EUROPEAN COMMISSION

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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

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

Subject: **Case M.10341 – Prince / Ferro**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 26 November 2021, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ("the Merger Regulation"), and following a referral pursuant to Article 4(5) thereof, by which the undertaking ASP Prince Holdings Inc. ("Prince", United States) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the undertaking Ferro Corporation ("Ferro" or the "Target", United States)

1 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

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(the "Transaction").[3] Prince and Ferro are hereinafter referred to as the "Parties" or the "Merged Entity" and Prince as "the Notifying Party" to the Transaction.

1. THE PARTIES AND THE CONCENTRATION

(2) **Prince** is a US company active globally in the manufacturing of mineral-based chemicals, minerals and industrial additives and products focussed on the development, manufacture and marketing of specialty products for applications in a variety of industries, including construction, electronics, consumer products, agriculture, automotive, oil & gas and heavy equipment. Prince is ultimately controlled by affiliated funds managed by American Securities LLC ("American Securities").

(3) **Ferro** is a US company active globally in the supply of (i) functional coatings for glass, metal, ceramic and other substrates, and (ii) colour solutions in the form of pigments and colorants, for a broad range of applications and industries, mainly building and construction, automotive, industrial products, as well as household furnishings and appliance.

(4) The Transaction concerns the acquisition of sole control of Ferro by Prince.

(5) On 11 May 2021, the Parties entered into an agreement providing for a reverse triangular merger. This merger is entered into by Ferro, PMHC II Inc., an indirect wholly owned subsidiary of Prince, and PMHC Fortune Merger Sub Inc. (the "Merger Sub"), a wholly-owned subsidiary of PMHC II Inc., on 11 May 2021. Pursuant to the agreement, upon implementation of the Transaction, the Merger Sub will merge with and into Ferro and the separate existence of the Merger Sub will subsequently cease. Ferro will be the surviving entity in the merger and will become a wholly-owned direct subsidiary of PMHC II Inc. and a wholly-owned indirect subsidiary of Prince.[4] As part of the Transaction, Chromaflo Technologies ("Chromaflo", USA),[5] another portfolio company of American Securities, will be combined with Ferro, within Prince. The Transaction therefore constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

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3 Publication in the Official Journal of the European Union No C 489, 6.12.2021, p. 3.

4 Immediately prior to the implementation of the proposed Transaction, each share held in Ferro shall be converted automatically into a right to receive a certain amount per share in cash. After the implementation of the proposed Transaction, each of the shares in Ferro shall be cancelled and extinguished automatically and shall cease to exist. Each share in the Merger Sub shall be converted and become one share of common stock of Ferro, as the surviving entity in the merger and shall constitute the entire issued stock capital of Ferro.

5 Chromaflo is a US company active globally in the supply of colourants and chemical pigment dispersions for thermosets.

2. UNION DIMENSION

(6) The Transaction does not meet the thresholds laid down in Article 1(2) and Article 1(3) of the Merger Regulation. In accordance with Article 4(5) of the Merger Regulation, the Notifying Parties requested a referral to the Commission on the grounds that (i) the case would be reviewable under the national merger control laws of five Member States, namely Austria, Germany, Poland, Portugal and Spain; and (ii) the geographic scope of a number of potentially affected markets, as a result of the Transaction, is likely to be wider than national. No Member State expressed disagreement with this request and the case was referred to the Commission on 17 August 2021.

3. MARKET DEFINITION

3.1. Introduction

(7) The Parties are two global US companies active in the manufacturing of mineral-based chemicals and industrial additives and products, giving rise to a number of overlaps[6] at horizontal level.

(8) In this respect, the Parties' activities give rise to affected markets, with respect to the manufacture and supply of porcelain enamel coatings[7] and glass coatings[8] in the EEA, where they both operate production facilities.

3.2. Product market definition

3.2.1. Porcelain enamel coatings

(9) Porcelain enamel coatings are a type of surface coating consisting in a thin layer of glass-like coating applied to a substrate of metal. They are also known as vitreous coating or vitreous enamel.

(10) Porcelain enamel coatings are made from frits, *i.e.* ground glass generally produced from metal oxides and minerals. Porcelain enamel coatings are then applied on

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6 The Transaction gives rise to horizontal overlaps regarding the Parties' activities in the manufacture and supply of (i) porcelain enamel coatings, (ii) glass coatings, (iii) roof tile coatings, (iv) pigment dispersions for thermosets (v) industrial cobalt aluminate and (vi) ready-to-use mixtures for grinding wheels. As the Parties' market shares, under any plausible market definition, do not exceed 20% with respect to roof tile coatings, pigment dispersions for thermosets industrial cobalt aluminate and ready-to-use mixtures for grinding wheels, these products will not be further discussed in this Decision.

7 In the EEA, Prince manufactures and supplies porcelain enamel customers from its production facility located in Bruges (Belgium). Ferro produces and supplies porcelain enamel customers in the EEA from its production facilities in Saint-Dizier (France) and Almazora (Spain).

8 In the EEA, Prince manufactures and supplies glass coatings from its production facility located in Cambiago (Italy). A small portion of the glass coatings (forehearth colorants) supplied by Prince in the EEA originates from its production facility in Fenton (United Kingdom). Ferro produces and supplies glass coatings customers in the EEA from its production facilities in Saint-Dizier (France), Alsfeld, Colditz, Hanau and Frankfurt (Germany), and Almazora, Benicarlo and Onda (Spain).

different metal substrates like stainless steel, cast iron, aluminium or copper, and aim at protecting the metal substrate and impart certain properties like corrosion resistance, thermal stability, and scratch resistance. Porcelain enamel coatings are used for four main product applications, namely (i) appliances (*e.g.*, washing machines, dishwashers, dryers, stoves and ovens), (ii) water-heaters, (iii) sanitary-ware (*e.g.*, bath tubs and washbasins) and (iv) cookware applications (*e.g.*, pots and pans).

Notifying Party's view

(11) The Notifying Party submits that the market for the manufacture and supply of porcelain enamel coatings form a product market distinct from other industrial coatings based on the specific characteristics of porcelain enamel coatings and their respective applications, which give rise to limited substitutability with other types of industrial coatings.[9]

(12) Furthermore, the Notifying Party argues that, given the existence of demand-side substitutability, as well as a high degree of supply-side substitutability, the market for the manufacture and supply of porcelain enamel coatings constitute a single overall product market, which does not require further segmentation based on, *e.g.*, end-use application.[10]

Commission's assessment

(13) While not having dealt specifically with the market for the manufacture and supply of porcelain enamel coatings in its decisional practice, the Commission has, in the past, considered a number of distinct relevant product markets within the industrial coatings category, such as coil coatings, wood finishes, protective coatings, powder coatings, and other industrial coatings.[11] In a previous decision,[12] the Commission considered a possible further segmentation of the market for coil coatings by end-application (*e.g.*, construction, transport, domestic appliances). The Commission, however, ultimately left the scope of the exact product market definition open.

(14) In line with the Notifying Party's arguments and with its precedents, for the purposes of the present case, the Commission considers that the market for the manufacture and supply of porcelain enamel coatings should be considered separately from other industrial coatings. Specifically, the Commission's considerations would rely on (i) the specific features of the manufacturing process of porcelain enamel coatings,[13] and on (ii) the characteristic properties porcelain enamel coatings impart, such as

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9 Form CO, Chapter 2, paragraphs 21 et seq.

10 Form CO, Chapter 2, paragraphs 24 et seq.

11 M.8136 – *BASF/Chemetall;* M.8004 – *Akzo Nobel/Basf Industrial Coatings Business*. See also M.4853 – *PPG/SigmaKalon*; M.1182 – *Akzo Nobel/Courtaulds*.

12 M.8004 – *Akzo Nobel/Basf Industrial Coatings Business.*

13 Porcelain enamel coatings are made starting from frits. Frits are produced by blending and mixing the raw ingredients, high temperature smelting to form a glass, and then milling the mixture into a fine powder. This finely ground porcelain enamel powder is then applied to the metal.

corrosion resistance, thermal stability, and scratch resistance.[14,15] The market investigation results did not contradict such findings.

(15) In the present case, the Commission investigated whether, within the market for the manufacture and supply of porcelain enamel coatings, it would be appropriate to distinguish amongst different types of porcelain enamel coatings, based on their end-use applications.

Distinction by end-use application

(16) In this respect, the results of the market investigation indicated that, on the demand-side, while customers consider that porcelain enamel coatings for different end-use applications could not be used interchangeably, competitors noted that, from a technical standpoint, porcelain enamel coatings for different end-use applications can be used interchangeably.[16] From a supply-side standpoint, competitors also consider that the various elements of the manufacturing process of porcelain enamel, such as raw materials, infrastructure and equipment, production line and technologies, expertise, and product features, are similar or common across the different types of porcelain enamel based on end-application. Similarly, a number of competitors noted that durability, corrosion, and heat resistance are similar or common across the different types of porcelain enamel by end-use application. One competitor specified that porcelain enamel coatings for appliances, water heaters, sanitary ware, cookware and heat exchangers are always interchangeable.[17] Additionally, the majority of customers confirmed that, if there were a change in market circumstances for the specific type of end-use application they currently source, they would consider switching to sourcing porcelain enamel for other end-use applications.[18]

Conclusion

(17) In light of the elements set out above, the Commission considers that, for the purpose of the present case, it is appropriate to consider an overall market for the manufacture and supply of porcelain enamel coatings, without any further segmentation by end-use application being justified.

3.2.2. Glass coatings

(18) Glass coatings serve both functional (obscuration) and aesthetic (colour and decoration) purposes. Glass coatings are used for a variety of application techniques including automotive glass (to block UV rays from adhesive holding glass to frame),

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14 Additionally, porcelain enamel coatings are not significantly affected by UV exposure; therefore, their aesthetical properties remain unchanged in time, differently from other coatings, such as paints and polymer coatings.

15 Form CO, Chapter 2, paragraphs 3 et seq.

16 Questionnaire 1 to Competitors for Porcelain Enamel, question 6.

17 Questionnaire 1 to Competitors for Porcelain Enamel, question 6.

18 Questionnaire 2 to Customers for Porcelain Enamel, question 6.

flat glass (*e.g.*, appliance glass or architectural glass) and container glass (such as bottles). The Parties' activities with respect to glass coatings relate in particular to glass frits-based products, which are primarily sold in liquid form and, to a more limited extent, in dry form.[19]

Notifying Party's view

(19) The Notifying Party submits that glass coatings form a distinct product market from other industrial coatings, due to their specific properties and respective applications, which gives rise to limited substitutability with other types of industrial coatings. Moreover, the Notifying Party argues that glass coatings constitute an overall market, which does not require further segmentation based on end-use application, considering that there is a significant degree of demand-side and supply-side substitutability between different types of glass coatings.[20]

Commission's assessment

(20) Similarly to the observation made for porcelain enamel in paragraph 13 above, in its past decisional practice, the Commission has not specifically considered whether it could be appropriate to define a market for glass coatings or any other potential narrower markets, and has only considered a number of distinct relevant product markets for various types of industrial coatings.[21]

(21) In the present case, the Commission noted, in line with the arguments put forward by the Notifying Party that glass coatings constitute a specific type of product in light of the raw materials used as an input for its manufacturing (frit powder, pigments and a liquid medium) different from other types of coatings, and the specific end-application purpose for which it is used in the industry.[22] The results of the market investigation did not contradict this finding.[23]

(22) Furthermore, the Commission investigated whether it would be appropriate to distinguish between different types of glass coatings, based on their end-use

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19 The Notifying Party submits that the vast majority of glass coatings are sold to customers as liquid glass coatings. This is because all glass coatings must be applied in liquid form. Where dry glass coating is supplied to a customer, this is generally considered a semi-finished product (or intermediate) which is used by customers who choose to make the liquid glass coatings themselves by adding a carrier medium of their choice to powdered glass coating product instead of acquiring directly the liquid glass coating. Hence, the manufacture of dry glass coatings and liquid glass coatings is not conducted on two distinct product lines. Rather, the manufacture of liquid glass coatings includes one additional step. This additional step involves a piece of equipment to disperse the dry glass coatings materials. At this stage of the process of manufacture, the glass coating paste is dispersed by means of a machine such as a triple roll mill or disperser.

