

ACQUISITION BY ECOLAB INC. OF THE HOLCHEM GROUP LIMITED

Directions issued pursuant to paragraph 10 of the Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act) on 24 December 2018

On 30 November 2018 Ecolab acquired The Holchem Group Limited (**Holchem**) (together known as '**the Parties**') (the '**Merger**').

On 24 December 2018 the Competition and Markets Authority (**CMA**) made an Initial Enforcement Order in accordance with section 72(2) of the Enterprise Act 2002 (the '**Act**') addressed to Ecolab Inc. (**Ecolab**), Ecolab U.S. 2 Inc. (**Ecolab US**) and Ecolab (U.K.) Holdings Limited (**Ecolab UK**) (the '**IEO**') for the purpose of preventing pre-emptive action.

On 22 January 2019 the CMA made a variation order in accordance with section 72(4)(b) of the Act to clarify that Holchem is required to produce a separate statement confirming its compliance with the IEO ('**the Variation order**').

On 24 January 2019 the CMA granted a derogation consenting to certain individuals of Ecolab receiving and reviewing financial data from Holchem in order to comply with certain financial requirements and fiduciary duties, and to preserve the protection given by Holchem to Ecolab in its warranties in the sale and purchase agreement for the transaction (the '**First derogation**'). The First derogation continues to apply.

On 19 March 2019 the CMA granted a derogation consenting to certain individuals taking certain actions and having access to certain information in order to ensure that the Holchem business can continue to export its regulated products into EU Member States if the UK exited the EU in such a way that Holchem is no longer compliant with certain EU Legislation ('**No Deal Exit**') (the '**Second derogation**'). The second derogation no longer applies.

On 5 April 2019 the CMA revoked the Second derogation and replaced it with a temporary derogation consenting to certain individuals in Ecolab and Holchem having access to certain information and taking certain actions in order to ensure that the Holchem business can continue to export its regulated products into EU Member States in the event of a No Deal Exit (the '**Third derogation**'). The third derogation no longer applies.

On 24 April 2019 the CMA referred the Merger for a phase 2 investigation pursuant to section 22(1) of the Act (the '**Reference**').

The CMA wishes to ensure that no action is taken pending final determination of the reference which might prejudice that reference or impede the taking of any action under Part 3 of the Act which may be justified by the CMA's decisions on the reference.

The CMA now issues written directions under paragraph 10 of the IEO that, for the purposes of securing compliance with the IEO, that Ecolab must appoint a monitoring trustee in accordance with the terms provided for in the Annex and shall comply with the obligations set out in the Annex.

Signed

Timothy Geer

Director, Mergers

10 May 2019

Annex

Directions to appoint a monitoring trustee

Interpretation

In these Directions:

- (a) 'the Act' means the Enterprise Act 2002;
- (b) 'CMA' means the Competition and Markets Authority;
- (c) 'Directions' means the directions issued under paragraph 10 of the IEO;
- (d) 'Interim Enforcement Order' means the interim enforcement order made by the CMA on 24 December 2018;
- (e) 'business' has the meaning given by section 129(1) and (3) of the Act;
- (f) 'the Commencement Date' means 24 December 2018;
- (g) 'Ecolab' means Ecolab Inc. registered at 1 Ecolab Place, St Paul, Minnesota, USA. For the purposes of these Directions, Ecolab includes Ecolab U.S. 2 Inc. (Ecolab US) and Ecolab (U.K.) Holdings Limited (Ecolab UK).
- (h) 'the Ecolab business' means the business of Ecolab Inc. and its subsidiaries carried on as at the Commencement Date, including Ecolab US and Ecolab UK;
- (i) 'Holchem' means The Holchem Group Limited, registered under number 05776448;
- (j) 'the Holchem business' means the business of The Holchem Group Limited and its subsidiaries carried on as at the commencement date;
- (k) 'MT' means the monitoring trustee appointed in accordance with the Directions.

Terms and expressions defined in the IEO have the same meaning in these Directions, unless the context requires otherwise.

Appointment

1. Ecolab must appoint an MT in order to:
 - (a) report on the extent of compliance with the IEO;
 - (b) assess the extent of integration between Ecolab and Holchem;

- (c) report on the adequacy of the IEO;
 - (d) monitor compliance with the IEO;
 - (e) assist with the consideration of further derogation requests; and
 - (f) in the event that the CMA requires a divestiture, ensure that any divestiture process is carried out in compliance with the CMA's decision in its final report and with the IEO.
2. The MT must act on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities.
 3. Ecolab and Holchem must cooperate fully with the MT, in particular as set out below, and Ecolab must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Ecolab and Holchem as set out in these Directions.

