

Summary

1. On 24 April 2019, the Competition and Markets Authority (CMA) referred the completed acquisition by Ecolab Inc (Ecolab) of The Holchem Group Limited (Holchem) (the Merger) for an in-depth (phase 2) merger inquiry. The CMA is required to address the following questions:
 - 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.¹
2. Ecolab is a global supplier in water, hygiene and energy technologies, providing cleaning, water treatment and sanitising products and services to customers operating in food service, food processing, hospitality, healthcare, industrial, and oil and gas industries. It supplies, among other products, cleaning chemicals and ancillary services to industrial and institutional customers in the UK, including to food and beverage (F&B) manufacturers. It is incorporated in the United States (US) and listed on the New York Stock Exchange. Its global turnover in 2018 was approximately £11.3 billion (US\$14.7 billion).
3. Holchem is a UK based supplier of cleaning chemicals and ancillary services primarily to industrial customers active in the F&B industry, as well as distributors in the institutional segments in the UK and the Republic of Ireland. Holchem is incorporated in the UK and before the Merger was owned by several individuals and family trusts.
4. On 30 November 2018 Ecolab acquired the entire issued share capital of Holchem. We find that the share of supply test in the Act is satisfied, and that a relevant merger situation has therefore been created.
5. In this final report on our inquiry into the Merger, we refer to each of Ecolab and Holchem as a Party and collectively to both as the Parties.

Our inquiry

6. The Parties overlap in the supply of formulated cleaning chemicals (and ancillary services) to F&B customers and in the supply of formulated cleaning chemicals to institutional customers, both in the UK. We note that the CMA's

¹ s35(1) of the Enterprise Act 2002 (the Act).

phase 1 investigation found that the combination of the Parties in the supply to institutional customers in the UK did not give rise to a realistic prospect of an SLC, and we therefore have not found it necessary to examine this market further. We consider that this was a proportionate way in which to conduct our inquiry. Our report therefore focuses on the supply of cleaning chemicals and ancillary services to F&B customers.

7. The Parties provide important products and services which are crucial to ensuring that places where food and beverages are manufactured, processed and packaged remain clean and hygienic and the food or beverage free from contamination.
8. In our inquiry we analysed data from the Parties about their gains and losses of customers over the past few years and about their bidding activity in formal tender processes. We sent questionnaires to the Parties' customers and to suppliers listed by the Parties as competitors, through which we received detailed insight into the market and the competitive dynamic. In addition to conducting hearings with the Parties, we held calls with main and potential competitors and a range of customers of the Parties. Where available, we also reviewed internal documents of the Parties.

Our findings

9. We assessed the Merger against a counterfactual of pre-Merger conditions of competition.

The market

10. We consider that the relevant product market is the supply of formulated cleaning chemicals and ancillary services to F&B customers in the UK. We have excluded unformulated products from the relevant market as, although unformulated products are a viable alternative to formulated products under certain circumstances, the evidence demonstrates that unformulated chemical suppliers would act as a constraint only for a small proportion of the market. We note that there is some evidence of differences between the food, beverage and dairy segments and these are explored in our competitive assessment. Similarly, we note that there are some differences in the requirements of customers of different sizes and we took these differences into account in our competitive assessment.

Competitive effects

11. We considered whether removing one Party as a direct independent competitor might allow the merged entity to increase prices, lower the quality of its products or customer service (for example, technical support services), reduce the range of its products/services, and/or reduce innovation. This is a horizontal, unilateral effects theory of harm.
12. To assess this, we looked at market shares, customer behaviour (including likelihood of switching between suppliers), the closeness of competition between Ecolab and Holchem, and remaining competitive constraints after the Merger.
13. We found that the Merger substantially increases concentration in an already concentrated market. The Merger combines the largest supplier, Holchem, with another large supplier, Ecolab, creating a merged entity with a market share of ⌘ [30-40%] in the supply of formulated cleaning products (and ancillary services) to F&B customers in the UK. The merged entity is around twice as large as the next largest competitor. The only other suppliers of scale are Diversey Limited (Diversey) and Christeys Food Hygiene Limited (Christeys).
14. However, given the differentiated nature of suppliers in this market, we consider that market shares give only a partial indication of the Parties' competitive strength. We therefore examined and placed more weight on the evidence on how closely the Parties compete. A merger between parties who compete closely could have a significant effect on rivalry and therefore on the extent to which the competitive process encourages firms to improve their offers to customers or to become more efficient and innovative.
15. We found during our inquiry that reliability, backed-up by high quality technical support services, is important to customers. This is because of the potentially very high cost to customers of having their production disrupted by something going wrong in the cleaning process or because of the risk to public health and to the F&B manufacturer's reputation of a food hygiene incident. A number of customers and competitors told us that these considerations are utmost in customers' minds when thinking about switching cleaning chemical suppliers. We found that many customers do not switch frequently, they face material switching costs (eg in trialling a potential supplier) and many tend to view their supply options as being limited to a few large, established suppliers.
16. We also found that customers vary in their requirements and preferences between suppliers, while suppliers vary in their areas of strength or expertise.