20 Form CO, Chapter 3, paragraph 35 et seq.

21 M.8136 – *BASF/Chemetall;* M.8004 – *Akzo Nobel/Basf Industrial Coatings Business*. See also M.4853 – *PPG/SigmaKalon*; M.1182 – *Akzo Nobel/Courtaulds*.

22 Form CO, Chapter 4, paragraph 1 et seq.

23 Minutes of calls with three customers, dated 23 September 2021, 30 September 2021, 1 October 2021; Minutes of a call with a competitor, dated 7 October 2021; Questionnaire 3 to Competitors for Glass Coatings, questions 2, 3 and 6; Questionnaire 4 to Customers for Glass Coatings, questions 1, 2 and 6.

applications, *i.e.* automotive glass coatings, flat glass coatings, and container glass coatings. The Commission also investigated whether a distinction based on the form of glass coatings *i.e.* dry glass coatings and liquid glass coatings, could be warranted and, finally, whether it would be appropriate to single out the manufacture and supply of forehearth colourants.[24] The results of the market investigation and corresponding Commission's assessment are set out below.

Distinction by end-use application

(23) On the demand-side, a majority of competitors and customers alike indicated that customers would not be able to use the various types of glass coatings interchangeably.[25] A majority of customers indicated, accordingly, that they would not be able to switch from one type of glass coating to another,[26] because notably of the differences existing between the application processes (as each type of coating is applied to a specific type of glass, requiring different types of machinery), the characteristics of the products (formulation of the glass coating itself require different types of additives depending on the end-application), as well as their specific products requirements (resistance to scratching, heat etc. required by customers varying significantly between each type of end-application).[27] A customer explains for example that the flat glass coating industry is typically simpler in terms of application abilities requirements (e.g. spray, roll, coated on) than the automotive industry which is more sophisticated in terms of the techniques used.[28]

(24) On the supply-side, competitors pointed out certain similarities in the raw materials used and the production process of each end-applications, despite stressing differences in product features and know how.[29] Customers also consistently noted that the production processes and the underlying technology largely varies depending on the end-use application.[30] Furthermore, the results of the market investigation were mixed in relation to the competitors' ability to switch production between the various types of glass coatings in a relatively short timeframe and without incurring significant costs. While some competitors indicated that they would be in a position to switch production and would do so in case of a change in market conditions, others indicated that they would not have this ability.[31]

(25) In this respect, the Commission notes that the market investigation highlighted that the Parties' competitors do not focus the core of their activities on all three types of end-use application consistently, but they rather specialise in one or two areas and

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24 See paragraph 33 below for a description of forehearth colourants.

25 Questionnaire 3 to Competitors for Glass Coatings, questions 6 and 7; Questionnaire 4 to Customers for Glass Coatings, questions 6 and 7.

26 Questionnaire 4 to Customers for Glass Coatings, question 6.

27 Questionnaire 4 to Customers for Glass Coatings, question 6.

28 Minutes of a call with a customers, dated 23 September 2021.

29 Questionnaire 3 to Competitors for Glass Coatings, question 7.

30 Minutes of calls with three customers, dated 23 September 2021, 30 September 2021, 1 October 2021.

31 Questionnaire 3 to Competitors for Glass Coatings, question 8.

they tend to have limited activities in the other ones.[32] A competitor also indicated that prices differ also from one type of end-use application to another. For example, coatings for automotive glass tend to be more expensive than non-automotive coatings, although in some instances, for example for some niche applications involving precious metals, non-automotive glass coatings may also be expensive.[33]

(26) In light of the above, the Commission leaves open the question as to whether it is necessary, to distinguish, within the manufacture and supply of glass coatings, some separate markets according to the end-use application *i.e.* automotive glass coatings, flat glass coatings, and container glass coatings.

Distinction by form (dry and liquid glass coatings)

(27) In relation to the possibility to distinguish glass coatings according to their form, *i.e.* between liquid glass coatings and dry glass coatings,[34] the Commission first notes that the manufacturing process of dry and liquid glass coatings slightly differs.[35]

(28) However, according to the information provided by the Parties, dry glass coatings is only an intermediate product in that glass coatings must in any event be applied by glass manufacturers in liquid form, so that they are largely substitutable. Dry glass coatings are mixed with a liquid medium used as an input for the preparation of liquid glass coatings. As such, customers of dry coatings are either distributors or end customers which mix dry glass coatings at their own premises, for resale or own purposes use.

(29) Accordingly, dry glass coatings constitute only a marginal part of the supply of glass coatings overall.[36] In addition, on the basis of the data provided by the Parties, the Parties[37] and virtually all competitors supply liquid glass coatings for the main end-applications, *i.e.* automotive, flat glass and container glass.[38]

(30) These observations were confirmed in the course of the market investigation. A minority of competitors indicated that they supplied glass coatings in dry form in the

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32 Questionnaire 3 to Competitors for Glass Coatings, questions 6 to 9; Minutes of a call with a competitor, dated 7 October 2021.

33 Minutes of a call with a competitor, dated 7 October 2021.

34 Glass coatings may be supplied to customers in liquid or dry form.

35 The manufacturing of liquid glass coatings consists in three steps: (i) blending / mixing the liquid and solid ingredients, then (ii) dispersing this mixture in a mill or dispersator (so-called pasting), and (iii) finally packaging the glass coating. Dry glass coatings are manufactured by (i) mixing and blending the solid ingredients and (ii) using a high-pressure compactor to press them together.

36 In 2020, in the EEA, approximately 17% of glass coatings supplied to the market were supplied in dry form. In value, this figure is approximately 10%.

37 The only exception is that [10-20]% of Ferro's flat glass is supplied to the market in dry form.

38 The supply of dry glass coatings appears to be particularly relevant with respect to the supply of forehearth colourants, which further discussed in paragraph 31 below.

EEA and, even when they did, such competitors indicated that dry coatings only accounted for a minimal proportion of their supply.[39]

(31) As to distributors exercising an intermediary role – consisting in sourcing dry glass coatings from manufacturers and transforming it into liquid glass coatings to resell to customers – the results of the market investigation results suggest that their activity is negligible.[40] Only half of competitors and a minority of customers are aware of the presence of such distributors on the market, and these players are considered to only be able to supply very limited volumes.[41]

(32) In light of these elements, the Commission considers that it is not appropriate to distinguish glass coatings according to their form, and that dry and liquid glass coatings should be considered altogether within each and every relevant markets.

Forehearth colorants

(33) Forehearth colorants is an umbrella term for a colouration substance (or additive) which enables the colouration of glass through the introduction, melting and dispersion of colorants in a forehearth channel, which is a channel transporting molten glass from the furnace to forming machines, instead of in a tank (which is how on-glass coatings are applied). Forehearth colourants are primarily used in conjunction with container glass coatings.

(34) Regarding forehearth colorants and the potential identification of a separate segment for this product within container glass coatings, the market investigation results did not provide any elements, which would justify distinguishing a separate segment. The manufacture and supply of this product appears as a niche activity. Only one competitor of the Parties indicated to be active in the manufacturing and supply of this product and a minority of customers source it.[42]

(35) Furthermore, based on the information provided by the Notifying Party, container glass coatings can be applied to glass using different methods. The first method is an on-glass method which applies the coatings to the surface of glass product. The second method is the in-glass method, which changes the colour of the entire glass material and not only the surface of the glass container. The in-glass colouring can be achieved using both traditional glass coatings and forehearth colourants. As a result, traditional glass coatings and forehearth colourants differ in their application process but demand for glass coatings applied on the surface of a container and forehearth products used in-glass typically come from the same customer groups and

39 Questionnaire 3 to Competitors for Glass Coatings, question 9.

40 Questionnaire 5 to Distributors for Glass Coatings, question 6.

41 Questionnaire 3 to Competitors for Glass Coatings, question 11; Questionnaire 4 to Customers for Glass Coatings, questions 8-9.

42 Questionnaire 3 to Competitors for Glass Coatings, question 12; Questionnaire 4 to Customers for Glass Coatings, question 10.

competitors are in a position to switch between forehearth coatings and other glass coatings in response to a change in price of either product.[43]

(36) In light of these elements, the Commission considers that it is not appropriate to distinguish forehearth colourants from container glass coatings.

Conclusion

(37) In light of the elements set out above, the Commission considers that it could be appropriate to distinguish separate markets according to the type of end-application, *i.e.* automotive glass coatings, flat glass coatings, and container glass coatings, but ultimately leaves this question open, as that the competitive assessment would not significantly differ if an overall market or each specific plausible narrower market is considered.

(38) For the purposes of the present case, considering that serious doubts would arise both on an overall market, as well as on each plausible narrower markets taken individually, the Commission will carry out its competitive assessment on the market for the manufacture and supply of glass coatings overall, and address each plausible narrower market where relevant.

3.3. Relevant geographic market definition

3.3.1. Porcelain enamel coatings

Notifying Party's view

(39) The Notifying Party submits that the geographic market for the manufacture and supply of porcelain enamel coatings is at least EEA-wide in scope, if not global. The reasons put forward are the following: (i) manufacturers supply porcelain enamel to customers globally from a single or from a limited number of manufacturing sites; (ii) there are large cross-border trade flows within the EEA and far beyond (in particular, between EMEA and APAC), and transport costs are negligible; (iii) customers tend to procure products globally and in a centralised fashion; (iv) manufacturers do not face material regulatory barriers or meaningful tariffs limiting trade; and (v) there are no regional differences in product and technical characteristics.[44]

Commission's assessment

(40) In those cases related to various types of coatings, while ultimately leaving the exact geographic market definition open, the Commission considered that the scope of most of these products is at least EEA-wide, if not global.[45]

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43 Response to RFI 5, question 16 et seq.

44 Form CO, Chapter 2, paragraph 38 et seq.

45 M.4853 – *PPG/SigmaKalon*. For completeness, the Commission notes that, in this case, the Commission also considered the possibility for national markets while ultimately leaving these questions open. With

(41) In the present case, the results of the market investigation indicated that the relevant geographic scope of the market for the manufacture and supply of porcelain enamel coatings could be EEA-wide, possibly with the addition of Turkey, due to the reasons outlined below.

(42) Within the EEA, porcelain enamel manufacturers are subject to the same EU regulatory framework (*REACH* – Registration, Evaluation, Authorisation and Restriction of Chemicals[46]), therefore, across the EEA, under a regulatory standpoint, conditions of competition are rather homogenous. Additionally, customers highlighted the existence of price differences between the EEA and other regions of the world and indicated transport costs and geographical proximity to their suppliers' manufacturing plant as elements playing a role in their choice of a supplier of porcelain enamel coatings.[47] In terms of transport costs, the majority of customers observed that, while transport costs represent 0-5% of the total price of the product when the supplier is EEA-based, they represent 5-10% of the total price of the product when the supplier is based outside of the EEA and supplies EEA-based customers. In terms of geographic location, certain customers claim that it is essential that technical experts working for porcelain enamel coatings' suppliers be in close contact with their customers, as they might be asked to intervene at their customers' production sites at short notice, should a technical issue occur.[48] The vast majority of customers indicated that they source the largest part of their porcelain enamel coatings needs at EEA-wide level and, to a more limited extent, they source their needs from Turkish suppliers, which are considered by the majority of customers as credible as EEA-based suppliers.[49]

Conclusion

(43) In light of the elements set out above, the Commission deems it appropriate to define the geographic scope of the market for porcelain enamel as EEA-wide and, potentially, including Turkey. The Commission, however, considers that the question relating to the precise scope of the geographic market for porcelain enamel

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respect to decorative coatings, the Commission considered the possibility for a national, regional or EEA-wide scope. Regarding protective and marine coatings, the Commission considered that the potential market segment for protective coating could have had a national, EEA-wide or worldwide geographic scope. Lastly, for metal coatings, the Commission considered that the market could be considered as either national or EEA-wide in scope. See also case M.8136 – *BASF/Chemetall;* M.8004 – *Akzo Nobel/Basf Industrial Coatings Business* and M.1182 – *Akzo Nobel/Courtaulds*; with respect to decorative coatings specifically, see M.10123 – *PPG/Tikkurila*; M.8020 – *Sherwin-Williams/Valspar*; M.4779 – *AkzoNobel/ICI.*

46 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (*REACH*), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396/1, 30.12.2006, p. 3.

47 Questionnaire 2 to Customers for Porcelain Enamel, question 7; minutes of calls with two customers and one competitor, dated respectively, 29 September 2021, 4 October 2021, and 23 September 2021.

