COMESA Competition Commission
COMESA Competition Commission
Kang'ombe House, 5th Floor
P.O. Box 30742
Lilongwe 3, Malawi
Tel: +265 1 772 466
Email- compcom@comesacompetition.org

Common Market for Eastern and Southern Africa

Case File No. CCC/MER/09/45/2022

Decision[1] of the Ninety-Seventh (97th) Meeting of the Committee Responsible for Initial Determinations Regarding the Proposed Merger involving AkzoNobel N.V, Kansai Plascon East Africa Proprietary Limited and Kansai Plascon Africa Limited

ECONOMIC SECTOR: Paints

COMESA COMPETITION COMMISSION
02 SEP 2023

2 September 2023

[1] In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible, the information omitted has been replaced by ranges of figures or a general description.

The Committee Responsible for Initial Determinations,

Cognisant of Article 55 of the Treaty establishing the Common Market for Eastern and Southern Africa (the "**COMESA Treaty**");

Having regard to the COMESA Competition Regulations of 2004 (the "**Regulations**"), and in particular Part 4 thereof;

Mindful of the COMESA Competition Rules of 2004, as amended by the COMESA Competition [Amendment] Rules, 2014 (the "**Rules**");

Conscious of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation of 2015;

Recalling the overriding need to establish a Common Market;

Recognising that anti-competitive mergers may constitute an obstacle to the achievement of economic growth, trade liberalization and economic efficiency in the COMESA Member States;

Considering that the continued growth in regionalization of business activities correspondingly increases the likelihood that anti-competitive mergers in one Member State may adversely affect competition in another Member State,

Desirability of the overriding COMESA Treaty objective of strengthening and achieving convergence of COMESA Member States' economies through the attainment of full market integration,

Having regard to the COMESA Merger Assessment Guidelines of 2014,

Determines as follows:

Introduction and Relevant Background

1. On 8 November 2022, the COMESA Competition Commission (the "**Commission**") received a notification for approval of a merger involving Akzo Nobel N.V ("**AkzoNobel**") as the acquiring firm and Kansai Plascon East Africa Proprietary Limited ("**KPEA**") and Kansai Plascon Africa Limited ("**KPAL**") as the target firms, pursuant to Article 24(1) of the Regulations.

2. Pursuant to Article 26 of the Regulations, the Commission is required to assess whether the transaction between the parties would or is likely to have the effect of substantially preventing or lessening competition or would be contrary to public interest in the Common Market.

3. Pursuant to Article 13(4) of the Regulations, there is established a Committee Responsible for Initial Determinations, referred to as the CID. The decision of the CID is set out below.

COMESA COMPETITION COMMISSION
02 SEP 2023

4. Article 25(1) of the Regulations provides that the Commission shall examine a merger within 120 days after receiving the notification. Article 25(2) of the Regulations provides that if prior to the expiry of the 120-day period, the Commission has decided that a longer time period is necessary, it shall so inform the parties and seek an extension from the Board. In the present case, the 120-days period would have expired on 27 March 2023. On 9th March 2023, the CID was informed that the Commission's preliminary assessment identified potential concerns likely to arise from the transaction in a number of Member States and that it required additional time to conclude its assessment and to ensure the merging parties were provided with sufficient time to respond to its findings. The CID thus granted an extension of 60 days for the Commission to conclude its assessment of this transaction.

5. A Statement of Concerns ("**SOC**") was issued to the merging parties on 28 April 2023. On 6 May 2023, the CID received a request from the Commission on behalf of the merging parties for an additional extension of 30 days to the statutory period to allow the merging parties sufficient time to respond to the Statement of Concerns. On 7 May 2023, the CID granted the extension, thereby extending the statutory assessment period to 28 June 2023. On 8 June 2023, the CID granted a further extension of 60 days following a second request from the Commission on behalf of the merging parties seeking additional time to make representations to the SOC and to discuss potential remedies with the Commission. As a result of this extension, the statutory period for assessment would have expired on 28 August 2023.

6. The CID also noted that the merging parties were informed that all submissions to the CID were to be made by 18 August 2023. The CID observed that the parties made additional submissions to the Commission on 25 August 2023; further that on 27 August 2023 during the CID hearing, the parties made oral presentations on the matters submitted in their written submissions of 25 August 2023. The CID condoned the submission of new information and directed the Commission to analyse the parties' new submissions and extended the statutory time period to 3rd September 2023.

7. The CID also notes that the parties raised concerns in relation to their ability to make submissions to the Commission. In their submissions of 20 June 2023, the merging parties stated that: *"For the avoidance of doubt, this submission is not to be considered as a formal reply to the SOC because the merging parties have not been given sufficient time to engage with the Commission on the substance of the case and on potential remedies which may alleviate concerns. Therefore, there are a number of important elements on which the merging parties would*

want to respond but are unable to do so in the very limited time that has been made available."

8. The CID also noted the submission by the parties on 21 July 2023, that:

> *The merging parties would like to thank the Commission for the opportunity to comment on the SOC, as well as for the opportunity that was provided to meet with and provide additional information to the Commission on 17 May 2023 in the form of a presentation.*
>
> *The merging parties have engaged actively and constructively with the Commission throughout the course of its merger review process and have provided substantial evidence of the highly competitive nature of coatings markets across all COMESA Member States. The merging parties were therefore extremely concerned to receive the SOC draft which, in their view, failed to take into account many of the aspects of competition outlined in their submissions. Prior to receipt of the SOC, the merging parties had not been made aware of nor had the opportunity to respond to the Commission's specific concerns, despite having responded to numerous general requests for information from the Commission following the initial merger filing.*
>
> *The merging parties were also extremely concerned to receive the Response Letter, which reiterates many of the concerns raised in the SOC and introduces further new statements that are not in line with the comprehensive set of evidence gathered by the merging parties to assist the Commission with its assessment. Moreover, the merging parties have not been able to have any substantial discussion with the Commission on its actual concerns, and how these might best be addressed.*

9. The CID observes that the SOC constitutes a formal document issued by the Commission to notify the merging parties of the competition concerns identified by the Commission in the course of the merger assessment. The SOC provides an opportunity for the merging parties to respond and defend their case before any formal recommendation is made to the CID. It outlines the Commission's preliminary findings with respect to the elements forming part of the merger assessment, such as the relevant market definition and market structure, the alleged anti-competitive effects anticipated from the implementation of the merger and sets out the evidence supporting these findings.

10. It also noted that the merging parties had more than one month to respond to the SOC, and further numerous extensions were granted to accommodate the parties' requests, with the final date of the submissions of the parties' response being pushed to 21 July 2023, implying that the parties had a total of 84 days to

COMESA COMPETITION COMMISSION
02 SEP 2023

respond to the SOC. In addition, the CID observes that the merging parties submitted requests for extension of the assessment period by 30 days, and 60 days, respectively, and in both instances, the requested timelines for extensions were granted by the CID in their entirety.

11. As regards the parties' assertions that they have not been able to have any substantial discussion with the Commission on the concerns identified, the CID records that a meeting was held between the Commission and the merging parties on 17 May 2023, beyond its normal working hours, from 17:00 hours to 19:00 hours to accommodate the parties' schedule upon their request for a physical meeting with the Commission. As noted above, the parties were not restricted in making further submissions to the Commission, as seen from their correspondences of 20 June 2023 and 21 July 2023. The CID also observes that the Commission accommodated the parties' request for another physical meeting on 31 July 2023 to discuss the remedies put forward and accepted further submissions from the merging parties on 10 August 2023 and 16 August 2023.

12. In view of the foregoing, the CID considers that the merging parties were provided sufficient time to respond to the SOC and offer appropriate remedies.

13. Having duly considered the various submissions made by the Commission and the merging parties, the CID hereby issues its decision.

The Parties

AkzoNobel (the Acquirer)

14. AkzoNobel is a Dutch multinational company that manufactures and sells paints and performance coatings for consumer and industrial use. It is a public limited liability company established under the laws of the Netherlands.

15. AkzoNobel manufactures coatings used in various segments, which are primarily divided into decorative coatings (or paints) and industrial (or performance) coatings which include automotive and speciality coatings; marine, protective and yacht coatings; wood finishes; coil coatings; and powder coatings. AkzoNobel is widely regarded to be a global leader for sustainability within the decorative coatings and industrial coatings industries.

16. AkzoNobel has manufacturing plants in South Africa that produce the full range of decorative coating and industrial coating products sold in South Africa, as well as a number of products that are exported to other countries in Africa. In the Common Market, AkzoNobel has manufacturing plants in Egypt, Mauritius, Tunisia, and Zambia.

COMESA COMPETITION COMMISSION
07 SEP 2023

17. In the Common Market, AkzoNobel has activities in the following countries: the Democratic Republic of Congo ("**DRC**"), Egypt, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Mauritius, Rwanda, Sudan, Tunisia, Uganda, Zambia, and Zimbabwe.

KPEA (the target business)

18. KPEA is a subsidiary of Kansai Paint Co. Limited ("**Kansai Paint**"), a Japanese multinational manufacturing and selling paints and coatings products globally. KPEA has its registered address in the Republic of Mauritius. KPEA manufactures coatings used in various segments, namely decorative coatings, and industrial coatings, which include specialised coatings. KPEA has five manufacturing plants in Tanzania, Kenya, and Uganda. KPEA also derives revenues in several other Member States through the supply of its products to independent third-party distributors (or resellers), retailers and/or directly to final customers.

19. KPEA's five manufacturing plants produce decorative coating and industrial coating products that are then exported as finished products into many other African countries. In the Common Market, KPEA has activities in Burundi, Kenya, Malawi, Uganda, and Zambia.

KPAL (the target business)

20. KPAL is a subsidiary of Kansai Paint and has its registered address in South Africa. KPAL has eight manufacturing plants, which are in South Africa, Malawi, Zambia, and Zimbabwe. KPAL manufactures decorative and industrial coatings in three Member States (i.e., Malawi, Zambia, and Zimbabwe), but also derives revenues in several other Member States by supplying its products to independent third-party distributors (or resellers), retailers and/or directly to final customers. In the Common Market, KPAL has activities in Eswatini, Kenya, Malawi, Zambia, and Zimbabwe.

Jurisdiction of the Commission

21. Article 24(1) of the Regulations requires 'notifiable mergers' to be notified to the Commission within 30 days of the parties' decision to merge. Rule 4 of the Rules on the Determination of Merger Notification Thresholds and Method of Calculation (the "**Merger Notification Thresholds Rules**") provides that:

Any merger, where both the acquiring firm and the target firm, or either the acquiring firm or the target firm, operate in two or more Member States, shall be notifiable if:

COMESA COMPETITION COMMISSION
02 SEP 2023

a) *the combined annual turnover or combined value of assets, whichever is higher, in the Common Market of all parties to a merger equals or exceeds USD 50 million; and*

b) *the annual turnover or value of assets, whichever is higher, in the Common Market of each of at least two of the parties to a merger equals or exceeds USD 10 million, unless each of the parties to a merger achieves at least two-thirds of its aggregate turnover or assets in the Common Market within one* and the same Member State.

