

**DEROGATION LETTER
IN RESPECT OF INITIAL ENFORCEMENT ORDER ISSUED
PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002
COMPLETED ACQUISITION**

Please note that [X] indicates figures or text which have been deleted at the request of the parties for reasons of commercial confidentiality.

Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority ('CMA') on 24 December 2018

Completed acquisition by Ecolab Inc. of The Holchem Group Limited

We refer to your letters dated 3 January 2019, 16 January 2019 and 23 January 2019 requesting that the CMA consents to derogations to the Initial Enforcement Order of 24 December 2018 (later, varied pursuant to a variation order dated 22 January 2019) (the '**Initial Order**'). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, Ecolab Inc. (**Ecolab**), Ecolab U.S. 2 Inc. (**Ecolab US**) and Ecolab (U.K.) Holdings Limited (**Ecolab UK**) are required to hold separate the Ecolab business from The Holchem Group Limited (**Holchem**) business and refrain from taking any action which might prejudice a reference under section 22 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, Ecolab, Ecolab US, Ecolab UK and Holchem may carry out the following actions, in respect of the specific paragraphs:

1. Paragraphs 4(a), 5(a) and 5(l) of the Initial Order

The CMA understands that as a publicly traded company regulated by the US Securities and Exchange Commission, Ecolab is subject to certain financial reporting requirements. Ecolab submitted that in order to fulfil these requirements, Ecolab's European and Global Finance Organisation must receive and review aggregated financial data on a monthly basis from each of Ecolab's business units. Ecolab

proposes to comply with the aforementioned financial reporting obligations by incorporating into its financial data Ecolab's estimates of Holchem's performance (calculated as part of its due diligence of the Holchem business) for the period in which the Initial Order is in effect.

In order to ensure that these estimates do not differ materially from Holchem's actual financial information (such that Ecolab would risk breaching its financial reporting obligations), Ecolab is requesting a derogation from the Initial Order to allow [REDACTED: *A finance project manager at Ecolab Europe GmbH*] to review Holchem's actual financial information and compare these against Ecolab's due diligence estimates of Holchem's business. Ecolab further requests that in the event that [REDACTED: *A finance project manager at Ecolab Europe GmbH*] identifies any material differences between Ecolab's due diligence estimates and the Holchem actuals, that [REDACTED: *A finance project manager at Ecolab Europe GmbH*] is able to communicate these differences to [REDACTED: *An accounting executive at Ecolab Europe GmbH*] and [REDACTED: *An accounting manager at Ecolab Inc.*] for entry into Ecolab's consolidated accounts.

The CMA consents for [REDACTED: *A finance project manager at Ecolab Europe GmbH*] to receive and review financial data concerning the Holchem business on a monthly basis, and for him to communicate any material differences between Ecolab's estimates of Holchem's performance and the actual figures to [REDACTED: *An accounting executive at Ecolab Europe GmbH*] and [REDACTED: *An accounting manager at Ecolab Inc.*] for entry into Ecolab's consolidated accounts, subject to the following conditions:

- a) any financial data concerning the Holchem business that is shared with [REDACTED: *A finance project manager at Ecolab Europe GmbH*] shall be in the format submitted by Ecolab on 16 January 2019 in Derogation Request Annex 1;
- b) Holchem financial information will only be viewed by [REDACTED: *A finance project manager at Ecolab Europe GmbH*];
- c) [REDACTED: *A finance project manager at Ecolab Europe GmbH*] will only share with [REDACTED: *An accounting executive at Ecolab Europe GmbH*] and [REDACTED: *An accounting manager at Ecolab Inc.*] information concerning the Holchem business that is strictly necessary for the purposes of making corrections at the Ecolab consolidated level;
- d) all corrections shall be made at the Ecolab Group level, such that no adjustment is made to the financials of any individual Holchem entity;
- e) the CMA will promptly be provided with a copy of any notice of correction;

- f) [REDACTED: *A finance project manager at Ecolab Europe GmbH*], [REDACTED: *An accounting executive at Ecolab Europe GmbH*] and [REDACTED: *An accounting manager at Ecolab Inc.*] will enter into a non-disclosure agreement ('NDA') in a form approved by the CMA;
- g) [REDACTED: *A finance project manager at Ecolab Europe GmbH*], [REDACTED: *An accounting executive at Ecolab Europe GmbH*] and [REDACTED: *An accounting manager at Ecolab Inc.*] currently do not, and will not, during the Restricted Period have any operational or commercial role in the UK cleaning chemicals business of Ecolab; and
- h) any changes to any of the named individuals in this derogation can only be made with the prior approval of the CMA.

For the purpose of this derogation, the 'Restricted Period' shall mean:

- a) in the event the transaction is granted unconditional clearance by the CMA, from the date that the derogation is granted until the Initial Order (or Interim Order if applicable) is lifted; or
- b) in the event that the transaction is not granted unconditional clearance by the CMA (but is subject to the acceptance of undertakings in lieu of a reference, the imposition of remedies or a prohibition decision) from the date that the derogation is granted until six months after the Initial Order (or Interim Order or interim measures under any remedy undertakings or order, if applicable) is lifted.