48 Minutes of a call with a customer, dated 4 October 2021.

49 Questionnaire 2 to Customers for Porcelain Enamel, questions 7 and 11.

coatings can be left open since the competitive assessment would not materially differ under any plausible market definition.

(44) For the purpose of the present case, the Commission will carry out its competitive assessment on the overall market for the manufacture and supply of porcelain enamel coatings at EEA-wide level and in the alternative regional market including the EEA and Turkey.

3.3.2. Glass coatings

Notifying Party's view

(45) The Notifying Party argues that the geographic market for glass coatings is at least EEA-wide in scope, if not global. Specifically, the Notifying Party submits that manufacturers supply customers globally from a single or a limited number of manufacturing sites; the transport costs are relatively low and the products can easily be transported; customers tend to procure products globally and in a centralised fashion; manufacturers do not face material regulatory barriers or meaningful tariffs limiting trade; and there are no regional differences in product and technical characteristics.[50]

Commission's assessment

(46) In its previous decisional practice relating to various types of industrial coatings, while ultimately leaving the exact geographic market definition open, the Commission considered that the scope of most of these products is at least EEA-wide, if not worldwide.[51]

(47) In relation to the geographic scope of the glass coatings market and plausible narrower relevant markets for glass coatings, the Commission first notes that, similar to porcelain enamel, the EEA market is subject to the same EU regulatory framework (REACH - Registration, Evaluation, Authorisation and Restriction of Chemicals) so that there are no material regulatory and technical variations across the EEA.

(48) Second, while in the course of the market investigation competitors indicated that they supply the market and that competition occur on a global basis, the large majority of customers stressed that they typically source their needs on an EEA-wide level.[52] Furthermore, all competitors which contributed to the market investigation indicated that the competitive strength of their company, of the Parties, as well as of other glass coatings suppliers varies across geographic regions.[53]

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50 Form CO, Chapter 3, paragraph 21 et seq.

51 *Ibid*.

52 Questionnaire 3 to Competitors for Glass Coatings, questions 13 and 14; Questionnaire 4 to Customers for Glass Coatings, questions 11-12; Minutes of a call with a customer, dated 1 October 2021.

53 Questionnaire 3 to Competitors for Glass Coatings, question 15.

(49) Third, customers also highlighted that the geographic location of suppliers and their proximity are important criteria to select a supplier, pointing towards an EEA-wide geographic market scope. A customer for both automotive glass and flat glass explains for example that it is very important that the facility of its supplier is located close to his, to reduce transports costs as well as for security of supply, which is a critical point in the industry.[54] According to another customer, having a regional supply base is a key requirement for automotive glass coatings customers, as it allows to reduce risks associated with transport and ensures availability of technical and customer support at short notice.[55]

(50) With respect specifically to flat glass, customers explain that lead times are particularly important in this area, as contracts tend to be short and supply be carried out on a project-by project basis.[56]

Conclusion

(51) On the basis of the elements set out above, the Commission considers the appropriate geographic scope for the market for the manufacture and supply of glass coatings overall, and all plausible narrower markets to be EEA-wide.

4. COMPETITIVE ASSESSMENT

4.1. Analytical framework

(52) Article 2 of the Merger Regulation requires the Commission to examine whether notified concentrations are compatible with the internal market, by assessing whether they would significantly impede effective competition in the internal market or in a substantial part of it.[57]

(53) In this respect, a merger may entail horizontal and/or non-horizontal effects. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different, but related, relevant markets.

(54) As concerns the assessment of horizontal overlaps, the Commission's guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (the "Horizontal Merger Guidelines")[58] distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.

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54 Minutes of a call with a customer, dated 1 October 2021. See also minutes of a call with a customer, dated 30 September 2021.

55 Minutes of a call with a customer, dated 23 September 2021.

56 Minutes of a call with a customer, dated 23 September 2021; minutes of a call with a customer, dated 30 September 2021.

57 For specific rules in relation to the EEA, see Annex XIV to the EEA Agreement.

58 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, OJ C 31, 05.02.2004, p.5-18.

(55) Non-coordinated effects may significantly impede effective competition by eliminating important competitive constraints on one or more firms, which consequently would have increased market power, without resorting to coordinated behaviour. In that regard, the Horizontal Merger Guidelines consider not only the direct loss of competition between the merging firms, but also the reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger.

4.2. Overview of affected markets

(56) The Transaction gives rise to affected markets with respect to (i) the overall market for the manufacture and supply of porcelain enamel coatings at EEA level and (ii) the overall market, and plausible narrower markets, for the manufacture and supply of glass coatings at EEA level.

4.3. Assessment of horizontal effects

4.3.1. Porcelain enamel

(57) Table 1 below shows the Notifying Party's market share estimates for the overall market for the manufacture and supply of porcelain enamel coatings in the EEA.

Table 1: Estimate of the Parties' and their main competitors' market shares for the market for the manufacture and supply of porcelain enamel coatings in the EEA (2018-2020)

Company	Value			Volume		
	2018	2019	2020	2018	2019	2020
Prince	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Ferro	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[30-40]%	[40-50]%
Combined[59]	***[50-60]%***	***[50-60]%***	***[50-60]%***	***[50-60]%***	***[50-60]%***	***[50-60]%***
Gizemfrit	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Colorobbia	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Wendel	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
EMO	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Torrecid	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Keskin	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Source: Form CO.

(58) As a result of the Transaction, the Merged Entity would have high combined market shares on the EEA market for the manufacture and supply of porcelain enamel coatings. More specifically, for the last three years – 2018-2020 – the Merged Entity would hold a combined market share of [50-60]% in value and of [50-60]% in volume, with the increment brought by Prince being of, at least, [10-20]% in value

59 Some of the Parties' combined market shares may not add up due to rounding.

and [10-20]% in volume. In line with the Commission's practice,[60] these high combined market shares would already be in themselves indicative of the Parties' strong, and possibly dominant, position on the market. The Parties' next largest competitors would have a market share significantly smaller than that of the Merged Entity, namely Gizemfrit ([10-20]% market share in value and volume), Colorobbia ([10-20]% market share in value and volume), and Wendel ([5-10]% market share in value and volume).

(59) Furthermore, the Commission notes that the competitive assessment would not significantly differ, should an alternative regional market including both the EEA and Turkey be considered. In such case, in 2020, on the overall market for the manufacture and supply of porcelain enamel coatings, the Parties' combined market share would amount to [40-50]% in value and to [40-50]% in volume, with an increment brought by Prince of, respectively, [10-20]% in value and [10-20]% in volume. The main remaining competitors would be the same as those identified in the market including only the EEA. While Gizemfrit, which is a Turkish-based supplier, would hold a slightly higher market share in an alternative market encompassing both the EEA and Turkey, the other competitors' market share would be very similar, showing that the market structure and the gap between the Merged Entity's market share post-Transaction and its next largest competitors would still be significant. More specifically, Gizemfrit would hold a [20-30]% market share in value and a [20-30]% market share in volume, Colorobbia would hold a [10-20]% market share in value and volume, and Wendel would hold a [5-10]% market share in value and volume.

Notifying Party's view

(60) The Notifying Party submits that the combination of the Parties' activities in the market for the manufacture and supply of porcelain enamel coatings will not give rise to non-coordinated horizontal effects due to reasons set out below:[61]

(a) *First*, the Parties will continue to face significant competitive pressure from a range of well-established suppliers of porcelain enamel coatings, such as Gizemfrit, Colorobbia, Wendel, EMO, Torrecid, and Keskin;[62]

(b) *Second*, customers typically adopt a multi-sourcing strategy, which implies that they generally have 2 to 3 suppliers qualified with whom they regularly place orders. According to the Notifying Party, customers are in a position to play suppliers against each other in order to obtain the most competitive terms;[63]

(c) *Third*, post-Transaction, the Parties will continue facing competition not only from EEA-based suppliers but also from suppliers based outside of the EEA,

60 Horizontal Merger Guidelines, paragraph 17.
61 Form CO, Chapter 2, paragraphs 52 et seq.
62 Form CO, Chapter 2, paragraph 53.
63 Form CO, Chapter 2, paragraph 54.

such as Turkish and Asian suppliers. These suppliers already have existing production facilities with sufficient spare capacity that could be used to supply products into the EEA. Hence, the Notifying Party argues that, in order to keep their customers, they would have no incentive to carry out strategies which could potentially induce their customers to switch to these alternative suppliers;[64]

(d) *Fourth*, there is significant spare capacity so that rival suppliers could easily and rapidly expand supplies. Consequently, if the Parties were to restrict output or increase prices post-Transaction, there are well-established competitors on the market that have spare production capacity as well as the necessary know-how and experience for customers to turn to;[65] and

(e) *Finally*, the Parties face countervailing buyer power, specifically from large and sophisticated customers, who may even be able to in-source production of porcelain enamel coatings. The Notifying Party argues that there is already a number of European manufacturers of porcelain enamel products already in-sourcing their porcelain enamel coatings needs.[66]

Commission's assessment

(61) For the reasons set out in this section, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with respect to porcelain enamel coatings in the EEA or within a broader geographic market encompassing the EEA and Turkey.

(62) *First*, as set out in paragraphs 56 to 58 above, the Commission notes that the Transaction leads to the creation of a very large player for the manufacture and supply of porcelain enamel coatings, with high combined market shares.

(63) Considering an EEA-wide market, the Parties' combined market share would amount to [50-60]% in value and volume, which is, in itself, evidence of the existence of a dominant market position.[67] In the potential alternative market encompassing both the EEA and Turkey, the Parties' combined market shares, while being below 50%, would still be significantly high ([40-50]% in value and [40-50]% in volume). The Parties' strong position on the market and the overall market structure are mirrored in the market investigation results, where the majority of customers submitted that, post-Transaction, there would not be a sufficient number of suppliers of porcelain enamel coatings remaining in the market.[68] Moreover, customers ranked Prince and Ferro as the strongest players in the market in terms of competitive strength, followed by Wendel, whereas competitors ranked Prince,

64 Form CO, Chapter 2, paragraphs 55-62.
65 Form CO, Chapter 2, paragraphs 63-71.
66 Form CO, Chapter 2, paragraphs 72-78.
67 Horizontal Merger Guidelines, recital 17.
68 Questionnaire 2 to Customers for Porcelain Enamel, question 30.

Ferro, and Gizemfrit as the strongest suppliers.[69] This ranking, however, would need to be balanced with the indication provided by a number of customers who consider that, while Turkish players, such as Gizemfrit, could be considered as credible suppliers of porcelain enamel coatings in the EEA, the perceived lower quality of their products and the geographic distance would disadvantage them *vis-à-vis* EEA-based suppliers, such as the Parties.[70]

(64) *Second*, the Commission considers that the Parties are close competitors in the market for the manufacture and supply of porcelain enamel coatings in the EEA. Both the majority of customers and competitors who responded to the market investigation regard the porcelain enamel coatings manufactured and supplied by the Parties as largely substitutable in terms of product features and quality.[71] Only to a more limited extent, players, such as Gizemfrit, Wendel, and Colorobbia are reported as close competitors to any of the Parties.[72]

(65) *Third*, the Commission considers that non-EEA based suppliers would not be capable of credibly competing with the Parties for EEA-based customers. Specifically, in relation to non-EEA based suppliers' capability to compete for EEA-based customers, while the majority of customers and competitors indicated that Gizemfrit, a Turkish-based player, would be capable to credibly compete for customers based in the EEA,[73] a number of customers also indicated that, in certain instances, lower quality of the product as well as longer distance and higher transport costs could represent a competitive disadvantage for a player, such as Gizemfrit. None of the customers who responded to the market investigation indicated that Asian suppliers would be credible players to fulfil their needs of porcelain enamel coatings in the EEA.[74]

(66) *Fourth*, while the majority of customers who responded to the market investigation confirmed that they tend to adopt a multi-sourcing strategy for their needs of porcelain enamel coatings, due primarily to security of supply considerations, they also argued that they tend to supply their porcelain enamel coatings needs from two or three suppliers only. Additionally, one customer indicated that, while in the past there used to be over half-dozen suppliers in the market to switch to, currently, there are only three main suppliers who would be considered credible, *i.e.*, Prince, Ferro, and Gizemfrit.[75] A number of competitors also indicated that customers tend to source their needs from a maximum of two-to-three suppliers.[76] Hence, the

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69 Questionnaire 1 to Competitors for Porcelain Enamel, question 18, and Questionnaire 2 to Customers for Porcelain Enamel, question 16.

