



The Turkish Competition Board approves an acquisition in the markets for metal packaging coatings and metal decorating inks (Akzo Nobel/Metlac)

The Turkish Competition Board has approved the acquisition of Metlac Holding by Akzo Nobel Coatings, having concluded that the transaction would not lead to the creation or strengthening of a dominant position that would substantially lessen competition in the market. It is worth noting that the same transaction was recently prohibited in the United Kingdom.

On 27 August 2012, the Turkish Competition Board (the “TCB”) made public the reasoning for its unconditional clearance decision on the acquisition of Metlac Holding S.r.l. (“**Metlac Holding**”) and its subsidiaries by Akzo Nobel Coatings Int. B.V. (“**ANCI**”), a transaction which has already been cleared by the competition authorities of Cyprus, Brazil, Austria, Pakistan, Russia and Germany but blocked by the competition regulators in the UK¹. According to the press, this is the first time that the UK competition regulators have blocked a transaction which has been cleared by another national competition regulator in Europe.² The TCB’s clearance decision was rendered by a majority of votes on 14 June 2012, with two members dissenting.

Prior to the transaction, 49 per cent of Metlac Holding’s shares were held by ANCI, which is a subsidiary of Akzo Nobel N.V. (“**AkzoNobel**”) and 51 per cent of the shares were held by the Bocchio family members. ANCI, by exercising its call option, aimed to purchase the remaining 51 per cent of the shareholding from the Bocchio family members (the “**Transaction**”). Upon the transfer of the shares, AkzoNobel would obtain sole control of Metlac Holding and its subsidiary Metlac S.p.a. (“**Metlac**”). AkzoNobel and Metlac Holding are both active in the metal packaging coatings business, which are mostly used in the production of beverage and food cans.

Competitive analysis by the TCB

The TCB defined the geographic market as the **Republic of Turkey** and identified two relevant product markets: metal packaging coatings and metal decorating inks. The TCB concentrated its analysis on the **metal packaging coatings market**, since Metlac Holding has no activities in the area of metal decorating inks in Turkey.

For its dominance assessment, the TCB considered market shares, concentration levels, potential competition and the supply and demand side aspects of the market. With respect to the market share evaluation, the TCB found that the post-Transaction combined market shares of the parties would grant AkzoNobel the highest market share in Turkey as well as in the region comprising EEA and Russia. Furthermore, the HHI levels were also estimated to be very high.³ Putting these strong indications of dominance aside, the TCB further evaluated the supply and demand structure as well as the potential competition in the market.

With respect to the competitive structure of the market, the TCB dwelled upon the competitive pressure imposed by both local and the importer competitors. It emphasised that half of the total

¹ http://www.offt.gov.uk/shared_offt/mergers_ea02/2012/AkzoNobelMetlac.pdf

² <http://www.ft.com/intl/cms/s/0/f0f20f5c-02f2-11e2-a284-00144feabdc0.html#axzz2AggTGUxR>

³ The market share figures are not made public in the decision. According to the evaluations of the Bundeskartellamt (“**BKartA**”), which has analysed the Transaction on the EEA-wide, on the basis of their sales figures, the combined market share amount of Akzo Nobel and Metlac was found to be between 35-45 per cent for 2011. Based on total EEA sales volumes for 2011, the BKartA estimates the combined share of the parties to be at 45-55 per cent.



market is comprised of imported products and that there are strong competitors in the EEA region (the origin of most importing activities). Considering the market shares and the concentration levels, the TCB identified the market as being of an oligopolistic nature with low barriers to entry apart from start-up costs.

The TCB also took into account new entries to the market in the past few years (and those companies active in the EEA region which have not yet entered into Turkish market – such as Actega, Grace/Darec, Schekolin and Salchi – as indications of the existence of potential additional competition). The TCB stated that competition in the metal packaging coatings market took place on the basis of prices. From the buyer-side perspective, the TCB emphasised that the buyers can easily switch suppliers in the event of a price increase. It also acknowledged that buyers have countervailing buyer power in the market due to their high volume purchases. Given these findings, the TCB was convinced that, despite the high market shares and HHI levels, the metal packaging coatings market was competitive.

