businesses KPS acquired viable, competitive, and well-capitalised*

- (25) In relation to proven track-record of long-term commitment *vis-à-vis* past businesses acquired by KPS, Prince argues that KPS' past investments and average holding periods prove its long-term commitment to maintain the businesses it acquired in the past as viable, competitive, and well-capitalised. Prince considers that the average holding period for past KPS investments of approximately 5 years would show a commitment to ensuring that portfolio companies succeed. Additionally, Prince observes that KPS has a proven track-record of achieving significant EBITDA growth in its portfolio companies. On average, KPS carve-out transactions have resulted in [...]x EBITDA growth over the holding period.
- (26) In its Reasoned Opinion, the Trustee indicates that KPS has a track-record of holding investments for a number of years before exiting with 5.3 years average holding period for investments exited in the last ten years. Moreover, the Trustee analysed the net leverage change in the investments held by KPS in the past ten years, *i.e.*, the net debt-to-EBITDA leverage ratio, calculated as liabilities net of cash and cash equivalent, divided by EBITDA. This ratio illustrates how many years of operating profit a given company would need to set aside to pay back its debt. Hence, the ratio is used as a measure for the sustainability of indebtedness. A significant increase in net leverage could indicate that the company's owner increased the indebtedness of the business, potentially to the detriment of the operating activities, for example, to extract equity and recoup as much capital as possible on the investment. The Trustee observes that, generally, for the companies divested by KPS in the last ten years, the leverage tends to increase but not significantly and it would remain below 5x (a level that the Trustee took as reference in this instance) with a [...]x average.^{5,6}
- (27) In relation to KPS' exited investments in the last ten years, the Commission notes that an average holding period of 5.3 years, with in some cases holding periods of less than 4 years, is relatively short given the timeline of corporate restructurings which require several accounting periods to return results. The Commission further assessed the exit conditions and, in two cases, it established that the companies upon exit by KPS either entered bankruptcy proceedings or were taken over by creditors.
- (28) Nevertheless, the Commission analysed the financial data relating to past sales of KPS' portfolio companies and did not identify any problematic areas. In particular, at exit, the investments that continued as going concern displayed levels of capitalisation as measured by net debt to EBITDA and by equity-to-debt that were not indicating excessive leverage.
- (29) Additionally, the Commission carried out a comparative analysis, verifying some of the Parties' main competitors' net leverage ratios.⁷ The Commission observed that, for almost all companies in the peer group of a listed competitor of the Divestment Businesses, the ratio is higher than 4, which would be in line with the ratio for those investments held and exited by KPS in the last ten years.

⁵ [...].

⁶ The Commission confirmed the reading of the leverage ratio increase over the holding period of investments held by KPS, based on Appendix 5.5 to the Reasoned Opinion.

⁷ A listed direct competitor is Johnson Matthey. Based on this company, the Commission retrieved the peer group from the investor perspective, as provided by the Bloomberg peer analysis tool.

- (30) In light of the foregoing, the Commission considers that KPS has a proven track-record of long-term commitment to maintain the businesses it acquired in the past viable, competitive, and well-capitalised.

2.5. Incentive to maintain and develop the Divestment Businesses as a viable and active competitor and long-term commitment to maintain the Divestment Businesses viable, competitive, and well-capitalised