70 Questionnaire 2 to Customers for Porcelain Enamel, questions 7-8.

71 Horizontal Merger Guidelines, paragraph 28.

72 Questionnaire 1 to Competitors for Porcelain Enamel, question 19, and Questionnaire 2 to Customers for Porcelain Enamel, question 18.

73 Questionnaire 1 to Competitors for Porcelain Enamel, question 13, and Questionnaire 2 to Customers for Porcelain Enamel, question 11.

74 Questionnaire 2 to Customers for Porcelain Enamel, question 11.

75 Questionnaire 2 to Customers for Porcelain Enamel, question 21.

76 Questionnaire 1 to Competitors for Porcelain Enamel, question 25.

Commission understands that, while customers would prefer to continue to adopt a multi-sourcing strategy and to switch among two-to-three players, post-Transaction, this multi-sourcing strategy may become practically impossible to carry out, since the remaining players in the market to whom customers can switch to are not considered as strong and credible as the Parties. Even if customers wanted to switch to alternative suppliers, they would encounter difficulties in doing so, given the limited number of credible porcelain enamel coatings suppliers remaining in the market post-Transaction.[77]

(67) *Fifth*, the Commission observes that switching supplier of porcelain enamel coatings would additionally be hindered by the substantial switching costs that customers would face in doing so.[78] The majority of customers who responded to the market investigation indicated that switching supplier of porcelain enamel coatings is rather difficult and the vast majority of them has not switched to any alternative supplier in the last three years. They argue that switching is "*cost intensive*" and "*time consuming*" and indicated that, should the testing phase of the product manufactured by an alternative supplies proceed smoothly, it would still take them at least one year to switch.[79] Additionally, the majority of customers consider that entering the EEA market for the manufacturing and supply of porcelain enamel is difficult, indicating know-how and high costs relating to the infrastructure among the main barriers to entry. None of the customers who responded to the market investigation is aware of the entry of any new player in the EEA market for porcelain enamel coatings in the last five years.[80]

(68) *Sixth*, in relation to in-sourcing, contrary to the arguments put forward by the Notifying Party, none of the customers or competitors who responded to the market investigation consider that in-sourcing porcelain enamel could be or become a credible alternative to fulfil customers' porcelain enamel needs in the EEA.[81] Given the obstacles to switch to alternative suppliers, as described above, and the lack of ability to in-source porcelain enamel coatings, the Parties' customers' bargaining power would not seemingly exert a sufficient level of competitive pressure on the Merged Entity.[82]

(69) *Finally*, the majority of customers and competitors indicated that the Transaction would have a negative impact on the market for the manufacture and supply of porcelain enamel coatings in the EEA, specifically on price, choice of suppliers, and, to a more limited extent, on innovation.[83] A number of customers elaborated on this claim by arguing that, post-Transaction, there would not be a sufficient number of

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77 Horizontal Merger Guidelines, paragraph 31.

78 Horizontal Merger Guidelines, paragraph 31.

79 Questionnaire 2 to Customers for Porcelain Enamel, questions 22-23.

80 Questionnaire 2 to Customers for Porcelain Enamel, questions 27-28.

81 Questionnaire 1 to Competitors for Porcelain Enamel, question 27, and Questionnaire 2 to Customers for Porcelain Enamel, question 26.

82 Horizontal Merger Guidelines, paragraph 64.

83 Questionnaire 1 to Competitors for Porcelain Enamel, question 38, and Questionnaire 2 to Customers for Porcelain Enamel, question 31.

porcelain enamel coatings suppliers remaining in the market and none of those remaining would be capable of competing with the Merged Entity. One customer, for instance, stated that "*The merging of Prince and Ferro will lower competition, thus impacting price and choice of suppliers. Because of lack of competition, we believe there won't be incentives to innovation*" and one competitor confirmed that "*The transaction will cause less competition and less innovation*".[84] Certain customers even claimed that the number of credible options available to them would be reduced from two to one, *i.e.*, the Merged Entity.[85] For example, one customer indicated that "*There will be lower competition. There is no other supplier big enough to compete with Ferro + Prince*".[86] Therefore, the Commission considers that the increased market power that the Parties would hold post-Transaction, their larger bargaining power *vis-à-vis* customers, as well as the reduction in competition might lead to, on the one hand, more profitable price increases and, on the other hand, fewer incentives to innovate.[87]

Conclusion

(70) In light of the above findings, the Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market with respect to the market for the manufacture and supply of porcelain enamel coatings in the EEA due to non-coordinated horizontal effects.

4.3.2. Glass coatings

(71) The tables below set out the Parties' market share estimates on an overall market for the manufacture and supply of glass coatings (Table 2), as well as on plausible narrower markets, *i.e.* automotive glass coatings (Table 3), flat glass coatings (Table 4) and container glass coatings (Table 5).

84 Questionnaire 1 to Competitors for Porcelain Enamel, question 38, and Questionnaire 2 to Customers for Porcelain Enamel, question 31.

85 Minutes of a call with a customer, dated 4 October 2021.

86 Questionnaire 2 to Customers for Porcelain Enamel, question 31.

87 Horizontal Merger Guidelines, paragraph 8.

Table 2: Estimates of the Parties and their main competitors' market shares on the market for the manufacture and supply of glass coatings in the EEA (2018-2020)

Company	Value			Volume		
	2018	2019	2020	2018	2019	2020
Prince	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Ferro	[40-50]%	[40-50]%	[40-50]%	[30-40]%	[30-40]%	[30-40]%
Combined[88]	***[50-60]%***	***[50-60]%***	***[50-60]%***	***[50-60]%***	***[50-60]%***	***[40-50]%***
Johnson Matthey	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%
Weilburger	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%
Peter Lacke	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Fluorital	[0-5]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Monopole	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Performance Paints	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Tiflex	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Fenzi	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Marabu	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Source: Form CO and Annex GC2.

(72) On an overall market for the manufacture and supply of glass coatings, the Parties' combined shares would exceed 50% for the three last years both in value and in volume, except for the Parties' combined 2020 market share in volume, which would amount to [40-50]%. The increment accounted for by Prince is also not negligible, being [10-20]% in volume and [10-20]% in value in 2020. Furthermore, the Parties' next largest competitors, Weilburger and Johnson Matthey, hold relatively modest market shares in comparison to the Merged Entity, not exceeding [10-20]% in value and [10-20]% in volume.

(73) In line with the Commission's practice,[89] these high market share levels are in themselves indicative of the Parties' strong, and possibly dominant, position on the market. These findings are confirmed and even more pronounced when looking at the plausible narrower markets within the manufacture and supply of glass coatings with high concentration levels, in particular with respect to automotive glass coatings and flat glass coatings.

88 Some of the Parties' combined market shares may not add up due to rounding.

89 Horizontal Merger Guidelines, paragraph 17.

Table 3: Estimates of the Parties and their main competitors' market shares on the possible market for the manufacture and supply of automotive glass coatings in the EEA (2018-2020)

Company	Value			Volume		
	2018	2019	2020	2018	2019	2020
Prince	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Ferro	[60-70]%	[50-60]%	[50-60]%	[50-60]%	[50-60]%	[40-50]%
Combined[90]	***[70-80]%***	***[60-70]%***	***[60-70]%***	***[70-80]%***	***[60-70]%***	***[60-70]%***
Johnson Matthey	[20-30]%	[30-40]%	[30-40]%	[20-30]%	[30-40]%	[30-40]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Source: Form CO and Annex GC2.

(74) In the possible market for the manufacture and supply of automotive glass coatings, the Parties' combined shares would be very high in that they would exceed 65% both in value and in volume. Furthermore, the increment accounted for by Prince amounts to at least [10-20]%. Johnson Matthey would be the second largest competitor, far behind the Merged Entity, with a share of at most [30-40]% in value and in volume.

Table 4: Estimates of the Parties and their main competitors' market shares on the possible market for the manufacture and supply of flat glass coatings in the EEA (2018-2020)

Company	Value			Volume		
	2018	2019	2020	2018	2019	2020
Prince	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%
Ferro	[60-70]%	[60-70]%	[60-70]%	[50-60]%	[50-60]%	[50-60]%
Combined[91]	***[80-90]%***	***[80-90]%***	***[80-90]%***	***[70-80]%***	***[70-80]%***	***[70-80]%***
Johnson Matthey	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Fenzi	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%
Torrecid	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Printglass	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
KEM Glass	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Source: Form CO and Annex GC2.

(75) In the possible market for flat glass coatings, the Parties' combined shares would be even higher than for automotive glass, and would amount to at least [80-90]% in value and [70-80]% in volume. The increment originating from Ferro would be of at least [10-20]%. The Parties' next largest competitor Fenzi (in volume) and Johnson

90 Some of the Parties' combined market shares may not add up due to rounding.

91 Some of the Parties' combined market shares may not add up due to rounding.

Matthey (in value) would respectively hold a share of [10-20]% and [5-10]% at most.

Table 5: Estimates of the Parties and their main competitors' market shares on the possible market for the manufacture and supply of container glass coatings in the EEA (2018-2020)[92]

Company	Value			Volume		
	2018	2019	2020	2018	2019	2020
Prince	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%
Ferro	[30-40]%	[30-40]%	[30-40]%	[20-30]%	[20-30]%	[20-30]%
Combined[93]	***[40-50]%***	***[40-50]%***	***[30-40]%***	***[40-50]%***	***[40-50]%***	***[30-40]%***
Weilburger	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Peter Lacke	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Fluorital	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%
Monopole	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Performance Paints	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Tiflex	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Others	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%
Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Source: Form CO and Annex GC2.

(76) In the possible market for container glass coatings, while the Parties' combined shares are not as high as on the automotive and flat glass coatings plausible markets, they remain significant and exceed 40% for all three years, except for the Parties' combined 2020 share, which amounts to [30-40]%. Moreover, the Parties' next competitor, Weilburger would be far behind the Merged Entity, with a market share of at most [10-20]% in value and [10-20]% in volume.

Notifying Party's view

(77) The Notifying Party submits that the combination of the Parties' activities in glass coatings will not give rise to any non-coordinated horizontal effects due to reasons set out below:[94]

(a) *First*, in relation to all plausible narrower markets identified within the *glass coatings market*, the Notifying Party argues that:

(i) the market share estimates submitted by the Notifying Party materially overstate the Parties' position in the relevant market due to the fact that the Parties have not been able to estimate market shares for providers of polymer, paper label, sleeves, hotstamping, foils, wet chemical etching, and

92 For completeness, considering only the manufacture and supply of forehearth colourants, the Parties' combined share would amount to [90-100]% in value and in volume in the EEA in 2020.

93 Some of the Parties' combined market shares may not add up due to rounding.

94 Form CO, Chapter 3, paragraph 72.

metallisation glass coatings, which the Notifying Party considers suitable alternatives to frits-based glass coatings;

(ii) Prince is a relatively small player in the EEA market for glass coatings and, therefore, the increment brought by the Transaction is limited and will not materially change the market structure;

(iii) Customers in the EEA typically adopt a multi-sourcing strategy which allows them to play glass coatings suppliers against each other to obtain better conditions;

(iv) Post-Transaction, the Parties will continue facing competition from a well-established number of EEA-based glass coatings suppliers as well as from a number of suppliers who are not yet active in the EEA.[95]

(b) *Second*, concerning specifically *automotive glass coatings*, the Notifying Party argues that the increment brought by Prince is relatively small and will not significantly change the market dynamics. Additionally, the Parties face the threat of expansion from suppliers of glass coatings who do not currently supply to automotive glass customers and they also face the pressure exerted by large and sophisticated customers' countervailing buyer power;[96]

(c) *Third*, as regards *flat glass coatings*, similarly to the above, the increment brought by Prince is moderate and will not significantly change the market structure. The Notifying Party notes that the Parties are not close competitors in relation to the supply of flat glass coatings, and, within this product area, their sales are generated generally from customers in different sectors; for instance, while Prince focuses its activity mainly on appliance glass coatings, Ferro is more active in the supply of architectural coatings. Similarly to the arguments put forward concerning automotive glass coatings, the Notifying Party claims that the Parties face the threat of expansion from suppliers of glass coatings who do not currently supply to flat glass customers and they are also subject to the pressure exerted by large and sophisticated customers' countervailing buyer power;[97] and

(d) *Finally*, concerning *container glass coatings*, while stressing again that Prince's presence in this area is rather moderate, the Notifying Party argues that the Parties' overlap in this product area is limited, *i.e.*, there is only a limited number of customers currently sourcing their container glass coatings needs from both Parties. In addition, the Parties face the threat of expansion from even more suppliers of glass coatings, who do not currently supply to container glass customers and they are subject to the pressure exerted by large and sophisticated customers' countervailing buyer power. The Notifying Party also notes that there is currently spare capacity in the market,

95 Form CO, Chapter 3, paragraph 73-82.
96 Form CO, Chapter 3, paragraph 83-97.
97 Form CO, Chapter 3, paragraph 98-109.

which could allow competitors to increase production easily to meet demand from switching customers, should an increase in price occur post-Transaction.[98]

Commission's assessment

(78) The Commission considers that the Transaction raises serious doubts as to its compatibility with the internal market, on an overall market as well as on plausible narrower markets for the manufacture and supply of glass coatings in the EEA.

