

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

Please note that [✂] 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 and varied on 22 January 2019

Completed acquisition by Ecolab Inc. of The Holchem Group Limited

We refer to your letters dated 20 February 2019, 1 March 2019 and 13 March 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 (together, the "**Parties**") 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 the Holchem business must have a presence in a Member State of the European Union ("**EU**") to comply with certain EU legislation governing the regulated products that it exports to the EU (the "**regulated products**"). Failure to comply with this legislation would prevent Holchem from exporting its regulated products to EU Member States. The relevant EU legislation is:

- Regulation (EU) 1223/2009 (the “**Cosmetics Regulation**”);
- Regulation (EU) 648/2004 (the “**Detergent Regulation**”);
- Regulation (EU) 1272/2008 (the “**CLP**”); and
- Regulation (EU) 528/2012 (the “**Biocidal Products Regulation**” or “**BPR**”) (together, the “**Relevant EU Legislation**”).

To ensure that the Holchem business can continue to export its regulated products into EU Member States if the UK exits the EU in such a way that Holchem is no longer compliant with the Relevant EU Legislation, the Parties are requesting a derogation from the Initial Order to allow Ecolab to carry out certain actions on the Holchem business’ behalf.

The CMA understands that if the UK exits the EU under the terms of the Withdrawal Agreement¹ on 29 March 2019 (“**Deal Exit**”), Holchem would remain compliant with the Relevant EU Legislation for the duration of the Withdrawal Agreement. The CMA also understands that if the UK’s proposed exit from the EU is delayed to a date after the 29 March 2019, whether by an extension of the period under Article 50(2) Treaty on European Union or otherwise (“**Extension of EU Membership**”), Holchem would remain compliant with the Relevant EU Legislation during the period of the extension. The CMA understands that if the UK exits the EU on 29 March 2019 other than under the terms of the Withdrawal Agreement (“**No Deal Exit**”), Holchem would not be compliant with the Relevant EU Legislation from the time of the UK’s exit from the EU.

The political uncertainty surrounding the UK’s proposed exit from the EU potentially creates a very small window of time for Holchem to act in order to remain compliant with the Relevant EU Legislation. [§]. The CMA therefore understands that Holchem will need to undertake some preparatory work to be ready for a possible No Deal Exit. Equally, preparatory work may be commenced by Holchem which ultimately may not be required in the event of a Deal Exit or an Extension of EU Membership.

Therefore, in order to ensure that the Holchem business remains able to compete independently on the market selling certain regulated products to customers who require all or part of their deliveries to be made to an EU Member State in the event of a No Deal Exit, the CMA has decided to grant the following derogations from the Initial Order, subject to strict compliance with the conditions set out below.

¹ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the EU and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018.

Derogations related to the Ecolab business

The CMA consents to the individuals named in Annex 1 (the "**Registration Transfer Individuals**") having access to the following information and taking the following actions:

- a) With respect to the regulated products made available for export by the Holchem business and subject to the Cosmetics Regulation:
 - i. Make the necessary notifications on the Cosmetics Products Notification Portal in order to change the 'responsible person' for the regulated products concerned from Holchem business entities to Ecolab Deutschland GmbH ("**Ecolab Deutschland**");
 - ii. Receive from the Holchem business the Product Information File (as defined at Article 11 of the Cosmetics Regulation) for each of the regulated products concerned, review the Product Information File and make inquiries of the Holchem business into any safety concerns or concerns regarding compliance with the Cosmetics Regulation and completeness of the Product Information File; and
 - iii. Retain copies of the Product Information Files for 10 years following the placing of the regulated products concerned on the market in accordance with the requirements set out in Article 11 of the Cosmetics Regulation.
- b) With respect to the regulated products made available for export by the Holchem business and subject to the Detergents Regulation, review information related to the formulation of the products concerned and make inquiries of the Holchem business into any safety concerns or regulatory compliance concerns.
- c) With respect to the regulated products made available for export by the Holchem business and subject to the CLP, review information related to the formulation of the products concerned and make inquiries of the Holchem business into any safety concerns or regulatory compliance concerns.
- d) With respect to the Holchem business' four dossiers which have been submitted for registration under the requirements of the Biocidal Products Regulation, be recorded as the relevant 'asset owner' on the European Chemicals Agency ("**ECHA**") R4BP3 platform (the "**Platform**"), such action entailing:
 - i. Having joint access rights with Holchem to the Platform and the Holchem business' applications, namely the information contained

within the dossiers submitted by the Holchem business, as well as any additional information requested by the ECHA as part of the application process; and

- ii. Taking any action required to proceed the Holchem business' applications, such action to be taken solely at the direction of the Holchem business.

Actions to be taken by the Holchem business

The CMA consents for the Holchem business to take the following actions:

- a) With respect to the regulated products made available for export by the Holchem business and subject to the Cosmetics Regulation:
 - i. Make the necessary notifications on the Cosmetics Products Notification Portal to change the 'responsible person' for the regulated products concerned from Holchem business entities to Ecolab Deutschland;
 - ii. Make available to the Registration Transfer Individuals the Product Information File (as defined at Article 11 of the Cosmetics Regulation) for each of the regulated products concerned, and respond to any inquiries regarding any safety concerns or concerns regarding the completeness of the Product Information File; and
 - iii. Change the labelling on the regulated products concerned to indicate that Ecolab Deutschland is the 'importer' as defined in Article 2(1)(i) of the Cosmetics Regulation and therefore the 'responsible person' as defined in Article 4 of the Cosmetics Regulation, while retaining the existing Holchem branding and identifying Holchem as the manufacturer of origin.
- b) With respect to the regulated products made available for export by the Holchem business and subject to the Detergents Regulation:
 - i. Make available to the Registration Transfer Individuals information requested related to the formulation of the regulated products concerned and respond to inquiries into any safety concerns or regulatory compliance concerns; and
 - ii. Change the labelling on the regulated products concerned to indicate that Ecolab Deutschland is the 'EU manufacturer' of the products for the purposes of Article 2(10) of the Detergents Regulation, while

retaining the existing Holchem branding and identifying Holchem as the manufacturer of origin.

