



25.05.2016

Notice u/s 6 (2) of the Competition Act, 2002 given by Akzo Nobel N.V.

CORAM:

Mr. Devender Kumar Sikri

Chairperson

Mr. Augustine Peter

Member

Mr. U.C. Nahta

Member

Mr. M. S. Sahoo

Member

Mr. G. P. Mittal

Member

Legal Representatives of the parties: M/s Khaitan & Co., LLP

Order under Section 31(1) of the Competition Act, 2002

1. On 17.03.2016, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) filed by Akzo Nobel N.V. (“**Akzo**”/“**Acquirer**”). The said notice was given pursuant to the execution of a Signing Protocol (“**SP**”), between Akzo and BASF SE (“**BASF**”) on 17.02.2016. (Hereinafter Akzo and BASF are collectively referred to as the “**Parties**”). The Parties have agreed on the terms and conditions of Asset and Share Sale and Purchase



Agreement (“**ASPA**”) which would be executed after completion of certain mandatory employee information and consultation procedures vis a vis BASF’s work councils.

2. As stated in the notice, the combination relates to the acquisition of a unit of BASF, engaged in industrial coatings business (“**BASF IC**”), by Akzo by way of acquisition of shares and assets of BASF IC (“**Proposed Combination**”). In this regard, the Parties also intend to conclude a short term toll manufacturing agreement (“**TMA**”) with regard to the industrial coatings that are currently produced by the five out-of-scope production sites in Germany, Spain, Japan and Argentina. Further, the Parties also intend to conclude a long term supply agreement (“**LTSA**”) to ensure supply of resins and certain other intermediaries, as well as e-coat products for which no IP would be transferred.
3. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as “**Combination Regulations**”), vide letter dated 18.04.2016, the Acquirer was required to provide information/document(s) *inter-alia* pertaining to terms of TMA and LTSA by 21.04.2016. The Acquirer filed response to the aforesaid letter on 02.05.2016 after seeking extension of time. In continuation of the aforesaid letter, vide letter dated 06.05.2016, the Acquirer was required to provide certain information/clarifications by 11.05.2016. The Acquirer submitted its response on the due date.
4. Akzo, a public listed company incorporated in the Netherlands, is listed on the Euronext Amsterdam Stock Exchange in the Netherlands. It is a global undertaking engaged in the production and marketing of a wide range of paints, performance coatings and specialty chemicals.
5. BASF, a public listed company headquartered in Ludwigshafen, Germany, is listed on the Frankfurt Stock Exchange, London Stock Exchange and the Zurich Stock Exchange. Its activities range from chemicals to crude oil and natural gas, including specialty chemicals, plastics, performance products, functional solutions and agricultural solutions, among others.



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6. It has been stated that BASF IC is engaged in developing, manufacturing, selling and distribution of industrial coating products at a worldwide level including India. BASF IC has a broad range of coating applications serving customers in various industries viz., construction, furniture, power generation and commercial transport. The activities are organized into the business segments coil, foil, wind and general industry and commercial transport. As regards the activities of BASF IC in India, the Acquirer has submitted that it is primarily active in the market for protective coatings, a sub-market of industrial coatings. More specifically, it is active in market of protective coatings for power generation specifically rotor blades of wind turbine assets. It has also been stated that a minor part of its turnover is derived from coil coatings, another sub-market of protective coatings. BASF's turnover in this market is on account of residual sale as it has terminated its activity in the coil coating market in 2015.
7. Based on the activities of BASF IC in India, the Acquirer submitted that the relevant product markets that can be distinguished within the industrial coatings market, are related to (i) protective coatings; (ii) coil coatings. As regards the relevant geographic market, the Acquirer submitted that considering the factors such as the operations of the Parties and their competitors, lack of any transport barriers, the narrowest relevant geographic market may be considered as India.
8. The Commission decided to leave the delineation of the relevant market open as it was observed that the Proposed Combination, for the reasons detailed in ensuing paragraphs, is not likely to cause an appreciable adverse effect on competition in any of the possible alternative relevant markets that could be delineated.
9. The Commission noted that the Acquirer has a market share of around 10-15 percent in the market for protective coating and around 15-20 percent in the narrower segment of protective coatings for power generation. In respect of these segments, the Commission observed that BASF has a limited presence with a market share of around 0-5 percent in both the segments. Thus, combined market shares of the Parties, post-combination, would be around 10-15 percent in the market for protective coating and around 20-25 percent in the market for protective coatings for power generation. It was noted that there are other significant competitors such as Berger Paints India Limited (20-25 percent), Asian PPG Industries Limited (10-15 percent) in



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the protective coatings segment and Berger Paints India Limited (20-25 percent), Kansai Nerolac Paints Limited (10-15%) in the protective coatings for power generation segment who will continue to pose competitive constraints to the Acquirer, post combination. The Commission also observed that the Acquirer is not active in the narrowest segment for protective coatings for rotor blades in India and therefore, no overlap exists in this segment.

10. With respect to the Coil Coating segment, the Commission noted that Acquirer has a market of around 20-25 percent and the market share of BASF is around 0-5 percent. Thus, the incremental market share of the Acquirer resulting from the Proposed Combination is insignificant (0-5 percent). Also, Berger Becker Coating Private Limited (25-30 percent) and Nippon Paint (India) Company Limited (15-20 percent) and others pose competitive constraints in the coil coatings segment. The Commission noted that BASF has terminated its activity in the coil coating segment in 2015 and its small market share is on account of the residual sale.
11. As regards vertical relationships emanating from the Proposed Combination, the Commission examined the terms and conditions of TMA and LTSA and noted from the submissions of the Parties that neither BASF nor Akzo is currently supplying intermediate products or e-coats to the third parties. Therefore, the Commission is of the opinion that the vertical relationship emanating from the Proposed Combination is not likely to cause any competition concern in any of the relevant markets in India.
12. Considering the facts on record and the details provided in the notice given under sub-section (2) of section 6 of the Act and assessment of the Proposed Combination on the basis of factors stated in sub-section (4) of section 20 of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have appreciable adverse effect on competition in India in any of the relevant market(s) and therefore, the Commission hereby approves the same under sub-section (1) of section 31 of the Act.
13. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.



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14. The Secretary is directed to communicate to the Acquirer accordingly.