(79) *First*, as indicated in paragraph 70 to 75 above, the Transaction would combine the first (Ferro) and the second (Prince) largest manufacturer and supplier of glass coatings in the EEA, overall and for each of the three possible markets defined by reference to the various glass coatings end-applications. The market share data provided by the Parties also highlights the limited number of competitors, with market shares much more limited than that of the Parties' combined market shares, suggesting that a limited number of alternatives would remain post-Transaction. These findings were confirmed in the course of the market investigation, along with the Parties' closeness of competition.

(80) With respect to automotive glass coatings, competitors and customers alike highlighted that the main players on the EEA market are Ferro, Prince and Johnson Matthey, and rated very similarly their competitive strength, so that the Parties can be considered as being particularly close.[99] Customers also indicated that the Parties would be facing a very limited number of players post-Transaction.[100]

(81) Regarding flat glass coatings, the results of the market investigation indicate that, similar to automotive glass coatings, Ferro, Prince and Johnson Matthey, are the main players on the market and that they stand close in terms of competitive strength. Apart from the Parties, respondents to the market investigation identified Johnson Matthey and Fenzi as alternative competitors.[101]

(82) As to container glass coatings, competitors indicated that Ferro is a particularly strong player on this area, while Prince is a smaller player.[102] Customers however rated the Parties' competitive strength on this narrower plausible market as being very similar.[103] Furthermore, a competitor indicated that Prince and Ferro are able to

98 Form CO, Chapter 3, paragraph 110-128.

99 Questionnaire 3 to Competitors for Glass Coatings, question 21; Questionnaire 4 to Customers for Glass Coatings, question 19.

100 Questionnaire 4 to Customers for Glass Coatings, question 20.

101 Questionnaire 3 to Competitors for Glass Coatings, question 21; Questionnaire 4 to Customers for Glass Coatings, question 19.

102 Minutes of a call with a competitor, dated 23 September 2021; Questionnaire 3 to Competitors for Glass Coatings, question 21.

103 Questionnaire 4 to Customers for Glass Coatings, question 19.

offer some alternative techniques and technologies that other players may not be able to provide.[104]

(83) *Second*, with respect to the Notifying Party's argument that market shares overstate the Parties' position as they do not account for the competitive constraint exerted by suppliers of polymer, paper label, sleeves, hotstamping, foils, wet chemical etching, and metallisation glass coatings, the Commission observes that the technologies and techniques put forward by the Parties are very different from glass coatings, in that they do not involve the same raw materials, equipment and infrastructure, production line and know-how, and also do not yield the same type of features on the finished product.[105]

(84) In addition, even if the technologies and techniques put forward by the Parties were considered as alternatives to the manufacture and supply of glass coatings exerting a competitive constraint on these products, these products only exert a very remote and limited competitive constraint on container glass coatings, so that it cannot be considered as significantly changing the Parties' position on the market for the manufacture and supply of glass coatings and other plausible narrower markets, nor having an impact on their competitive dynamics. The results of the market investigation shows notably that customer typically select their preferred technology before even reaching out to suppliers, which do not typically take into account the competition coming from these alternative technologies, and that prices vary greatly from one type of technology to another without influencing each other.[106]

(85) A competitor primarily active in the manufacture and supply of automotive and flat glass coatings indicates in this respect that the choice of one technology rather than the other is with the customer and what they value for the result, such as design, aesthetics, sustainability *etc*. The same competitor further explains that the price of other techniques is not influenced by those of glass coatings, but rather, by the price of raw materials.[107]

(86) Another competitor active in the manufacture and supply of container glass coatings explains that the technologies being different, customer decide in favour of one technology over the other prior to even approaching suppliers, so that the price of one technology does not influence the other.[108] Rather, some other technologies such as hotstamping are merely complementary to glass coatings rather than competing with it.

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104 Minutes of a call with a competitor, dated 23 September 2021.

105 Form CO, paragraph 39 et seq.; minutes of a call with a competitor, dated 23 September 2021; minutes of a call with a competitor, dated 7 October 2021.

106 Minutes of a call with a competitor, dated 23 September 2021; minutes of a call with a competitor, dated 7 October 2021; see also Questionnaire 3 to Competitors for Glass Coatings, question 26.

107 Minutes of a call with a competitor, dated 7 October 2021. Questionnaire 3 to Competitors for Glass Coatings, question 26.

108 Minutes of a call with a competitor, dated 23 September 2021.

(87) *Third*, the results of the market investigation have shown that customers are not in a position to exercise sufficient countervailing buyer power, notably in view of the limited alternatives available on the market, as well as additional difficulties faced by customers when switching suppliers.

(88) As such, although in the course of the market investigation, a majority of customers responding to the market investigation confirmed that they had a multi-sourcing strategy in place, they also put forward the fact that the number of credible players on the market meant that post-Transaction they would have very few to no alternative players to turn to.[109] Accordingly, during the market investigation, a majority of competitors indicated that they did not consider that customers are able to exert significant buyer power.[110]

(89) Furthermore, with respect to switching, a majority of customers responding to the market investigation indicated that it is difficult or very difficult to switch suppliers of glass coatings, mentioning technicalities, testing, as well as the number of products as barriers to switching.[111] A majority of customers also indicated that it considered having less negotiating power than their glass coating supplier.[112]

(90) In relation specifically to automotive glass coatings, customers indicated that they are limited in their switching abilities due to some stringent testing and project development processes, which typically last from several months to a year or more, and involve significant costs.[113]

(91) Regarding flat glass coatings, a customer indicated that switching is particularly complex, as production lines are fine-tuned for the use of a specific supplier. As a result, even in the case of supply issues, switching is seen as the last resort, and is a carefully considered option prior to implementation. Similar to automotive glass coatings, switching requires a testing process, of quality but also of the specific features of the product (e.g. strength, thickness, scratching etc.), and, after the testing phase, the product must also be validated by the customer's clients.[114] A customer also stressed that the technology used by the supplier must be compatible with the customer's production process, which can prevent switching altogether or limit the volumes which the customer is able to source from a given supplier.[115]

(92) As to container glass coatings, several competitors on the market stated that they did not consider buyer power to constitute a strong competitive constraint on its activity,

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109 Questionnaire 4 to Customers for Glass Coatings, question 25; Minutes of calls with three customers, dated 23 September 2021, 30 September 2021, 1 October 2021.

110 Questionnaire 3 to Competitors for Glass Coatings, question 30.

111 Questionnaire 4 to Customers for Glass Coatings, question 26.

112 Questionnaire 4 to Customers for Glass Coatings, question 27.

113 Minutes of a call with a customer, dated 23 September 2021.

114 Minutes of a call with a customer, dated 1 October 2021.

115 Minutes of a call with a customer, dated 1 October 2021.

notably because of the fact that the manufacture and supply of glass coatings is rather a niche activity.[116]

(93) *Fourth*, in the course of the market investigation, competitors and customers alike indicated that they did not consider the possibility for in-sourcing, i.e. the manufacture of glass coatings by customers themselves, to act as a competitive constraint on glass coatings suppliers,[117] notably because it would require too much time and incur very high costs to be set up.[118] Therefore, contrary to the Parties' contention, the possibility for in-sourcing does not appear as a credible alternative for glass coatings customers.

(94) *Fifth*, the results of the market investigation highlighted the presence of significant barriers to entry notably in terms of know-how and technology required, making it difficult for new entrants to penetrate the market, and pose a competitive constraint on the Parties post-Transaction. Customers and competitors stressed the high technical level and advanced expertise required for the supply, and more largely the developments of glass coatings products.[119] Products are typically developed over several months of not years to meet specific customers requirements, and successfully fulfil testing procedures and customer approvals.[120]

(95) In this respect, a majority of competitors indicated that they viewed entry on the market for the supply of glass coatings in the EEA as difficult or very difficult.[121] A vast majority of customers similarly indicated that they were not aware of any entry of new suppliers of glass coatings in the EEA in the past five years.[122]

(96) Moreover, a majority of competitors already active in the manufacture and supply of glass coatings in the EEA, indicated that they considered expanding their presence (e.g., by increasing the volumes produced with an increased capacity) as difficult.[123] More generally, a majority of competitors also did not consider that any new entrant or small player would be able to grow/expand to such a level to exert a significant competitive constraint on the merged entity consisting of Prince and Ferro in the next three years.[124]

(97) *Lastly*, in the course of the market investigation, competitors and customers alike voiced concerns in relation to the impact of the Transaction on the market and the plausible narrower markets. Across all types of glass coatings, a majority of

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116 Minutes of a call with a competitor, dated 23 September 2021; Questionnaire 3 to Competitors for Glass Coatings, question 30.

117 Minutes of calls with a competitor and a customer, dated 23 September 2021 and 30 September 2021.

118 Minutes of a call with a customer, dated 30 September 2021.

119 Questionnaire 4 to Customers for Glass Coatings, question 30; Questionnaire 3 to Competitors for Glass Coatings, question 33.

120 Questionnaire 4 to Customers for Glass Coatings, question 30; Questionnaire 3 to Competitors for Glass Coatings, question 33.

121 Questionnaire 3 to Competitors for Glass Coatings, question 33.

122 Questionnaire 4 to Customers for Glass Coatings, question 31.

123 Questionnaire 3 to Competitors for Glass Coatings, question 32.

124 Questionnaire 3 to Competitors for Glass Coatings, question 35.

competitors and customers anticipate that the Transaction will have a negative impact on prices, and possibly the range of supplied products.[125] Customers also point out the reduction of competition, in view notably of the limited number of players already active on the market.[126] In this respect, the Commission notes that Parties' strong combined position on the market in comparison with other players, combined with the low number of competitors remaining on the market and the relatively high barriers to market entry are likely to have an adverse effect on competition on the market.

(98) A customer for automotive glass coatings summarised the impact of the Transaction as follows: "*Ultimately, it will allow the combined entity to become even more dominant*".[127]

(99) A customer for automotive glass coatings and flat glass coatings notably explains that Prince represented an alternative sourcing which is lost directly because of the Transaction.[128] The same customer indicates "*the Transaction may cause a reduction in the level of competition in a market for the supply of automotive coatings such as enamel, which is already particularly concentrated*."[129]

(100) A competitor of the Parties in the area of container glass coatings voiced some concerns with respect to the size of the Merged Entity post-Transaction, in a market which is particularly small and niche.[130]

Conclusion

(101) In light of the elements stated above, the Commission considers that the Transaction is likely to raise serious doubts as to its compatibility with the internal market, on the overall market and plausible narrower markets for the manufacture and supply of glass coatings in the EEA.

5. COMMITMENTS

5.1. Framework for the assessment of the commitments

(102) Where a notified concentration raises serious doubts as to its compatibility with the internal market, the parties may undertake to modify the concentration to remove the grounds for the serious doubts identified by the Commission. Pursuant to Article 6(2) of the Merger Regulation, where the Commission finds that, following modification by the undertakings concerned, a notified concentration no longer

[125] Questionnaire 4 to Customers for Glass Coatings, question 34; Questionnaire 3 to Competitors for Glass Coatings, question 41; Minutes of a call with a customer, dated 30 September 2021.

[126] Questionnaire 4 to Customers for Glass Coatings, question 35; Minutes of a call with a customer, dated 1 October 2021.

[127] Minutes of a call with a customer, dated 23 September 2021.

[128] Minutes of a call with a customer, dated 1 October 2021.

[129] Minutes of a call with a customer, dated 1 October 2021.

[130] Minutes of a call with a competitor, dated 23 September 2021.

raises serious doubts, it shall declare the concentration compatible with the internal market pursuant to Article 6(1)(b) of the Merger Regulation.