General

4. The MT must possess appropriate qualifications and experience to carry out his or her functions.
5. The MT must neither have nor become exposed to a conflict of interest that impairs the MT's objectivity and independence in discharging his or her duties under these Directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA.
6. Ecolab shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.
7. Ecolab must appoint the MT as soon as is reasonably practicable and in any event by **17 May 2019** and the MT will continue to act either until the CMA has finally determined the reference (within the meaning of section 79 of the Act) or directs that the MT is no longer required.
8. The appointment of the MT by 17 May 2019 is subject to the approval of the CMA as to the identity of the MT and the terms and conditions of appointment in their entirety and;

- (a) the name of the proposed MT must be notified to the CMA as soon as is reasonably practicable and in any event by **5:00pm Tuesday 14 May 2019** along with draft terms and conditions of appointment; and
- (b) once the MT has been approved by the CMA and appointed, Ecolab must provide the CMA with a copy of the agreed terms and conditions of appointment.

Functions

- 9. The functions of the MT are as set out in paragraph 1.
- 10. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively, including the monitoring of communications within and between the Ecolab business and the Holchem business, such as written and electronic communications, telephone conversations and meetings as may be required.
- 11. The MT must comply with any requests made by the CMA for the purpose of ensuring the full and effective compliance by Ecolab and Holchem and all its subsidiaries with the IEO.

Obligations of Ecolab and Holchem

- 12. Ecolab and Holchem and their subsidiaries and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
 - (a) the provision of full and complete access to all personnel, books, records, documents, facilities and information of Ecolab or Holchem as the MT may reasonably require; and
 - (b) the provision of such office and supporting facilities as the MT may reasonably require.
- 13. If Ecolab or Holchem or any of their subsidiaries are in any doubt as to whether any action or communication would infringe the IEO, it is required to contact the MT for clarification.

14. If Ecolab or Holchem or any of their subsidiaries has any reason to suspect that the IEO may have been breached, it must notify the MT and the CMA immediately.

Reporting functions

15. The MT is required to provide an initial report to the CMA no later than **5:00pm Friday 31 May 2019** giving details of any arrangements which have been, or should be, put in place to ensure compliance with the IEO, and including among other things:

- (a) details of the current extent of compliance with the Phase 1 IEO;
- (b) a description of the current arrangements made for the separate operation of the Ecolab business and the Holchem business and for the preservation of the assets required to operate the Holchem business; and
- (c) recommendations as to what changes to those arrangements, if any, are necessary.

16. In addition to providing the initial report referred to in paragraph 15 above, the MT must provide every four weeks (or otherwise as required by the CMA) a statement to the CMA stating whether or not, in his or her view, Ecolab and all its subsidiaries has complied with the IEO. At the same time, the MT must provide the CMA with a report setting out the following:

- (a) the basis for the MT's view that the IEO has or has not, as the case may be, been complied with and in particular whether:
 - (i) anything has caused him or her to be concerned as to whether Ecolab and all its subsidiaries has complied with the IEO, and if it has, whether those concerns have been resolved and why;
 - (ii) he or she has any remaining doubts or uncertainties as to whether Ecolab and all its subsidiaries has complied with the; and
 - (iii) anything that causes him or her to be concerned about a possible future breach of the IEO (whether deliberate or inadvertent);
- (b) details of the performance of the Ecolab business and Holchem business, including any factors that might indicate asset deterioration;
- (c) whether appropriate steps are being taken to maintain the Holchem business as a going concern;

(d) the extent to which Ecolab and Holchem and all their subsidiaries have cooperated with the MT in his or her task of monitoring its compliance with the IEO and details of any aspects of the cooperation of Ecolab or Holchem or all their subsidiaries that he or she considers could be improved;

(e) the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of Ecolab and Holchem and all their subsidiaries with the IEO and if there is anything that the MT considers would assist him or her in monitoring compliance;

(f) any current or anticipated requests for consent to vary the IEO; and

(g) the information he or she used to compile the report.

17. When providing reports to the CMA the MT must ensure that he or she does not disclose any information or documents to the CMA which Ecolab or Holchem or any of their subsidiaries would be entitled to withhold from the CMA on the grounds of legal privilege.

18. The MT must immediately notify the CMA in writing if he or she forms a reasonable suspicion that the IEO has been breached, or if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view; including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 17 above).

19. All communications between the MT and the CMA (including the report and statement referred to in paragraphs 15 and 16) are confidential and should not be disclosed to Ecolab and Holchem or any of their subsidiaries or to the Ecolab business or Holchem business, save with the prior written consent of the CMA. The MT shall not disclose such communications to third parties.