22. The undertakings concerned have a combined annual turnover value in excess of the threshold of USD 50 million in the Common Market, and they each derive at least USD 10 million in the Common Market. In addition, the Parties do not achieve more than two-thirds of their respective aggregate COMESA-wide turnover within one and the same Member State. The notified transaction is therefore notifiable to the Commission within the meaning of Article 23(5)(a) of the Regulations.

Referral to Member States

23. Article 24(8) of the Regulations provides that a Member State may request the Commission to refer a merger to a competent authority of the Member State for consideration under the Member State's national competition law if such Member State is satisfied that the merger, if carried out, is likely to disproportionately reduce competition to a material extent in such Member State or any part of such Member State.

24. On 21 November 2022, 25 November 2022, and 2 December 2022, the national competition authorities of Zimbabwe, Kenya, and Zambia, respectively submitted requests for referral of the transaction.

25. Mergers which are likely to give rise to relevant markets with a local or national geographic scope, and the effects of which are likely to be confined to, or have their main economic impact in, a single Member State, are most likely to be considered favourably for referral to that Member State. To the extent that referral is made to one Member State only, the benefit of a 'one-stop-shop' is also preserved[2].

26. In the current case, there were reasonable grounds to believe that the relevant geographic markets were larger than national, and that the transaction may bring about substantial cross-border effects, especially given that products available in Kenya, Zambia, and Zimbabwe are also imported from, or exported to, other

[2] EC Notice on Case Referral in respect of concentrations. Accessed at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(01)&from=PL

COMESA COMPETITION COMMISSION
07 SEP 2023

Member States. Thus, any remedial action taken by these authorities would inevitably have a spillover effect in the rest of the Common Market.

27. Having regard to the cross-border trade of the products involved, and the number of Member States who were likely to be affected by the transaction, the CID observes that the Commission retained jurisdiction over the entirety of the transaction in the spirit of protecting the benefits of the one-stop shop, as well as to prevent a potential fragmentation of the Common Market arising from potentially conflicting decisions, and ensure coordinated investigations and remedial action.

Details of the Merger

28. The transaction involves the acquisition by AkzoNobel of 83.31% of the issued share capital of KPAL and all the issued share capital of KPEA from Kansai Paint.

29. The parties submitted that the primary rationale for the proposed transaction is to improve AkzoNobel's footprint in Sub-Saharan Africa and provide it with better access to certain countries where it currently has a relatively limited presence, mainly in East Africa (including many Member States). The transaction is expected to lead to various synergies with the objective to better serve the parties' collective customer base as a result of the complementarity of the parties' manufacturing facilities, distribution networks and cross-selling opportunities. The parties also expect to achieve synergies by way of procurement savings for raw materials and a combination of their operational expertise.

Competition Assessment

Consideration of the Relevant Markets

Relevant Product Market

30. The CID observes that both AkzoNobel and the target entities are involved in the manufacture and supply of decorative coatings and industrial coatings. The Commission has previously identified distinct markets for decorative coatings and industrial coatings.

31. Decorative coatings are 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. They are used to embellish the interiors as well as exteriors of buildings with various finishes such as matte finish, eggshell and satin, gloss and semi-gloss[3]. They

[3] See Decorative Paints Market: APEJ Projected to Account for the Largest Market Value Share Throughout the Forecast Period: Global Industry Analysis and Opportunity Assessment, 2016-2026.

COMPETITION COMMISSION
02 SEP 2020

are supplied through wholesale and retail channels to professional decorators and DIY (do-it-yourself) users.

32. Industrial coatings are applied to the surface of a substrate to improve its surface properties, including appearance, adhesion, wettability, corrosion resistance, wear resistance and scratch resistance[4]. Industrial coatings are supplied to producers of goods on which the coating needs to be applied and that have as part of their production process an integrated paint application line. Typically, manufacturers have to develop coatings to the precise formulation or specifications required by their customers, e.g., whether the coating will be used in steel, automobile, marine, or civil construction industries. Industrial coatings are supplied directly by the coatings manufacturer to the industrial customer.

33. The limited substitutability from a demand perspective implies the existence of distinct drivers of growth which can be reasonably expected to create different competition conditions for industrial and decorative paints.[5] Given that the parties are involved in the manufacture and supply of both industrial and decorative coatings, both product markets were considered in the competition assessment.

34. The CID further considered whether submarkets could be identified within the decorative and industrial coatings markets.

A. Decorative Coatings Segment

35. From the demand side, the CID observes that a distinction could potentially be made between different types of decorative coatings, for example woodcare products, water-based products, solvent-based products, etc, which are often marketed as suitable/dedicated to a particular use or type of surface.

i. *Decorative Paints vs Woodcare products*

36. In the Common Market, the manufacturers produce both woodcare and decorative paints, and both are often available at same point of sale. The parties argued in favour of a single market on the basis of supply-side considerations. The CID observed that whilst from a supply side that substitution could occur relatively quickly, the same may not be as evident from a demand side. In ***PPG/ TIKKURILA***[6], the market investigation provided mixed results as to the substitutability of decorative paints and woodcare product. The CID noted that

[4] EC decision of 28/10/2016 in Case M.8136 - BASF / CHEMETALL, para 10.

[5] Case precedence from Europe and South Africa supports the findings of separate products markets for decorative and industrial coatings (see for example, European Commission Case M.8004 - AKZO NOBEL_BASF; EC Case M.8020 - SHERWIN-WILLIAMS / VALSPAR INDUSTRIAL; South Africa Competition Commission review of AkzoNobel/Kansai merger; and South Africa Competition Tribunal Case No. 53/AM/JUL11 Kansai Paint Co. Ltd / Freeworld Coatings Limited.

[6] EC Case M.10123 - PPG / TIKKURILA, decision dated 10/03/2021. Accessed at: https://ec.europa.eu/competition/mergers/cases1/202114/m10123_404_3.pdf on 26 December 2022.

COMPETITION COMMISSION 07 SEP 2023

there were indications that woodcare products are designed for a specific type of surface such that other types of decorative paints may not perceived by customers to be as efficient on wood surfaces. However, in view of inconclusive evidence on customer preferences within the Common Market, the CID held that it could be left open whether woodcare coatings should be assessed separately from other decorative coatings.

ii. *Water-based vs Solvent-based coatings*

37. The parties argued against the identification of narrower markets, on the following grounds:

37.1. Water-based and solvent-based coatings compete within the same broad market for decorative coatings. Customers and consumers can and do switch between different types of coatings, trading off between slight differences in technical characteristics and differences in the price per litre. Most significant producers supply a range of different decorative coatings, including water-based and solvent-based coatings, and producers can and do switch between the supply of different types of coatings, quickly and easily. As a result of these market features, there has been limited emphasis on separate product markets for water-based and solvent-based decorative paints in previous case precedents. All decorative coatings belong to the same product market and any sub-segmentations of this market are not appropriate nor particularly meaningful.

37.2. With respect to customer choices:

- Water-based and solvent-based decorative coatings can be used interchangeably to paint various surfaces, and the choice of paint is largely based on the individual customer's preferences and/or project-specific requirements and/or applicable rules and laws. There are no major differences in performance between these types of coatings, and the application of either solvent or water-based coatings yields the same end result.
- In particular driven by the increased focus on the 'green economy' and global sustainability initiatives, water-based paints are becoming increasingly popular, since water-based coatings are considered more environmentally friendly. This has resulted in noticeable movement towards water-based paints at the direct expense of solvent-based paints (showing clear and substantial direct competition between water- and solvent-based paints at the aggregate level).

37.3. With respect to the paint production process:

COMPETITION COMMISSION
02 SEP 2021

- All decorative coating products have similar technical properties, are produced using almost identical equipment from common raw materials, share the same main components and technical developments are therefore also generally applicable across decorative coating products.

37.4. With regard to the manufacturing processes for water-based and solvent-based paints:

- The only major difference between the equipment used to manufacture each paint type is the metal substrate that the tanks are made of. Specifically, solvent-based paints are made in carbon steel tanks, whereas water-based paints are made in stainless steel tanks (due to hygiene and bacterial risk issues).
- The difference in production processes lies in how the mill base is prepared, and which raw materials are used at each stage. For example, the mill base for solvent-based paints contains resin and the other ingredients, including pigments and emulsions; whereas the mill base for water-based paints will be free of emulsions, which are only introduced once the required degree of dispersion has been attained.

37.5. With respect to switching between producing water-based and solvent-based paint:

- Due to the different raw materials used in production, separate systems within the same manufacturing plant are typically used to produce these two types of paint. Additionally, the production of solvent-based paint involves the use of flammable chemicals, and therefore more stringent health and safety protocols are required in relation to the equipment used to make these types of paint.
- However, it is possible to manufacture solvent-based paints and water-based paints in the same equipment and tanks, provided that the tanks are stainless steel and that the production area meets all the necessary health and safety requirements (e.g., the equipment must be flame-proof).
- Switching from producing water-based paints to producing solvent-based paints – using the very same equipment and tanks – carries a risk of contamination. Accordingly, switching in this direction would require deep cleaning of the equipment and tanks, which can be done within a day and is relatively inexpensive (provided the necessary health and safety requirements are in place).

COMPETITION COMMISSION
02 SEP 2021

- The main direction of substitution over the past decade has been away from solvent-based paints towards the production and consumption of more water-based paints. Switching from producing solvent-based paints to producing water-based paints – using the very same equipment and vessels – is even more straight-forward. The equipment used to manufacture solvent-based paints does not need to be as thoroughly cleaned before introducing water-based mixtures to the vessels.

38. The CID considers that there exist significant differences in the production process that is likely to make substitution costly, inconvenient, and unlikely to occur in a swift manner. Different tanks and different base ingredients are required for producing water-based and solvent-based coatings. Due to the use of flammable chemicals, different systems are required and are subject to different health and safety protocols. The parties acknowledge in their submissions that solvent-based paints "*have a more complex technical composition, as well as higher input costs (i.e., more expensive raw materials and chemicals)*", which supports a finding of limited supply side substitutability.

39. In terms of performance, the parties' own submissions state that "*solvent-based paints are generally considered to have higher durability*" which is likely to influence consumer choices, particularly for large construction or industrial projects. On the other hand, where there are strict environmental specifications, there will be further limited substitutability between waterborne and solvent-based paints.