- (31) In relation to the Proposed Purchaser's incentive, Prince observes that KPS has a long-term investment strategy in relation to all its acquisitions. KPS aims at continuity and value-increasing development of the Divestment Businesses as a global stand-alone business. Prince points to KPS' plans to [...].⁸
- (32) Regarding KPS' long-term commitment to maintain the Divestment Businesses viable, competitive, and well-capitalised, Prince argues that this commitment is fully demonstrated by KPS. Prince notes KPS' acknowledgement of the Divestment Businesses as a competitive force in both the markets for porcelain enamel and glass coatings, and stresses that KPS is committed to its success in the long-term. Prince further notes that KPS currently envisages owning and operating the Divestment Businesses for over three years and considers this time-horizon sufficient to prove KPS' long-term commitment toward the success of the Divestment Businesses.
- (33) The Trustee, in its Reasoned Opinion, points out that KPS focuses on corporate carve-outs for industrial and manufacturing companies, with a proven track-record of successfully managing them. Specifically, in relation to the Divestment Businesses, KPS has developed a business plan, aimed at ensuring that the Divestment Businesses remain an effective competitor in the market for porcelain enamel and glass coatings. The Trustee informed the Commission that KPS' long-term business plan includes a number of objectives, such as [...]. Based on this strategy, KPS expects to generate an acceptable return on its investment. The Trustee analysed also the forecast profit and loss statements prepared by KPS. On this basis, the Trustee observes that KPS forecasts a general growth in revenues for the next five years, up to 2026, combined with a steady increase in gross profit margin on a yearly basis and cost savings. KPS' strategy should overall increase the annual return from USD [...] million to USD [...] million in five years.
- (34) The Commission considers that the acquisition of the Divestment Businesses by KPS falls under its long-term strategy to purchase businesses active in manufacturing sectors to create value. The Commission views KPS' business plan as sufficiently sound and it observes that KPS will invest sufficient resources to operate the Divestment Businesses on a stand-alone basis and at global level. Additionally, the Commission positively assesses KPS' plan to enhance the Divestment Businesses' growth and expand their presence, both in terms of geographic coverage and products array.
- (35) In light of the foregoing, the Commission considers that KPS has sufficient incentive to maintain and develop the Divestment Businesses as a viable and active competitor and that KPS has the long-term commitment to maintain the Divestment Businesses viable, competitive, and well-capitalised.

⁸ [...].

2.6. Absence of *prima facie* competition problems

- (36) Prince submits that the acquisition of the Divestment Businesses by KPS is neither likely to create *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be unduly delayed. Prince stresses that KPS does not control any portfolio companies that compete with the activities of the Divestment Businesses, and that there are no horizontal overlaps nor vertical relations between KPS and the Divestment Businesses' activities. Prince further indicates that it has conducted, with KPS, a detailed antitrust filing assessment. A merger control approval, which is a mandatory pre-closing filing procedure, is currently ongoing in Serbia.⁹
- (37) In its Reasoned Opinion, the Trustee takes the view that the acquisition of the Divestment Businesses by KPS will not give rise to *prima facie* competition concerns, as no horizontal or vertical overlaps exist between KPS and the Divestment Businesses. The Trustee also underlines that the purchase of the Divestment Businesses by KPS is subject to a merger control review procedure in Serbia, which is currently ongoing. The Trustee further notes that it has not identified a risk that the implementation of the Commitments could be delayed.
- (38) In light of the elements set out above, as well as the information made available for the purposes of its assessment, the Commission concludes that *prima facie* competition concerns will not arise as a result of the acquisition of the Divestment Businesses by the Proposed Purchaser.
- (39) This *prima facie* assessment is based on the information available for the purposes of this buyer approval process and does not prejudice the competition assessment of the acquisition of the Divestment Businesses by KPS, by a competent competition authority under applicable merger control rules.

3. ASSESSMENT OF THE PROPOSED AGREEMENT

- (40) The acquisition of the Divestment Businesses by KPS will be carried out under the Proposed Agreement dated 9 February 2022, including 10 exhibits and, specifically, the draft TSA and the draft License Agreement.
- (41) The Trustee notes that:
- a) In relation to the transfer from Fenton, UK, to Bruges, Belgium, of the production equipment for forehearth colorants, which is an integral part of the Divestment Businesses, the management of the Divestment Businesses requested to delay the transfer. This request was due to the temporary summer shutdown of the Bruges Facility, which would not have allowed the employees at the Bruges Facility to start working immediately upon the transfer to install and operate the equipment. KPS and Prince have agreed to delay the transfer of this equipment by six weeks so that the transfer better coincides with the reopening of the Bruges Facility after the summer pause, on 16 August 2022. The transfer will nevertheless be completed by 27 July

⁹ [...].