2. Paragraphs 4(a), 5(a) and 5(l) of the Initial Order

The CMA understands that monthly financial data from Ecolab business units is used to report the financial performance of Ecolab's business units to the Europe-wide and global heads of Ecolab ('**Senior Management**'). Ecolab submitted that Senior Management have fiduciary duties to ensure the financial performance of Ecolab. For the purposes of reporting on the financial performance of Ecolab's business units (including Holchem) and thereby to enable Senior Management to discharge these fiduciary duties relating to financial performance, Ecolab is requesting a derogation from the Initial Order for specified Senior Management individuals (listed in Annex 1 of your letter of 23 January 2019) to receive and review consolidated revenues and EBITDA financial data concerning the Holchem business on a monthly basis.

The CMA consents to this derogation, subject to the following conditions:

- a) any financial data concerning the Holchem business that is shared with Senior Management will only be shared by [REDACTED: *A finance project manager*

at Ecolab Europe GmbH], and shall be in the format submitted by Ecolab on 23 January 2019, and subsequently approved by the CMA;

- b) any financial data received by Senior Management will only be shared among the individuals listed in Schedule 1 of your letter of 23 January 2019;
- c) Senior Management will enter into an NDA in a form approved by the CMA;
- d) Senior Management currently do not, and will not during the Restricted Period, have any operational or commercial role in the UK cleaning chemicals business of Ecolab; and
- e) any changes to any of the named individuals in this derogation can only be made with the prior approval of the CMA.

For the purpose of this derogation, the 'Restricted Period' shall mean:

- a) in the event the transaction is granted unconditional clearance by the CMA, from the date that the derogation is granted until the Initial Order (or Interim Order if applicable) is lifted; or
- b) in the event that the transaction is not granted unconditional clearance by the CMA (but is subject to the acceptance of undertakings in lieu of a reference, the imposition of remedies or a prohibition decision) from the date that the derogation is granted until six months after the Initial Order (or Interim Order or interim measures under any remedy undertakings or order, if applicable) is lifted.

3. Paragraphs 4(a), 5(a), 5(b) and 5(l) of the Initial Order

The CMA understands that under the sale and purchase agreement for the transaction, the sellers of Holchem warranted that no Holchem company had, since 31 August 2018, incurred, or agreed to incur, any capital expenditures exceeding certain specified thresholds agreed by the parties as representing sufficiently material expenditure for this business/industry. Ecolab submitted that in order to preserve the protection given to Ecolab by this warranty whilst simultaneously allowing Holchem to incur any necessary significant capital expenditure to remain a competitive business, it is requesting a derogation from the Initial Order to permit [REDACTED: A finance project manager at Ecolab Europe GmbH] to review and approve or veto all capital approvals for accounts payable and other expenditures in excess of certain specified thresholds.

The CMA consents to this derogation – that is, for [REDACTED: A finance project manager at Ecolab Europe GmbH], or as amended with prior approval of the CMA,

to review and approve or veto all capital approvals for accounts payable and other expenditures in excess of the thresholds listed below:

- a) Capital expenditure over [REDACTED];
- b) Indirect expense purchase orders (for example, the purchase of equipment spares) or upfront payments to customers over [REDACTED];
- c) Direct expense purchase orders (for example, the purchase of raw materials) over (i) [REDACTED]; or (ii) [REDACTED]; and
- d) Customer rebates, distributor refunds, returns, commissions or price corrections over [REDACTED].

The above consent is subject to the following conditions, namely that:

- a) information shared with [REDACTED: *A finance project manager at Ecolab Europe GmbH*] in order to seek Ecolab's approval for capital expenditure is kept to the minimum strictly necessary to allow persons to take a decision on the proposed expenditure, and should not include any commercially sensitive information, including, but not limited to, information relating to customers (including names and key contractual terms on price) and specific products;
- b) the CMA will be provided with prior notification of Ecolab's exercise of its right to veto expenditure proposed by Holchem which exceeds the levels of delegated authority described above, and is provided with the reasons for any proposed veto by Ecolab; and
- c) [REDACTED: *A finance project manager at Ecolab Europe GmbH*] currently does not, and will not, during the Restricted Period have any operational or commercial role in the UK cleaning chemicals business of Ecolab.

For the purpose of this derogation, the 'Restricted Period' shall mean:

- a) in the event the transaction is granted unconditional clearance by the CMA, from the date that the derogation is granted until the Initial Order (or Interim Order if applicable) is lifted; or

in the event that the transaction is not granted unconditional clearance by the CMA (but is subject to the acceptance of undertakings in lieu of a reference, the imposition of remedies or a prohibition decision) from the date that the derogation is granted until six months after the Initial Order (or Interim Order or interim measures under any remedy undertakings or order, if applicable) is lifted.

24 January 2019