40. The CID observes that market investigations confirm differences in prices, with water-based paints generally cheaper than oil-based paints. Given the price sensitivity of retail customers, coupled with preferences for environmental-friendly paints, it is improbable that there would be a significant shift from water-based to oil-based paints in response to a small but significant increase in price of water-based paints. Likewise, having regard to the perceived difference in performance, it is unlikely that in response to a small but significant increase in price of oil-based paints, a substantial number of consumers would shift to water-based paints; water-based paints generally last for a shorter duration compared to oil-based paints and are mainly used for interior walls. The market investigations confirm that there are differences in customer preferences in relation to the usage of oil-based paints and water-based paints with water-based products being preferred for interior, wall coats and ceilings while oil-based products are used for outdoor surfaces, and further that oil-based paints tend to last longer.

COMESA COMPETITION COMMISSION
02 SEP 2013

iii. *Premium coatings*

41. The CID noted the merging parties' submissions that there exists a continuous chain of substitution between a wide range of different paint products of varying perceived quality. According to the parties, this substantial chain of substitution blurs any putative line between attempts to categorize products on the basis of quality tiers and underlines the fact that defining paint products on the basis of some version of quality tiers cannot be achieved in any meaningful way for the purposes of a competition assessment. The parties made the following submissions in favour of a single market for decorative coatings:

41.1. A distinction between 'premium' and 'budget' does not fully reflect this complexity, nor does it reflect the complete chain of substitution between different types of paint products offered on the market, such as 'mid-tier' products. Any comparison between products within extremes of the premium and budget tiers entirely overlooks the part of the relevant market in which the bulk of volumes are supplied, and competition occurs, namely the 'middle' or 'mid-tier' product ranges. In other words, there is a continuous spectrum of decorative coating products – varying in terms of availability, quality, price, branding, characteristics, and other terms – along which consumers continually trade off purchasing decorative coating products, based on their preferences.

41.2. In particular, there is no clear or distinct price range or price difference between products that are categorized loosely as 'premium', 'mid-tier', or 'budget'. Products that fall towards the lower edge of a 'premium' categorization, and products that fall towards the upper edge of a 'mid-tier' categorization would have minimal price differences (and similarly for the upper edge of 'budget' compared to the lower edge of "mid-tier"). In this way, the products in each tier exercise either a direct or an indirect competitive constraint on one another, thereby forming the continuous chain of substitution across all decorative coating products.

41.3. It follows that customers regard the various paint products as readily substitutable. In other words, changes in the availability, pricing, quality, branding and other terms of one brand of decorative coatings give rise to substantial substitution towards several other brands of decorative coatings.

41.4. The production processes to produce paints that are classified as "premium", 'mid-tier' or 'budget' do not differ materially (if at all), in that the same production equipment and the same type of inputs (i.e., a vehicle/base, binder, pigments, and additives) are used to produce both "premium", "mid-tier", and "budget" coatings.

COMPETITION COMMISSION SA
02 SEP 2011

41.5. Many large local and regional rivals offer a full range of different types of paints, and serve the most demanding clients (e.g., big corporates, governments, hospitals, large private properties). Manufacturers may use marketing strategies and branding to market and promote paints in different 'tiers' of the market. As such, the majority of decorative coatings manufacturers supply products across the full spectrum of high-quality, mid-quality and lower-quality paints to the market, subject to the customers' needs.

41.6. The competitive pressure between paint brands is intensifying through further changes in consumer preferences, increased marketing efforts of other brands (in particular distributors own brands), and the influence of retailers' stocking preferences. Additionally, consumers are becoming more price sensitive in the difficult economic climate following the COVID-19 pandemic, such that price is becoming an increasingly important deciding factor (and out-weighing other factors such as branding) in their paint purchase decisions. These trends amplify the substitutability across paint brands and the level of competition in decorative coatings more generally, such that there is a single relevant product market for the supply of all decorative coating products.

41.7. As a result of these market features and evidence of demand and supply-side substitution, all decorative coatings belong to the same product market, and any sub-segmentations or separate assessment is unlikely to yield any further insight or lead to any different conclusions.

41.8. There are several rival suppliers in the various Member States that have clearly demonstrated that they can and do supply high-quality paint (i.e., good quality paint with a recognised brand), both within their country of origin, and to other countries to which they have expanded their presence. There is overwhelming evidence that each of these rivals is able to supply high-quality decorative coatings, compete effectively to supply decorative coatings for application in large-scale architectural projects, and offer reliable support to its customers.

42. The CID observes that most manufacturers tend to cater for all household segments and offer both premium and budget options. For instance, Kansai Plascon offers a budget gloss as well as a premium gloss. Dulux's Luxurious Silk is described as a "*Dulux Luxurious Silk is a low odour premium interior mid sheen finish with supreme stain resistance*", amongst a variety of other options. From a supply perspective, manufacturers confirmed that it is relatively easy to switch from producing budget paints to premium paints, as the same equipment

COMPETITION COMMISSION SA
07 SEP 2020

is used, with the difference being in the formulation and mix of raw materials used.

43. However, Dulux and Plascon are perceived as premium brands within the Southern African region, particularly in countries where they have established local manufacturing plants. Whilst the parties have argued against further segmentation on the basis of quality, they acknowledge that they have internal classification of their sub brands into quality categories, typically, a certain brand is associated with a specific quality tier. For instance, in Eswatini, AkzoNobel's Dulux, Hammerite and Woodcare brands are considered premium products; Rockgrip is AkzoNobel's mid-tier brand; and Bergermaster is its economy brand. It is also worth noting that the acquirer's premium brands have consistently accounted for 80% of its sales in Eswatini since 2020[7].

44. In addition, the CID notes that AkzoNobel's press release regarding its recent acquisition of the decorative coatings business from Sherwin-Williams on 2 August 2023 clearly recognises the "existing **premium-focused** Dulux portfolio"[8] (emphasis added).

45. On the basis of the market investigations, and information from the Member States, it can be inferred that the merging parties' brands are considered premium brands and have built significant customer loyalty on the basis of the quality of these brands. Interviews with customers in Member States also point towards the relevance of quality and brand image as a factor that consumers consider. It was further confirmed that there is a significant price difference between premium and medium brands, which is explained by the difference in quality; and that within their product portfolio, Dulux and Plascon have products that compete directly with each other, and they are each other's strongest competitors. In response to a small but significant increase in price of the premium brands, it is unlikely that a significant number of premium customers would shift to lower tier brands as they would still be concerned with the quality of the paint. The information gathered thus points toward limited substitutability from a demand side between premium paints and the budget to medium quality paints.

46. In view of the foregoing analysis, and without prejudice to the CID's approach in future cases, the relevant market has been identified as **the manufacture and supply of premium decorative coatings, further segmented into water-based and solvent-based paints.**

---

[7] Parties' response to Information request from Eswatini Competition Commission, dated 16 February 2023.

[8] 'AkzoNobel completes acquisition of Chinese Decorative Paints business from Sherwin-William', dated 2 August 2023. Accessed at: https://www.akzonobel.com/en/media/latest-news---media-releases-/akzonobel-completes-acquisition-of-chinese-decorative-paints-business-from-sherwin-williams

COMPETITION COMMISSION
02 SEP 2023

B. Industrial Coatings Segment

47. Several distinct markets can be identified within the industrial coatings category, including[9]:

i. Coil coatings

48. Steel coil coatings and aluminium coil coatings are supplied for coating steel and aluminium coil during the production process. Coil coatings are used to improve their surface characteristics in particular by protecting them against corrosion or exposure to UV and by providing aesthetic effects such as colour, gloss, and metallic shine. They are purchased by steel and aluminium mills for application directly on to pre-cleaned metal coils on automated coil coating lines. These coated coils of steel and aluminium are cut and the sheets are used for a range of products such as metal cladding and roofing for buildings or household appliances[10].

49. Coil coatings have been found to constitute a distinct product market, based on the peculiar characteristics of such coatings which are specifically designed for application to steel and aluminium coil and not suitable for application to the type of equipment used by customers for any other type of coatings. On the supply-side, all producers of coil coatings are able to produce both steel and aluminium coatings and all three types of layers of coil coatings (primer back-coat, primer and topcoat) used in the treatment of steel and aluminium coils[11].

ii. Powder coatings

50. Powder coatings come in the form of a free-flowing, dry powder that is typically applied electrostatically and then cured under heat or with ultraviolet light. Powder coatings are usually used to create a hard finish that is tougher than conventional paint. Powder coatings are mainly used for the coating of metals, such as household appliances, interior and exterior parts of vehicles, exterior facades, doors, aluminium window frames, furniture, and bicycle frames[12].

iii. Wood finishes

51. Wood finishes are industrial coatings applied to wood and wood-based panels which are then used to manufacture end products such as furniture, cabinets,

---

[9] See EC Case M.4853 – PPG/SigmaKalon.

[10] EC Case M.8004 - AKZO NOBEL / BASF INDUSTRIAL COATINGS BUSINESS, paragraph 13.

[11] EC Case M.4853 – PPG/SigmaKalon, paragraphs 23-24. Primers provide the adhesion between the pre-treated substrate and the topcoats; they are also responsible for the corrosion resistance of the whole system. Topcoats are added on top of the primer and provide the aesthetic effect, for example colour or gloss. Backcoats are applied to the underside of the coil and provide mainly the adhesion properties. Backcoats are generally not exposed to corrosive environments and are not visible in the end-application. Backcoats are therefore considered easier to produce.

[12] RBB Economics Report, paragraph 47.

COMPETITION COMMISSION 02 SEP 2020

doors and floors. Wood finishes mainly provide scratch resistance, durability, and decorative features to the wood products they are applied to[13].

iv. *Protective and marine coatings (PMC)*

52. PMC are heavy-duty coatings for application primarily to structural steel and concrete to enable them to resist corrosion, chemical attack and, where necessary, to keep underwater area of ships free from marine vegetation and animal life and abrasion. PMC are not suitable for the type of equipment used by customers of other types of coatings because of their rough appearance and texture and chemical content. Within the PMC market, it is possible to distinguish two different hypothetical sub-segments for protective coatings and for marine coatings in light of the different applications and quality standards, as well as for the distinct end-users (e.g. marine coatings are supplied for the application to the hull, interior or superstructure of ships to protect ship structures from corrosion; protective coating can be applied to large assets in industries such as power generation, oil and gas, mining, and infrastructure such as airports and stadiums).

v. *Automotive original equipment manufacturing (OEM)*

53. These are supplied directly to car manufacturers for OEM. It is noted that the target undertakings are not active in this segment within the Common Market.

vi. *Automotive refinish coatings*

54. Automotive refinish coatings are specially formulated products for the repair and repainting of vehicles such as cars, trucks and buses in an after-market environment. These coatings are supplied directly to specialist wholesale channels and larger car repair shops.

vii. *General industrial coatings*

55. General industrial coatings comprise a wide variety of liquid coatings. These are coatings that are used for generalised industrial uses and are sold to small customer groups. Examples include coatings for agricultural and construction machinery, road marking coatings, some metal coatings, glass coatings, and mirror backing coatings. This category of industrial coatings is typically viewed as a "catch-all" category for less specialised (or light duty) industrial coatings, and it is standard industry practice to group this variety of coatings together[14].