(103) As set out in the Commission's Remedies Notice,[131] the commitments proposed by the parties have to eliminate the competition concerns entirely, and have to be comprehensive and effective from all points of view.[132] Moreover, commitments in Phase I can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation and that the commitments are sufficient to clearly rule out "serious doubts" within the meaning of Article 6(1)(c) of the Merger Regulation.[133]

(104) In assessing whether the proposed commitments will maintain effective competition, the Commission considers all relevant factors, including the type, scale and scope of the proposed commitments with reference to the structure and the particular characteristics of the market in which the competition concerns arise, including the position of the parties and other participants on the market.[134]

(105) In order for the proposed commitments to comply with those principles, they must be capable of being implemented effectively within a short period of time.[135]

(106) Concerning the type of acceptable commitments, the Merger Regulation gives discretion to the Commission as long as the commitments meet the required standards. Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty, at the time of its Decision, that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that effective competition will be maintained.[136] Divestiture commitments are normally the best way to eliminate competition concerns resulting from horizontal overlaps.

(107) The divested activities must consist of a viable business that, if operated by a suitable purchaser, can compete effectively with the merged entity on a lasting basis and that is divested as a going concern. The divested business must include all the assets which contribute to its current operation or which are necessary to ensure its viability and competitiveness and all personnel which are currently employed or which are necessary to ensure the business' viability and competitiveness.[137]

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131 Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (OJ C 267, 22.10.2008, p. 1-27), the "Remedies Notice".

132 Remedies Notice, paragraphs 9 and 61.

133 Remedies Notice, paragraph 81.

134 Remedies Notice, paragraph 12.

135 Remedies Notice, paragraph 9.

136 Remedies Notice, paragraph 10.

137 Remedies Notice, paragraphs 23-25.

(108) The intended effect from the divestiture will only be achieved if and once the divested business is transferred to a suitable purchaser in whose hands it will become an active competitive force in the market. The potential of a business to attract a suitable purchaser is an important element of the Commission's assessment of the appropriateness of the proposed commitment.[138]

(109) Even though normally the divestiture of an existing viable stand-alone business is required, the Commission, by observing the principle of proportionality, may also advise the parties to consider the divestiture of businesses which have existing strong links or are partially integrated with businesses retained by the parties and therefore need to be 'carved out' in those respects. Conversely, carving-out a business from the scope of the commitments can only be accepted by the Commission if it can be certain that, at least at the time when the business is transferred to the purchaser, a viable business on a stand-alone basis will be divested and the risks for the viability and competitiveness caused by the carve-out will thereby be reduced to a minimum.[139]

5.2. Procedure

(110) On 17 December 2021, the Commission informed the Parties of the serious doubts arising from the preliminary assessment of the Transaction during a "State of Play" meeting.

(111) In order to remove the serious doubts raised by the Transaction and render the concentration compatible with the internal market, on 22 December 2021, the Notifying Party formally submitted a first set of commitments under Article 6(2) of the Merger Regulation (the "Initial Commitments").

(112) On 3 January 2022, the Commission launched a market test of the Initial Commitments in order to assess whether they were sufficient and suitable to remedy the serious doubts identified and described under Section 4 above.

(113) Following the feedback received from the market test, the Notifying Party formally submitted amended commitments on 19 January 2022 (the "Final Commitments").[140] The Final Commitments are annexed to this decision,[141] and form an integral part thereof.

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138 Remedies Notice, paragraph 47.

139 Remedies Notice, paragraphs 35-36.

140 The Parties are in discussion with the US FTC regarding the divestment of Prince's US porcelain enamel business (the "Prince US Porcelain Enamel Business" and, together with the Divestment Businesses, the "Combined Divestment Business"). […]

141 See Annex I.

5.3. The proposed Commitments

5.3.1. Description of the Initial Commitments

(114) The Initial Commitments consist of the divestment of: (i) Prince's European porcelain enamel coatings business, and (ii) Prince's European glass coatings business,[142] which respectively include Prince's Belgian subsidiary Prince Belgium BV (including its branches in France and Germany and a representative office in Shanghai) and Prince's Italian subsidiary Prince Minerals Italy S.r.l., jointly referred to as the "Divestment Businesses". Specifically, the following elements are included in the Divestment Businesses:

(a) Prince's manufacturing facility in Bruges, Belgium (the "Bruges Facility") and all tangible and intangible assets (including intellectual property rights) located at the Bruges Facility needed to manufacture, develop and supply porcelain enamel coatings as currently manufactured, developed, and supplied by Prince;

(b) Prince's manufacturing facility in Cambiago, Italy (the "Cambiago Facility") and all tangible and intangible assets (including intellectual property rights) located at the Cambiago Facility needed to manufacture, develop and supply glass coatings as currently manufactured, developed, and supplied by Prince;

(c) All production equipment necessary for the production of forehearth concentrates to be re-located to the Bruges Facility from Fenton, UK;[143]

(d) The land where the tangible assets belonging to the Divestment Businesses are located (except for the premises where the Cambiago Facility operates as these are not owned by Prince Minerals Italy S.r.l.);

(e) All raw materials, if any, work in progress and finishing goods inventory related to the Divestment Businesses;

(f) All intellectual property rights used by Prince Belgium BV and Prince Minerals Italy S.r.l., know-how and R&D relating to the marketing, development, manufacture and supply of porcelain enamel coatings and glass coatings (including logos, sub-brands, taglines, trade dress) and the manufacturing processes used, including with respect to pipeline products;

(g) All licences, permits and authorisations issued by any governmental organization for the benefit of the Divestment Businesses;

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[142] This is to the exception of forehearth colourants concentrates. With respect to forehearth colourants concentrates specifically, Prince further committed to transfer its production unit of forehearth colourants concentrates located in Fenton, UK, to its production facility in Bruges, Belgium.

[143] As part of the Initial Commitments, Prince shall relocate the production equipment necessary for the production of forehearth concentrate from Fenton to the Bruges Facility, at its own cost and risk.

(h) All contracts, leases, commitments, and customer orders of the Divestment Businesses;

(i) All customer, credit and other records of the Divestment Businesses;

(j) Through a transition services agreement ("TSA"), transitional support to the extent requested by the purchaser and for a reasonable commercial duration between […] months;

(k) License to the purchaser – for a reasonable transitional period necessary to allow the purchaser to rebrand the Divestment Businesses – to use the "Prince" name and logo to the same extent as such name and logo are currently used by Prince in relation to the Divestment Businesses;

(l) During the period of the above mentioned license, a black-out period of a commercially reasonable duration during which Prince will not, within the EEA, sell any Prince-branded products of a type that is currently manufactured by the Divestment Businesses or Prince-branded forehearth concentrate products; and

(m) All personnel employed at each of the Bruges Facility and the Cambiago Facility (approximately 125 individuals in the Bruges Facility and 26 individuals in the Cambiago Facility), including the key personnel.

(115) The Initial Commitments provide that the purchaser of the Divestment Businesses will meet the following criteria:

(a) The purchaser shall be independent of and unconnected to the Notifying Party and its affiliated undertakings (this being assessed having regard to the situation following the divestiture);

(b) The purchaser shall have the financial resources, proven experience and incentive to maintain and develop the Divestment Businesses as a viable and active competitive force in competition with the Parties and other competitors;

(c) The acquisition of the Divestment Businesses by the purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Initial Commitments will be delayed. In particular, the purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Businesses.

(116) The Initial Commitments provide that the Divestment Businesses are an attractive and sellable package, which generated in 2020 a total net turnover of approximately

EUR […] million.[144] Forecasted turnover for 2022 would amount to approximately EUR […] million.

5.3.2. Results of the market test

(117) Overall, the results of the market test were positive. A large majority of respondents to the market test indicated that the Initial Commitments are suitable, *i.e.*, their scope is appropriate to effectively remove the competitive concerns identified.[145]

(118) A number of respondents to the market test noted, however, that certain IP rights and R&D capabilities might be shared among Prince's facilities across the world and not be exclusive to the Divestment Businesses, thus hampering the autonomy and the viability of the Divestment Businesses in terms of IP rights and R&D.[146] The Commission subsequently investigated this claim further. Ultimately, based on the information provided by the Notifying Party, the Commission understands that there are certain technical customer support services performed at Prince's various R&D centres across the world. These technical customer support services, however, are performed independently and not in coordination with the technical customer support services performed at the Bruges Facility and the Cambiago Facility. All the necessary IP rights and R&D capabilities relating to the manufacture and supply of porcelain enamel coatings and glass coatings in the EEA are fully part of the Divestment Businesses.[147]

(119) In terms of viability, a majority of respondents to the market test further confirmed that the Initial Commitments, in the hands of a suitable purchaser would allow it to become an effective competitor in the EEA in the manufacture and supply of both porcelain enamel coatings and glass coatings.[148]

(120) The majority of market participants indicated that the scope of the transitional services agreement proposed in the Initial Commitments is sufficient for a purchaser to take up operations effectively. In terms of duration, the majority of market respondents indicated that 12 months would appear to be an appropriate duration for such agreement.[149]

(121) Concerning the rebranding license clause, market participants who responded to the market test most commonly answered that an appropriate duration for such provision would be either 12 months or 6 months, but a sizeable number of respondents also indicated that 24 months would be more adequate.[150] The market test results relating to the rebranding license clause would need to be assessed together with the results

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144 This figure does not include forehearth concentrate revenues currently sold from Fenton, UK.

145 Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, questions 4 and 5.1-5.2.

146 Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, questions 5.1.1 and 6.1.1.

147 Response to RFI 12, question 1, and RFI 13, questions 7-8.

148 Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, questions 6.1 and 6.2.

149 Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, questions 7.1 and 7.2.

150 Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, questions 8.1 and 8.2.

relating to the black-out period. In this respect, a majority of respondents indicated that 24 months would be an appropriate duration for such black-out period, while a sizeable number of respondents consider that 12 months might be sufficient.[151]

(122) As to potential risks associated with the Initial Commitments, the vast majority of respondents to the market test did not point out any uncertainties, difficulties, risks and/or delays, which could jeopardise the transfer of the Divestment Businesses, their viability, or future competitiveness of the Divestment Businesses in the hands of a suitable purchaser.[152]

(123) In relation to the standard purchaser criteria included in the Initial Commitments, while a majority of respondents to the market test indicated that such criteria would be appropriate to identify a suitable purchaser, the slight majority of customers who responded to the market test consistently expressed concerns in relation to the identity of the purchaser of the Divestment Businesses. More specifically, a number of customers indicated the importance for a purchaser to have a relevant experience dealing with industrial businesses, as well as a long-term investment strategy in the EEA.[153] One customer, for instance, noted "*This is a highly technical sector. We believe that the buyer should have a very strong industrial background and should have the proven expertise to run such an entity. A purely financial buyer would lack the necessary expertise to ensure continuous innovation, and may solely focus on short profits*" and another one added "*We believe the purchaser must have knowledge of the customers and the regulations. Not necessarily be an already established player in the specific enamel porcelain, but have exposure to the same markets*".[154] Additionally, certain customers who responded to the market test stressed that it would be risky to sell the Divestment Businesses to a financial investor as a financial investor would focus on short-term profitability and not be interested in having a long-term commitment to maintain the Divestment Businesses viable and competitive. One customer observed "*No period of time defined* [in the Initial Commitments] *how long a purchaser of the Prince manufacturing facilities has to pursue the business. There is no requirement that defines a minimum business period. If purchaser decides after one year to stop business, customers would face interruption in production and need to qualify new sources*".[155]

(124) Finally, a majority of respondents to the market test indicated that they would not consider purchasing the Divestment Businesses. While there was a limited number of respondents that signalled their interest in potentially purchasing the Divestment Businesses, amongst those interested candidates an even smaller number would qualify as industrial buyers.[156]

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151 Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, questions 8.1 and 8.2.

152 Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, questions 10 and 11.

153 Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, questions 12 and 13.

154 Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, question 13.1.

155 Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, questions 5.1.1 and 13.1.

156 Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, question 16.

5.3.3. Commission's assessment of the Initial Commitments

(125) As explained in Section 4 above, the Commission considers that the Transaction gives rise to serious doubts as to its compatibility with the internal market in relation to (i) the market for the manufacture and supply of porcelain enamel coatings, and (ii) the market for the manufacture and supply of glass coatings, both at EEA level. The Commission notes that the Initial Commitments would remove the full overlap in the markets where serious doubts result from the Transaction.