2022, thus, leaving a two-weeks buffer to install and start operating the equipment before the reopening of the Bruges Facility on 16 August 2022,

- b) While, pursuant to the Commitments, Prince shall grant a rebranding period of up to [...] months, the Proposed Agreement provides for a shorter duration. Specifically, Prince and KPS negotiated and agreed on a three-months rebranding period, which, according to KPS, would be sufficient to complete the rebranding,
 - c) While, pursuant to the Commitments, the purchaser can request a black-out period of up to [...] months, the Proposed Agreement does not provide for any black-out period. The Trustee understands that KPS did not request any black-out period and does not consider it necessary. Prince, therefore, agreed not to include any black-out period in the Proposed Agreement,
 - d) While, pursuant to the Commitments, the purchaser can require, and Prince undertakes to provide, certain transition services, such as centralised functional support, IT and other administrative functions, for a period up to [...] months, with the option of renewal for up to [...] months, the Proposed Agreement provides for a short duration of up to [...] months. The Trustee understands that this is the duration negotiated between Prince and KPS and both of them would find this duration appropriate,
 - e) Prince and the Proposed Purchaser entered into a license agreement (the “License Agreement”), in connection with the Proposed Agreement. The License Agreement provides that KPS grant to Prince a license to continue using certain recipes for a period of five years in connection with Prince’s retained business in South America to manufacture and sell this business’ products to South American customers only. The scope of the License Agreement would be limited to South America and Prince would not be allowed to use the same recipes anywhere else or for any other customers outside of its South American customers.
- (42) Considering the above, the Trustee takes the view that the Proposed Agreement is consistent with the Commitments. The Trustee, however, raised some concerns in relation to the 5-year duration of the License Agreement.
- (43) Against this background, while the Commission considers that the Proposed Agreement is in line with the Commitments, it shared the Trustee’s concerns in relation to the 5-year duration of the License Agreement. Consequently, the Commission indicated to the Trustee, Prince, and KPS that a shorter duration of the License Agreement would be sufficient to allow Prince’s retained business in South America to swiftly transition from the Divestment Businesses’ recipes to the merged entity’s recipes. Ultimately, Prince agreed to limit the duration of the License Agreement to [...]. The Commission considers this duration satisfactory, on the one hand, to allow the merged entity to swiftly transition from the Divestment Businesses’ recipes to its own recipes and, on the other hand, to smoothly rescind the links between the Divestment Businesses and the merged entity.
- (44) On 12 April 2022, a number of amendments to the Proposed Agreement were brought to the Commission’s attention:

- a) Prince and KPS agreed to add to the Divestment Businesses four employees, currently based in Fenton, UK, and Quincy, USA, in order to ensure that all relevant personnel is included in the Divestment Businesses,¹⁰
 - b) Prince and KPS agreed to add to the Divestment Businesses one brand “VitroMax”. VitroMax is a brand for colour concentrates containing a high degree of oxide and is often used for high pull container and rolled pattern glass colour forehearts,
 - c) Prince and KPS agreed to add to the Divestment Business an asset located in Leesburg, Alabama. This asset was mistakenly excluded.¹¹
- (45) The Trustee reviewed these amendments and considered that they do not raise any concerns, considering that they further boost the strength and viability of the Divestment Businesses. The Commission agrees with the Trustee’s analysis.
- (46) On 16 April 2022, further amendments to the Proposed Agreement were brought to the Commission’s attention. Specifically:
- Prince and the Proposed Purchaser informed the Commission that there were certain minor frit-based products manufactured by Prince at the Bruges Facility, which would have to be excluded from the scope of the Divestment Businesses since, from a technical standpoint, they would not belong to those markets where the Commission identified competition concerns. These products are used in metallurgical applications and are not related to porcelain enamel or glass coatings. These products include extrusion frits¹² and refractory glazes,¹³
 - Prince and the Proposed Purchaser further explained that Prince’s plant in Fenton, UK, is developing a new product in collaboration with an existing client (Vesuvius plc, hereinafter, “Vesuvius”) and this product would be a novel type of refractory glaze, which is not part of the Divestment Businesses, since the Commission identified competition concerns only in relation to the market for the manufacture and supply of porcelain enamel coatings and glass coatings,
 - The additional amendments relate to two of Prince’s patent applications, referring to (i) the refractory glaze under development for Vesuvius; and (ii) glass lubricants, manufactured by Prince at its plant in Fenton, UK, and consisting in frit-based metallurgical products,
 - The additional amendments clarify that the patent application relating to glass lubricants are excluded from the Divestment Businesses, whereas Prince is not retaining any IP rights in relation to extrusion frits, which remain with the Divestment Businesses,