56. Given the clearly different functional characteristics of the various types of industrial coatings, and thus limited demand substitutability, the CID considers

[13] EC Case M.8004 - AKZO NOBEL / BASF INDUSTRIAL COATINGS BUSINESS, paragraph 54.
[14] RBB Economics Report, paragraph 47.

COMPETITION COMMISSION 07 SEP 2010

that the different types of industrial coatings constitute distinct product markets. This is also consistent with the practice adopted in other jurisdictions and the parties do not dispute the existence of such submarkets within the industrial coatings market.

Relevant Geographical Market

57. For the purposes of defining the geographic market, account must be taken of a number of factors, such as the nature and characteristics of the products or services concerned, the existence of entry barriers, consumer preferences, the existence, in the area concerned as compared with neighbouring areas, of appreciable differences in the market share of undertakings, or price differences[15].

A. Decorative Coatings Segment

58. The parties argued in favour for a wider than national geographic market for decorative coatings, spanning COMESA and neighbouring African countries.

59. The CID notes that in the context of the current transaction, the parties are direct competitors in a number of markets, hence the need for more in-depth consideration of the relevant markets.

60. The CID considers that the scope of the geographic market for decorative coatings is likely to be narrower than global, having regard to the differing brands present across countries and the varying degree of popularity of a particular brand in different countries – e.g. the Dulux brand was seen to account for a relatively insignificant share of the market in ***Akzo/Mauvilac***[16], compared to local brands, whilst in other Member States such as Zimbabwe and Eswatini, Dulux is considered a premium brand. The presence of different brands can further be explained by the costs of transportation - transportation of finished products over long distances is uneconomical, and the manufacturers tend to have production facilities within or near the country of distribution or enter into licensing agreements with local manufacturers/distributors.

61. At the same time, in light of the relatively easier export and import of trade of paints between certain countries on the African continent, the decorative coatings market is likely to be larger than national. Whilst it is unlikely that the geographic scope would extend to all COMESA Member States plus neighbouring African countries, in view of the distance and hence high

[15] Case T-151/05, JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber) of 7 May 2009, Nederlandse Vakbond Varkenshouders (NVV), v EC, paragraph 52.

[16] Decision of the 71st meeting of the CID regarding the Proposed Acquisition by Akzo Nobel Coatings International B.V. of Mauvilac Industries Limited, dated 8 June 2020. Accessible at: https://www.comesacompetition.org/wp-content/uploads/2020/06/1a.-Revised-CID-Decision-Akzo-Nobel-and-Mauvilac.pdf

COMESA COMPETITION COMMISSION
02 SEP 2021

transportation costs between the various Member States, the CID considers that there likely exist smaller clusters of countries within the African continent across which the conditions of competition are likely to be largely similar.

62. The identification of specific narrow clusters or national markets is not peculiar to COMESA. In its review of the instant merger, the Botswana Competition and Consumer Authority identified a national market for wholesale supply and retail distribution of decorative paints in Botswana[17]. The Fair Competition Commission of Tanzania identified, on a conservative basis, and in view of its specific jurisdiction focus, a national market for the decorative coatings, noting that "*the geographic scope of the supply of decorative coatings market has been consistently considered by various competition authorities as national or at most regional*"[18].

63. In ***AKZO NOBEL/ICI***[19], AkzoNobel itself considered that "*the markets for decorative coatings (and for all possible submarkets) are national with the exception of UK and Ireland, Benelux and, Greece and Cyprus.*"[20] The EC's market investigation in this case broadly confirmed the identification of national markets for decorative coatings, in line with its previous decisions. In particular, the decision records that "*the markets are perceived as national by most competitors and customers. This is mainly due to different branding between countries; only few brands are used in several countries. Like most of their competitors the merging parties use most of their brands in only one country. For instance, Akzo uses the De Keyn brand only in Belgium. For the UK and Ireland a number of brands exist that are used in both countries, like for example the Crown brand which is used in the United Kingdom and Ireland as well as in Cyprus. In general, also language and labelling requirements point to national markets. Costs of transport seem to be less important*" [21].

64. The CID is aware that AkzoNobel similarly uses different branding between subregions on the African Continent. The Sadolin brand is marketed exclusively in the East African region, whereas Dulux is marketed in the Southern African region.

65. Having regard to the merging parties' distribution model in the decorative paints markets and the flow of exports from/to the Member States and thus the likely

---

[17] Botswana Competition Commission, Merger Decision No 10: 2023. Accessed at: https://www.competitionauthority.co.bw/sites/default/files/Merger%20Decision%20No%2010%202023%20-%20%20AkzoNobel%20N.V%20and%20Kansai%20Paint%20Co.%20Plascon%20Ltd.pdf

[18] Paragraph 7.3.2 of the Decision of the Tanzania Fair Trading Commission (MERGER APPLICATION NO. CBC.127/359/146).

[19] EC Case No COMP/M.4779 AKZO NOBEL/ICI.

[20] Case No COMP/M.4779, paragraph 17.

[21] *Ibid.*

COMESA COMPETITION COMMISSION 07 SEP 2023

degree of effective cross-border competition, the CID has identified the following clusters for the assessment of the supply of decorative coatings:

i. Eswatini and South Africa
ii. Malawi and South Africa
iii. Zambia and South Africa
iv. Burundi, Kenya, Rwanda, Tanzania and Uganda
v. Zimbabwe and South Africa.

Industrial Coatings

66. The CID observes that the relevant geographic market for industrial coatings was likely to be wider than national, given in particular the large volume of imports of such products into the Common Market from various sources. AkzoNobel, KPEA, and KPAL have overlapping activities in the manufacture and supply of five separate sub-segments in the Common Market. Specifically, AkzoNobel and KPEA supply automotive refinishes, coil coatings, marine and protective coatings, powder coatings, and wood finishes; whereas KPAL supplies automotive refinishes, marine and protective coatings, and wood finishes.

67. As the transaction does not raise significant concerns in relation to the supply automotive refinishes, marine and protective coatings, powder coatings, and wood finishes, and this outcome would not change under any alternative relevant market, the CID resolved that the markets could be left open.

68. With regards to coil coatings, the CID notes from the merging parties' submissions that AkzoNobel manufactures coil coatings in South Africa and exports these to Nigeria, and Uganda. AkzoNobel supplies coil coatings to a single large customer in Uganda, which is also supplied with even larger volumes by Japanese rival Nippon[22]. AkzoNobel also has a local tinting at the customer's premises. Nippon imports its product directly from India and does not have any on site facilities at the customer's premises. KPEA manufactures coil coatings at its plant in Kenya and exports these products to Mozambique, Uganda, and Zambia. KPEA supplies coil coatings to a single large customer in Kenya, which to the best of KPEA's knowledge, is currently also supplied by Salchi Metalcoat, an Italian coil coating supplier that exports products out of Italy).

69. From the operations of the players present in the Common Market, it appears that the coil coatings manufacturers are able to supply customers located in different territories, for instance Nippon supplies the Ugandan market from its manufacturing plant in India, whereas the Kenyan market is also served by players from Italy and India. Whilst it appears that the merging parties have some

[22] The parties submit that the customer was previously supplied by Nippons and Beckers.

COMESA COMPETITION COMMISSION
07 SEP 2023

form of local presence in the COMESA markets where they operate, this does not appear to confer any added advantage. It therefore appears that coil manufacturers are not constrained by the geographic distances from their manufacturing plants when supplying customers. In view of the foregoing, the CID considers that the relevant geographic market for coil coatings is broader than national, and at least COMESA-wide[23].

Conclusion on Relevant Markets

70. For purposes of this competition assessment, and without prejudice to the CID's approach in future cases, the relevant markets have been identified the manufacturer and supply of:

a) Premium decorative coatings (segmented into water-based and solvent-based) in the following geographic clusters:

i. Eswatini and South Africa

ii. Malawi and South Africa

iii. Zambia and South Africa

iv. Burundi, Kenya, Rwanda, Tanzania and Uganda

v. Zimbabwe and South Africa

b) The supply of each of coil coatings, powder coatings, wood finishes, protective and marine coatings, and automotive refinishes in a broader than national geographic market, which is at least COMESA-wide.

Market shares and Concentration

71. In respect of market shares and concentration, the CID noted that no significant market share accretion is expected in the relevant markets for automotive refinish coatings, protective and marine coating, and wood finishes.

72. In relation to the decorative coatings markets, in the absence of market shares for the specific submarkets identified, the assessment relied on available information for the broader decorative coatings market.

[23] The Commission observes that the European Commission has likewise previously adopted a wide geographic market for the supply of coil coatings, typically at least EEA-wide (e.g. Case M.8004 - *Akzo Nobel / Basf Industrial Coatings Business*; Case M.4853 - *PPG/SigmaKalon*; Case M.1182 – *Akzo Nobel / Courtaulds*). It was noted that whilst proximity is an important factor for customers' choice of coil coating supplier, in particular due to short lead-time requirements, the overwhelming majority of the respondents to their market investigations confirmed that they source coil coatings at EEA level; and manufacturers of coil coatings confirmed that they generally ship their coil coatings across the whole EEA, and sometimes wider to Russia and other non-EEA countries from their European plants.

COMPETITION COMMISSION 02 SEP 2020

i. *Eswatini/ South Africa cluster*

73. AkzoNobel and KPAL both supply decorative coatings into Eswatini. KPEA is not active in Eswatini. All of AkzoNobel and KPAL's decorative coating products sold in Eswatini are manufactured in the parties' South Africa manufacturing plants, and are then exported as finished products (i.e., cans of paint) to a combination of retailers, distributors, and final customers in Eswatini.

74. The parties have submitted that in addition to the importing of decorative coating products, it is common for customers (i.e., consumers and tradespeople) to travel to South Africa to purchase paint and return with these products to Eswatini – since Eswatini borders South Africa (and is within reasonable driving distance of Johannesburg and other cities). These product sales would be recorded in South Africa, and not in Eswatini, even though they are ultimately used in Eswatini. As such, the market size for decorative coatings in Eswatini is difficult to measure and may be understated, as some demand for paint in Eswatini is recorded as products sold in South Africa.