The TCB also evaluated the argument that the financial power of AkzoNobel would endow it with a dominant position. In this regard, the TCB was of the opinion that AkzoNobel does not hold substantial financial power compared to its global competitors; in addition to this, it was of the opinion that the gap in financial power between AkzoNobel and its local competitors would not render these competitors unable to compete within the market.

The TCB also considered Metlac Holding's argument that the Transaction would result in the acquisition of an innovative competitor, which would substantially hinder competition in the market. In response to this, the TCB stated that this argument could not be endorsed by concrete evidence and that therefore, could not be concluded that the Transaction would lead to a lessening of the existing competitive pressure in the market.

In light of its assessment, the TCB, by majority of votes, concluded that the Transaction would not lead to the creation or strengthening of a dominance that would substantially lessen competition; it therefore granted its unconditional approval.

The dissenting opinion

Two of the TCB members opposed to the decision and argued that the Transaction should be subject to further analysis within the scope of a Phase II investigation. The dissenting opinion (“**Opinion**”) of these two members mainly argues that the decision was given on the basis of optimistic assumptions, without any real economic analysis. The Opinion stresses that the high HHI levels raise competition concerns, as they would also under US and EU competition legislation, which cannot be alleviated by the findings in the decision.

In order to support its argument, the Opinion refers to some of the answers provided by some competitors during the investigation. According to these answers, contrary to the findings in the decision, there have been no recent or anticipated entries onto the market. In addition to this, the competitors have also stated that for customers, product and service quality and consistency are more important factors than product price.

Contrary to the decision, the Opinion also asserts that Metlac is an important innovative market player, with unique products and R&D investments, which allows Metlac to compete strongly with AkzoNobel and other competitors. In this respect, the Opinion concludes that in the absence of any tangible economic evidence, the evaluation and assumptions made with regards to the supply and demand structure of the market, financial power and potential competition cannot be sufficient to reach the



certain conclusion that the Transaction would not lead to the creation or strengthening of a dominant position which would lead to a substantial lessening of competition.

Comments and conclusion

Although the Transaction has been unconditionally cleared by the competition authorities of numerous jurisdictions, it has been subject to further investigations within Phase II procedures by the German BKartA (it was unconditionally cleared afterwards) and is still subject to an in-depth investigation by the Competition Commission (“CC”) of the UK. This implies that the Transaction has alarmed the European competition authorities, which have decided to look into the possible effects of the Transaction in more detail. With this approach, according to its Provisional Findings Report⁴ (“Report”), the CC has evaluated, among other things, the specific features of the industry (including its competitive characteristics and Metlac’s position in the market).

Contrary to the findings of the TCB, the Report acknowledges that when making supply choices, the customers consider the suppliers’ reputation, technological ability (including the ability to innovate and formulate coatings) and the suppliers’ own appetite to compete across the industry.

Furthermore, the Report acknowledges that Metlac constitutes an important brake on AkzoNobel “*via its low pricing, strong product quality and innovation and willingness to provide a wide range of products*”.⁵ In light of its findings, and considering the different post-Transaction scenarios, at this stage the CC has provisionally concluded that the Transaction may be expected to result in a substantial lessening of competition. The Report includes a detailed analysis of some points set forth by the TCB as the basis of its decision and presents results that are different to TCB’s conclusions. This may be regarded as a supportive argument for the Opinion, which claims that an in-depth analysis of the Transaction is necessary.

Source: *Yaprak Gonlusen*, The Turkish Competition Board unconditionally approves an acquisition in the markets for metal packaging coatings and metal decorating inks (Akzo Nobel/Metlac), 14 June 2012, e-Competitions, N°49211, www.concurrences.com

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⁴ http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/akzo-nobel-metlac/akzonobel_metlac_pfs_excised.pdf

⁵ *Ibid*, 14.