Customers will therefore not generally view each of the major suppliers as being completely interchangeable for their particular requirements.

17. To assess the closeness of competition between Ecolab and Holchem, we looked at the customer base of each Party, the accounts gained and lost, participation in tenders, evidence from customers and internal documents of the Parties.
18. We found that the Parties compete for the same types of customers, including across each of the food, dairy and beverage segments and across a range of customer sizes. Notwithstanding this, we found that Ecolab receives a significant proportion of its revenue from international customers (which source their cleaning chemicals on a multi-national basis and have a UK presence) whereas Holchem does not supply any such customers.
19. We analysed the Parties' records on gained and lost accounts to determine which competitors were competing for those accounts and how often they were competing against each other. This evidence shows that Holchem was Ecolab's closest competitor by a significant extent for customers that Ecolab lost or viewed as being at threat of losing, as well as being the closest competitor for new customer opportunities targeted by Ecolab. Holchem therefore provides a substantial competitive constraint on Ecolab. The analysis also shows that Ecolab's other main competitors were Diversey and Christeyns. Similarly, Ecolab was a close competitor in a material number of Holchem's gained and lost accounts, although Diversey and Christeyns appear to have been closer competitors.
20. We looked at how closely the Parties compete in formal tenders. A sizeable share of each of the Parties' revenue comes from customers won in formal tenders, which are typically used by larger customers. The tender data indicates that Holchem is by far Ecolab's closest competitor. No other rival competed against Ecolab for a greater amount of tender value or won more tender value in those instances in which Ecolab itself did not win. Indeed, the tenders lost by Ecolab to Holchem were substantially greater in value than the tenders lost to all other competitors combined. From Holchem's perspective, the tender data shows that Ecolab has been a significant competitor, together with Diversey and Christeyns. Both Parties usually competed with one or two of the other Party, Diversey or Christeyns and only occasionally competed against all three. We consider that this shows that although there are four main competitors in this market, most competition for tendered contracts takes place between two or three large providers. We found that other suppliers, apart from Diversey and Christeyns, competed against the Parties in very few instances.

21. Both the gains and losses data and the tender data that we have analysed show that the Parties are close competitors, and usually face competition from some combination of each other and the two other large competitors (ie Diversey and Christeyns).
22. We received qualitative evidence from customers of the Parties which, overall, corroborates the quantitative gains and losses and tender data. Overall the responses to questionnaires to customers (sent both by the CMA and by the Parties) indicated that the Parties are close competitors. Holchem's larger customers only identified Ecolab, Diversey or Christeyns as their first or second choice alternative to Holchem. For Ecolab's larger customers, both Holchem and Diversey were equally popular as alternative suppliers, with Holchem ranked as the first alternative more than any other supplier. Smaller Ecolab customers named Holchem as their best alternative. Most smaller Holchem customers thought Diversey or Ecolab would be their best alternative, and although alternative suppliers were named, most were each mentioned only by one customer. Although smaller customers were somewhat more likely than larger customers to view smaller suppliers as their best alternatives, they still predominantly viewed one of the larger suppliers as their best alternative. This qualitative evidence is consistent with a market that is characterised by just four main players and a long tail of smaller players that are not effective competitors for the vast majority of customers.
23. The internal documents of the Parties that we have seen are, overall, consistent with the view that Holchem is a strong constraint on Ecolab, and that after the Merger the merged entity would be able to increase prices and/or worsen quality aspects of its offer.
24. We therefore consider that the evidence shows that the Parties are close competitors. In particular, it is clear that Holchem is the strongest competitive constraint faced by Ecolab in the UK F&B market. Ecolab, conversely, is one of the three main competitive constraints faced by Holchem in the market.
25. We then considered the strength of the remaining competitive constraints on the Parties.
26. The evidence shows that both Diversey and, to a lesser extent, Christeyns are significant constraints on the Parties and would continue to be constraints after the Merger. Although there are smaller suppliers active in the market, we did not find evidence that smaller F&B cleaning chemical suppliers, whether individually or collectively, would provide anything other than a weak constraint on the merged entity, and the constraint would be particularly weak

for larger customers. We also consider that other specialist suppliers would, at most, provide a very limited constraint and only for some customers.

27. Finally, we considered the evidence on whether unformulated cleaning products, which are basic cleaning materials unmixed with other chemicals and are outside the relevant market, offer some level of constraint on the Parties. F&B customers told us they value the ancillary services from the Parties (which are not offered with unformulated products) and we found that only a small proportion of them would be able to switch to unformulated products. We found that customers typically only use unformulated products for some of their requirements and would continue to require formulated cleaning chemicals and the ancillary services. We saw very little evidence of actual switching from formulated cleaning chemicals to unformulated products. Therefore we consider that customer switching to unformulated products would offer at best a weak constraint on the merged entity.
28. For these reasons, we conclude that, subject to any countervailing factors, the Merger will give rise to an SLC in the supply of formulated cleaning chemicals and ancillary services to F&B customers in the UK.