(126) Based on the feedback received from the market test on the Initial Commitments, the Commission considers that the Initial Commitments have the appropriate scope to address the competitive concerns identified in the market for the manufacture and supply of porcelain enamel coatings and glass coatings at EEA level. However, the market test feedback identified the need for some technical improvements, notably with respect to the specification of the duration of the TSA, the rebranding clause and correspondent black-out period.

(127) Additionally, the results of the market test highlighted some specific risks in relation to the transfer of the Divestment Businesses to a financial purchaser. Indeed, customers and competitors alike underlined that the operation of the Divestment Businesses required some specific knowledge to translate the business to be divested into a competitive force on the market. Respondents indicated accordingly that an industrial buyer, or, at the very least, a financial player with a track record of dealing with portfolio companies active in the industrial sector would be required.[157] Therefore, in view of the feedback received from the market test relating to risks associated with financial investors and in line with its practice,[158] the Commission considers that the Initial Commitments should be amended by supplementing the purchaser criteria with an additional criteria so as to ensure that (i) only companies with proven experience in the manufacturing sector in the EEA and, (ii) should the purchaser be a financial investor, only a financial investor with a long-term commitment and experience in operating in the manufacturing sector, are considered as potentially suitable purchasers.

(128) Furthermore, in view of the fact that (i) only a limited number of respondents to the market test signalled an interest in purchasing the Divestment Businesses, and out of those potentially interested purchasers, only a very limited number were industrial companies, and (ii) the risks identified by markets participants with respect to the features of a suitable purchaser, the Commission considers it appropriate to require an amendment of the Initial Commitments to include an upfront buyer clause.[159] Such requirement would mitigate the risks associated with the selection of a suitable purchaser for the Divestment Businesses.

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[157] Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, questions 12 and 13.

[158] Remedies Notice, paragraph 49.

[159] Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, question 16.

5.3.4. Description of the Final Commitments

(129) Following the results of the market test of the Initial Commitments, the Commission communicated the summary of the observations made by the respondents to the market test and its assessment to the Parties.

(130) In order to address the comments made by Commission, on 19 January 2022, the Notifying Party formally submitted the Final Commitments, which contain the following technical improvements of the Initial Commitments:

(a) *TSA.* The TSA includes a duration of […] months, with an option for renewal of […] months.[160]

(b) *Rebranding license and black-out period.* The rebranding license clause and corresponding black-out period both include a duration of […] months.[161]

(131) Furthermore, the Final Commitments include an amendment of the purchaser criteria and an upfront buyer clause, as described below:

(a) *Purchaser criteria.* The purchaser criteria have been further refined. Specifically, the purchaser criteria in the Final Commitments provide that

(i) the purchaser shall have not only the financial resources, proven experience and incentive to maintain and develop the Divestment Businesses as a long-term viable and active competitive force in competition with the Parties and the other competitors, but it shall also have proven experience specifically in the manufacturing sector in the EEA;[162] and

(ii) should the purchaser be a financial investor, it shall (i) have a proven track-record of long-term commitment to maintain the businesses it acquired viable, competitive, and well-capitalized, and (ii) demonstrate a long-term commitment to maintain the Divestment Businesses viable, competitive, and well-capitalized.[163]

(b) *Upfront buyer requirement*. The Final Commitments include an upfront buyer requirement, meaning that the Transaction will not be implemented before the Notifying Party has entered into a final and binding sale and purchase agreement for the implementation of the Final Commitments and the Commission has approved the purchaser.[164]

[160] Final Commitments, Schedule, paragraph 2(h).
[161] Final Commitments, Schedule, paragraph 2(b).
[162] Final Commitments, paragraph 16(b).
[163] Final Commitments, paragraph 16(c).
[164] Final Commitments, paragraph 3.

5.3.5. Commission's assessment of the Final Commitments

(132) The Commission considers that, for the reasons set out below, the Final Commitments remove the serious doubts previously identified as to the compatibility of the Transaction with the internal market with respect to the manufacture and supply of porcelain enamel coatings and glass coatings, at EEA level.

(133) *First*, the Final Commitments allow for the removal of all competition concerns identified by the Commission. The Final Commitments consist of the Notifying Party committing to divest Prince's entire porcelain enamel and glass coatings business in the EEA. The divestment of the Divestment Businesses would therefore effectively address all of the Commission's concerns by removing the full overlap between the Parties' activities in those markets where the Commission identified serious doubts stemming from the Transaction.

(134) In the course of the market test, a vast majority of respondents confirmed the appropriateness of the scope of the Commitments. The Divestment Businesses encompass all necessary elements to ensure their competitiveness, including the necessary IP rights and R&D capabilities. The Final Commitments also provide for a TSA, rebranding license clause, and a black-out period, which are sufficient, both in terms of scope and duration, to ensure a smooth transfer of the Divestment Businesses to a suitable purchaser.

(135) *Second*, the Commission considers that the Divestment Businesses are viable, so that they would allow a suitable purchaser to effectively and credibly compete for the manufacture and supply of porcelain enamel coatings and glass coatings at EEA level.

(136) Based on the information provided by the Notifying Party, the Divestment Businesses largely operate on a standalone basis and very few of its back-office functions are integrated with those of Prince's non-EEA business. To the extent that some back-office functions are not included in the Divestment Businesses, such functions will be offered by Prince, at the option of the purchaser, as part of the TSA.

(137) In terms of personnel, the Divestment Businesses have a management team, production leadership team, quality control team, maintenance team, product engineering team and personnel responsible for sales and marketing and compliance. Thus, the relevant Key Personnel is part of the Divestment Businesses.

(138) On the basis of the accounts and detailed financial data provided by the Notifying Party, the Commission notes that the Divestment Businesses will also likely be profitable. Both the Bruges Facility and the Cambiago Facility have been registering positive profit margins and their sales are mostly external, thus excluding *prima facie* concerns that transfer pricing amongst Prince's facilities across the world could influence the accounts provided and analysed. Additionally, based on turnover

figures for 2021,[165] the turnover registered for the Bruges Facility has been increasing compared to 2019 and 2020, and the turnover registered for the Cambiago Facility in 2020 has remained stable compared to 2017 and 2018, while the turnover registered in 2019 was slightly higher.

(139) In the course of the market test, a majority of respondents confirmed accordingly that a suitable purchaser of the Divestment Businesses would likely become an effective competitor in the EEA on a lasting basis, as regards the manufacture and supply of the manufacture and supply of porcelain enamel coatings and glass coatings.[166]

(140) *Third*, the revised purchaser criteria set forth in the Final Commitments will ensure that the Divestment Businesses will be transferred to a suitable purchaser. Such purchaser will have manufacturing experience in the EEA and, additionally, should the purchaser be a financial investor, it will have to show a proven track-record of long-term commitment to maintain the businesses it acquired in the past viable, competitive, and well-capitalized, and will have to demonstrate a long-term commitment to maintain the Divestment Businesses viable, competitive, and well-capitalized in the future. This additional criterion allows to address the potential risk pointed out by some respondents to the market test that a financial investor might exit the market in the short term and not be interested in keeping the Divestment Businesses running and viable in the long-term.

(141) *Finally*, the upfront buyer clause mitigates implementation risks and ensures that the Divestment Businesses will be transferred to a suitable purchaser.

(142) For the reasons outlined above, the Commission concludes that the Final Commitments are sufficient in scope and suitable to eliminate the serious doubts as to the compatibility of the Transaction with the internal market with respect to (i) the manufacture and supply of porcelain enamel coatings, and (ii) the manufacture and supply of glass coatings, at EEA level.

(143) The decision in this case is conditioned on the full compliance with the requirements set out in Section B of the Final Commitments (including the Schedule), which constitute conditions. The remaining requirements set out in the other sections of the Final Commitments constitute obligations on the Notifying Party.

6. CONCLUSION

(144) For the above reasons, the Commission has decided not to oppose the Transaction, as modified by the Final Commitments, and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B of the Final Commitments, annexed to the present

[165] These figures would refer to the turnover registered in 2021 up to September 2021. The figures related to the whole year 2021 have not been made available yet.

[166] Market test of the Commitments – R1 – for Porcelain Enamel and Glass Coatings, questions 6.1 and 6.2.

decision, and with the obligations contained in the other sections of the Final Commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

CASE M.10341 – PRINCE INTERNATIONAL CORPORATION / FERRO CORPORATION

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 (the "**Merger Regulation**"), ASP Prince Holdings, Inc. ("**Prince**" or the "**Notifying Party**") hereby enters into the following Commitments (the "**Commitments**") *vis-à-vis* the European Commission (the "**Commission**") with a view to rendering the acquisition of Ferro Corporation by Prince (the "**Concentration**") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "**Decision**"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "**Remedies Notice**").

Section A. Definitions

1 For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by Prince, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "**Consolidated Jurisdictional Notice**").

Assets: the assets that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses as indicated in Section B, paragraph 5 (a), (b) and (c) and described more in detail in the Schedule.

Closing: the transfer of the legal title to the Divestment Businesses to the Purchaser.

Closing Period: the period of […] months from the approval of the Purchaser and the terms of sale by the Commission.

Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Businesses: the businesses which the Notifying Party commits to divest as referred to in Section B and further described in the Schedule.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Prince and who has/have received from Prince the exclusive Trustee mandate to sell the Divestment Businesses to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] months from the Effective Date.

Hold Separate Manager: the person appointed by Prince for the Divestment Businesses to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all Personnel necessary to maintain the viability and competitiveness of the Divestment Businesses, as listed in the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by Prince, and who has/have the duty to monitor Prince's compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party and the undertaking that is the target of the Concentration.

Personnel: all staff currently employed by the Divestment Businesses as listed in **Annex 1**.

Prince: ASP Prince Holdings, Inc., incorporated under the laws of the State of Delaware, with principal office at 15311 Vantage Parkway West, Suite 350, Houston 77032 TX, USA.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Businesses in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 15 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Retained Business: all of Prince's business not within the scope of the Divestment Business.

Schedule: the schedule to these Commitments describing in more detail the Divestment Businesses.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] months from the end of the First Divestiture Period.

Section B. The commitment to divest and the Divestment Businesses

Commitment to divest

2 In order to maintain effective competition, Prince commits to divest, or procure the divestiture of the Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 14 of these Commitments. To carry out the divestiture, Prince commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Businesses within the First Divestiture Period. If Prince has not entered into such an agreement at the end of the First Divestiture Period, Prince shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Businesses in

accordance with the procedure described in paragraph 26 in the Trustee Divestiture Period.

3 The Concentration shall not be implemented before Prince or the Divestiture Trustee has entered into a final binding sale and purchase agreement for the sale of the Divestment Businesses and the Commission has approved the purchaser and the terms of sale in accordance with paragraph 17.

4 Prince shall be deemed to have complied with this commitment if:

(a) by the end of the Trustee Divestiture Period, Prince or the Divestiture Trustee has entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 14; and

(b) the Closing of the sale of the Divestment Businesses to the Purchaser takes place within the Closing Period.

5 In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Businesses, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 40 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Businesses is no longer necessary to render the Concentration compatible with the internal market.

Structure and definition of the Divestment Business

6 The Divestment Businesses consist of two legal entities: (i) Prince's Belgium subsidiary Prince Belgium BV (including its branches in France and Germany and a representative office in Shanghai) and (ii) Prince's Italian subsidiary Prince Minerals Italy S.r.l., as further described in the Schedule. The structure chart of the entities which comprise the Divestment Businesses is provided in **Annex 2**. The Divestment Businesses, described in more detail in the Schedule, include all assets and staff that contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Businesses, in particular:

(a) all tangible and intangible assets (including intellectual property rights);

(b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Businesses;

(c) all contracts, leases, commitments and customer orders of the Divestment Businesses;

(d) all customer, credit and other records of the Divestment Businesses; and

(e) the Personnel.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

7 From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Businesses. In particular Prince undertakes from the Effective Date until Closing:

(a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy, of the Divestment Businesses;

(b) to make available, or procure to make available, sufficient resources for the development of the Divestment Businesses and on the basis and continuation of the existing business plans; and

(c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Businesses, and not to solicit or move any Personnel to Prince's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Businesses, Prince shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. Prince must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

8 The Notifying Party commits, from the Effective Date until Closing, to procure that the Divestment Businesses are kept separate from the business(es) that the Notifying Party will be retaining and, after closing of the Concentration, to keep the Divestment Businesses separate from the business(es) that the Notifying Party is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the businesses retained by Prince have no involvement in the Divestment Businesses; (ii) the Key Personnel and Personnel of the Divestment Businesses have no involvement in any business retained by Prince and do not report to any individual outside the Divestment Businesses.

