ANALYSIS OF AGREEMENT CONTAINING CONSENT ORDER TO AID PUBLIC COMMENT

In the Matter of The Sherwin-Williams Company and The Valspar Corporation File No. 161-0116

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") with the Sherwin-Williams Company ("Sherwin-Williams"). The purpose of the Consent Agreement is to remedy the anticompetitive effects that would result from Sherwin-Williams's proposed acquisition of The Valspar Corporation ("Valspar"). Under the terms of the Consent Agreement, Sherwin-Williams must divest Valspar's North America Industrial Wood Coatings Business to Axalta Coating Systems Ltd. ("Axalta") or another buyer approved by the Commission. The Consent Agreement provides the acquirer with the manufacturing plants and other tangible and intangible assets it needs to effectively compete in the market for the manufacture and sale of industrial wood coatings in North America. Sherwin-Williams must complete the divestiture within ten days of the closing of the acquisition.

On March 19, 2016, Sherwin-Williams agreed to acquire Valspar for approximately $11.3 billion, including the assumption of debt. This acquisition would concentrate most of the nearly $1 billion North American industrial wood coatings industry in two major competitors – the combined Sherwin-Williams/Valspar and Akzo Nobel N.V. ("Akzo Nobel"). On May 26, 2017, the Commission issued an administrative complaint alleging that the acquisition, if consummated, may substantially lessen competition in the market for the manufacture and sale of industrial wood coatings in North America in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become a part of the public record. After 30 days, the Commission will review the Consent Agreement and comments received, and decide whether it should withdraw, modify, or make the Consent Agreement final.

II. The Parties

Sherwin-Williams, headquartered in Cleveland, Ohio, is one of the top three manufacturers of industrial wood coatings in North America. Sherwin-Williams supplies industrial wood coatings to a wide variety of customers, including manufacturers of kitchen cabinets, building products, and furniture ("wood products manufacturers"). Sherwin-Williams operates three dedicated industrial wood coatings plants in North America.

Valspar is one of the top three manufactuers of industrial wood coatings in North America. Like Sherwin-Williams, Valspar supplies industrial wood coatings to some of the largest wood product manufacturers. Valspar operates two dedicated industrial wood coatings plants located in North America.

III. The Manufacture and Sale of Industrial Wood Coatings in North America

Absent the remedy, Sherwin-Williams's acquisition would harm competition in the manufacture and sale of industrial wood coatings in North America. Industrial wood coatings consist of a broad category of stains, topcoats, and sealants used during the manufacture of wood products such as kitchen cabinets, furniture, and building products.

The relevant product market does not include off-the-shelf interior and exterior wood stains sold to retail consumers or other substrates such as laminates, decorative foils, films, or veneers. Industrial wood coatings are designed for application on high-speed manufacturing lines in a factory setting and are tailored to meet wood products manufacturers' specifications. These specifications are demanding; wood product manufacturers require industrial wood coatings that perform well along a variety of dimensions, such as resistance to abrasion and moisture. Wood coatings sold to retail consumers are not formulated to meet these specifications and are thus not economically viable substitutes. Since wood product manufacturers rely on finished wood for its appearance and to meet the demand and preferences of their own customers, they likewise cannot easily or quickly substitute other finishing materials or technologies for their finished wood products. Attempting to do so would result in a high risk of significant sales losses for these manufacturers.

North America is the appropriate geographic market in which to evaluate the likely competitive effects of the proposed acquisition. Sherwin-Williams and Valspar sell industrial wood coatings to customers throughout North America. The relevant geographic market is no broader than North America because freight costs and logistical challenges limit wood product manufacturers' ability to purchase significant volumes of industrial wood coatings from overseas.

Currently, three firms – Sherwin-Williams, Valspar, and Akzo Nobel – manufacture and sell most industrial wood coatings in North America. Collectively, these three firms control over 70 percent of the North American market for industrial wood coatings. The Commission often calculates the Herfindahl-Hirschman Index ("HHI") to assess market concentration. Under the Federal Trade Commission and Department of Justice Horizontal Merger Guidelines, markets with an HHI above 2,500 are generally classified as "highly concentrated," and acquisitions "resulting in highly concentrated markets that involve an increase in the HHI of more than 200 points will be presumed to be likely to enhance market power." Absent the proposed remedy, the acquisition would increase the HHI by at least 900 points to over 2,700 for industrial wood coatings, resulting in a highly concentrated market.

IV. Effects of the Acquisition

Absent relief, the acquisition would combine two of the three leading industrial wood coatings suppliers and pose a significant risk of competitive harm. The industrial wood coatings industry is a mature, stable industry, with relatively low growth rates and high barriers to entry. The acquisition would eliminate substantial direct competition between Sherwin-Williams and

Valspar. The acquisition also would increase the ease and likelihood of anticompetitive coordination between the only two remaining major suppliers. Thus, the acquisition likely would result in higher prices and a reduction in services and innovation to customers.

V. Entry

Entry into the market for the manufacture and sale of industrial wood coatings would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the likely competitive harm from the acquisition. The industrial wood coatings industry in North America enjoys significant barriers to entry and expansion including the high cost of building industrial wood coatings plants, the need for substantial technological and manufacturing expertise, and the significant on-site technical support requirements of large customers. For these reasons, entry by a new market participant or expansion by an existing one, would not deter the likely anticompetitive effects from the acquisition.

VI. The Consent Agreement

The proposed Consent Agreement remedies the competitive concerns raised by the acquisition by requiring Sherwin-Williams to divest Valspar's North America Industrial Wood Coatings Business to Axalta or another buyer approved by the Commission. In addition, the Consent Agreement requires Sherwin-Williams to transfer the customer contracts currently serviced by Valspar's Industrial Wood Coatings Business to the buyer.

Under the proposed Consent Agreement, Sherwin-Williams will divest Valspar's industrial wood coatings plants located at High Point, North Carolina and Cornwall, Ontario. In addition, Sherwin-Williams will divest the research and development facilities, warehouses, and testing facilities of Valspar's Industrial Wood Coatings Business. Sherwin-Williams will also divest intellectual property, inventory, accounts receivable, government licenses and permits, and business records. The Consent Agreement limits Sherwin-Williams's use of, and access to, confidential business information pertaining to the divestiture assets.

Axalta is one of the leading suppliers of industrial coatings to large OEMs in the automotive and general industrial markets and is well positioned to operate these assets as an effective competitor. Through the proposed Consent Agreement, Axalta will become one of the leading North American manufacturers of industrial wood coatings. With the divested assets, Axalta will be able to replicate Valspar's position in the market today. It will own plants capable of manufacturing a broad range of industrial wood coatings as well as the other assets necessary to compete successfully in this market. Axalta's presence will preserve the three-way competition that currently exists in the relevant markets and moderate the potential for unilateral or coordinated effects.

Sherwin-Williams must complete the divestiture within ten days of the closing of the acquisition. A Monitor will monitor Sherwin-Williams' compliance with the obligations set forth in the Order. If Sherwin-Williams does not fully comply with the divestiture and requirements of the Order, the Commission may appoint a Divestiture Trustee to divest Valspar's

North America Industrial Wood Coatings Business and perform Sherwin-Williams' other obligations consistent with the Order.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.