

# COMPLETED ACQUISITION BY ECOLAB, INC OF THE HOLCHEM GROUP LIMITED

## Issues statement

14 May 2019

### The reference

1. On 24 April 2019, the Competition and Markets Authority (CMA), in exercise of its duty under [section 22\(1\)](#) of the Enterprise Act 2002 (the Act), referred the completed acquisition by Ecolab, Inc (Ecolab) of The Holchem Group Limited (Holchem) (the Merger) for further investigation and report by a group of CMA panel members (the Group).
2. In exercise of its duty under section 35(1) of the Act, the CMA must decide:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
3. In answering these two questions we are required to apply a ‘balance of probabilities’ threshold to our analysis. That is, we will decide whether it is more likely than not that the Merger may be expected to result in an SLC.<sup>1</sup>
4. In this statement, we set out the main issues we are likely to consider in reaching our decision on the SLC question (paragraph 2(b) above), having had regard to the evidence available to us to date, including the evidence referred to in the CMA’s phase 1 decision (the Phase 1 Decision).<sup>2</sup>
5. We are publishing this issues statement in order to assist parties submitting evidence to our investigation. The issues statement sets out the issues we currently envisage being relevant to our investigation and we invite parties to

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<sup>1</sup> [Merger Assessment Guidelines](#) (CC2/OFT1254), paragraph 2.12. The Merger Assessment Guidelines have been adopted by the CMA board (see [Mergers: Guidance on the CMA’s jurisdiction and procedure](#) (CMA2), Annex D).

<sup>2</sup> [The Phase 1 Decision](#)

notify us if there are any additional relevant issues which they believe we should consider.

6. Throughout this document we refer to Ecolab and Holchem collectively as ‘the Parties’.
7. In our inquiry, we intend to continue from the CMA’s phase 1 investigation. Indeed, the Phase 1 Decision contains much of the detail underpinning this issues statement and parties are encouraged to read the two documents in conjunction. We intend to focus our investigation on the area in which the CMA found that the Merger gives rise to a realistic prospect of an SLC. That is, in the supply of cleaning chemicals for food and beverage (F&B) customers in the UK. Although this does not preclude the consideration of any other issues which may be identified during the course of our investigation, we are only likely to consider other issues in light of new evidence being brought to our attention by third parties. We consider this to be a proportionate way in which to conduct our inquiry.

## **Background**

8. On 30 November 2018, Ecolab purchased the entire issued share capital of Holchem.

### ***The Parties***

9. Ecolab is a supplier of, among other products, cleaning chemicals and ancillary services to (i) industrial customers including F&B manufacturers; and (ii) institutional customers active in the foodservice (catering), hospitality, lodging, healthcare, government, education and retail industries. Ecolab is incorporated in the US and listed on the New York Stock Exchange. Its global turnover in 2017 was approximately £10.8 billion (US\$13.8 billion).
10. Holchem supplies cleaning chemicals and ancillary services primarily to industrial customers active in the F&B industry, as well as distributors in the institutional segment. It is a private company, incorporated in the UK and owned by several individuals and family trusts. The global turnover of Holchem in 2018 was approximately £43 million.

## **Our intended inquiry**

11. Below we set out some specific areas of our intended assessment in order to help parties who wish to make representations to us. However, these will not be the only areas for our assessment. For example, we will also look at key

characteristic of how the market operates, the relevant counterfactual,<sup>3</sup> and any evidence available to us in relation to efficiencies arising from the Merger.<sup>4</sup>

## **The Parties' services and market definition**

12. The market definition provides a framework for assessing the competitive effects of a merger for a relevant product and geographic market. It involves an element of judgement. The boundaries of a market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We will take these factors into account in our competitive assessment.<sup>5</sup>
13. The CMA's Phase 1 Decision considered the impact of the Merger in the following frames of reference:
  - (a) the supply of cleaning chemicals for F&B customers in the UK; and
  - (b) the supply of cleaning chemicals for institutional customers in the UK.<sup>6</sup>
14. As we have stated in paragraph 7, we currently do not intend to investigate the supply of cleaning chemicals for institutional customers in the UK.
15. We intend to consider whether supply of cleaning chemicals for F&B customers in the UK should be further segmented. In addition, we will consider new evidence on the relevant market definition if we receive any.