75. **Table 1** below records the merging parties' share of total decorative coating sales in Eswatini, in terms of both value (sales revenue) and volume (litres), in 2021. In addition, the parties submitted that the largest local competitors are Star Paint and Global Paints, which both have local manufacturing capabilities to supply the Eswatini market (and also to supply other African markets). According to the parties, small local manufacturer, Acrylon Paints also supplies decorative coatings in Eswatini. Over and above these, regional players (and some of the largest in South Africa) such as PPG, Duram, Medal Paint, and Promac supply (i.e., export) decorative coating products into Eswatini. The parties provided their internal best rough estimates of the share of supply of the largest competitors in decorative coatings in Eswatini, in **Table 2** below.

Table 1 – Merging Parties' Decorative Coatings Share of Supply in Eswatini, 2021[24]

[redacted]

Table 2 – Alternative Suppliers of Decorative Coatings in Eswatini, 2021

Supplier	Type of competitor	Rough estimates of share of supply
Star Paint	Local manufacturer	10%
Global Paints	Local manufacturer	5-15%
Acrylon Paints	Local manufacturer	Up to 5%

[24] Information claimed as confidential by the merging parties.

COMPETITION COMMISSION 12 SEP 2022

Medal Paint (through the manufacture of the Champion brand in South Africa)	Imported products	Up to 10%
Duram	Imported products	5%
Promac Paints	Imported products	Up to 5%
Prominent Paints (PPG)	Imported products	Up to 5%

76. The CID observes that the transaction would combine the largest and second largest manufacturers of decorative paints supplied in Eswatini. The parties have argued that the share of supply at a national level severely underestimates the level of competition faced by the merging parties and their competitors in Eswatini. The parties submitted that the relevant market for decorative coatings is a regional one that is likely to include manufacturers in neighbouring countries (in particular South Africa) that can and indeed do supply decorative coatings into Eswatini. In this context, the parties submitted the figures below as estimates of their share of supply for decorative coating products in a geographic region consisting of both South Africa and Eswatini, which they submit would be almost half the magnitude of the national Eswatini shares.

Table 3 – Merging Parties' Decorative Coatings Share of Supply in Eswatini and South Africa, 2021

Party	Value share	Volume share
AkzoNobel	16%	11%
KPAL	18%	12%
KPEA	-	-
Combined	***33%***	***23%***

77. The CID considers that the above market shares are unlikely to reflect the true market position of the merging parties in this region. In South Africa, the merging parties have also been found to be the largest and second-largest manufacturers of decorative coatings, and the transaction is expected to create a dominant firm with a considerable market share and ultimately the transaction has been prohibited[25]. It was further reported that the merging parties are close competitors in terms of price, quality, and product range. Dulux South Africa's own website notes "***Voted "Most Loved Paint Brand in South Africa" for three consecutive years in the TGI ICON Brands Survey...***"[26]. It is, therefore, odd that an extension of the geographic market from Eswatini, where the merging parties are in a strong position, to include South Africa, where the parties are in an equally strong if not dominant position, could result in such a significant reduction in the parties' estimated market shares. Consequently, the market

[25] Competition Commission of South Africa, press statement dated 9 November 2022. https://www.compcom.co.za/wp-content/uploads/2022/11/Commission-prohibits-merger-between-two-leading-paint-manufacturers-09-November-2022.pdf Accessed on 19 January 2023.
[26] https://www.duluxtrade.co.za/about-us. Accessed on 28 March 2023.

COMPETITION COMMISSION
02 SEP 2021

shares of the cluster encompassing Eswatini and South Africa must indeed be higher than those submitted by the merging parties.

78. Having regard to the strength of the merging parties' brands in each of South Africa and Eswatini, the CID is satisfied that the transaction is likely to result in a significant market share accretion in the market including Eswatini and South Africa.

ii. *Malawi/ South Africa cluster*

79. The parties submitted that they do not have overlapping activities in Malawi; and that AkzoNobel has not supplied any decorative coating products into Malawi for the last 12 months. If there are Dulux products currently being sold in Malawi, AkzoNobel does not have any control over these products being sold in or into Malawi (or any other territory) and is not aware of any other exports of AkzoNobel products.

80. The CID observes that AkzoNobel's Dulux paints is present in the Malawian market through imports from South Africa by traders. This notwithstanding, the market investigations confirm that AkzoNobel's market shares in Malawi would be relatively small, and therefore the transaction is not likely to result in a significant market share accretion in Malawi.

iii. *Zambia/ South Africa cluster*

81. In Zambia, AkzoNobel, KPAL and KPEA are all active in decorative coatings. Both AkzoNobel and KPAL have local manufacturing facilities in Zambia. AkzoNobel's manufacturing plant in Zambia does not manufacture the full range of AkzoNobel decorative coating products. As such, AkzoNobel imports raw materials and some finished products (i.e., cans of paints) into Zambia from its South African manufacturing plant. The parties submitted that AkzoNobel's local manufacturing facility is very small and underutilised. It only produces around 40% of the decorative coating products that AkzoNobel sells in Zambia. The remaining 60% are manufactured in and exported from South Africa as finished products (i.e., cans of paint).

82. KPAL manufactures decorative coating products at its local plant and supplies these products directly to retailers and final customers (including contractors) in Zambia. KPEA does not have local manufacturing facilities in Zambia but does have some local activity through minimal sales volumes of decorative coatings that are exported from Kenya.

83. In terms of sales volumes in 2021, AkzoNobel, KPAL and KPEA sold [redacted] respectively. The parties further

COMPETITION COMMISSION 02 SEP 2022

submitted their share of total decorative coatings sales value and volume in Zambia as per ***Table 4*** below[27].

Table 4 – Merging Parties' Share of Supply for Decorative Coatings in Zambia, 2021

Party	*Share of Supply Value (USD)*	*Share of Supply Volume (Litres)*
AkzoNobel	7%	3%
KPAL	21%	10%
KPEA	<1%	<1%
Combined	~28%	~14%

84. The parties submit that the largest local competitors in decorative paints are Decotex Paints, Insignia Paint, Colourite Chemicals, and Colosul Paints. In addition, there are a few smaller local manufacturers such as Coral Paints and Galaxy Paints, as well as regional players such as PPG, Nash Paint, and Splash Paints that supply decorative coating products in and/or into Zambia.

85. The parties provided their internal best rough estimates of the share of supply of the largest competitors in decorative coatings in Zambia, in ***Table 5*** below[28].

Table 5 – Alternative Suppliers of Decorative Coatings in Zambia, 2021

Supplier	**Rough estimates of share of supply**
Decotex	12 - 26%
Colourite	Around 8%
Colosul	7 - 13%
Insignia	6- 10%

86. The CID observes that the parties' submissions differ considerably from customer perceptions. According to market share information gathered from the market, Plascon is reported as having a market share of 25-40% and Dulux 15-30% of the decorative coatings market, which would imply a significant market share accretion post-merger. Further, in a 2021 interview, Kansai Plascon's country manager for Zambia stated that "*in terms of total market share [Kansai Plascon Zambia] commands 35-37 percent share, holding the number one position in most sectors.*"[29] The parties have disputed the accuracy of the market

[27] The parties submitted that the figures have been estimated largely with reference to independent third-party market sizes for decorative coatings in Zambia, provided by Orr & Boss, combined with the merging parties' internal sales value and volume data for Zambia.

[28] These competitor shares are based on various sources of market information, including the parties' view of the market and research from third-party sources. Therefore, competitor shares of supply are presented as a range of all available estimates, to ensure that all relevant information is being provided on a conservative basis. The parties submit that these share of supply estimates serve as only an indication of the level of competition in the decorative coatings market and not final shares of supply for competitors.

[29] 'Kansai Plascon: Putting People First in Africa', Published on 24 May 2021 in Africa Outlook Magazine: https://www.africaoutlookmag.com/company-profiles/1344-kansai-plascon Accessed 18 January 2023.

COMPETITION COURT 01 SEP 1994 NAIROBI

share quoted in the magazine article, noting that it relates to a broader market including industrial coatings.

87. The merging parties submit that they have an estimated combined market share of 13% by volume, and specifically AkzoNobel's market share is 3%. The parties further submit that other competitors have higher market shares such as Decotex with 12-26%; and Colosul with 7-13%. The CID, however, observes that from an internal document[30] produced by the acquiring group for purposes of analysing the impact of the transaction, they anticipate that post-merger, AkzoNobel would move from 4th to 1st position (as seen in Figure 1 below), which appears to conflict with the parties' purported combined market share of 13% post-merger.

Figure 1 – Anticipated Change in AkzoNobel's Market Position pre- and post-merger

[redacted]

88. The CID observes from the market investigations in Zambia, that Plascon and Dulux are considered as superior paint brands to the rest of the competitors. One customer stated that in the event of a price increase *"it would continue to purchase from Plascon and Dulux as it has done over the years"* and highlighted that continuation of the 2 individual brand names was of prime importance. Another customer submitted that in *"terms of use, quality and other characteristics between the products produced and supplied by Dulux Zambia and Kansai Plascon Zambia Limited and the other producers and suppliers on*

[30] [redacted] Confidential document.

01 SEP 2023

the market, Dulux & Plascon hold an upper hand in terms of their vast Catalogue of paints. Their High-End paints are of superior quality and carry a massive 5,7,8,10 & 12 year Guarantee. Local Suppliers are yet to crack the code in certain areas in relation to this particular point". The customer equally allocates significantly higher market shares to the merging parties as follows: Plascon 40%, Dulux 30% and the rest would be shared by the local manufacturers and stated that they do not have concerns as long as quality is not compromised.

89. Notwithstanding the various positions on market shares, the CID considers that there is significant evidence from the market supporting the finding of a distinct market for premium decorative coatings where AkzoNobel and Kansai Plascon do not appear to be exposed to significant competitive constraints from a wide range of players.

iv. *Burundi/ Kenya/ Rwanda/ Tanzania / Uganda cluster*

90. The parties submit that they have no overlapping activities in the supply or manufacture of decorative coatings in the East Africa cluster (i.e., Kenya, Burundi, Rwanda and Uganda).

91. In Kenya, KPEA supplies decorative coatings and it has two local manufacturing facilities while some of its decorative coating products are manufactured in Tanzania and Uganda before being exported to Kenya. KPAL is not active in Kenya. The CID observes that AkzoNobel has a supply arrangement with [redacted] in Kenya, who manufactures and supplies decorative paints. From the information available on the manufacturer's website[31], it does not supply any AkzoNobel brands among its decorative coatings range in Kenya.

