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Elliott Takes Akzo to Court to Oust Chairman in PPG Battle

By Ellen Proper

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(Bloomberg) -- **The battle for control of paintmaker Akzo Nobel NV escalated after activist investor Elliott Advisors petitioned a Dutch court to back its bid to oust the chairman over his refusal to negotiate with U.S. suitor PPG Industries Inc.**

Elliott asked the Enterprise Chamber of the Netherlands to enforce its request for a shareholders' vote on firing Chairman Antony Burgmans, who the New York-based hedge fund said in a statement Tuesday is in "flagrant breach" of his duties to investors for rebuffing PPG's third takeover offer worth about \$29.5 billion.

In response, the Amsterdam-based company reiterated its support for Burgmans and said he has played a crucial role in evaluating and rejecting PPG's latest bid. The company doesn't see how the dismissal of the chairman would benefit Akzo Nobel or its shareholders in any way, a spokesman said by phone. The move by Elliott comes a day after Akzo Nobel rejected PPG's latest takeover bid in favor of its own breakup strategy, raising the prospect that the U.S. rival will go hostile with its offer for the coating and chemical company. After taking two weeks to evaluate the sweetened proposal, Akzo Nobel said it's flawed and riddled with risk, defying pressure from shareholders including Elliott and Causeway Capital Management LLC to negotiate.

A spokesman for the Enterprise Chamber confirmed it received Elliott's petition on Monday. The court in central Amsterdam handles corporate disputes and its rulings are binding. A hearing could come as early as May 18 or before if the court deems the case more urgent.

At the crux of the case is Akzo Nobel's refusal last month to call an extraordinary shareholders' meeting requested by Elliott and other shareholders to vote on the chairman's ouster. Elliott is leading a campaign to push Akzo Nobel to enter talks

with PPG, a move the fiercely independent Dutch company has rejected with the backing of the government in the Netherlands as well as labor unions.

Elliott contends that under Dutch law, Akzo Nobel investors have the right to request a vote on the chairman's dismissal at a special meeting. For its part, Akzo Nobel has said such a move would go against the spirit of the law and would be "irresponsible, disproportionate, damaging and not in the best interests of the company."

In taking legal action, corporate lawyer Martijn Kesler said Elliott may be going down the route of some other foreign companies in underestimating the power of Dutch company boards.

'Huge' Power

"The Enterprise Chamber tends to rule against activist shareholders as long as the board acted in the corporate interest," said Kesler, an attorney at law firm AMS Advocaten, which isn't involved in this case. "Based on some earlier key rulings by the Enterprise Chamber, Dutch company directors simply have a huge discretionary power to act."

Akzo Nobel has said Dutch law allows its board to refuse to put a motion before shareholders for a vote for a number of reasons including if the motion is aimed at changing strategy or goes against "reasonableness and fairness."

By specifically targeting Burgmans, Elliott may have a hard time proving its claims, as the supervisory board acts as a collective, said Bas Steins Bisschop, a lawyer in The Hague and professor emeritus at Nyenrode Business University.

"The question is do shareholders have a say on whether it's desirable that the board negotiates over the terms of a takeover it opposes," he said. Also, Elliott would have to convince the court "Burgmans is an individual who disturbs the game."

Strategy

Earlier court rulings in cases involving ASM International NV and ABN Amro Bank NV found that strategy is exclusively within the competence of the board of directors under the supervision of the supervisory board, said Steins Bisschop, who is not involved in the Akzo Nobel case. "In other words, shareholders have no right to determine a company's strategy," he said.

Elliott said the boards of of the Dutch paintmaker "continue to demonstrate a disturbing and inexplicable tendency to act in their own, self-entrenching interests and against the interests of shareholders and other stakeholders."

The reasons for declining PPG's third proposal are

“unconvincing and unsupported by any available evidence,” it added. Akzo’s supervisory board under Burgmans has “failed to fulfill its corporate governance duties by refusing to obtain, through constructive engagement with a credible bidder, the necessary information required to fully evaluate a bona fide proposal.”

PPG, which has threatened to take the offer directly to investors, has said its reviewing its response to Akzo’s rebuff. The Pittsburgh-based company declined to comment on Elliott’s court challenge.

A fruitless face-to-face meeting in the Netherlands on Saturday between Akzo Nobel Chief Executive Officer Ton Buechner and his counterpart Michael McGarry lasted less than 90 minutes, with PPG aggrieved at Akzo Nobel’s unwillingness to negotiate. McGarry has said he plans to make a hostile takeover bid if his reluctant target doesn’t come to the negotiating table and hammer out an agreement by June 1.

The Dutch company has said it wants to carry out a breakup strategy to create two companies focused on chemicals and coatings. Akzo shares rose 0.2 percent to 77 euros in Amsterdam.

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