## **Assessment of the competitive effects of the Merger**

### ***Theory of harm***

16. The term 'theory of harm' describes the possible ways in which an SLC could arise as a result of a merger. The theory of harm often provides the framework for our analysis of the competitive effects of a merger. Identifying a theory of harm in this issues statement does not preclude an SLC from being identified on another basis following receipt of additional evidence. We welcome views on the theory of harm described below.

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<sup>3</sup> [Merger Assessment Guidelines](#), section 4.3.

<sup>4</sup> [Merger Assessment Guidelines](#), section 5.7.

<sup>5</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>6</sup> [The Phase 1 Decision](#)

17. We will assess whether the Merger gives rise to an SLC in the supply of cleaning chemicals for F&B customers in the UK. This is a horizontal, unilateral effects theory of harm.
18. Unilateral effects can arise in a horizontal merger where one firm merges with a direct competitor that previously provided a competitive constraint. Through the Merger, removing one party as a direct competitor might allow the Parties to increase prices, lower the quality of their products or customer service, reduce the range of their products/services, and/or reduce innovation.<sup>7</sup> In general, where products or services are differentiated, for example by branding or quality differences, unilateral effects are more likely where the merger firms' products compete closely.<sup>8</sup>
19. Unilateral effects are also more likely if the variable profit margins of the products and services of the merger firms are relatively high. This is because, after a price increase, even if some customers switch away the value of the sales kept by the merged firm will be greater than they otherwise would be if margins were lower, making the price rise less costly.<sup>9</sup> Therefore, unilateral effects resulting from a merger are more likely where the merger eliminates a significant competitive force in the market or where customers have little choice of alternative suppliers.<sup>10</sup>
20. In this case, the Parties overlap in the supply of cleaning chemicals to industrial customers, and in particular in the supply of cleaning chemicals to F&B customers. As well as supplying cleaning chemicals the Parties are also involved in the provision of related ancillary services. In the F&B segment this may include assisting customers in setting up required cleaning protocols to ensure production lines are cleaned to the appropriate standard. Supply contracts or agreements are awarded both through formal bidding tenders and through bilateral negotiation.
21. To assess the theory of harm set out in paragraph 17, we will consider: the parties' market power; closeness of competition between the parties, and their post-merger incentives; and remaining competitive constraints (including from unformulated cleaning products and alternative cleaning solutions).
22. We intend to estimate market shares by revenue using data from the Parties and third parties. We will analyse bidding data and data on the Parties' records of winning and losing customers. We intend to consider the variable

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<sup>7</sup> [Merger Assessment Guidelines](#), paragraph 5.4.1.

<sup>8</sup> [Merger Assessment Guidelines](#), paragraph 5.4.6.

<sup>9</sup> [Merger Assessment Guidelines](#), paragraph 5.4.9 (b).

<sup>10</sup> [Merger Assessment Guidelines](#), paragraph 5.4.12.

margins that the Parties' earn in the relevant market. We will also consider evidence from the Parties' internal documents, third party questionnaire responses and views, and third party internal documents.

23. We will consider evidence on entry and/or expansion by third parties and whether such entry or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Merger.<sup>11</sup> To do this, we will examine the plans of third parties including their internal documents, consider the costs and time necessary for competitors to develop and launch competing products and services, and examine other factors that might inhibit entry or the expansion of competitors, such as any scale or incumbency advantages.

### ***Theory of harm we are not currently minded to investigate***

24. The Phase 1 Decision found that the Parties have a low share of the supply of cleaning products for institutional customers and after the Merger there will be numerous other competitors to constrain them.<sup>12</sup> The Phase 1 Decision therefore concluded that there was no realistic prospect that the Merger would result in an SLC in the supply of cleaning products for institutional customers.
25. Subject to any further evidence submitted in response to this issues statement or in the course of the investigation, we are not currently minded investigating this theory of harm.

### **Possible remedies and relevant customer benefits**

26. Should we conclude that the Merger is expected to result in an SLC in one or more markets, we will consider whether, and if so what, remedies might be appropriate, and will issue a further statement.
27. In any consideration of possible remedies, we may in particular have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.

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<sup>11</sup> [Merger Assessment Guidelines](#), section 5.8.

<sup>12</sup> [The Phase 1 Decision](#), paragraph 130.

## Responses to the issues statement

28. Any party wishing to respond to this issues statement should do so in writing, by **no later than 5pm on 27 May 2019**. Please email [EcolabHolchem@cma.gov.uk](mailto:EcolabHolchem@cma.gov.uk) or write to:

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