92. AkzoNobel and KPAL do not have sales or generate revenues in neither Rwanda nor Burundi, while KPEA is active in the supply of decorative coatings in both countries through manufacturing decorative coatings in its Tanzanian and Ugandan plant, and exporting these to Rwanda and Burundi, so it generates sales' revenues from its supply to these countries.

93. In Tanzania, AkzoNobel has a licensing agreement with [redacted] is licensed to manufacture and sell a selection of AkzoNobel's decorative coating products. The parties submitted that to date, [redacted] has not manufactured or sold any AkzoNobel products. Since [redacted] has not been active in the manufacture and supply of AkzoNobel's decorative coating products, AkzoNobel has not supplied any raw materials, or provided any technical input/advice to

[31] [redacted] Accessed on 18 January 2023.

COMPETITION COMMISSION 27 SEP 2023

[redacted]. Nonetheless, it is noted that AkzoNobel's Sadolin is described as a household paint brand[32] in Tanzania.

94. In Uganda, the parties submitted that AkzoNobel has no presence in decorative coatings, and [redacted]

95. The CID notes that through [redacted] AkzoNobel is actively present and competes in the Ugandan market through its Sadolin brand. [redacted]

i. [redacted]

ii. [redacted]

iii. [redacted]

96. The target operates through Plascon Uganda, who describes itself as the largest paint manufacturing company in Uganda.[36] In 2019, the company reported its market share in the broad paints market at 60%, as a result of a strong dealer network, trusted products and trend setting colours[37]. This is further reiterated by the company itself in a 2020 press release: "*Kansai Plascon Uganda has successfully built on local partnerships and expertise to become the number one paint company in Uganda with 60% market share, supplying both decorative and*

[32] https://www.scribd.com/document/359659469/AkzoNobel-Media-Release-Tanzania-final-2-doc;
[33] Information claimed as confidential by the merging parties.
[34] Paragraph 11.2.2 of the parties' response dated 20 June 2023.
[35] Confidential information. Paragraph 12.9 of the parties' submissions dated 20 June 2023.
[36] https://www.facebook.com/plasconuganda/
[37] https://www.independent.co.ug/we-are-ready-to-serve-the-growing-paint-market/#:~:text=With%20a%20strong%20dealer%20network,paint%20brand%20in%20Southern%20Africa. Accessed 18 January 2023.

COMPETITION COMMISSION SA
12 SEP 2023

manufacturing segments."[38] Further, it appears that there was strong competition between AkzoNobel and Kansai Plascon[39], and thus the transaction would result in the elimination of an effective competitive constraint on the market leader. Kansai Plascon is referred to as having the largest market share in Uganda and as a leader in the East African region[40]. It has further been reported that the proposed transaction would end "*end years of trade wars pitting the two rivals for the East African market*"[41]. These statements suggest a strong degree of competition between the merging parties, which would be lost as a result of the transaction.

97. The information at hand clearly points to the fact that the parties are considered strong players in the East African market with established recognisable brands. The CID therefore considers that the transaction is more likely than not to result in a significant change in market structure in the East African region.

v. *Zimbabwe/ South Africa cluster*

98. The parties submitted that AkzoNobel is not active in decorative coatings in Zimbabwe, while KPAL is active in the manufacture and supply of decorative coatings in the country. ***Table 6*** and ***Table 7*** below provide the estimated market shares of the target entities, and their main competitors in Zimbabwe, respectively.

Table 6 – Merging Parties' Decorative Coatings Share of Supply in Zimbabwe, 2021

Party	Volume	Value
AkzoNobel	-	-
KPAL	16%	27%
Combined	***16%***	***27%***

Table 7 – Competitors' Decorative Coatings Share of Supply in Zimbabwe, 2021

Supplier	Rough estimates of share of supply
Dulux Zimbabwe	***45-50%***
Splash Paints	5-8%
Nash Paints	3-10%
Prominent Paints (imported products)	2-10%

[38] Kansai Paint press release dated 15 June 2020, 'Kansai Plascon Uganda Donates Anti Mosquito Paint and Masks to Uganda Schools Ahead of Reopening Post COVID-19 Lockdown'. https://www.kansai.com/sites/default/files/new/press21/pdf/20200615.pdf Accessed 18 January 2023.

[39] https://www.monitor.co.ug/uganda/business/prosper/a-battle-of-paints-hits-uganda-1718760 Accessed 18 January 2023.

[40] https://www.businessdailyafrica.com/bd/corporate/companies/dutch-paint-giant-akzonobel-rival-kansai-s-africa-business-3840182

[41] https://www.businessdailyafrica.com/bd/corporate/companies/dutch-paint-giant-akzonobel-rival-kansai-s-africa-business-3840182 Accessed on 19 January 2023.

COMPETITION COMMISSION 02 SEP 2023

Defender Paint	1-10%
Ledger Paints	1-3%
Parker/Bravo Paints	0.5%

99. The CID disagrees with the parties' position that AkzoNobel has no market share in the decorative coatings market in Zimbabwe. The market shares attributed to Dulux Zimbabwe are reflective of the strength of the Dulux brand, which is a core brand of AkzoNobel. Whilst Dulux Zimbabwe Pvt Limited may not fall under the AkzoNobel Group in terms of shareholding structure, it is evident that to the average consumer, AkzoNobel and the Dulux brand are synonymous. Indeed, Dulux Zimbabwe's own website recognises that "***Dulux is the flagship brand from the world's largest paint company, AkzoNobel***"[42]. Its Facebook page similarly describes Dulux as "A brand from Akzo Nobel"[43]. It is highly unlikely that post-merger, the merging parties would compete aggressively with one of its licensees, which only manufactures the Dulux brand, to such an extent that the latter would be considered a separate competitive threat on the market.

100. In Zimbabwe, Dulux and Plascon are the two largest brands. The transaction is thus likely to result in significant market share accretion at national level in relation to the merging parties' brands, with a combined market share of more than 60%, which is at least 6 times higher than their closest competitor. According to figures gathered by the national competition authority, the merging parties' combined market share would be even higher, at an estimated 85%. The transaction will therefore result in a significant change in the market structure for decorative coatings in Zimbabwe, and thus in the region comprising of Zimbabwe and South Africa.

Import Competition

101. An assessment of the levels of import competition provides a useful indication of the levels of competitive restraint the incumbents face from imports. If imports have a significant and sustainable share of the market, then the threat of imports prevents local firms from pricing their products above a competitive level[44].

102. According to the parties' submission, import competition amongst African countries is significantly strong.

103. Paint is a heavy product which may be costly to transport as a finished good, therefore many manufacturers choose to set up production facilities closer to their markets. The CID acknowledges that cross-border trade in paints is a

[42] https://www.dulux.co.zw/about-us/ Accessed on 17 January 2023.
[43] https://www.facebook.com/Letscolourzimbabwe/ Accessed on 17 January 2023.
[44] *ICN Recommended Practices for Merger Analysis and Guiding Principles and Recommended Practices for Merger Notification and Review Procedures*: ICN Merger Working Group and the Notification & Procedures Subgroup (2002)

COMPETITION COMMISSION
07 SEP 2023

possibility both within and outside the Common Market, although the threat of import competition may be less significant the higher the geographic distance and cultural differences between the Member States. This is supported by evidence of paint manufacturers only exporting product into neighbouring countries, rather than all Member States and buttressed by the merging parties' own export strategy within the Common Market.

Consideration of Dominance/ Unilateral Effects

104. Unilateral effects may arise where, as a result of a merger, the merged entity finds it profitable to raise prices (or reduce output or quality) because of the loss of competition between the merged entities. Pre-merger, any increase in the price of one of the merging parties' products could have led to a diversion of its sales to the other party (depending on the extent of competition between them). However, post-merger the competitive constraints that each firm imposed on the other is eliminated which may provide incentives for the merged entity to increase prices.

105. The parties have submitted that, irrespective of the precise market definition considered, no competition concerns are anticipated as a result of the proposed transaction because in the decorative coatings markets considered, the increments are small, and the parties' combined shares are low.

106. The CID considers that the transaction has the potential to result in significant market share accretion across several geographic regions including Eswatini and Zimbabwe, and the East African region.

107. In Zambia, it is noted that there is a divergence of views in relation to the market strength of the merging parties, and therefore the potential impact of the transaction. The CID observes that market participants interviewed have a much different perception of the market strength of the merging parties' brands than the parties themselves. The CID would argue that the quality perceived and associated by the customers reflects the true position of the brands.

108. The CID observes that Kansai Plascon's website clearly that "*the key strategic intent of Kansai Plascon is to consolidate its position as the No. 1 coatings company in Africa. To achieve this goal, it is imperative to have a significant* presence *in the Southern, Eastern and Western Africa markets*"[45].

109. Internal documents from the acquiring group[46] analysing the potential of the transaction acknowledges that [redacted]

[45] https://plascon.africa/about-us/

[46] [redacted] Confidential document.

COMPETITION 02 SEP 2020

[redacted] Further, the transaction is anticipated to consolidate the acquirer's already strong position in numerous Member States, as seen in Figure 1 above.

110. On the basis of the information available, the CID is satisfied that the transaction is capable of resulting in the creation and/or strengthening of market power in the broad market for decorative coatings in relevant geographic clusters identified, which will increase the merging parties' ability to engage in unilateral conduct post-merger without significant competitive constraints from remaining players on the market. The merged entity will benefit from the combination of two of the strongest paint brands in the Common Market, in addition to the combination of significant balance sheets. As a result of the popularity of their brands and perceived quality level, there are no effective substitutes to whom customers and/or retailers could reasonably turn to if the merged entity were to engage in exploitative or abusive conduct. Pre-merger, there is evidence that the two brands were each other's closest substitutes and the parties' behaviour and strategy on the market would have been constrained by each other. This important competitive pressure will be lost as a result of the merger. This is also supported by the views of stakeholders that it is of prime importance that the two brands continue to be offered on the market and that quality is not compromised as a result of the result.

111. In the market for coil coating, ***Table 8*** below shows the 2021 volume (litres) and value (USD) market shares of AkzoNobel, KPEA and KPAL for the supply of coil coatings in the Common Market, as well as including other neighbouring countries[47]. Both AkzoNobel and KPEA are relatively significant players in the coils market. The transaction would result in a market share accretion of at least 10% by value, and around 6-13% by volume at COMESA level, as well as the region including neighbouring countries.