Countervailing factors

29. We considered whether there are countervailing factors which may prevent an SLC from arising, namely entry or expansion, buyer power or efficiencies.
30. We do not consider that expansion by smaller competitors will be timely, likely and sufficient to prevent an SLC from arising in this case. We consider that there are barriers to entry and expansion which will hamper new or existing rivals looking to expand to the size where they could sufficiently constrain the merged entity in the UK. Customers have low switching rates and place value on reputation, reliability and a proven track record. We therefore consider that an entrant would find growth of the scale required to prevent the Merger giving rise to an SLC to be slow and uncertain. This is consistent with the lack of recent entry (apart from through acquisition) and organic expansion in the industry.
31. We looked in detail at the possible expansion of Kersia group (Kersia), a global supplier of cleaning chemicals which has recently started expanding into the F&B market in the UK. From the evidence we received, including Kersia's plans and internal targets, we consider that there is considerable uncertainty about how effective Kersia will be in competing for larger customers. We found that Kersia was starting from a low base in the UK and its sales targets are modest relative to the Parties' turnover figures. We

consider that this indicates that the expansion of Kersia would be insufficient to provide effective competition to the merged entity within the next two years to prevent an SLC from arising. We therefore consider that any such expansion would not be timely, likely and sufficient for Kersia, together with the other small suppliers of F&B products, to prevent the Merger giving rise to an SLC.

32. We do not consider that there is compelling evidence that buyer power or efficiencies are likely to prevent an SLC from arising.
33. We therefore consider that countervailing factors are unlikely to prevent an SLC from arising.

Findings on SLC

34. We find that the completed acquisition by Ecolab of Holchem:
 - (a) has resulted in the creation of a relevant merger situation; and
 - (b) has resulted, or may be expected to result, in an SLC in the supply of formulated cleaning chemicals (and ancillary services) to F&B customers in the UK.
35. We consider that the adverse effects arising from the identified SLC could be an increase in prices, a lowering of the quality of the Parties' products or customer service (for example, technical support services), a reduction in the range of their products/services, and/or a reduction in innovation.

Remedies

36. Having concluded that the Merger has resulted, or may be expected to result, in an SLC, we are required under the Act to consider whether action should be taken to remedy, mitigate or prevent the SLC or any adverse effects that may be expected to result from the SLC and, if so, what action should be taken.
37. In deciding on the appropriate remedy, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will then select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.

38. We considered a full divestiture of Holchem, a partial divestiture of Holchem (excluding two subsidiaries), and an alternative divestiture proposal from the Parties. For each remedy option, we assessed its effectiveness by considering the impact on the SLC and its resulting adverse effects, the appropriate duration and timing, practicality and risk profile.
39. We conclude that two remedies would be effective in remedying the SLC and adverse effects that we have found: a sale of the entirety of Holchem, and a sale of Holchem Laboratories Limited (Holchem Laboratories), ie a partial divestiture. This would require Ecolab to sell all or the majority of Holchem or Holchem Laboratories to a suitable purchaser within a timeframe specified by the CMA. These two remedies would comprehensively address our competition concerns at source, and thereby comprehensively address the SLC and the adverse effects that we have identified have resulted, or may be expected to result, from the Merger.
40. We conclude that the alternative divestiture proposal put forward by Ecolab would not be an effective remedy to address the identified SLC and its resulting adverse effects.
41. We found that Ecolab's proposed remedy package has serious and fundamental shortcomings with regard to its comprehensiveness and material risks with regard to its effectiveness. The proposed remedy was not of a standalone business but a transfer of a portfolio of customers, which we did not consider would act as a comprehensive solution to address the SLC that we have found. Among other concerns, the evidence from customers strongly indicates they would not welcome such a transfer and whilst some may agree to move to a purchaser and be supplied with its products, we have no certainty of customers doing so, no guarantee they will remain and no powers to intervene if they reasonably choose not to.
42. We have not identified any potential relevant customer benefits (RCBs) to which we should have regard under the Act. Consequently, we have not modified our view of the appropriate remedy in light of any RCBs that would be eliminated by either of the remedies we have found to be effective.
43. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective in addressing the SLC and the resulting adverse effects.
44. Holchem Laboratories is a smaller divestiture package than the entirety of Holchem. As a result, we find the sale of Holchem Laboratories to be the more proportionate remedy to comprehensively remedy the SLC and its

resulting adverse effects. We consider that this partial divestiture remedy is no more onerous than is required to achieve that aim. We have not identified any relevant costs from a sale of Holchem Laboratories, and we have not identified any RCBs which we should take into account. In view of our important concerns about the adverse effects of the Merger, we have not seen any evidence that the costs of introducing an effective remedy outweigh the benefits of this remedy. We therefore conclude that the divestiture of Holchem Laboratories would be proportionate to the SLC and its resulting adverse effects.

45. Ecolab will be required to sell Holchem Laboratories subject to the CMA's approval of the identity of the purchaser and the terms of the transaction.
46. We propose to implement this partial divestiture remedy by seeking suitable undertakings from the Parties. We will issue an order if we are unable to obtain suitable undertakings from the Parties within the statutory timescale.