- c) With respect to the regulated products made available for export by the Holchem business and subject to the CLP:
- i. Make available to the Registration Transfer Individuals the information related to the formulation of the regulated products concerned and respond to inquiries into any safety concerns or regulatory compliance concerns; and
 - ii. Change the labelling on the regulated products concerned to indicate that Ecolab Deutschland is the 'importer' of the products for the purposes of Article 2(17) of the CLP, while retaining the existing Holchem branding and identifying Holchem as the manufacturer of origin.
- d) With respect to the Holchem business' on-going BPR registration applications:
- i. Transferring or procuring for the Registration Transfer Individuals the necessary access rights to the Platform;
 - ii. Providing the Registration Transfer Individuals with copies of the Holchem business' applications namely the information contained within the dossiers submitted by the Holchem business, as well as any additional information requested by the ECHA as part of the application process; and
 - iii. To the extent Holchem cannot do it itself directly, directing the Registration Transfer Individuals to take any action required to be taken by the Ecolab business to proceed the Holchem business' applications.

Conditions

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

- a) In the event of a Deal Exit, Holchem shall reverse any steps taken under this derogation by 15 April 2019. In the event of a Deal Exit, this derogation will remain in place until 15 April 2019 subject to the CMA having the discretion to reduce or extend this period in writing;
- b) In the event of a No Deal Exit, Holchem is obliged to use its best endeavours to become, in and of itself, capable of ensuring its own compliance with the Relevant EU Legislation as soon as possible, ie without requiring Ecolab Deutschland's involvement and the involvement of the Registration Transfer

Individuals. Holchem is obliged to notify the CMA within 7 days of it becoming aware that it is capable of ensuring its own compliance with the Relevant EU Legislation. Holchem is obliged to reverse any steps taken under this derogation within four weeks of notifying the CMA that it is capable of ensuring its own compliance with the Relevant EU Legislation. In the event of a No Deal Exit, this derogation will remain in place until the date 4 weeks after the date on which Holchem notifies the CMA that it is capable of ensuring its own compliance with the Relevant EU Legislation, subject to the CMA having the discretion to reduce or extend this period in writing;

- c) In the event of an Extension of EU Membership, Holchem shall reverse any steps taken under this derogation by 15 April 2019. In the event of an Extension of EU Membership, this derogation will remain in place until 15 April 2019, subject to the CMA having the discretion to reduce or extend this period in writing;
- d) Holchem is to communicate the changes being made pursuant to this derogation to its customers in a form approved by the CMA;
- e) Any labelling changes shall retain the branding of the Holchem business and the contact details of the Holchem business and state explicitly that the products concerned have been manufactured by the Holchem business;
- f) With respect to the access rights granted to the Registration Transfer Individuals on the Platform:
 - i. Usernames and passwords for the Platform necessary to access any Holchem information shall not be provided to any other individuals at the Ecolab business; and
 - ii. the Registration Transfer Individuals shall use the Platform to access information only and not take any action (for example the submission of obligations) on the Platform unless the Holchem business is precluded from doing so (eg delegating an asset, transferring an asset or nominating an asset) and only then at the explicit direction of the Holchem business;
- g) Information shared with the Registration Transfer Individuals is kept to the minimum strictly necessary to comply with the formalities outlined above 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 provided to particular customers;

- h) The Parties' external lawyers, DLA Piper UK LLP, shall attend any meetings between the Registration Transfer Individuals on the one hand, and representatives of the Holchem business on the other (whether face to face or by telephone) convened in order to resolve any issues which must necessarily be resolved in order to carry out the steps to be taken by the Ecolab business outlined above. DLA Piper UK LLP will agree a note of each meeting with the participants which will be made available to the CMA on request, such note to include (among other things) a summary of the types of information disclosed by the Holchem business;
- i) Any information received by the Registration Transfer Individuals under this derogation shall not be shared with or accessible to anyone (apart from other Registration Transfer Individuals) at the Ecolab business;
- j) Any information received by the Registration Transfer Individuals under this derogation shall be retained for the minimum period required under EU law and then immediately destroyed 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;
- k) Any information shared with the Registration Transfer Individuals under this derogation will only be used by the Registration Transfer Individuals to comply with the formalities set out above;
- l) The Registration Transfer Individuals will enter into a non-disclosure agreement in a form approved by the CMA;
- m) Any changes to any named individuals in Annex 1 of this derogation can only be made with the prior approval of the CMA; and
- n) The Registration Transfer Individuals currently do not, and will not, during the Restricted Period have any operational or commercial role in the UK cleaning chemicals business of the Ecolab business.

For the purposes 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.

Elie Yoo, Assistant Director, Mergers

19 March 2019

Annex 1 – Registration Transfer Individuals

Name	Job Title	Why Needed
[REDACTED]	[REDACTED: A <i>regulatory specialist at</i> Ecolab Europe GmbH	Management decision-maker
[REDACTED]	[REDACTED: A <i>regulatory specialist at</i> Ecolab Deutschland GmbH	Specialist in toxicology
[REDACTED]	[REDACTED: A <i>regulatory specialist at</i> Nalco Limited UK	Experience working on Brexit preparation
[REDACTED]	[REDACTED: A <i>regulatory specialist at</i> Ecolab Deutschland GmbH	Specialist in biocides