Table 8 - Share of supply for coil coatings, 2021

Party	COMESA		COMESA and other neighbouring countries	
	Value	Volume	Value	Volume
AkzoNobel	10%	6%	17%	13%

[47] Source: Orr & Boss market size data, Parties' revenues. The parties have submitted that: (i) these shares likely overestimate the parties' combined share as only the COMESA member states for which there was (partial) data available have been included; (ii) Orr & Boss provided partial data for Comoros, DRC, Djibouti, Eritrea, Libya, Madagascar, Rwanda, Seychelles, and Sudan; and complete data for Burundi, Egypt, Ethiopia, Kenya, Malawi, Mauritius, Eswatini, Uganda, Zambia, and Zimbabwe; (iii) Other non-COMESA countries included are Botswana, Mozambique, Namibia, South Africa, and Tanzania.

KPAL	--	--	--	--
KPEA	21%	19%	12%	12%
Combined	**31%**	**25%**	**29%**	**25%**

112. The parties submitted that top competitors in Kenya, Uganda, and Zambia include are Beckers (Sweden) and Nippon Paint (India). In addition, other global suppliers (and potential competitors) in coil coatings include Jotun (Norway), Sherwin-Williams (USA), Alcoa Corporation (USA), and PPG (USA).

113. The CID observes the presence of global players serving customers in the Common Market from various facilities. In addition, there are other local players within the Common Market who manufacture and supply a full range of coil coatings products, including Kenyan coating manufacturers Galaxy and Basco who supply customers in Kenya.

114. The CID considers that, on the basis of information available to it, the transaction is unlikely to result in a strengthening of market power by the merging parties in the coil coatings market in Africa to an extent that could allow the parties to operate independently on the market, as there are other strong rivals to whom customers, often big players themselves, could turn to. However, in view of the characteristics of the market, the CID has considered whether the merger could lead to concerns of coordinated effects, in particular having regard to the merging parties' submissions that at national level, there are typically two or three suppliers supplying a small set of customers.

115. The CID notes that within the national markets, AkzoNobel and KPAL/KPEA have different market positions, for instance in Kenya and Zambia, the target entities are significant players, whereas in Uganda, AkzoNobel is a significant player. Pre-merger, the merging parties each competed with other players such as Beckers, Nippon, and Salchi, across a number of markets. The CID was concerned whether as a result of the merger, there could be an incentive for the merged entity to collude with the remaining rivals and engage in customer allocation by territory.

116. It is noted, however, that there is likely to be heterogeneity across the different customers who serve different industry needs and thus require different specifications and volumes, which could make agreements on terms and conditions of contracts more complex. Further, it does not appear that the market is transparent, with limited visibility of competing prices. It is also noted that the contracts tend to be of a long-term nature. For example, AkzoNobel has been supplying its customer in Uganda with coil coatings since 2015 and has supplied its other smaller customers for almost ten (10) years. It takes many months to years of testing in order to approve a product line for a customer and assure the

COMPETITION COMMISSION
02 SEP 2019

customer that it will have continuity of supply. The long term relationship between the customer and the supplier significantly reduces the effectiveness of the threat of retaliation in case of deviation from any collusive strategy.

117. The relevant set of actual suppliers is typically different for different customers. It is not often the case that the same 2 or 3 suppliers share the supply to a large number of different customers. In all instances in the Member States, a different combination of coil coating suppliers supply each of the large coil customers. In Kenya, the target's customer is currently supplied by KPEA from its Kenyan production facility and Salchi, from its Italian production facility. The customer was historically also supplied by either Nippon (from India) or Beckers (from Sweden or South Africa), before it switched to Salchi. In Uganda, AkzoNobel's sole customer is currently supplied from its South African production facility and Nippon (from its Indian production facility). In Zambia, the target's customer is currently supplied from KPEA's Kenyan production facilities. These different combinations make the sustainability of a successful collusive strategy less likely.

118. Finally, the coil coatings customers are large, and likely sophisticated purchasers that are more likely to take advantage of the limited customer base to get the best possible rates from the suppliers by playing the suppliers off against one another.

119. In view of the foregoing, the CID concludes that in terms of the coil coating market, the transaction is not likely to lead to coordinated effects, facilitate or create incentives for the remaining players serving the Common Market to engage in collusive strategies.

Consideration of Effect on Trade between Member States

120. Having regard to the above assessment, and on the basis of data available to the Commission, the transaction raises serious doubts in relation to the potential negative effects on trade between Member States in relation to the decorative coatings segment. As observed, competition in the relevant product markets takes place across borders, and the transaction will lead to a significant increase in the market power of the merging parties. There are serious risks that the transaction could seriously affect the effectiveness of competition in the Common Market and undermine establishment of competitors within the Common Market.

Efficiency Considerations

121. Article 26(1) of the Regulations provides that whenever called to consider a merger, the Commission shall initially determine whether the merger is likely to

COMPETITION COMMISSION

substantially prevent or lessen competition. If it appears that the merger is likely to substantially prevent or lessen competition, the Commission shall then determine whether:

(a) the merger is likely to result in any technological efficiency or other pro-competitive gain which will be greater than and offset the effects of any prevention or lessening of competition that may result or is likely to result from the merger and would not be obtained if the merger is prevented;

(b) the merger can be justified on substantial public interest grounds.

122. The CID noted the following submissions made by the parties in relation to the rationale of the transaction:

i. Lead to various synergies with the objective to better serve the parties' collective customer base as a result of the complementarity of the parties' manufacturing facilities, distribution networks and cross-selling opportunities. The parties also expect to achieve synergies by way of procurement savings for raw materials and a combination of their operational expertise.

ii. The Proposed Transaction will lead to additional benefits for consumers as the parties' combined technology and R&D capabilities – particularly in the parties' research and production locations – will lead to accelerated sustainable innovation, bringing new products to the market. Notably, AkzoNobel is a leading player in health, safety, and environment standards in the coating industry and, through the Proposed Transaction, such standards will be replicated across the parties' facilities, through investments in the merged entity's sustainability agenda. This will result in an upliftment of manufacturing plants that is likely to increase operational efficiencies significantly at the parties' sites in COMESA Member States.

iii. Their combined business will allow them to introduce better quality, more sustainable products (e.g., water-based paint products) to many COMESA member states, and also remove certain raw materials from production processes that do not comply with AkzoNobel's global products stewardship standards.

123. The CID considers that on the aspect of research and development capabilities, the acquirer is already among the largest paint companies in the world and can therefore invest in such R&D projects on its own irrespective of the merger. While the addition of KPAL and KPEA may improve their R&D capability, it is unlikely that the combination and the resulting effects would create an impact so significant on the market to offset the anti-competitive effects identified above. It

is highly unlikely that the parties would fail to meet the same objective of research and development absent the merger. The merger is not indispensable to the achievement of this objective.

124. Further, the complementarity of the manufacturing facilities and distribution networks could have negative consequences on the market, as discussed above, in view of the potential for closure of manufacturing plants in certain Member States which could leave customers within that territory unserved. It is noted that when AkzoNobel entered the Malawi market, this resulted in a closure of the local plants, with the intention that the Malawi market would be served from the Zambian plant after consolidation. Instead, the result was the removal of Akzo from the market as confirmed by the parties themselves, and customers now source the Dulux brands from importers, which may not offer a similar level of service as what was offered by the manufacturer.

125. Further, in view of the current strength of the acquirer and its global standards, it can by itself engage in the promotion and manufacturing of sustainable products, even if the merger were to be prevented. Likewise, should the Kansai Group value the global standards that Akzo Nobel adheres to in its production and procurement processes, nothing prevents the latter from implementing such standards internally within the KPAL and KPEA entities.

126. In view of the foregoing, the CID is of the considered position that the efficiencies expected from the transaction may be obtained outside the merger transaction and further, would not be sufficient to offset the public interests and competition concerns identified above.

Remedies

127. Article 26(7) of the Regulations provide that where the Commission is satisfied that a proposed merger will be contrary to the public interest, it can make orders to remedy the competitive harm identified. In determining the appropriate actions, regard must be had to the effectiveness, necessity and proportionality of the remedies in restoring competition to the level that would have likely prevailed pre-merger. In other words, the remedies seek to restore or maintain competition at the level existing pre-merger, while permitting the realisation of relevant merger benefits.

128. The foregoing assessment has identified a risk of significant market share accretion in relation to the broad decorative coatings markets in relevant geographic clusters involving each of Eswatini, Zambia, Zimbabwe, and Member States in the East African region (namely Rwanda, Uganda, Burundi, Kenya). These concerns are heightened by the fact that the parties were in most

instances each other's closest competitors, and the transaction would thus eliminate an important competitive restraint on the acquirer. Further, the CID is concerned that the transaction may result in the closure of the manufacturing plant in Malawi, which could have an impact on employment.

Continuity of Production in Malawi

129. Article 1 of the Regulations define competition as "*the striving or potential striving of two or more persons or organisations engaged in production, distribution, supply, purchase or consumption of goods and services in a given market against one another which results in greater efficient, high economic growth, increasing employment opportunities, lower prices, and improved choice for consumers*". The concept of competition within the meaning of the Regulations encompasses the consideration of employment opportunities and by extension, the consideration of job losses which may arise as a result of transactions under the purview of the Regulations.

130. In Malawi, stakeholders submitted concerns that the merger would result in the closing down of manufacturing of paints by Kansai Plascon Malawi Ltd as it also happened with Dulux Paints Malawi Ltd when it was acquired by AkzoNobel. Such a closure will inevitably result in job losses and will affect competition and consumer choice in the market through the exit of a key player who is perceived to offer higher quality products.

131. It is acknowledged that the economic situation in Malawi has been difficult in recent years in view of the shortage of foreign currency, as has been highlighted by market participants. In order to strike a balance between protecting the commercial freedom of parties in their operations on the market, and protecting employment opportunities in the Common Market, in its Statement of Concerns, the Commission recommended that an obligation be imposed on the merging parties to continue production at the manufacturing plant in Malawi for a period of three years post-merger; and if no such commitment can be provided by the parties, that the merger be prohibited in Malawi.

132. On 27 August 2023, during their oral submissions to the CID, the parties referred to the Commission's recommendation for approval of the transaction in Malawi subject to continued production at the manufacturing plant in Malawi for 3 years, which the parties confirmed they agreed with.

Market for decorative coatings in Eswatini

133. [redacted]

[redacted]

134. It is recalled that the merging parties do not have manufacturing facilities in Eswatini. All of AkzoNobel's and KPAL's decorative coating products sold in Eswatini are manufactured in their respective South Africa manufacturing plants, and are then exported as finished products (i.e., cans of paint) to a combination of retailers, distributors, and final customers in Eswatini. It is further recalled that the relevant geographic market identified a cluster comprising Eswatini and South Africa, having regard to the extent of trade flows between these two countries. It would therefore be ideal for a common remedy to be adopted in the two countries to address the competition concerns identified in this cluster. However, it cannot suffice for the merging parties to commit to extend any remedies agreed with the South African competition authorities to the Eswatini markets without the Commission having been able to review and assess these remedies.