¹⁰ The employee based in the USA is being transferred from Prince to KPS primarily for the viability of the US divestment business, which is not to be considered part of the Divestment Businesses.

¹¹ This asset is being transferred from Prince to KPS primarily for the viability of the US divestment business, which is not to be considered part of the Divestment Businesses.

¹² Extrusion frits are used to assist in making extruded metal products.

¹³ Refractory glazes are used to prevent oxidation and burning of carbon-containing components in high-temperature applications.

- The additional amendments provide for a license by Prince to the Proposed Purchaser over the patent application for the entire duration of the patent. This is to allow the Proposed Purchaser to develop, make, and sell refractory glazes and extrusion glass to customers other than Vesuvius. Therefore, the Divestment Businesses will include the refractory glaze and extrusion businesses currently located at the Bruges Facility, while Prince will keep the IP rights relating to refractory glaze and will license them to the Proposed Purchaser;
 - The additional amendments provide for a license by Prince to the Proposed Purchaser over the patent application for glass lubricants for the entire duration of the patent. This is to allow the Proposed Purchaser to develop, make, and sell any related products and, specifically, for the development of its own extrusion glass products.
- (47) The Trustee reviewed these amendments and considered that they do not raise any concerns. Additionally, the management of the Divestment Businesses observed that these amendments would benefit the Divestment Businesses and would not have an impact on its viability.
- (48) The Commission further investigated the *rationale* behind these additional amendments. The Commission understands that the manufacturing activities for metallurgical products in the categories of extrusion glass and refractory glaze would have remained within the scope of the Divestment Businesses as these activities were performed at the Bruges Facility, however, without the related patents, the Divestment Businesses' ability to develop and sell these metallurgical products would have most likely been hampered. Thus, while the Commission identified competition concerns only in the markets for the manufacturing and supply of porcelain enamel and glass coatings, it appears that a license over the above-mentioned patents for their entire duration would ensure the continued viability of the Divestment Businesses. Specifically, it would allow the Divestment Businesses to continue competing in the market for (extrusion glass and refractory glaze) metallurgical products. The Commission understands that both Prince and the Proposed Purchaser find these amendments appropriate in scope and length.
- (49) In light of the foregoing, and taking into account the Trustee's Reasoned Opinion, the Commission concludes that the Proposed Agreement is aligned with the Commitments and that, accordingly, the Divestment Businesses are sold in a manner that is consistent with the Commitments.

4. CONCLUSION

- (50) Based on the above assessment, the Commission approves KPS as a suitable purchaser.
- (51) Based on the Proposed Agreement, the Commission further concludes that the Divestment Businesses are being sold in a manner consistent with the Commitments.
- (52) This decision only constitutes approval of the Proposed Purchaser identified herein and of the Proposed Agreement. This decision does not constitute a confirmation that Prince has complied with its Commitments.
- (53) This decision is based on paragraph 17 of the Commitments.

For the Commission

(Signed)
Olivier GUERSENT
Director-General