9 Until Closing, Prince shall assist the Monitoring Trustee in ensuring that the Divestment Businesses are managed as distinct and saleable entities separate from the businesses which Prince is retaining. Immediately after the adoption of the Decision, Prince shall appoint a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Businesses independently and in the best interest of the businesses with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Prince. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 6(c) of these Commitments. The Commission may, after having heard Prince, require Prince to replace the Hold Separate Manager.

Ring-fencing

10 Prince shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date, obtain any Confidential Information relating to the Divestment Businesses and that any such Confidential Information obtained by Prince before the Effective Date will be eliminated and not be used by Prince (excluding Confidential Information obtained and/or retained by Prince to provide transitional services to the Divestment Businesses to the extend needed for the provision of such services). In particular, the participation of the Divestment Businesses in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Businesses. Prince may obtain or keep information relating to the Divestment Businesses which is reasonably necessary for the divestiture of the Divestment Businesses or the disclosure of which to Prince is required by law. For the avoidance of doubt, the obligations in this paragraph will not require Prince to delete any Confidential Information relating to its Retained Business, provided that such information shall only be used for the purposes of such Retained Business.

Non-solicitation clause

11 Prince undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Businesses for a period of […] years after Closing.

Due diligence

12 In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Businesses, Prince shall, subject to customary confidentiality assurances, and dependent on the stage of the divestiture process:

(a) provide to potential purchasers sufficient information as regards the Divestment Businesses; and

(b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

13 Prince shall submit written reports in English on potential purchasers of the Divestment Businesses and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). Prince shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Businesses to the Commission at each and every stage of the divestiture process following the Effective Date, as well as a copy of all the offers made by potential purchasers within five days of their receipt following the Effective Date.

14 Prince shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers, in each case following the Effective Date.

Relocation of the production equipment for the production of forehearth concentrate from Fenton to the Bruges Facility

15 Prince shall relocate the production equipment necessary for the production of forehearth concentrate from Fenton to the Bruges Facility, at its own cost and risk, within the Closing or if this is not feasible, as soon as reasonably practical thereafter by a date to be agreed between Prince and the Purchaser under the oversight of the Monitoring Trustee. At the request of Prince, and based on a positive opinion by the Trustee, the Commission may consent to the extension of this deadline.

Section D. The Purchaser

16 In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

(a) the Purchaser shall be independent of and unconnected to the Notifying Party/Notifying Parties and its/their Affiliated Undertakings (this being assessed having regard to the situation following the divestiture);

(b) the Purchaser shall have the financial resources, proven experience (specifically in the manufacturing sector in the EEA) and incentive to maintain and develop the Divestment Businesses as a long-term viable and active competitive force in competition with the Parties and other competitors;

(c) should the Purchaser be a financial investor, it shall (i) have a proven track-record of long-term commitment to maintain the businesses it acquired viable, competitive, and well-capitalized and (ii) demonstrate a long-term commitment to maintain the Divestment Businesses viable, competitive, and well-capitalized;

(d) the acquisition of the Divestment Businesses by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

17 The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Businesses shall be conditional on the Commission's approval. When Prince has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. Prince must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria, and that the Divestment Businesses are being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Businesses are being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Businesses without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Businesses after the sale, taking account of the proposed purchaser.

Section E. Trustee

(I) Appointment procedure

18 Prince shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. Prince commits not to close the Concentration before the appointment of a Monitoring Trustee.

19 If Prince has not entered into a binding sale and purchase agreement regarding the Divestment Businesses one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Prince at that time or thereafter, Prince shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

20 The Trustee shall:

(a) at the time of appointment, be independent of Prince and its Affiliated Undertakings;

(b) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and

(c) neither have nor become exposed to a Conflict of Interest.

21 The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Businesses, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by Prince

22 No later than two weeks after the Effective Date, Prince shall submit the name or names of one or more natural or legal persons whom Prince proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, Prince shall submit a list of one or more persons whom Prince proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 17 and shall include:

(a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

(c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

23 The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Prince shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Prince shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Prince

24 If all the proposed Trustees are rejected, Prince shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 15 and 20 of these Commitments.

Trustee nominated by the Commission

25 If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Prince shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

(II) Functions of the Trustee

26 The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Prince, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

27 The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Businesses with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Prince with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Businesses, and the keeping separate of the Divestment Businesses from the business retained by the Parties, in accordance with paragraphs 6 and 7 of the Commitments;

(b) supervise the management of the Divestment Businesses as a distinct and saleable entity, in accordance with paragraph 8 of these Commitments;

(c) with respect to Confidential Information:

– determine all necessary measures to ensure that Prince does not after the Effective Date obtain any Confidential Information relating to the Divestment Businesses except as required to ensure the continued viability of the Divestment Businesses (including as necessary to provide transitional services to the Divestment Businesses);

– in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses;

– make sure that any Confidential Information relating to the Divestment Businesses obtained by Prince before the Effective Date is eliminated and will not be used by Prince, except as required to ensure the continued viability of the Divestment Businesses; and

– decide whether such information may be disclosed to or kept by Prince as the disclosure is reasonably necessary to allow Prince to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Businesses and Prince or Affiliated Undertakings;

(iii) propose to Prince such measures as the Monitoring Trustee considers necessary to ensure Prince's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Businesses,

the holding separate of the Divestment Businesses and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Divestment Businesses and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending Prince a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Businesses as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending Prince a non-confidential copy at the same time, if it concludes on reasonable grounds that Prince is failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 15 of these Commitments, submit to the Commission, sending Prince a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Businesses after the sale and as to whether the Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of the Divestment Businesses without one or more Assets or not all of the Personnel affects the viability of the Divestment Businesses after the sale, taking account of the proposed purchaser;

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

28 If the Monitoring and Divestiture Trustee are not the same legal or natural person, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

29 Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Businesses to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 13 and 14 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Prince, subject to Prince's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

30 In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Prince.

(III) Duties and obligations of the Parties

31 Prince shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Prince's or the Divestment Businesses' relevant books, records, documents, management or other Personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Prince and the Divestment Businesses shall provide the Trustee upon request copies of any document. Prince and the Divestment Businesses shall make available to the Trustee an office on their premises, and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

32 Prince shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. Prince shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Prince shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

33 Prince shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Prince shall cause the documents required for effecting the sale and the Closing to be duly executed.

34 Prince shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Prince for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of, or breach of confidentiality by, the Trustee, its employees, agents or advisors.

35 At the expense of Prince, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Prince's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Prince refuse to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors instead, after having heard Prince. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 31 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Prince during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

36 Prince agrees that the Commission may share Confidential Information proprietary to Prince with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.

37 Prince agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Monitoring Trustee.

38 For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

(IV) Replacement, discharge and reappointment of the Trustee

39 If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and Prince, require Prince to replace the Trustee; or

(b) Prince may, with the prior approval of the Commission, replace the Trustee.

40 If the Trustee is removed according to paragraph 36 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 15-22 of these Commitments.

41 Unless removed according to paragraph 36 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

42 The Commission may extend the time periods foreseen in the Commitments in response to a request from Prince or, in appropriate cases, on its own initiative. Where Prince requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Prince. Only in exceptional circumstances shall Prince be entitled to request an extension within the last month of any period.

43 The Commission may further, in response to a reasoned request from Prince showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to Prince. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

44 The Commitments shall take effect upon the date of adoption of the Decision.

SCHEDULE

1. The Divestment Businesses are comprised of two legal entities (i) Prince's Belgium subsidiary Prince Belgium BV (including its branches in France and Germany and a representative office in Shanghai) and (ii) Prince's Italian subsidiary Prince Minerals Italy S.r.l.. A structure chart for these two entities is set out in **Annex 2**. Functionally, the Divestment Businesses are structured in accordance with the organisation of the Personnel as set out in **Annex 1**.

2. In accordance with paragraph 5 of these Commitments, the Divestment Businesses include, but are not limited to:

(a) the following main tangible assets:

- Prince's manufacturing facility in Bruges, Belgium (the "**Bruges Facility**"), where its porcelain enamel coatings and forehearth frits for supply into the EEA are manufactured;

- all production equipment and other tangible assets currently located at the Bruges Facility;

- Prince's manufacturing facility in Cambiago, Italy (the "**Cambiago Facility**"), where all of Prince's on-glass coatings (i.e., automotive glass coatings, flat glass coatings and container glass coatings with the exception of forehearth colourants) for supply worldwide are manufactured;

- all production equipment and other tangible assets currently located at the Cambiago Facility (except for the actual premises where the Cambiago Facility operates as these are not owned by Prince Minerals Italy S.r.l.);

- all production equipment currently located at Fenton necessary for the production of forehearth concentrate (which will be relocated to the Bruges Facility);

- all raw materials if any, work in progress and finished goods inventory related to the Divestment Businesses; and

- customer lists, records and goodwill pertaining to the Divestment Businesses;

- the land where the tangible assets belonging to the Divestment Businesses are located (except for the premises where the Cambiago Facility operates as these are not owned by Prince Minerals Italy S.r.l.).

(b) the following main intangible assets:

All IP rights used by the Divestment Businesses, know-how and R&D relating to the marketing, development, and manufacture of the Divestment Businesses' products and the manufacturing processes used (including in respect of pipeline products). The relevant know-how is embodied, for example, in design history files, technical files, drawings, product specifications, manufacturing process descriptions, and quality control standards. The Prince name and logo will be retained by the merged entity post-Closing.

At the request of the Purchaser, Prince will grant a limited, non-transferable, non-assignable license to the Purchaser, for a transitional period of up to […] months (which is ultimately determined based on the reasonable needs of the Purchaser under the oversight of the Monitoring Trustee) pending Purchaser's rebranding of the Divestment Businesses, to use the "Prince" name and logo in relation to the Divestment Businesses in the same manner as such name and logo are currently used by Prince in relation to the Divestment Businesses. During the period of this license as well as a black-out period of up to […] months (which is ultimately determined based on the reasonable needs of the Purchaser under the oversight of the Monitoring Trustee), Prince will not in the EEA sell any Prince-branded products of a type that is currently manufactured by the Divestment Businesses or Prince-branded forehearth concentrate products or use the Prince logo in connection with the foregoing.

(c) the following main licences, permits and authorisations:

All licenses, permits and authorizations issued by any governmental organization for the benefit of the Divestment Businesses to the extent transferable (or all reasonable assistance to a buyer for transfer of these licences).

(d) the following main contracts, agreements, leases, commitments and understandings:

Prince commits to procure the continuation of all material contracts specific to the operation of the Divestment Businesses (including the lease for the Cambiago Facility), to the extent legally possible.

(e) the following customer, credit and other records:

Prince's existing customer, credit and other records relating to the Divestment Businesses and its products.

(f) the following Personnel:

Prince commits to procure the transfer of all Personnel currently employed by the Divestment Businesses, as listed in **Annex 1**.

(g) the following Key Personnel:

Of the Personnel mentioned in Annex 1, the Key Personnel are:

(a) the Hold Separate Manager; and

(b) The Key Personnel set out in **Annex 3**.

(h) the arrangements for the supply with the following services by Prince for a transitional period of up to […] months (which is ultimately determined based on the reasonable needs of the Purchaser under the oversight of the Monitoring Trustee):

To the extent required by the Purchaser, Prince undertakes to provide, through a transition services agreement (TSA), centralized functional support (e.g., but not limited to finance, accounts payable/accounts receivable, procurement), IT and other administrative functions (including in relation to the production equipment necessary for the production of forehearth concentrate to be relocated from Fenton to the Bruges Facility).

The duration of the TSA can be extended, with respect to any transitional services for which transition is not complete, at the request of the Purchaser for an additional period of up to […] months, which is ultimately determined based on the reasonable needs of the Purchaser, and based on a positive opinion by the Trustee, and consent by the Commission.

3. If there is any asset or personnel which is not covered by paragraphs 1 and 2 of this Schedule but which is both used (exclusively or not) in the Divestment Businesses, and necessary for the continued viability and competitiveness of the Divestment Businesses, that asset or adequate substitute will be offered to the Purchaser.