135. [redacted]

136. The Regulations provide that whenever called upon to consider a merger, the Commission shall determine whether or not the merger is likely to substantially prevent or lessen competition, and the following matters must be taken into account:

i. the actual and potential level of import competition in the market;

ii. the ease of entry into the market, including tariff and regulatory barriers;

iii. the level, trends of concentration and history of collusion in the market; the degree of countervailing power in the market;

iv. the likelihood that the acquisition would result in the merged parties having market power;

[48] That is, the CPI/ inflation rate in South Africa (where products are manufactured and costs, which are subject to inflation, are incurred).

v. the dynamic characteristics of the market including growth, innovation and product differentiation;

vi. the nature and extent of vertical integration in the market;

vii. whether the business or part of the business of a party to the merger or proposed merger has failed or likely to fail; and

viii. whether the merger will result in the removal of efficient competition.

137. The merger will result in the removal of the acquirer's closest competitor in terms of price and quality, and further having regard to the location and size of the Eswatini market, there is no effective competition from imports other than from South Africa. Entry barriers exist in the form of brand loyalty and reputation and combined with the high market shares of the merging parties, it is highly likely that the merger will result in the merged entity having market power. Within the premium decorative coatings market, AkzoNobel and Kansai Plascon face limited competition from other players. Thus, while other local manufacturers such as Star Paints may be a large player in terms of manufacturing capacity in the broad decorative paints market, the interviews with customers in Eswatini did not identify Star Paints as an effective competitor to the merging parties. Therefore, despite the presence of alternative suppliers in the broader market for decorative coatings, in the event the merging parties were to engage in anti-competitive conduct, there would be no effective substitute in terms of price and quality that consumers could turn to.

138. [redacted]

139. The CID considers that the remedy proposed will not offset the loss in competitive pressures which was previously exercised by the merging parties' products on each other pre-merger, to the detriment of the interests of customers in Eswatini.

Market for Decorative Coatings in Zimbabwe

140. [redacted]

141.

142. the parties submitted that:

vi. Therefore, the remedy proposed by the merging parties is appropriate.

143. The CID observes that in the Zimbabwean market would bring competition back to the level prevailing pre-

merger. [redacted] in limited geographies is likely to affect the viability of the [redacted] Since the brand name will be retained by the merging parties in other territories, this means that there would be no possibilities for the buyer to expand the brand beyond that area, and [redacted] may be too small to warrant a significant incentive of the buyer to invest into the brand.

144. The parties submitted that there are limited imports into and exports out of Zimbabwe, and that as a result of Zimbabwe's economic situation, it is difficult to move paints in either direction. The parties therefore submit that the Zimbabwean business constitute a viable business. The CID notes that this contradicts the parties' arguments that the relevant geographic market for decorative coatings is at least COMESA-wide (and should include other neighbouring African countries). To the contrary, the parties' submissions strengthen the position that distinct conditions of competition exist across different Member States which support the finding of a much narrower geographic market.

145. In addition, the territorial restriction would also imply that the parties and/or their distributors located in other territories would not be able to supply [redacted] in the Zimbabwean market. The Commission is thus concerned that the above could result in territorial restrictions which are not compatible with the Regulations and the COMESA Treaty objective of market integration.

146. Whilst Zimbabwe has been identified as a distinct market separate from other Member States, any remedy aimed to address concerns identified in the Zimbabwean market should not, however, restrict or negatively influence the pattern of trade between Member States. The transaction could impact on effect on trade between Member States if as a result of the transaction, it becomes difficult for other players to establish themselves in Zimbabwe. In the current case, [redacted] will partition the Common Market as the trademark protection will require restrictions on the buyer operating within Zimbabwe, and on all actual and potential distributors located outside Zimbabwe. [redacted] would make it more difficult for the entity in Zimbabwe to establish itself in other parts of the Common Market, as well as for players outside Zimbabwe to establish themselves within Zimbabwe.

147. The parties' argument that trade will not be reduced as the merging parties will compete across borders is at odds with the trademark protections that will apply [redacted] This will inevitably result in market allocation/partitioning, as the distributor in Zimbabwe will be shielded from

COMPETITION TRIBUNAL

competition from outside distributors, and the distributors outside Zimbabwe will equally be shielded from any potential competition from the distributor in Zimbabwe. This will effectively limit competition and thus trade across borders. Likewise, the parties' argument that [redacted]

148. The CID also referred to the ex-post evaluation of the design and implementation of remedies accepted in merger cases by the European Commission[49], which recognised that among the issues that received insufficient consideration in defining the scope of divestiture remedies and led to serious problems during the remedy's implementation was the "***insufficient consideration of geographic limitations***"[50]. Geographic limitations refer to the damaging effect of a geographical split in the remedy's scope, e.g., where a business is divested only in one national market but suffers from a brand-split where a neighbouring and closely related market is not included.

149. Having regard to the markets at hand, the CID considers that [redacted] proposed by the parties in Zimbabwe has the potential of creating serious risks of market partitioning. Whilst the manner in which the parties were operating pre-merger in Zimbabwe may not have encouraged significant cross-border trade, the CID cannot support a remedy which will eliminate all possibility of such cross-border trade for the buyer, for this is inimical to the single market imperative which the Regulations seek to achieve. The CID, therefore, holds that the [redacted] put forward by the parties does not amount to an appropriate remedy which is compatible with the Regulations.

<u>Market for Decorative Coatings in Zambia</u>

150. Whilst there is a dispute on the market shares of the merging parties in Zambia, it is noted that the market investigations clearly illustrate the preference for the merging parties' brands, and the limited competition pressures which are exerted by other competitors' brands. [redacted] Consumers in Zambia are also settled on the need to have the two brands to continue selling on the market and that quality should not be compromised post-merger. Therefore, results from the market investigations on the strength of the parties on the market corroborate the findings of the merging parties being in a stronger position relative to their competitors. Further, in view of the absence of appropriate remedies put forward by the merging parties in Eswatini and Zimbabwe, and

[49] DG COMP, European Commission, 'Merger Remedies Study' (Public version), October 2005.
[50] *Ibid*, page 23 – Section II.A, paragraph 6.

therefore the prohibition of the merger in these Member States, if the merger is approved in Zambia, it would provide a platform for the parties to coordinate their behaviour in relation to the other Member States. The CID therefore note that a similar prohibition must be applied in Zambia to ensure that the two brands continue to compete effectively and independently in Eswatini and Zimbabwe, thereby preserving the integrity of competition in the relevant markets.

Market for Decorative Coatings in Uganda

151. The parties committed to grant a perpetual royalty-free license for the Sadolin brand to a third party in Uganda, and that the territory could be expanded to relevant adjacent African countries, should the Commission consider this beneficial for competition in the Common Market.

152. The CID considers that the disposal of the licence for the Sadolin brand would need to lead to an outcome that restores competition to the level that would have prevailed absent the merger, thereby comprehensively remedying the substantial lessening of competition identified in relation to decorative coatings in Uganda and the East African cluster. In this regard, it would be important that the geographic scope of the licence covers the Member States of the East African region, to ensure that the buyer can effectively continue to manufacture the brand in Uganda, whilst at the same time not be constrained in the growth of the brand, which is already a known name in the other East African countries, beyond Uganda. This would further ensure that the remedy will not bring about undesirable restrictions on trade between Member States.

153. As regards the licence, the CID notes that the licensee should obtain all existing inventory and get full access to the formula used for the manufacture of Sadolin decorative coatings. The terms of the licence should also allow the licensee autonomy in relation to sourcing of raw materials, key aspects of commercial policy, in particular on pricing and promotional behaviour. In addition, the purchaser should not be allowed to sub license to another other party without the authorisation of the Commission.

154. In view of the foregoing, a divestiture of the Sadolin brand in Kenya, Burundi, Rwanda and Uganda could address the concerns identified. Therefore, the CID considers that the proposed divestiture of the Sadolin brand is appropriate, subject to the parties notifying the Commission of the proposed divestiture in order for the Commission to assess the suitability of the preferred buyer and the terms and conditions of the Trademark Agreement to ensure the viability of the divestiture strategy of maintaining competition on the market.

COMPETITION COMMISSION
01 SEP 2017

Consideration of Third-Party Views

155. Submissions were received from the national competition authorities of Egypt, Eswatini, Kenya, Malawi, Mauritius, Seychelles, Zambia, and Zimbabwe, as well as from several competitors and customers in the paints market. These submissions were considered and factored into the analysis of the merger and in designing appropriate remedies.

Determination

156. Given the foregoing reasons, the CID determined that the merger is not likely to substantially prevent or lessen competition in the Common Market in relation to the industrial coatings markets. The CID, therefore, approves the merger in relation to the industrial coatings markets within the Common Market.

157. With regard to the decorative coatings markets, the CID determined that the merger is likely to substantially prevent or lessen competition in the Common Market. The CID, therefore, issues the following orders in relation to the decorative coatings markets:

   i. In Malawi, the merger is approved subject to the parties' compliance with their commitment to continue production at the manufacturing plant in Malawi for a period of three years from the date of the merger approval.

   ii. In the geographic cluster affecting Burundi, Kenya, Rwanda and Uganda, the merger is approved subject to the parties divesting of the Sadolin brand to a buyer who must be capable of ensuring continued sales of the brand in Uganda for the foreseeable future. Within a period of **six months** from the date of the merger approval, the parties **shall** notify the Commission of the preferred buyer and licence agreement for the Commission's review and approval before the implementation of the divestiture. Until the approval by the Commission, the parties commit to ring-fence their respective businesses in the Common Market. The buyer of the divested brand must not have any structural relationship with the merging parties. Divestment shall include all required licenses to enable the buyer to independently access raw materials, manufacture, distribute, and market the Sadolin brand.

   iii. Failing the notification by the parties within the **six-months** period, the merger **shall be** deemed prohibited in respect of the decorative coatings market in the East African cluster;

   iv. The assessment of the suitability of the buyer and/or divestiture licence **shall be** completed not later than four months from the date of the notification by the parties. Where an appropriate divestiture licence and/or a suitable buyer is not identified within the **four-months** period, the merger **shall be** deemed

COMPETITION CO
02 SEP 2021

prohibited in respect of the decorative coatings market in the East African cluster; and,

v. In each of Eswatini, Zambia, and Zimbabwe, the merger is prohibited.

158. This decision is adopted in accordance with Article 26 of the Regulations.

Dated this 2nd day of September 2023

Commissioner Dr Mahmoud Momtaz (Chairperson)

Commissioner Vipin Naugah **Commissioner Islam Tagelsir Ahmed Alhasan**